

# Firearms Amendment Bill 2017

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

##### Part 1—Preliminary

Clause 1 provides that the main purposes of the Bill are—

- to amend the Principal Act to—
  - create offences for possessing, carrying and using firearms in public places and private property;
  - provide for firearm prohibition orders;
  - further provide for Victorian Civil and Administrative Tribunal review of certain Chief Commissioner firearm licensing decisions under the Act;
  - further provide for traffickable quantities of unregistered firearms;
  - creating offences for possession of parts and equipment for the purpose of manufacturing firearms;
  - to improve the operation of the Act; and
  - deal with other minor and related matters;
- to make consequential and related amendments to certain other Acts due.

Clause 2 provides for the commencement of the Bill. Part 1 of the Bill comes into operation on the day after the day on which the Act receives Royal Assent.

Subclause (2) provides that Part 3 of the Bill comes into operation 10 years after the day on which Part 2 comes into operation. Part 3 of the Bill provides for the repeal of the firearm prohibition order provisions in new Parts 4A and 10A of the Principal Act. As such these 2 Parts will sunset 10 years after they commence.

Subclause (3) provides that the remaining provisions will come into operation on a day or days to be proclaimed (subject to subclause (4)). Subclause (4) provides that any provision subject to subclause (3) that has not commenced before 30 September 2018 comes into operation on that day.

Clause 3 provides that in the Bill, the **Firearms Act 1996** is the Principal Act.

#### **Part 2—Amendment of the Firearms Act 1996**

Clause 4 inserts new subparagraph (a)(viiia) into section 1 of the Principal Act. Section 1 of the Principal Act sets out the purposes of the Act. One of the purposes is to give effect to the principle that the possession, carriage, use, acquisition and disposal of firearms are conditional on the need to ensure public safety and peace. New subparagraph (a)(viiia) additionally provides that the purpose is to provide for strict control on the possession, carriage, use, acquisition, disposal and storage of firearms. New subparagraph (a)(viiia) is to support the firearm prohibition order provisions in new Part 4A and 10A of the Principal Act.

Clause 5 subclause (1) inserts the following definitions into the Principal Act—

- ***IBAC officer*** which has the same meaning as in the **Independent Broad-based Anti-corruption Commission Act 2011**;
- ***premises*** which means any place, whether built on or not and whether enclosed or not, and includes any building or structure on the place.

Subclause (2) amends the definition of ***shooting gallery*** by substituting "paintball guns" with "paintball markers".

Clause 6 amends section 6(6) of the Principal Act. Section 6 provides for offences for non-prohibited persons to possess, carry or use a longarm without a licence. Section 6 specifies tiered, increasing

penalties, depending on the category of firearm. Section 6(6) states that a non-prohibited person must not possess, carry or use a longarm that is not a category A, B, C, D or E longarm. Clause 6 inserts a paintball marker into this subsection. This is to avoid any confusion with section 6(5A), which already prohibits the possession, carriage or use of a paintball marker by an unlicensed person by clarifying that the offence in section 6(6) does not relate to a paintball marker.

Clause 7 amends sections 7C(1) and 7C(2) of the Principal Act to lower the number of unregistered firearms that constitute the offence of possession of a traffickable quantity of unregistered firearms from "more than 3 firearms" to "2 or more firearms". A corresponding amendment is made by clause 21 of the Bill to section 101A of the Principal Act to reduce the number of unregistered firearms that constitute the offence of acquiring or disposing of traffickable quantities of firearms.

Clause 8 amends section 17(1) of the Principal Act. Section 17(1) outlines when the Chief Commissioner of Police must not issue a longarm or handgun licence. Section 17(1)(c) specifically requires that the Chief Commissioner be satisfied of a range of matters.

Clause 8(a) inserts new section 17(1)(ba) into the Principal Act to create a separate ground for the refusal to issue a longarm or handgun licence if the Chief Commissioner is satisfied that the applicant is not a fit and proper person on the basis of information known to the Chief Commissioner as to the criminal activities of the applicant.

Clause 8(b) substitutes new sections 17(1)(c)(i) and (ia) of the Principal Act to reflect new section 17(1)(ba). The amendments will mean that under section 17(1)(c) the Chief Commissioner of Police must not issue a longarm or handgun licence unless the Chief Commissioner is satisfied that (in addition to the other matters provided for in the paragraph)—

- in relation to an applicant to which new paragraph (ba) does not apply, the applicant is a fit and proper person; and
- all responsible persons in relation to the application are fit and proper person.

Clause 9 amends section 34 of the Principal Act. Section 34 provides for review of a decision not to issue a licence. Subclause (1) amends section 34(1) to alter the cross-reference in that section to refer to the ground specified in new section 17(1)(ba).

As outlined above, clause 8 shifts the ground currently set out in section 17(1)(c)(ia) to a separate ground at section 17(1)(ba) of the Principal Act. Section 34(2) currently provides that the right to apply to the Firearms Appeals Committee for review does not apply where the decision is on the ground set out in section 17(1)(c)(ia) of the Principal Act. These decisions are only subject to judicial review by the Supreme Court of Victoria.

Subclause (2) substitutes a new section 34(2) into the Principal Act, which will enable the review of decisions on the ground specified in new section 17(1)(ba) by the Victorian Civil and Administrative Tribunal.

Clause 10 inserts new section 39A into the Principal Act. New section 39A provides that a junior firearms licence continues to operate after the holder turns 18 while the holder is in the process of transitioning to an adult licence and the Chief Commissioner is considering the adult licence application.

Under new section 39A(1) a junior licence is taken to continue in force on and after the holder turns 18 years of age if—

- the junior licence is not due to expire until on or after the holder turns 18 years of age; and
- before the holder turns 18 years of age, the Chief Commissioner receives an application from the holder, in accordance with the Principal Act, for a licence for the same category of firearms as that for which the junior licence has been issued.

Subsection 39A(2) provides for the period for which the licence is taken to continue in force.

Subsection (3) provides for the expiry of the licence if the Chief Commissioner decides not to issue the adult licence.

Clause 11 amends section 42 of the Principal Act, in relation to the renewal of licences, consistently with the amendments made to section 17 for applications for licences.

Clause 11(a) inserts new section 42(2)(bb) into the Principal Act to create a separate ground for the refusal to renew a licence if the Chief Commissioner is satisfied that the applicant is not a fit and proper person on the basis of information known to the Chief Commissioner as to the criminal activities of the applicant.

Clause 12 amends section 44 of the Principal Act, which will enable the review of decisions on the ground specified in new section 42(2)(bb) by the Victorian Civil and Administrative Tribunal.

Clause 13 amends section 49 of the Principal Act. Section 49 currently outlines the grounds on which the Chief Commissioner of Police may cancel a licence suspended under section 47 of the Principal Act. Section 49(1)(f)–(i) specifically requires that the Chief Commissioner be satisfied of a range of matters when cancelling a licence.

Clause 13 substitutes new section 49(1)(f), (fa) and (fb) for existing section 49(1)(f) and (fa) of the Principal Act so that the Chief Commissioner of Police may cancel a licence suspended under section 47 where the Chief Commissioner is satisfied that—

- the holder of the licence is not a fit and proper person on the basis of information known to the Chief Commissioner as to the criminal activities of the holder (new section 49(1)(f)); or
- in relation to a holder to which paragraph (f) does not apply, the holder is no longer a fit and proper person on any other basis (new section 49(1)(fa)); or
- if the Chief Commissioner is satisfied that any responsible person in relation to the licence is not a fit and proper person (new section 49(1)(fb)).

Clause 14 amends section 50 of the Principal Act. Section 50 provides for the review of a decision to cancel a licence. Clause 14 amends section 50 to enable the review of decisions on the ground specified in new section 49(1)(f) by the Victorian Civil and Administrative Tribunal.

Clause 15 amends section 51 of the Principal Act to reflect the amendments made by clause 13. Subclause (1) substitutes "paragraph (f)" for "paragraph (fa)" in section 51(1).

Subclause (2) amends section 51(1A) by omitting the words "general category handgun" and substituting "paragraph (f)" for "paragraph (fa)".

Clause 16 inserts new section 54(1A) into the Principal Act. Section 54 provides that certain persons are exempt from the requirements in Part 2 of the Principal Act. New section 54(1A) provides that a non-prohibited person does not commit an offence and is not required to hold a licence under Part 2 of the Principal Act when carrying or using a handgun at a shooting range when receiving supervised instruction in the use of a general category handgun by a person who holds a general category handgun licence. The exemption applies if the person is 12 years or over and has not received any such instructions on more than 13 previous occasions. If the person is over the age of 18 years they must be receiving the instructions for target shooting or as part of certain occupational requirements. If the person is under 18 years, both the instructor and the child must have written consent from the child's parent or guardian.

This amendment will remove the current distinction between the number of shoots allowed for unlicensed youths and adults under instruction at a shooting range and allow for a maximum of 13 total unlicensed shoots over the person's entire life.

Clause 17 moves the non-exhaustive definition of *carry on the business of being firearms dealer* from Division 1 of Part 3 of the Principal Act to new Division 1A of Part 3. The current definition applies to the whole of the Principal Act, however it is only required for Part 3—Carrying on the business of dealing in firearms and related items.

Clause 18 repeals the non-exhaustive definition of *carrying on the business of being a firearms dealer* as the definition has been inserted to a new Division 1A of Part 3 of the Principal Act by clause 17 of the Bill.

Clause 19 subclause (1) substitutes the heading for section 59A of the Principal Act to reflect new offences inserted into that section by clause 19.

Subclause (2) inserts new offences of possessing firearm parts or equipment (non-plant and machinery items, such as a firearm mould) including such possession for the purpose of manufacturing a firearm or other firearm part.

New section 59A(3) prohibits a person from possessing any firearm part for the purpose of manufacturing—

- a category A or B longarm or paintball marker; or
- that type of firearm part or any other type of firearm part for a category A or B longarm or paintball marker—

unless that person does so under and in accordance with a licence issued under this Part. The penalty for this offence is the same as for section 59A(1).

New section 54(4) replicates the offence in new section 54(3) for firearms that are not a category A or B longarm or paintball marker and provides that the penalty for this offence is the same as for section 59A(2).

New section 54(5) creates the offence of a person possessing any equipment for the purpose of manufacturing—

- a category A or B longarm or paintball marker; or
- that type of firearm part or any other type of firearm part for a category A or B longarm or paintball marker—

unless that person does so under and in accordance with a licence issued under this Part. The penalty for this offence is the same as for section 59A(1).

New section 54(6) replicates the offence in new section 54(4) for firearms that are not a category A or B longarm or paintball marker and provides that the penalty for this offence is the same as for section 59A(2).

Clause 20 amends section 101(5) of the Principal Act. Section 101 is a prohibition on certain types of advertising firearms for sale. Section 101(5) provides an exemption to this offence. Clause 20(2) and (3) will extend this exemption to approved club publications and other commercial firearms or shooting sport publications that are published by means of the Internet.

Clause 21 amends section 101A of the Principal Act by reducing the quantity of unregistered firearms that constitute the offence of acquiring or disposing of traffickable quantities of firearms from "more than 3" unregistered firearms to "2 or more".

Clause 22 inserts new Part 4A—Firearm prohibition orders into the Principal Act. New Part 4A establishes a scheme that enables the Chief Commissioner of Police to make a firearm prohibition order against an individual, which prohibits the individual from acquiring, possessing, carrying or using a firearm or firearm related item.

Division 1 of new Part 4A defines terms for the purpose of new Parts 4A and 10A—Firearm prohibition orders, reporting and IBC of the Principal Act. In new section 112A, *firearms prohibition order* is defined to mean an order under new section 112D(1) of the Principal Act.

*Firearm related item* is defined to mean any of the following—

- a part of a firearm;
- cartridge ammunition;
- a silencer;
- an attachment for a firearm;
- an accessory for a firearm;
- any other prescribed item related to a firearm.

Division 2 of new Part 4A sets out the principal firearm prohibition order offences. New section 112B makes it an offence punishable by up to 10 years imprisonment for a person to whom a firearm prohibition order applies to acquire, possess, carry or use a firearm or firearm related item.

New section 112C inserts 2 further offences into the Principal Act. The offence in new section 112C(1) is punishable by up to 10 years imprisonment.

New section 112C(2) creates a corresponding offence for firearm related items (rather than firearms) and is punishable by up to 3 years imprisonment. The offence applies where a person, knowing that another person is subject to a firearm prohibition order—

- disposes of or gives possession of a firearm related item to the other person; or
- enables or permit the other person to possess, carry or use a firearm related item.



Division 3 of new Part 4A outlines the nature and process for making firearm prohibition orders.

New section 112D provides that the Chief Commissioner may make an order (a *firearms prohibition order*) prohibiting an individual from doing all or any of the following—

- acquiring any firearm or firearm related item; or
- possessing, carrying or using any firearm or any firearm related item.

Subsection (2) provides that the Chief Commissioner must not make a firearm prohibition order in respect of a person who is under the age of 14 years.

Subsections (3) and (4) clarify that a firearm prohibition order may be made—

- where the individual to whom the order applies or is to apply has never acquired, possessed, carried or used a firearm or a firearm related item;
- where a firearm prohibition order that has expired or been revoked previously applied to the person.

New section 112E provides that the Chief Commissioner of Police may make a firearm prohibition order only if satisfied that it is in the public interest (that the individual not possess, acquire, carry or use a firearm or related item) to do so, on one or more of the following grounds—

- because of the criminal history of the individual; or
- because of the behaviour of the individual; or
- because of the people with whom the individual associates; or
- because, on the basis of information known to the Chief Commissioner about the individual, the individual poses a threat or risk to public safety.

New section 112F enables the Chief Commissioner of Police to delegate, in writing, the power to make a firearm prohibition order to persons in a range of stated positions at Victoria Police.

New section 112G sets out the required form and content of a firearm prohibition order. Specifically, a firearm prohibition order must contain particulars which include information about

the effect of the order, about the identity of the individual and about certain provisions of the Act that apply to the order.

New section 112H provides that all licences, permits and approvals under the Principal Act that are held by the individual to whom a firearm prohibition order applies are cancelled by the making of the order. The cancellation has effect on the order being served on the individual.

Subsection (2) provides similarly for a licence, permit or approval under the Principal Act that is held by a body corporate, of which the individual is an officer.

New section 112I provides for service of the order.

New section 112J sets the duration of a firearm prohibition order, which depends on the age of the individual to whom the order applies. For an adult, the order remains in force for 10 years. For an individual under the age of 18 years the order remains in force for 5 years.

New section 112K provides that the Chief Commissioner may revoke an order. Subsection (2) clarifies that such a power is exercised solely at the discretion of the Chief Commissioner and that an application may not be made to the Chief Commissioner by another person for the Chief Commissioner to exercise the power.

Division 4 of new Part 4A outlines the process for the administrative review of decisions to make firearm prohibition orders.

New section 112L(1) provides for an application to VCAT for a review of the Chief Commissioner's decision to make the order. Clause 33 inserts new section 182A into the Principal Act, which specifies when such an application must be made.

Subsection (2) provides that section 50(3) of the **Victorian Civil and Administrative Tribunal Act 1998** does not apply to such a review. This means that the Tribunal may not make an order staying the operation of a firearm prohibition order that is the subject of a proceeding for review.

New section 112M(1) provides a further right to review a decision to make an order by application to VCAT. The application may only be made if more than half the time for which the order is in force has expired. Subsection (3)

provides only a single application may be made. Under subsection (4) the right to review is in addition to the right set out in section 112L and may be exercised irrespective of whether a right under section 112L has been exercised. New section 112M, therefore, provides to an individual to whom a firearm prohibition order applies an avenue to demonstrate that the basis on which the order was originally made is no longer satisfied.

Subsection 112M(5) provides that section 45(2) of the **Victorian Civil and Administrative Tribunal Act 1998** does not apply to this review. This means that an applicant may request a written statement of reasons from the Chief Commissioner for the decision to make a firearms prohibition order, even though more than 28 days have passed since the making of the order.

Subsection (5) also provides that section 50(3) of the **Victorian Civil and Administrative Tribunal Act 1998** does not apply to such a review. This means that the Tribunal may not make an order staying the operation of a firearm prohibition order that is the subject of a proceeding for review.

Finally, subsection (6) provides that, in making a decision on a review under subsection (1), the Victorian Civil and Administrative Tribunal may have regard to all information and material on which the decision to make the order was based as well as any other relevant information and material. This is to ensure that the Victorian Civil and Administrative Tribunal may have regard to information, material and the facts as they exist at the time of the further review.

New section 112N provides, for the avoidance of doubt, that section 54 of the **Victorian Civil and Administrative Tribunal Act 1998** applies to a review under Division 4 of new Part 4A of the Principal Act. Section 54 provides for the exercise of Crown Privilege in proceedings before the Victorian Civil and Administrative Tribunal. Specifically, the Attorney-General may certify in writing that the disclosure of information about a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest for a reason specified in the certificate that could form the basis for a claim by the State in a proceeding in the Supreme Court that the information or matter should not be disclosed. The Tribunal is then subject to certain requirements to ensure the confidentiality of the information.

Division 5 of new Part 4A sets out further offences and police powers that apply in relation to firearm prohibition orders.

New section 112O makes it an offence, punishable by a fine of up to 50 penalty units or imprisonment for up to 12 months, for a person to whom a firearm prohibition order applies to enter or remain on certain types of premises and includes firearms dealers premises, shooting ranges and firearm club premises.

The premises and places encompass both those that are approved those that are not.

Subsection (2) provides for types of premises that may be prescribed for the purpose of the offence in subsection (1).

These types of premises would represent a risk that the person to whom the order applies may have access to firearms or related items.

New section 112P establishes 2 offences related to the failure to surrender firearms or firearm related items on service of a firearm prohibition order, which are both punishable by up to 5 years imprisonment. Subsection (1) provides that at the time a firearm prohibition order is served, the individual on whom the order is served must immediately surrender, to the police officer serving the order, or a police officer assisting that officer, any firearm or firearm related item the individual has in their possession or that the individual is carrying or using.

Subsection (2) further provides that if an individual is unable to surrender a firearm or firearm related item under subsection (1), the individual must surrender that firearm or firearm related item to a police officer in the manner directed by the police officer who serves the order, and no later than 24 hours after the order is served.

New section 112Q provides that a police officer may enter and search any premises occupied by, in the care of or under the control or management of the individual to whom an order applies and any vehicle, vessel or aircraft that is in the charge of the individual or a passenger thereof if reasonably required to determine whether the individual has acquired, possesses or is carrying or using a firearm or firearm related item. Either before or after the search (if it is not practicable to do so before the search) the police officer must inform the individual or if requested by another person present, of their Victoria Police

registered number and that the officer is empowered to conduct such a search under the Act.

New section 112R provides that a police officer may search an individual (other than by strip searching) to whom an order applies and any item, package or thing in their possession if reasonably required to determine whether the individual has acquired, possesses or is carrying or using a firearm or firearm related item. Either before or after the search (if it is not practicable to do so before the search) the police officer must inform the individual, of their Victoria Police registered number and that the officer is empowered to conduct such a search under the Act.

New section 112S provides that a police officer may search a person (other than by strip searching) who is in the company of an individual to whom an order applies. If the officer reasonably suspects that the person is committing or is about to commit an offence against the Act and has a firearm or firearm related item in their possession. New section 112S clarifies that the threshold for conducting a search of an accompanying person is the same as in section 149(1)(a)—Search of persons or vehicles. Either before or after the search (if it is not practicable to do so before the search) the police officer must inform the person, of their Victoria Police registered number and that the officer is empowered to conduct such a search under the Act.

New section 112T provides for how firearms or firearm related items seized or surrendered under new Part 4A are to be dealt with.

A firearm or firearm related item may be retained if evidence of an offence against the Act or if reasonably necessary to forensically test to determine if it is evidence of an offence against the Act or another Act.

A firearm or firearm related item is forfeit to the Crown if the individual who surrendered it or from whom it was seized is not lawfully entitled to possess the firearm or item and no other person is lawfully entitled to possess the firearm or item or the firearm or item has been acquired, possessed, carried or used in contravention of the Act. If the firearm or item is not forfeited or no longer required as evidence, it must be returned to the person who is lawfully entitled to possess the firearm or item.

New section 112U provides that for the purposes certain Divisions of Parts 2 and 3 and Parts 4, 6 and 6A and section 179 a reference to a "prohibited person" is taken to include a reference to an individual to whom an order applies and a "non-prohibited person" does not include a reference to such an individual. The effect is that for certain exemptions and licensing, permit and approval decisions by the Chief Commissioner, the person to whom an order applies is treated as a "prohibited person".

- Clause 23 inserts a new subsection (1B) into section 121 of the Principal Act. This section provides for the storage requirements for cartridge ammunition and the various categories of firearms with tiered penalties for failing to comply with those requirements. New section 121(1B) clarifies that a person who possesses a paintball marker under a paintball marker licence must store that marker, when not being carried or used in the same manner as a category A or B longarm (which is stipulated in item 1 of Schedule 4 of the Principal Act) or in any other manner which the Chief Commissioner is satisfied is as secure as the manner provided for in item 1 of Schedule 4. Failure store a paintball marker in accordance with new subsection (1B) carries a penalty of 60 penalty units or 12 months imprisonment (which is the same penalty for category A or B longarms).
- Clause 24 inserts new subsection (1A) into section 121 of the Principal Act. This section provides for the storage requirements for firearms and cartridge ammunition under a dealers licence, with tiered penalties for failing to comply with those requirements depending on the category of firearm. New section 123(1A) clarifies that a person possessing a marker under a dealers licence must store that marker in the manner fixed in the licence, with a penalty of 60 penalty or 12 months imprisonment. This is the same requirement for category A and B longarms (section 123(1)) and in practice the storage requirements will be the same.
- Clause 25 amends section 130 of the Principal Act substituting a new section 130(1), (1A) and (1B) establishing new offences for a person to possess or carry a loaded firearm or use a firearm in a public place or in any other place with reckless disregard for the safety of any person. Subsection (2A) provides exemptions for the offence. Depending on the circumstances, the exemption in

new section 130(2A)(g) applies where a person is acting under a firearms licence and in accordance with any other laws applying to the circumstances. Clause 25(5) amends existing section 130(3) so that the Chief Commissioner may permit a person to possess, carry or use a firearm with respect to the offences in public places. Clause 25(7) provides a non-exhaustive definition of *loaded* for the purposes of the offences in the substituted section 130(1) and new section 130(1A).

- Clause 26 establishes 2 offences under new section 131A of the Principal Act. A person must not, with reckless disregard for the safety of any person, use a firearm to discharge a shot, bullet or other missile at a vehicle, vessel, aircraft or premises (which includes residential premises). An aggravated offence is established if the discharge occurs while carrying out a *serious indictable offence*, which has the same meaning as in section 325 of the **Crimes Act 1958**. Clause 26(4) provides for certain exemptions for the 2 new offences.
- Clause 27 amends section 152 of the Principal Act to provide that any firearm or firearm related item that is forfeited to the Crown under the Act must either be destroyed or returned to the person who is entitled to possess the firearm or item, or given to any person or body approved by the Minister to possess the firearm.
- Clause 28 amends section 155 of the Principal Act to increase the number of Australian lawyers appointed to the Firearms Appeal Committee from 3 to 5, which increases the overall number of members of the Committee from 13 to 15. This is to facilitate hearings by the Committee.
- Given the increase in the number of legal members of the Committee, subclause (2) increased the number of Australian lawyers on the panel that the Minister nominates for membership of the Committee to the Governor in Council. This panel is given to the Minister from professional associations (within the meaning of the Legal Profession Uniform Law (Victoria)).
- Clause 29 amends section 161(5) of the Principal Act by substituting the number of members of the Firearm Appeals Committee that constitute a quorum from 7 to 8 members as a consequence of the amendments to section 155.

Clause 30 inserts new Part 10A—Firearm prohibition orders, reporting and IBAC. New Part 10A establishes an oversight, assurance and monitoring regime for the exercise of powers and duties and functions under new Part 4A as well as the administration of the Part.

Division 1 of new Part 10A defines terms for the purpose of the new Part, including *applicable proceeding, process or action* for the purposes of new section 174J.

Division 2 of new Part 10A sets out the annual reporting obligations for the Chief Commissioner and the IBAC regarding certain matters relating to firearm prohibition orders and the review of orders by the IBAC.

Division 3 of new Part 10A provides the IBAC with a standing monitoring power. Under new section 173, the IBAC may monitor any exercise of the powers under Part 4A or 10A and the performance of the duties and functions of the Chief Commissioner, including monitoring any issue relating to the administration by the Chief Commissioner of Part 4A or 10A. The IBAC may give the Minister a written report on the outcome of exercising its monitoring powers. The IBAC must also provide a report if requested by the Minister. Under new section 174A, after monitoring, the IBAC may, in writing, recommend (in private) that the Chief Commissioner take any appropriate action. The Chief Commissioner has 45 days to give a written response to IBAC's recommendation.

Division 4 of new Part 10A sets out the IBAC Ministerial report which is to be tabled in Parliament. At the end of every 2 year period, the IBAC must provide a report on the exercise of the powers under Part 4A or 10A and the performance of the duties and functions of the Chief Commissioner under Part 4A or 10A. Under new section 174B, the IBAC may include recommendations to the Minister on possible amendments to Part 4A or 10A to improve the operation of the Parts. Under new section 174D the version of the IBAC Ministerial report that is to be tabled in Parliament must not include any information that in the Chief Commissioner has specified could reasonably be expected to endanger a person's safety, compromise operational activities or methodologies of State and Territory, federal and foreign law enforcement agencies or prejudice an investigation or prosecution.



New Division 5 of Part 4A outlines the requirements for the IBAC to review a proportion of decisions by the Chief Commissioner to issue firearm prohibitions orders.

New section 174E requires the Chief Commissioner as soon as possible at the end of each period of 3 months (starting on 1 January of any year) to report to the IBAC on the number of orders issued in the period and certain other matters, including whether or not an application for a VCAT review has been applied for. Once the Chief Commissioner provides the report, the IBAC must review a proportion of the orders made during the period under review. In determining the proportion of orders to be reviewed under new section 174F(4), the IBAC is to have regard to the number of orders made in the period, the need to have a representative sample of orders and other relevant issues, such as the age of the individual subject to the order. As a guide, depending on the number of orders made, a realistic sample would be approximately 10 per cent.

Under new section 174H for each order under review the IBAC must review whether or not the order should have been made having regard to the matters set out in new section 112E. The IBAC may only review the information on which the decision to make the order was based. Under new section 174I, following the review of the issuing of an order, the IBAC may recommend (in private) that the Chief Commissioner take action that it considers appropriate. The Chief Commissioner has 45 days to respond to the IBAC.

Division 6 of new Part 10A provides for general matters under the Part.

New section 174J provides that a *protected person* (as defined under the **Independent Broad-based Anti-corruption Commission Act 2011**) is not compellable to produce, or permit inspection of any document or other thing in an applicable proceeding, process or action if the person has created, or has in their possession or control, the document or thing in the performance of the duties and functions or the exercise of the powers of the protected person or the IBAC under the Principal Act. New section 174J(2) provides that a written certificate of the IBAC is evidence of this fact.

New section 174K provides that the **Freedom of Information Act 1982** does not apply to a *document* (as defined under that Act) that is in the possession of any person or body to the extent

it disclose information about the performance of the duties and functions or the exercise of the powers of the IBAC or an authorised IBAC officer.

New section 174L provides an exemption for the Chief Commissioner and members of Victoria Police personnel from section 181 of the Principal Act (disclosure of information) if the information is disclosed to the IBAC for the purposes of new Part 10A.

New section 174M provides powers of entry and inspection to IBAC officers, authorised by the IBAC to enter premises occupied by Victoria Police, inspect or copy documents found on those premises relating to the administration of Part 4A or are relevant to IBAC's functions. An authorised officer may also require a member of Victoria Police personnel to give the officer information relevant to the inspection and answer any relevant question. New section 174M(3) requires the Chief Commissioner to ensure that members of Victoria Police personal give any assistance the authorised IBAC officers reasonably requires to perform their functions.

New section 174N requires the Chief Commissioner to give the IBAC any reasonable assistance to enable it to perform its functions. The Chief Commissioner is also required to ensure that police officers, delegates of the Chief Commissioner under Part 4A and persons employed in the administration of Part 4A give the IBAC any assistance reasonably required to enable the IBAC to perform its functions under Part 10A.

New section 174O requires the Chief Commissioner take all reasonable steps to ensure records of certain matters relating to Part 4A are kept.

Clause 31 amends section 176 of the Principal Act, which provides for restrictions on the Chief Commissioner's power of delegation. As amended by clause 31, section 176 will permit the Chief Commissioner to delegate to any police officer or to any Victoria Police employee any of the Chief Commissioner's powers under the Principal Act, except—

- the power for delegation under section 176;
- the power to delegate the power to make a firearms prohibition order under new section 112F; and

- the requirement on the Chief Commissioner to provide, to the Minister for inclusion in the annual report of operations under Part 7 of the **Financial Management Act 1994** certain, reports in accordance with section 153C(1) of the Principal (this exemption is already provided for in existing section 176).

Clause 31 revokes the restriction on the power of the Chief Commissioner to make a decision not to issue or to cancel a general category handgun licence due to criminal activities on the part of an applicant or licensee that is known to the Chief Commissioner that would cause him or her not be satisfied that the person is a fit and proper person under existing section 17(1)(c)(ia) and 49(1)(fa). Reviews on this ground will now be to the Victorian Civil and Administration Tribunal rather than the Supreme Court, as provided for in clauses 9 and 12 of the Bill.

Clause 32 substitutes the reference to "the Victorian Civil and Administrative Tribunal" with "VCAT" in section 181 of the Principal Act. The definition of *VCAT* in section 38 of the **Interpretation of Legislation Act 1984** is applicable to all Acts and subordinate instruments, so reference to the full title is not required.

Clause 33 inserts new section 182A into the Principal Act to provide that an application for review to VCAT of the Chief Commissioner's decision to not issue, refuse to renew or cancel a licence based on the "criminal activities ground" under new section 17(1)(ba), 42(2)(bb) or 49(1)(f) or review of the decision to make a firearms prohibition order under new section 112L must be made within 28 days of the later of—

- the day on which the decision is made. Or in the case of the firearms prohibition order, the day on which the order is served on the individual; or
- if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant or the individual to whom a firearm prohibition order applies, requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or individual or the applicant or individual is informed, in accordance with section 46(5) of that Act, that a statement of reasons will not be given.

- Clause 34 amends section 189A of the Principal Act, providing that offences against the following sections of the Principal Act (which have been inserted into the Principal Act by the Bill) are indictable offences—
- section 59A(1), (2), (3), (4), (5) and (6);
  - section 112A, 112B(1) and (2) and 112O(1) and (2);
  - sections 130(1), (1A) and (1B) and 131A(1) and (2).
- Clause 35 inserts new sections 217 to 220 into the Principal Act. These are transitional provisions regarding amendments to firearm trafficking offences; written permissions given by the Chief Commissioner under section 130(3); and certain licensing applications and suspensions.
- Clause 36 subclause (1) repeals items 4 and 5A of Schedule 3 of the Principal Act as a consequence of the amendments to section 54. Subclause (2) substitutes "paintball gun" with "paintball marker" in Column 2 of item 6 of Schedule 3, providing consistency of language in the Act.
- Clause 37 inserts new item 1A into Schedule 4 of the Principal Act, to provide that the requirements for storage of paintball markers are the same as those for the storage of a category A or B longarm under item 1 of Schedule 4. Clause 37 should be read with clause 23, which inserts new section 121(1B) to clarify that a person who possesses a paintball marker under a paintball marker licence must store that marker, when not being carried or used in the same manner as a category A or B longarm.

### **Part 3—Repeal of firearm prohibition order provisions**

- Clause 38 will repeal new Parts 4A and 10A of the Principal Act. As provided in clause 2(2), Part 3 of the Bill comes into operation 10 years after new Parts 4A and 10A of the Principal Act commence, meaning the firearm prohibition order provisions will sunset after 10 years of operation.

### **Part 4—Amendment of other Acts**

- Clause 39 amends the **Control of Weapons Act 1990** by inserting a new section 5AB(3) into that Act to create an offence for an individual to whom a *firearm prohibition order* (as defined

under the **Firearms Act 1996**) applies from possessing, carrying or using an imitation firearm. A penalty of 1200 penalty units or imprisonment of 10 year will apply, which is the same penalty as for a *prohibited person* (as defined under the **Firearms Act 1996**) for possessing, using or carrying an imitation firearm.

The firearms prohibition order provisions inserted into the Principal Act by clause 22 of the Bill have been modelled on other jurisdictions' firearm prohibition order schemes. These schemes, treat an imitation firearm in a similar way to firearms. As Victoria regulates imitation firearms under the **Control of Weapons Act 1990**, rather than the Principal Act, it is appropriate that a person to whom a firearm prohibition order applies be prohibited from possessing, carrying or using an imitation firearm.

Subclause (3) amends section 11A of the **Control of Weapons Act 1990** to provide that an offence against new section 5AB(3) is an indictable offence.

- Clause 40 amends the **Criminal Organisations Control Act 2012** by inserting offences against new sections 112C(2), 112O(1), 121(1B) and 123(1A) in the Principal Act into the Schedule of that Act. That Schedule details certain offences that are applicable offences for the purposes of that Act. Under that Act, a senior police officer may issue an unlawful association notices on an individual if the officer reasonable believes the individual has associated with an individual convicted of an applicable offence tried on indictment and the commission of an offence is likely to be prevented if those individuals are prevented from associating with each other.
- Clause 41 amends the **Fortification Removal Act 2013** by inserting offences against new sections 112C(2), 112O(1), 121(1B) and 123(1A) in the Principal Act into the Schedule of that Act. That Schedule details certain offences that are specified offences for the purposes of that Act. Under that Act, the Magistrates' Court may order the removal or modification of a fortification at a premises if satisfied there is a fortification in place at the premises and there are reasonable grounds to believe the premises are being used, or have been used or are likely to be used for or in connection with certain criminal conduct, including the commission of a specified offence provided for in the Schedule in that Act.

### **Part 5—Repeal of amending Act**

Clause 42 provides for the automatic repeal of this amending Act on the first anniversary of the day on which all of the provisions are operational. The repeal does not affect continuing operation of the amendments made by it (see section 15(1) of the **Interpretation Legislation Act 1984**).