

NORTHERN TERRITORY OF AUSTRALIA

FIREARMS AMENDMENT ACT 2004

Act No. 19 of 2004

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

Act No. 19 of 2004

AN ACT

to amend the *Firearms Act* and for related purposes

[Assented to 15 March 2004]
[Second reading 26 November 2003]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Firearms Amendment Act 2004*.

2. Commencement

(1) Section 4 comes into operation on the day on which section 16C of the *Domestic Violence Act* commences.

(2) The remaining provisions of this Act come into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Firearms Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 3 of the Principal Act is amended by inserting in paragraph (c) of the definition of "interim restraining order" in subsection (1) "or 16C" after "section 6(3)".

5. Register

Section 7 of the Principal Act is amended by adding at the end the following:

"(4) A document certified by the Commissioner to be an extract from, or copy of, an entry in the register must be received in all courts and on all occasions as evidence and is taken to be sufficient proof of the particulars contained in that entry without requiring the production of the register from which the extract or copy was taken."

6. Period of licence

Section 14 of the Principal Act is amended by adding at the end the following:

"(3) A licence is not renewable and a fresh application must be made for the grant of a new licence as required."

7. Firearms collector licence

Section 24 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) A firearms collector licence authorises the holder to possess and display only firearms of a category specified in the licence.

"(1A) A firearms collector licence that authorises the possession of category H firearms does not authorise the holder of the licence to possess category H firearms that were manufactured after 31 December 1946 unless the holder is a student of arms within the meaning of section 35C(2)."

8. Firearms corporate licence

Section 26 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) The holder of a firearms corporate licence must not permit a person to possess or use a firearm held under the licence unless the person –

- (a) is the holder of a firearms employee licence, is an employee of the holder of the corporate licence, and the firearm is in the possession of the person for a purpose relating to his or her duties as an employee;
- (b) is the holder of a firearms instructor licence, is an employee or is otherwise engaged by the holder of the corporate licence in the capacity of an instructor, and the firearm is in the possession of the

person for a purpose relating to his or her duties as an employee or instructor; or

- (c) holds a relevant permit to possess and use a firearm of the type possessed under the corporate licence and the possession and use is in accordance with the conditions applying to the corporate licence.

Penalty: If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

If the offender is a body corporate -- 1 000 penalty units."

9. Grant of permits

Section 31 of the Principal Act is amended by inserting after subsection (1)(fb) the following:

"(fc) to authorise an approved firearms club to permit a person or class of persons to use under supervision a category H firearm for sports shooting at the firearms club;"

10. Suspension by police officer or Commissioner

Section 42 of the Principal Act is amended –

- (a) by inserting after subsection (1) the following:

"(1A) The Commissioner may, by written notice served on the holder of a licence, permit or certificate, suspend the licence, permit or certificate for a specified period or until conditions specified in the notice are complied with."; and

- (b) by inserting in subsection (2) "or (1A)" after "subsection (1)".

11. Refusal or revocation by Commissioner

Section 43 of the Principal Act is amended –

- (a) by omitting "Where" and substituting "(1) If"; and

- (b) by adding at the end the following:

"(2) A person must, immediately after a notice under subsection (1) is served on him or her or not later than the period specified in the notice, deliver to a member of the Police Force or to a person nominated by the person and approved by a member –

- (a) the licence, permit or certificate of registration (if any); and
- (b) any firearm to which the notice relates.

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Penalty: 50 penalty units or imprisonment for 12 months."

12. Repeal

Section 44A of the Principal Act is repealed.

13. Repeal and substitution

Sections 45 and 46 of the Principal Act are repealed and the following substituted:

"46. Storage and safe keeping requirements

- "(1) A person in possession of a firearm or ammunition –
- (a) must take all reasonable precautions to ensure that –
 - (i) it is kept safely;
 - (ii) it is not stolen or lost; and
 - (iii) it does not come into the possession of a person who is not authorised to possess it; and
 - (b) must comply with the storage and safe keeping requirements under this Act that apply to the firearm or ammunition.

Penalty: If the offender is a natural person – 50 penalty units or imprisonment for 12 months.

If the offender is a body corporate – 250 penalty units.

"(2) Subsection (1)(b) does not apply in relation to a firearm if the person in possession of the firearm satisfies the Commissioner that the person has provided alternative arrangements for the storage and safe keeping of the firearm (and any ammunition) that are of a standard not less than the requirements under the Act.

"(3) The Regulations may specify the minimum standards for storage and safe keeping of firearms or classes of firearms (and ammunition)."

14. Notice of appeal

Section 51 of the Principal Act is amended –

- (a) by omitting from subsection (1) "decision" (second reference) and substituting "decision or action"; and
- (b) by omitting subsection (2) and substituting the following:

"(2) An appeal under subsection (1) is instituted by the person lodging with the Tribunal a notice of appeal in the prescribed form accompanied by the determined fee.

"(2A) A notice of appeal must be lodged with the Tribunal –

- (a) within 28 days after the decision or action of the Commissioner appealed against; or
- (b) if the Tribunal is satisfied that the person has a reasonable excuse for not lodging the notice within 28 days – within the additional time that the Tribunal allows.

"(2B) A notice of appeal must state fully and in detail the grounds upon which the appeal is based and give particulars of the material on which the appellant relies."

15. Repeal

Sections 53 and 53A of the Principal Act are repealed.

16. Determination of appeals

Section 54 of the Principal Act is amended by adding at the end the following:

"(3) The Tribunal must publish its reasons for its decision (including if its decision is to confirm the decision or action of the Commissioner)."

17. New sections

The Principal Act is amended by inserting after section 54 in Part 9 the following:

"54A. Tribunal can make order for costs in certain cases

"(1) The Tribunal may make an order for costs against a party to an appeal if satisfied that –

- (a) the party's conduct in the proceedings is or was frivolous or calculated to cause delay; or
- (b) the party has, in the circumstances of the case, acted unreasonably.

"(2) An order for costs awarded by the Tribunal may be entered in the records of the Local Court as if it were a judgment given in that Court for a debt due to the person to whom the costs were awarded and, on entry in those records, is enforceable under the *Local Court Act* as such a judgment.

"54B. Procedure of Tribunal

"(1) Before the hearing of an appeal, a question of law or procedure (including a request for an adjournment or an extension of time) in relation to the appeal may be heard and determined by the Chairperson alone, without the need to convene the Tribunal.

"(2) Subject to subsection (1), all issues to be considered by the Tribunal must be determined by majority decision.

"(3) Schedule 7 applies in relation to the procedure of the Tribunal at a hearing before the Tribunal.

"(4) Subject to this Part and Schedule 7, the procedure of the Tribunal at a hearing before the Tribunal is as determined by the Chairperson.

"54C. Appeal to Supreme Court

"(1) A party to a proceeding before the Tribunal who is aggrieved by a decision of the Tribunal may appeal against that decision, on a question of law only, to the Supreme Court in accordance with the Rules of that Court.

"(2) An appeal under subsection (1) must be instituted within 28 days after the day the decision complained of was made."

18. Possession or use of firearms

Section 58 of the Principal Act is amended –

- (a) by omitting from subsection (5)(b) "a restraining order" and "restraining order" (second reference) and substituting "an interim restraining order" and "interim restraining order" respectively;
- (b) by omitting subsection (5)(ba) and substituting the following:
 - "(ba) in respect of whom a restraining order is or was in force may not possess or use a firearm –
 - (i) while the restraining order is in force; or
 - (ii) for a further period of 5 years from the date the order expires or ceases to have effect;"
- (c) by omitting from subsection (5)(d) "while" and substituting "of the type or category for which the licence was refused or revoked during any period for which"; and
- (d) by omitting subsection (7).

19. Obligation of supervisor

Section 58A of the Principal Act is amended --

- (a) by omitting from subsection (2)(a) "licence; or" and substituting "licence;"
- (b) by omitting from subsection (2)(b) "section 31(1)(fb)." and substituting "section 31(1)(fb); or"; and
- (c) by adding at the end of subsection (2) the following:
 - "(c) the person is a person to whom a permit under section 31(1)(fc) relates."

20. New Division

Part 11 of the Principal Act is amended by inserting after Division 2 the following:

"Division 2A – Certain offences outside Territory

"60A. Conspiring to commit and aiding etc. commission of offence outside Territory

"(1) A person must not, in the Territory, conspire with another person or persons to commit, in a place outside the Territory, an offence ('the principal offence') that is punishable under the provisions of a law in force in that place that corresponds to a provision of this Act.

"(2) A person must not, in the Territory, aid, abet, counsel, procure, solicit or incite the commission, in a place outside the Territory, of an offence ('the principal offence') that is punishable under the provisions of a law in force in that place that corresponds to a provision of this Act.

"(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to the same penalty as if the principal offence was committed in the Territory."

21. Repeal and substitution

Sections 62 and 63 of the Principal Act are repealed and the following substituted:

"62. Purchase of firearms

"(1) A person must not purchase a firearm unless the person is authorised to --

- (a) possess the firearm under a firearms dealer licence; or

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- (b) purchase the firearm by a permit or corresponding permit.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years or, if the offence relates to a category A firearm or category B firearm, 200 penalty units or imprisonment for 12 months.

If the offender is a body corporate – 2 000 penalty units or, if the offence relates to a category A firearm or category B firearm, 1 000 penalty units.

"(2) A person, other than the holder of a firearms dealer licence, must not purchase a firearm from another person unless –

- (a) the other person is the holder of a firearms dealer licence; or
- (b) the purchase –
- (i) is arranged through the holder of a firearms dealer licence; or
- (ii) if the holder of a firearms dealer licence is not reasonably available – is witnessed by a member of the Police Force.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years or, if the offence relates to a category A firearm or category B firearm, 200 penalty units or imprisonment for 12 months.

If the offender is a body corporate – 2 000 penalty units or, if the offence relates to a category A firearm or category B firearm, 1 000 penalty units.

"63. Sale of firearms

"(1) A person, other than the holder of a firearms dealer licence, must not sell a firearm to another person unless –

- (a) the other person is the holder of a firearms dealer licence; or
- (b) the sale –
- (i) is arranged through the holder of a firearms dealer licence; or
- (ii) if the holder of a firearms dealer licence is not reasonably available – is witnessed by a member of the Police Force.

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Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years or, if the offence relates to a category A firearm or category B firearm, 200 penalty units or imprisonment for 12 months.

If the offender is a body corporate – 2 000 penalty units or, if the offence relates to a category A firearm or category B firearm, 1 000 penalty units.

"(2) A person must not sell a firearm to another person unless the other person is authorised to –

- (a) possess the firearm under a firearms dealer licence; or
- (b) purchase the firearm by a permit or corresponding permit.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years or, if the offence relates to a category A firearm or category B firearm, 200 penalty units or imprisonment for 12 months.

If the offender is a body corporate – 2 000 penalty units or, if the offence relates to a category A firearm or category B firearm, 1 000 penalty units.

"(3) A person must not sell a firearm to another person ('the purchaser') unless the person sights –

- (a) if the purchaser is the holder of a firearms dealer licence – that licence;
- (b) if the purchaser is the holder of a firearms licence – that licence and the purchaser's permit to purchase the firearm; or
- (c) if the purchaser is not the holder of a firearms dealer licence or a firearms licence – the purchaser's permit to purchase the firearm.

Penalty: 400 penalty units or imprisonment for 2 years or, if the offence relates to a category A firearm or category B firearm, 200 penalty units or imprisonment for 12 months.

"(4) A person who sells a firearm to another person who is not the holder of a firearms dealer licence must complete the particulars of the sale on the permit authorising the purchase of the firearm and return the permit to the Commissioner not later than 7 days after the sale.

Penalty: If the offender is a natural person – 50 penalty units or imprisonment for 12 months or, if the offence relates to a

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category A firearm or category B firearm, 20 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 250 penalty units or, if the offence relates to a category A firearm or category B firearm, 100 penalty units.

"63A. Trafficking in firearms

"(1) A person who contravenes section 63 (other than subsection (3) or (4)) on 3 or more separate occasions during any period of 30 consecutive days is guilty of an offence of trafficking.

Penalty: If the offender is a natural person – imprisonment for 10 years or, if the offence relates to a category A firearm or category B firearm, imprisonment for 5 years.

If the offender is a body corporate – 2 500 penalty units or, if the offence relates to a category A firearm or category B firearm, 1 250 penalty units.

"(2) A person who contravenes section 63 (other than subsection (3) or (4)) on 3 or more separate occasions where a firearm involved in any of the offences is a prohibited firearm is guilty of an offence of aggravated trafficking.

Penalty: If the offender is a natural person – imprisonment for 15 years.

If the offender is a body corporate – 3 750 penalty units.

"(3) A person who contravenes section 63 (other than subsection (3) or (4)) on 3 or more separate occasions where a firearm involved in each of the offences is a prohibited firearm is guilty of an offence of trafficking in prohibited firearms.

Penalty: If the offender is a natural person – imprisonment for 20 years.

If the offender is a body corporate – 5 000 penalty units.

"(4) If a person is found guilty of an offence under subsection (1), (2) or (3), he or she is liable to the punishment under that subsection but not to separate or additional punishment for any of the offences that constituted the trafficking offence.

"(5) If a person is found not guilty of a trafficking offence under subsection (1), (2) or (3), he or she remains liable to punishment for any of the constituent offences that were alleged to have comprised the trafficking offence and can be found guilty of any of those constituent offences as an alternative

verdict to the trafficking offence, even if the person was not charged with any of the constituent offences.

"63B. Advertising firearm for sale

"(1) A person must not advertise a firearm for sale unless the advertisement in respect of the firearm contains the serial number of the firearm.

Penalty: 20 penalty units or imprisonment for 6 months.

"(2) Subsection (1) does not apply to the holder of a firearms dealer licence who is authorised under the licence to possess the firearm that is advertised for sale."

22. New section

The Principal Act is amended by inserting after section 68 the following:

"68A. Sale and purchase of ammunition

"(1) A person must not, in trade or commerce, sell ammunition for a firearm unless the person is the holder of a firearms dealer licence or is authorised by a permit to sell the ammunition.

Penalty: If the offender is a natural person – 10 penalty units or imprisonment for 3 months.

If the offender is a body corporate – 50 penalty units.

"(2) A person must not, in trade or commerce, sell ammunition for a firearm unless –

- (a) the person purchasing the ammunition is the holder of a licence for a category of firearm that takes the ammunition or is authorised to buy the ammunition by a permit or by the Commissioner in writing; and
- (b) the person who sells the ammunition holds the licence, permit or authorisation.

Penalty: If the offender is a natural person – 10 penalty units or imprisonment for 3 months.

If the offender is a body corporate – 50 penalty units.

"(3) A person who, in trade or commerce, sells ammunition for a firearm must advise the Commissioner without delay of any loss or theft of ammunition held by the person.

Penalty: If the offender is a natural person – 10 penalty units or imprisonment for 3 months.

If the offender is a body corporate – 50 penalty units."

23. Possession of ammunition

Section 69 of the Principal Act is amended –

- (a) by omitting subsection (1); and
- (b) by omitting from subsection (2) "(2) A person" and substituting "A person".

24. Repeal

Section 72 of the Principal Act is repealed.

25. Carrying firearms in public places

Section 78 of the Principal Act is amended –

- (a) by omitting the penalty provision at the foot of subsection (2) and substituting the following:

"Penalty: 200 penalty units or imprisonment for 12 months or, if the offence relates to a category A firearm or category B firearm, 100 penalty units or imprisonment for 6 months.";

and

- (b) by omitting the penalty provision at the foot of subsection (3) and substituting the following:

"Penalty: 400 penalty units or imprisonment for 2 years or, if the offence relates to a category A firearm or category B firearm, 200 penalty units or imprisonment for 12 months.".

26. False or misleading statements

Section 89 of the Principal Act is amended –

- (a) by inserting in subsection (1) "or misleading" after "false"; and
- (b) by omitting from subsection (2) "entry" and substituting "or misleading entry, or alteration to an entry,".

27. New section

The Principal Act is amended by inserting after section 98 the following:

"98A. Seizure etc. of firearm includes ammunition

"If a firearm is forfeited, required to be surrendered or delivered up to the Commissioner or liable to seizure under this Act, any ammunition relating to the firearm is included in the forfeiture, surrender, delivering up or liability to seizure."

28. New section

The Principal Act is amended by inserting after section 99 the following:

"99A. Storage of certain firearms

"(1) If a firearm –

- (a) is seized, surrendered or delivered up under this Act and cannot be returned to the owner of the firearm because the owner's licence or permit, or the certificate of registration of the firearm, is suspended or revoked; or
- (b) is lodged with the Commissioner under section 94 and cannot be returned to the owner of the firearm because the Commissioner has refused to grant a permit or certificate of registration,

the Commissioner may, by notice in writing, direct the owner of the firearm to sell or otherwise dispose of the firearm.

"(2) If –

- (a) a firearm has come into the lawful possession of a member of the Police Force;
- (b) no legal requirement exists for the retention of the firearm; and
- (c) reasonable attempts have been made to return the firearm to its registered owner,

the Commissioner may, by notice in writing, direct the owner to take possession of the firearm.

"(3) If the owner of a firearm does not comply with a direction under subsection (1) or (2) within 28 days after the direction is given or any further time that the Commissioner specifies in the notice, the Commissioner may dispose of the firearm in accordance with section 166 of the *Police Administration Act* as if the firearm was unclaimed property.

"(4) The Regulations may prescribe fees that are payable in relation to the storage of a firearm by the Commissioner prior to the owner taking possession of the firearm."

29. Disclosure of information by Commissioner in certain circumstances

Section 102 of the Principal Act is amended by inserting after subsection (2) the following:

"(2A) If the Commissioner or a court suspends or revokes a firearms employee licence in relation to a person, the Commissioner must inform the holder of the firearms corporate licence to which the employee licence relates of the suspension or revocation.

"(2B) If the Commissioner or a court suspends or revokes a firearms instructor licence or a permit in relation to a person and the Commissioner is aware of an employer or other person whose operations may be affected by the suspension or revocation, the Commissioner must inform the employer or other person of the suspension or revocation."

30. New section

The Principal Act is amended by inserting after section 104 the following:

"104A. Evidence by certificate

"(1) In any proceedings in a court for an offence against this Act, a certificate purporting to be signed by the Commissioner is prima facie evidence of the matters stated in the certificate and the facts on which they are based.

"(2) In subsection (1), a reference to proceedings in a court includes a reference to a preliminary examination under Part V of the *Justices Act*."

31. Schedule 1

Schedule 1 to the Principal Act is amended by omitting item 16.

32. Repeal and substitution

Schedule 7 to the Principal Act is repealed and the following substituted:

"SCHEDULE 7

Section 54B

PROCEDURE OF TRIBUNAL

1. Formality and technicality to be avoided

A proceeding must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matter before the Tribunal permits.

2. Tribunal not bound by rules of evidence

The Tribunal is not bound by the rules of evidence but may inform itself on any matter in the manner that it thinks fit.

3. Appearance and representation of parties

(1) The Registrar must give the parties to proceedings before the Tribunal not less than 14 days notice in writing of the time, date and place of the proceedings.

(2) A party is entitled to appear before the Tribunal personally or to be represented by a legal practitioner or other representative.

(3) A legal practitioner or other representative appearing before the Tribunal has the same liabilities, protection and immunity as a legal practitioner has in appearing for a party in proceedings before the Supreme Court.

(4) A party must be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.

(5) The Tribunal may make a determination in proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.

4. Summoning of witnesses

(1) The Tribunal may, by written notice signed by the Chairperson or a member, summon a person to attend before it, at a time and place specified in the summons, to give evidence and to produce such documents in the person's custody or control as are specified in the summons.

(2) A summons under subclause (1) may be served on the person to whom it is addressed –

(a) personally; or

(b) by delivering it to a person who has apparently attained the age of 16 years and is apparently residing or employed at the premises at which the person to be served resides or carries on business.

(3) A person served with a summons to attend before the Tribunal must not, without reasonable excuse, fail to attend the Tribunal or fail to produce any documents in the person's custody or control that are specified in the summons.

Penalty: If the offender is a natural person – 20 penalty units and 2 penalty units for each day during which the offence continues.

If the offender is a body corporate – 100 penalty units and 10 penalty units for each day during which the offence continues.

(4) Unless the Tribunal otherwise determines, a witness is entitled to receive witness fees as if he or she was a witness in civil proceedings in the Local Court.

5. Giving of evidence

(1) The Tribunal may –

(a) require a person to make an oath or affirmation to answer truthfully all questions put by a member of the Tribunal, or a person appearing before the Tribunal, relevant to the determination of a matter before it; or

(b) require a person giving evidence before the Tribunal to answer a relevant question put by a member of the Tribunal or a person appearing before it (as the case may be).

(2) A person who appears as a witness before the Tribunal has the same obligations and protection as a witness in proceedings before the Supreme Court.

33. Further amendments

The Principal Act is amended as set out in the Schedule.

34. Amendment of Firearms Regulations

(1) Regulation 1A of the Firearms Regulations is amended by omitting from subregulation (1)(s) "section 228" and substituting "section 226B, 228".

(2) The regulation amended by subsection (1) may be amended or repealed by a regulation as if the amendment had been made by a regulation.

SCHEDULE

Section 33

Provision	Amendment	
	omit	substitute
Section 15B(2)(b)	a firearm	an approved firearm
Section 36(7)	the whole subsection	
Section 49(6)	revoke	suspend, for a specified period or until specified conditions are complied with, or revoke
Sections 50(2)(b) and (4)(b) and 55(2)(a) and (c)	Northern Territory Shooters' Council	Northern Territory Firearms Council Incorporated
Section 77(5)	Despite section 102, where a person	If a person
Section 96(1)(a)	firearm;	firearm; and
Section 96(1)(b)	the whole paragraph	
Section 96(1)(c)	licence, permit or certificate of registration	licence or permit
Section 96(2)	category A firearm or category B firearm	category A firearm, category B firearm, category C firearm, category D firearm or category H firearm
Section 109	74(2), 89 and	74(2) and
Section 112	the whole section	