

Serial 106
Firearms Legislation Amendment Bill 2019
Ms Manison

A Bill for an Act to amend the *Firearms Act 1997* and the *Firearms Regulations 1997*

NORTHERN TERRITORY OF AUSTRALIA

FIREARMS LEGISLATION AMENDMENT ACT 2019

Act No. [] of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to amend the *Firearms Act 1997* and the *Firearms Regulations 1997*

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Firearms Legislation Amendment Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Firearms Act 1997

3 Act amended

This Part amends the *Firearms Act 1997*.

4 Section 3 amended (Interpretation)

Section 3(1)

insert

affected person, for Part 8A, see section 49L(2).

criminal intelligence means information the Commissioner classifies as criminal intelligence under the *Serious Crime Control Act 2009*.

firearm prohibition order, for Part 8A, see section 49B.

firearm related item, for Part 8A, see section 49C.

prohibited premises, for Part 8A, see section 49D.

reviewable decision, for Part 8A, see section 49L(1).

5 Section 4A inserted

After section 4, in Part 1

insert

4A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against section 49P, 49Q, 49R, 49S, 49T or 49Y(2).

Note for section 4A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

6 Part 8A inserted

After section 49A

insert

Part 8A Firearm prohibition orders

Division 1 Interpretation

49B Definitions

In this Part:

affected person, see section 49L(2).

firearm prohibition order means an order made under section 49E.

firearm related item, see section 49C.

prohibited premises, see section 49D.

reviewable decision, see section 49L(1).

49C **Meaning of *firearm related item***

A ***firearm related item*** means any of the following:

- (a) ammunition;
- (b) a silencer;
- (c) an item that is designed as, or reasonably capable of forming, part of a firearm;
- (d) any other item prescribed by regulation.

Examples for paragraph (c)

A barrel, breech block, pistol slide, frame, receiver, cylinder, trigger mechanism, bolt, stock, grip, operating mechanism or magazine.

49D **Meaning of *prohibited premises***

A ***prohibited premises*** is any of the following:

- (a) the premises of a firearms dealer;
- (b) the premises of an armourer;
- (c) a shooting range;
- (d) a handgun target shooting club;
- (e) a firearm collectors club;
- (f) a shooting club;
- (g) a place where a shooting match is occurring;
- (h) a firearms fair;
- (i) a shooting gallery;
- (j) a paintball range or a place where paintball activities are carried out;
- (k) a premises where firearms are stored;
- (l) any other premises prescribed by regulation.

Division 2 Firearm prohibition orders**49E Firearm prohibition order**

- (1) The Commissioner may make a firearm prohibition order in relation to a person prohibiting the person from:
 - (a) acquiring a firearm or firearm related item; and
 - (b) possessing or using any firearm or firearm related item; and
 - (c) being in the company of a person who acquires, possesses or is using a firearm or firearm related item.
- (2) The Commissioner must not make a firearm prohibition order in relation to a person under 14 years of age.
- (3) A firearm prohibition order may be made even if the person who is subject to the order or to be subject to the order has never acquired, possessed or used a firearm or firearm related item.

49F Considerations in making firearm prohibition order

The Commissioner may make a firearm prohibition order in relation to a person if the Commissioner is satisfied that it is in the public interest to do so for any of the following reasons:

- (a) because of the criminal history of the person;
- (b) because of the behaviour of the person;
- (c) because of the people with whom the person associates;
- (d) because of any criminal intelligence report or other criminal information the Commissioner holds about the person or the people with whom the person associates;
- (e) because, on the basis of information the Commissioner holds about the person, the person may pose a threat or risk to public safety if the person acquires, possesses or uses a firearm or firearm related item.

49G Form and content of order

- (1) A firearm prohibition order must contain the following particulars:
 - (a) a statement of the effect of the order, including the conduct prohibited by the order and the powers for enforcing the order under this Part;

- (b) the consequences that may follow if the person to whom the order relates contravenes the order;
 - (c) the identity of the person to whom the order relates;
 - (d) a statement that the order takes effect on the day on which it is served on the person to whom it relates;
 - (e) the date on which the order expires;
 - (f) the provisions of this Act that empower the making of the order;
 - (g) that the person to whom the order relates may apply to NTCAT under section 49L or 49M for review of the decision to make the order;
 - (h) subject to subsection (2), the Commissioner's reasons for the making of the order;
 - (i) details of:
 - (i) the effect of section 49K; and
 - (ii) the offences in Division 4 and section 49Y(2); and
 - (iii) the powers of police officers in Division 5.
- (2) Subsection (1)(h) does not require the Commissioner to include reasons for making the order if those reasons are as mentioned in section 49F(d).

49H Duration of order

- (1) A firearm prohibition order that relates to a person who is 18 years of age or older remains in force for 10 years from the day on which it is served on the person under section 49J.
- (2) A firearm prohibition order that relates to a person who is under 18 years of age remains in force for 5 years from the day on which it is served on the person under section 49J.

49J Service of order

- (1) A firearm prohibition order must be personally served on the person to whom it relates by a police officer.
- (2) A firearm prohibition order takes effect on the date it is served on the person to whom it relates.

- (3) The police officer serving the order on the person must explain to the person:
 - (a) the effect of the order, including the conduct prohibited by the order and the powers for enforcing the order under this Part; and
 - (b) the consequences that may follow if the person contravenes the order; and
 - (c) that the person may apply to NTCAT under section 49L or 49M for review of the decision to make the order.
- (4) As far as it is reasonably practicable to do so, the explanation must be given in a language or in terms that are likely to be readily understood by the person.
- (5) A failure to comply with subsections (3) and (4) does not affect the validity of a firearm prohibition order.

49K Cancellation of licences and permits

- (1) Any licence, permit or certificate of registration under this Act held by a person to whom a firearm prohibition order relates is cancelled by the making of the order and the cancellation takes effect on the order being served on the person.
- (2) If a licence, permit or certificate of registration under this Act is held by a body corporate, an officer of which is a person to whom a firearm prohibition order relates, the licence, permit or certificate is cancelled by the making of the order and the cancellation takes effect on the order being served on the person.
- (3) A person to whom a firearm prohibition order relates must surrender any firearm or firearm related item the person possesses or is using to the Commissioner as soon as practicable after being served with the order.

Division 3 Review by NTCAT

Note for Division 3

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.

49L Review by NTCAT

- (1) NTCAT has jurisdiction to review a decision (a **reviewable decision**) to make a firearm prohibition order under section 49E.

- (2) An **affected person**, for a reviewable decision, is the person to whom the firearm prohibition order relates.
- (3) An affected person for a reviewable decision may apply to NTCAT for review of the decision.
- (4) Section 44(2) of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply in relation to a reviewable decision for this section.

49M Further right to apply for review by NTCAT

- (1) Subject to this section, during the operation of a firearm prohibition order, an affected person may apply to NTCAT for a review of the reviewable decision.
- (2) An application under subsection (1) may be made:
 - (a) if the affected person is under 18 years of age at the time the order was served on the person – at 12 monthly intervals during the operation of the order; and
 - (b) if the affected person is 18 years of age or over at the time the order was served on the person – at any time after more than half the time for which the order is in force has expired.
- (3) An application made under subsection (2)(a):
 - (a) must be made within 28 days after the anniversary of the date on which the order was served on the person; and
 - (b) must not be made more than once in any 12 month period after the anniversary of the date on which the order was served on the person during the operation of the order.
- (4) An application made under subsection (2)(b) must not be made more than once in respect of an order.
- (5) The right to apply for review under this section:
 - (a) is in addition to the right set out in section 49L; and
 - (b) may be exercised irrespective of whether a right under section 49L has been exercised.
- (6) Section 44(2) of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply in relation to a reviewable decision for this section.

49N Confidentiality of classified information

- (1) In exercising its jurisdiction to review a reviewable decision under this Part, NTCAT must take steps to maintain the confidentiality of classified information provided to it by the Commissioner.
- (2) If NTCAT considers the classified information is criminal intelligence, the steps taken under subsection (1) includes steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings, their representatives and the public.
- (3) If NTCAT considers classified information is not criminal intelligence, NTCAT must allow the Commissioner to withdraw the classified information from consideration.
- (4) This section applies to an appeal to the Supreme Court under section 141 of the *Northern Territory Civil and Administrative Tribunal Act 2014* brought by a party in relation to a decision of NTCAT made in the exercise of its review jurisdiction under this section.
- (5) In this section:

classified information means information the Commissioner of Police classifies as criminal intelligence.

Division 4 Offences in relation to firearm prohibition orders**49P Offence to contravene firearm prohibition order**

- (1) A person commits an offence if:
 - (a) the person is subject to a firearm prohibition order; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in the person acquiring a firearm or firearm related item and the person is reckless in relation to that result.

Maximum penalty: If the offence relates to a firearm –
imprisonment for 10 years.

If the offence relates to a firearm related
item – imprisonment for 5 years.

- (2) A person commits an offence if:
 - (a) the person is subject to a firearm prohibition order; and

- (b) the person intentionally possesses or uses a firearm or firearm related item.

Maximum penalty: If the offence relates to a firearm – imprisonment for 10 years.

If the offence relates to a firearm related item – imprisonment for 5 years.

- (3) Strict liability applies to subsections (1)(a) and (2)(a).

49Q Offence to engage in conduct resulting in another person contravening firearm prohibition order

A person commits an offence if:

- (a) another person is subject to a firearm prohibition order and the person has knowledge of that circumstance; and
- (b) the person intentionally engages in conduct; and
- (c) the conduct results in the other person acquiring, possessing or using a firearm or firearm related item and the person is reckless in relation to the result.

Maximum penalty: If the offence relates to a firearm – imprisonment for 10 years.

If the offence relates to a firearm related item – imprisonment for 5 years.

49R Offence to be at prohibited premises

- (1) A person commits an offence if:

- (a) the person is subject to a firearm prohibition order; and
- (b) the person intentionally enters or remains at premises; and
- (c) the premises are prohibited premises and the person is reckless in relation that circumstance.

Maximum penalty: 50 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(a).

49S Offence to reside at premises where there are firearms or firearm related items

- (1) A person commits an offence if:
- (a) the person is subject to a firearm prohibition order; and
 - (b) at least 24 hours has elapsed since the person was served with the firearm prohibition order; and
 - (c) there is a firearm or firearm related item at the premises where the person resides and the person is reckless in relation that circumstance.

Maximum penalty: If the offence relates to a firearm – imprisonment for 4 years.

If the offence relates to a firearm related item – imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a) and (b).

49T Offence to be in company of person using firearm or firearm related item

- (1) A person commits an offence if:
- (a) the person is subject to a firearm prohibition order; and
 - (b) the person is intentionally in the company of another person; and
 - (c) the other person possesses or is using a firearm or firearm related item and the person has knowledge of that circumstance.

Maximum penalty: If the offence relates to a firearm – imprisonment for 4 years.

If the offence relates to a firearm related item – imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) A police officer does not commit an offence against subsection (1) if the police officer possesses or is using a firearm or firearm related item in the execution of the police officer's duty.

Division 5 Police powers**49U Search of person to whom firearm prohibition order relates without warrant or consent**

- (1) A police officer, without a warrant or consent, may exercise any of the powers set out in subsections (2) and (3), if the exercise of the power is reasonably required to determine whether a person to whom a firearm prohibition order relates has acquired, possesses or is using a firearm or firearm related item in contravention of the order.
- (2) For subsection (1), the police officer may exercise the following powers:
 - (a) search the person, other than by strip searching the person;
 - (b) search any thing in the person's possession.
- (3) A police officer who conducts a search under this section may do the following:
 - (a) stop and detain the person being searched for so long as is reasonably necessary to conduct the search;
 - (b) seize any firearm or firearm related item:
 - (i) that is found on the person or in any thing in the person's possession; or
 - (ii) that the person has acquired, possesses or is using.
- (4) Before a police officer commences a search of a person or any thing in the person's possession under this section, the police officer must inform the person:
 - (a) of the police officer's name; and
 - (b) that the police officer intends to search the person and any thing in the person's possession for any firearm or firearm related item and that the police officer is empowered to conduct the search under this Act.
- (5) Any action taken under this section is not unlawful only because of a failure to comply with subsection (4).

49V Search of associate without warrant or consent

- (1) A police officer, without a warrant or consent, may exercise any of the powers set out in subsections (2) and (3) with respect to a

person (an **associate**) who is in the company of a person to whom a firearm prohibition order relates, if the police officer believes on reasonable grounds that the associate:

- (a) is committing or is about to commit an offence against this Act; and
 - (b) has a firearm or firearm related item in the associate's possession.
- (2) For subsection (1), the police officer may exercise the following powers:
- (a) search the associate, other than by strip searching the associate;
 - (b) search any thing in associate's possession.
- (3) A police officer who conducts a search under this section may do the following:
- (a) stop and detain the associate being searched for so long as is reasonably necessary to conduct the search;
 - (b) seize any firearm or firearm related item:
 - (i) that is found on the associate or in any thing in the associate's possession; or
 - (ii) that the associate has acquired, possesses or is using.
- (4) Before a police officer commences a search of an associate under this section or any thing in the associate's possession, the police officer must inform the associate:
- (a) of the police officer's name; and
 - (b) that the police officer intends to search the associate and any thing in the associate's possession for any firearm or firearm related item and that the police officer is empowered to conduct the search under this Act.
- (5) Any action taken under this section is not unlawful only because of a failure to comply with subsection (4).

49W Search of premises, vehicles, aircraft or vessels without warrant or consent

- (1) A police officer, without a warrant or consent, may exercise any of the powers under subsections (2) and (4), if the exercise of the

power is reasonably required to determine whether a person to whom a firearm prohibition order relates has acquired, possesses or is using a firearm or firearm related item in contravention of the order.

- (2) For subsection (1), the police officer may exercise the following powers:
 - (a) enter and search any premises occupied by, in the care of or under the control or management of the person, including any thing on the premises and including any vehicle, aircraft or vessel on the premises;
 - (b) enter and search any vehicle, aircraft or vessel that is in the charge of the person, or in which the person is a passenger, wherever the vehicle, aircraft or vessel is located.
- (3) A police officer may enter or search premises, a vehicle, an aircraft or a vessel under this section with the assistance of any other police officer.
- (4) A police officer, for the purposes of an entry or search of premises, or a vehicle, an aircraft or a vessel under this section, may do the following:
 - (a) stop and detain the vehicle, aircraft or vessel being searched for so long as is reasonably necessary to conduct the search;
 - (b) seize any firearm or firearm related item found on the premises, vehicle, aircraft or vessel.
- (5) Before a police officer commences an entry or search of premises, or a vehicle, an aircraft or a vessel under this section, if the person to whom the order relates is present, the police officer must inform the person:
 - (a) of the police officer's name; and
 - (b) that the police officer intends to enter or search the premises, vehicle, aircraft or vessel for any firearm or firearm related item and that the police officer is empowered to conduct the entry or search under this Act.
- (6) If requested by another person present at premises, or in the vehicle, on the aircraft or on the vessel at any time before commencing or during a search under this section, the police officer must inform the person:
 - (a) of the police officer's name; and

- (b) that the police officer intends to enter or search, or is searching, the premises, vehicle, aircraft or vessel for any firearm or firearm related item and that the police officer is empowered to conduct the entry or search under this Act.
- (7) If it is not practicable to give the information under subsection (5) or (6) before commencing a search or during a search because of a risk to the safety of a police officer or person involved in the search, the police officer must give the information after the search is finished.
- (8) Any action taken under this section is not unlawful only because of a failure to comply with subsection (5), (6) or (7).

49X Search of person at premises, vehicles, aircraft or vessels without warrant or consent

- (1) A police officer, without a warrant or consent, may exercise any of the powers set out in subsections (2) and (3) with respect to a person who is present at premises, or in a vehicle, on an aircraft or on a vessel being searched under section 49W, if the police officer believes on reasonable grounds that the person acquired, possesses or is using a firearm or firearm related item.
- (2) For subsection (1), the police officer may exercise the following powers:
 - (a) search the person, other than by strip searching the person;
 - (b) search any thing in the person's possession.
- (3) A police officer who conducts a search under this section may do the following:
 - (a) stop and detain the person being searched for so long as is reasonably necessary to conduct the search;
 - (b) seize any firearm or firearm related item:
 - (i) that is found on the person or in any thing in the person's possession; or
 - (ii) that the person has acquired, possesses or is using.
- (4) Before a police officer commences a search of a person under this section or any thing in the person's possession, the police officer must inform the person:
 - (a) of the police officer's name; and

- (b) that the police officer intends to search the person and any thing in the person's possession for any firearm or firearm related item and that the police officer is empowered to conduct the search under this Act.
- (5) Any action taken under this section is not unlawful only because of a failure to comply with subsection (4).

49Y Requirement to give name and address

- (1) If a police officer suspects on reasonable grounds that a person is subject to a firearm prohibition order, the police officer may request the person to give to the police officer the person's name or address, or both.
- (2) A person commits an offence if:
- (a) the person is requested to give the person's name or address, or both, under subsection (1); and
 - (b) the person does not comply with the request.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

49Z Dealing with firearms or firearm related items surrendered or seized under this Part

- (1) This section applies if a firearm or firearm related item is surrendered or seized under this Part.
- (2) The police officer to whom the firearm or firearm related item was surrendered or who seized the firearm or firearm related item may retain possession of the firearm or firearm related item for so long as:
- (a) the firearm or firearm related item is evidence of an offence against this Act or any other law in force in the Territory; or
 - (b) it is reasonably necessary to test the firearm or firearm related item to determine if it is evidence of an offence against this Act or any other law in force in the Territory.
- (3) Subject to subsection (4), the firearm or firearm related item is forfeited to the Territory:
- (a) if the person who surrendered the firearm or firearm related item or from whom the firearm or firearm related item was seized is not lawfully entitled to possess the firearm or firearm

related item, and no other person is lawfully entitled to possess the firearm or firearm related item; or

- (b) if the following circumstances apply:
 - (i) the firearm or firearm related item was acquired, possessed or used, in contravention of this Part, by the person who surrendered it or from whom it was seized;
 - (ii) the Commissioner is satisfied the firearm or firearm related item had not been stolen at the time it was surrendered or seized.
- (4) The Commissioner may declare a firearm or firearm related item is not subject to forfeiture under subsection (3).

49ZA Sale, disposal or return of firearms or firearm related items surrendered or seized under this Part

- (1) This section applies in relation to the following:
 - (a) a firearm or firearm related item:
 - (i) that is not forfeited to the Territory under section 49Z(3); or
 - (ii) that is declared not subject to forfeiture under section 49Z(4);
 - (b) a firearm or firearm related item that is not required or no longer required under section 49Z(2).
- (2) The Commissioner may:
 - (a) by written notice, direct the owner of the firearm or firearm related item to sell or otherwise dispose of the firearm or firearm related item; or
 - (b) by written notice, direct the owner of the firearm or firearm related item to take possession of the firearm or firearm related item; or
 - (c) dispose of the firearm or firearm related item in the manner the Commissioner determines.
- (3) If the owner of a firearm does not comply with a direction under subsection (2)(a) or (b) 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 or firearm related item in accordance with section 166 of the *Police Administration Act 1978*

as if the firearm or firearm related item was unclaimed property.

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

Division 6 Review of operation of Part

49ZB Review of operation of Part

- (1) The Ombudsman must review the following during the first 2 years after the commencement of this Part:
- (a) the exercise of powers conferred on police officers under this Part;
 - (b) the financial effect of the result of the commission of offences against this Part.
- (2) The Ombudsman must give a copy of the report of the review to the Minister as soon as practicable after the expiry of the 2 year period mentioned in subsection (1).

7 Section 51 amended (Notice of appeal)

Section 51(1)

omit

A person

insert

Except as otherwise expressly provided, a person

8 Section 58 amended (Possession or use of firearms)

- (1) Section 58(1), penalty provision

omit, insert

Maximum penalty: 500 penalty units or imprisonment for 3 years or, if the offence relates to a category A firearm or category B firearm, 400 penalty units or imprisonment for 2 years.

(2) Section 58(6), penalty provision

omit, insert

Maximum penalty: 500 penalty units or imprisonment for 3 years.

9 Section 59 amended (Firearms to be registered)

Section 59(1), penalty provision

omit, insert

Maximum 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.

10 Section 62 amended (Purchase of firearms)

Section 62(1) and (2), penalty provision

omit

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

insert

500 penalty units or imprisonment for 3 years or, if the offence relates to a category A firearm or category B firearm, 400 penalty units or imprisonment for 2 years

11 Section 63 amended (Sale of firearms)

Section 63(1) to (3), penalty provision

omit

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

insert

500 penalty units or imprisonment for 3 years or, if the offence relates to a category A firearm or category B firearm, 400 penalty units or imprisonment for 2 years

12 Section 63B amended (Advertising firearm for sale)

Section 63B(1), penalty provision

omit, insert

Maximum penalty: 50 penalty units or imprisonment for 12 months.

13 Section 67 amended (Disposal of firearms by unauthorised holders)

Section 67(1), penalty provision

omit, insert

Maximum penalty: 50 penalty units or imprisonment for 12 months.

14 Section 68 amended (Altering firearms)

Section 68, penalty provision

omit, insert

Maximum penalty: 200 penalty units or imprisonment for 4 years.

15 Section 84 amended (Discharge of firearm causing danger)

Section 84(1), penalty provision

omit, insert

Maximum penalty: 200 penalty units or imprisonment for 4 years.

16 Section 99A amended (Storage of certain firearms)

Section 99A(1)(a), after "Act"

insert

, except under Part 8A,

Part 3 Amendment of Firearms Regulations 1997

17 Regulations amended

This Part amends the *Firearms Regulations 1997*.

18 Regulation 1A amended (Disqualifying offences)

(1) Regulation 1A(1)(b)

omit

, 134 or 135

insert

or 134

(2) After regulation 1A(1)(c)

insert

(d) section 155A, where a custodial sentence is imposed;

(3) Regulation 1A(1)(e), after "160"

insert

, 161A

(4) Regulation 1A(1)(g)

omit, insert

(g) section 170;

(ga) section 174C, where the circumstance of aggravation specified in section 174G(a) exists;

(gb) section 174E, 174F, 175, 176, 177, 178, 179, 180, 181 or 182;

(5) Regulation 1A(1)(h), after "section"

insert

180A, 184 or

(6) Regulation 1A(1)(n)

omit, insert

(n) section 192, 192B, 194, 195, 196, 201, 202, 202B, 202C, 202D or 211;

(7) Regulation 1A(1)(s)

omit

, 252, 281 or 287

insert

or 281

19 Regulation 1B amended (Offences of violence)

(1) Regulation 1B(b)

omit

, 125 or 129

insert

or 125

(2) Regulation 1B(f)

omit

or 135

Part 4 Repeal of Act

20 Repeal of Act

This Act is repealed on the day after it commences.