

WEAPONS PROHIBITION REGULATION 2009

Regulatory Impact Statement

NSW Ministry for Police

July 2009

REGULATORY IMPACT STATEMENT

TITLE OF REGULATORY PROPOSAL *Weapons Prohibition Regulation 2009*

PROPONENT NSW Ministry for Police

RESPONSIBLE MINISTER The Hon Tony Kelly MLC, Minister for Police

RELEVANT ACT *Weapons Prohibition Act 1998*

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Purpose of this Regulatory Impact Statement

This regulatory impact statement seeks to meet the requirements of the *Subordinate Legislation Act 1989* with respect to the required steps to be undertaken when seeking to make new statutory rules, or regulations.

The *Subordinate Legislation Act 1989* provides:

- For the automatic repeal of statutory rules (regulations) after they have been in force for five years. *The Weapons Prohibition Regulation 1999* is to be repealed on 1 September 2009. It is proposed that the Regulation be remade with some amendments.
- That any new regulation must demonstrate community benefit. To demonstrate this, the proponent agency must prepare and publish a regulatory impact statement (RIS) which outlines the objectives of the proposed regulation and considers a range of options to achieve those objectives. A RIS must also consider the economic and social costs of the proposed regulation, with only the option which produces the greatest net benefit to the community being chosen.

Additionally, the NSW Government's Guide to Better Regulation identifies seven principles which characterise good regulation. These are:

- 1) The need for government action should be established
- 2) The objective of government action should be clear
- 3) The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- 4) Government action should be effective and proportional
- 5) Consultation with business and the community should inform regulatory development
- 6) The simplification, repeal, reform or consolidation of existing regulation should be considered
- 7) Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness

During this process, every effort has been made to ensure adherence to the above principles.

Approach Taken in this Regulatory Impact Statement

To a large extent the proposed regulation recreates the existing provisions of the *Weapons Prohibition Regulation 1999*.

The changes proposed are generally minor and are focused on strengthening the probity requirements for permit applicants and streamlining the operation of the Regulation.

The RIS first considers the operation and objectives of the legislation and the need to balance the Government's responsibility to ensure public safety with the rights of individuals who can demonstrate a genuine need, to be permitted to possess and use prohibited weapons within set limits.

The RIS then considers a range of options which may be employed to achieve the objectives of the legislation, and the costs and benefits of each option. Finally the RIS considers the Government's Better Regulation Principles and concludes that the proposed Regulation delivers the greatest net benefit for the community.

Submissions / enquiries in relation to the proposed Regulation can be made to:

Weapons Prohibition Regulation 2009
Ministry for Police
PO Box A66
SYDNEY SOUTH NSW 1235

Or via e-mail at:

policy@bigpond.net.au

Final date for submissions: 31 July, 2009.

Additional copies of this RIS and the draft Regulation may be obtained from the NSW Ministry for Police on (02) 8263 6200 or via the NSW Police Force website: www.police.nsw.gov.au.

The Need for Effective Control of Prohibited Weapons

The *Weapons Prohibition Act 1998* and the *Weapons Prohibition Regulation 1999* commenced on 8 February 1999, replacing the *Prohibited Weapons Act 1989* and *Prohibited Weapons Regulation 1997*. The *Prohibited Weapons Act 1989* had been reviewed in the context of the national tightening of controls in relation to firearms. Against this background, the NSW Government legislated for the toughest controls and penalties relating to prohibited weapons in Australia.

Since the tightening of firearms laws from 1996 onwards, there has been concern regarding the possibility of prohibited weapons gaining in significance in the commission of crimes. This highlights the importance of a strong and effective legislative and regulatory regime governing the possession and misuse of such items.

The Schedule of Prohibited Weapons (Schedule 1 of the Act) has been designed to be an evolving list which is able to quickly respond to newly-emerging trends in the misuse of weaponry. For example, over the past few years, road spikes and laser pointers have emerged as items requiring enhanced regulation following increasing evidence of misuse. Inclusion of these items on the Schedule of Prohibited Weapons ensures that Police have the facility to charge persons found to have misused these items and that their sale, possession and use is strictly controlled.

The Operation and Objective of the Legislation

The Weapons Prohibition Act 1998

The legislative and regulatory regime in place for prohibited weapons is modelled on the *Firearms Act 1996* and supporting regulation.

Section 3 of the *Weapons Prohibition Act 1998* outlines the principles and objects of the Act as follows:

- (1) The underlying principles of this Act are:
 - (a) to confirm that the possession and use of prohibited weapons is a privilege that is conditional on the overriding need to ensure public safety, and
 - (b) to improve public safety by imposing strict controls on the possession and use of prohibited weapons.
- (2) The specific objects of this Act are as follows:
 - (a) to require each person who possesses or uses a prohibited weapon under the authority of a permit to have a genuine reason for possessing or using the weapon,
 - (b) to provide strict requirements that must be satisfied in relation to the possession and use of prohibited weapons,
 - (c) to provide an amnesty period to enable the surrender of prohibited weapons.

The guiding premise is that access to items classed as prohibited weapons must be controlled and strong penalties must be available for prosecution of persons found to have misused such items.

It is recognised however, that some individuals and groups within society have, and can demonstrate a genuine reason and/or legitimate need to possess and/or use prohibited weapons. For this reason, a system of permits and exemptions exists to provide limited lawful access.

List of Current Prohibited Weapons Permits by Category (as at May 2009)

Type	Total
General-Individual	48
General-Business	72
Dealer-Individual	5
Dealer-Business	56
Theatrical Armourer-Individual	2
Theatrical Armourer-Business	17
Instructor	60
Sporting-Individual	31
Sporting-Business	2
Production	1
Collector-Individual	110
Public Museum	15
Participate Re-Enactment-Individual	1
Participate Re-Enactment-Business	1
Body Armour Vest - Individual	2
Body Armour Vest - Business	12
RSL Club Display	11
Heirloom	4
Animal Management-Individual	2
Animal Management-Business	5
Scientific	2
Total	459

The current *Weapons Prohibition Act 1998* and *Weapons Prohibition Regulation 1999* can be viewed and/or downloaded from the NSW Government's legislation website: www.legislation.nsw.gov.au.

The Objectives of the proposed Regulation

The objectives of the *Weapons Prohibition Regulation 2009* are to:

- Ensure that the principles and the objects of the *Weapons Prohibition Act 1998* are supported;
- Ensure that the regulation and control of prohibited weapons in NSW is executed in a manner which is accountable to both consumers and the wider community; and
- Provide the administrative detail required in order to support the operation of the *Weapons Prohibition Act 1998*.

Specifically, the proposed Regulation provides for the following changes:

- Strengthening the existing regime through the introduction of a two-tiered classification of prohibited weapons so that the regulatory conditions are better aligned to the type of weapon;
- Expanding the offences for which a person is excluded from holding a permit, thereby enhancing protections in place aimed at preventing misuse of these items; and
- Streamlining the operation of the permit system, so as to ease the regulatory burden for permit holders.

Review of Weapons Prohibition Act and Regulation

These changes have been proposed following a comprehensive Review of both the *Weapons Prohibition Act* and *Weapons Prohibition Regulation*, undertaken by the Ministry for Police between 2004 and 2008, which involved two rounds of stakeholder consultations.

Over 230 submissions were received as a result of this process, from a range of stakeholders. These submissions shaped the findings of the Review including, for example, the decision to not include swords within the Schedule of Prohibited Weapons.

The changes proposed will be pursued through amendments to the following clauses in the Regulation, as follows:

Affected clause	Current Provision	Intended change
Clause 5	Outlines the prescribed offences which disqualify individuals from holding a licence	Amend to update and mirror the probity requirements outlined in the equivalent clause (also clause 5) of the <i>Firearms Regulation 2006</i>

Clause 14	Outlines the conditions under which a prohibited weapons – instructor permit may be issued and held	Authorise the Commissioner of Police to approve associations, bodies or organisations that conduct prohibited weapons instructor accreditation schemes and approve instructors who work in a voluntary capacity
Clauses 20, 21	Outlines the conditions under which prohibited weapons – re-enactment event and re-enactment event participant permits may be issued and held.	Provide that only a re-enactment club or organisation be required to obtain a 'Re-enactment Organiser's Permit' and that members of that club or organisation are permitted to participate in an event under the authority of a general prohibited weapons permit – that is, delete 'participant' permit
Clauses 22, 23	Outlines the conditions under which prohibited weapons – arms fair principal dealer and arms fair participant permits may be issued and held.	Provide that, in the context of arms fairs, only an arms fair principal dealer is required to obtain an 'Arms Fair Principal Dealer Permit' and that individuals are permitted to participate in an event under the authority of a general prohibited weapons permit
Clause 24	Outlines the conditions under which prohibited weapons – RSL Club display permits may be issued and held.	Reflect the structural change of the RSL (as per equivalent provision in <i>Firearms Regulation 2006</i>)
Clause 26	Outlines the conditions under which prohibited weapons – animal management permits may be issued and held.	Extend the terms of this provision to include a person undertaking veterinary science studies with an approved tertiary institution, but only in the course of their studies
Clause 32	Outlines additional conditions placed upon the holder of a theatrical weapons armourer permit	Provide that a holder of a theatrical armourer's permit be required to demonstrate active participation or employment in the industry for a significant proportion of the term of their previous permit.
New item – under Miscellaneous provisions	Insert new provision	Mirror clause 121 of the <i>Firearms Regulation 2006</i> by prescribing "Apprehended violence orders and interim apprehended violence orders of other jurisdictions", to support Section 4 of the Weapons Prohibition Act.
Schedule 1	Outlines the classes of persons exempted from the requirement of a permit	Clarify that security guards eligible for an exemption under the Regulation must first provide evidence of training in batons and handcuffs in order to be granted an

		<p>exemption by the Commissioner.</p> <p>Exempt civilian staff members of the NSW Police Force and officers of the Australian Customs Service from the requirement to obtain a permit to possess or use batons and handcuffs during the course of their ordinary duties. As above, these individuals must first demonstrate completion of training in the use of these items to be granted this exemption.</p>
Miscellaneous minor amendments	Various	Minor updates / deletions, etc aimed at ensuring continued currency of terminology, etc.

Further detail on the powers provided under the Act in relation to the changes proposed under the draft Regulation is provided at Tab A. These changes are viewed as a responsible and considered approach to enhancing the operation of the *Weapons Prohibition Regulation 1999*.

Options Considered in this RIS

Three options for achieving the Government's objectives (as outlined above) are considered in this Regulatory Impact Statement:

- Option 1:
Do nothing** This option would mean that the *Weapons Prohibition Act 1998* would operate without any accompanying Regulation.
- Option 2:
Rely on the industry to self-regulate** This option would place the onus on the weapons industry, in particular dealers, to establish procedures to regulate weapons including the payment of licences, permits and registration fees, among other things.
- Option 3:
Make the proposed Regulation** This option would enable the *Weapons Prohibition Act 1998* to operate with the Regulation to provide the required administrative detail for the operation of the Act. *This is the preferred option.*

However, should alternative options be identified which can be demonstrated to achieve the same goals, stakeholders are welcome to provide submissions outlining such alternatives, for consideration.

Criteria Used to Assess the Regulatory Options

The following criteria, which relate to the regulatory objectives, are used in the evaluation of the three options:

- The extent to which the proposed option supports the consumer protection objectives of the *Weapons Prohibition Act 1998*;
- The extent to which the proposed option provides an incentive for the accountable and safe practice by prohibited weapons owners or users, and the improvement of public safety;
- The cost effectiveness of each option, in terms of costs and benefits to consumers, industry and government; and
- The extent to which the option contributes to the overall efficiency of the regulatory system.

Option 1: no regulation

If the Government chose not to make the *Weapons Prohibition Regulation 2009* and allowed the *Weapons Prohibition Regulation 1999* to be repealed, the *Weapons Prohibition Act 1998* would operate without the support of a regulation, and the following would apply:

- The general ability to respond quickly to emerging trends in the misuse of prohibited weaponry would be limited.
- There would be no detailed listing provided of each distinct type of general prohibited weapons permit (Part 3 of the Regulation). Section 8 of the Act, which this part supports, only provides an overview of 'general', 'theatrical weapons armourer' and 'weapons dealer' permits;
- There would be no detailed listing provided of the prescribed offences which disqualify applicants for prohibited weapons permits (clause 5);
- There would be no detail provided as to the authority conferred by each type of permit (various clauses in Regulation);
- There would be no listing provided of either the schedule of fees for permits or the conditions under which these can be waived or refunded (clauses 35 and 36). This would mean either that provision would need to be made in the *Weapons Prohibition Act* for fees or that fees would no longer be charged for permits;
- There would be no Schedule outlining the approved list of persons exempted from the requirement for a prohibited weapons permit. If this were instead inserted into the *Weapons Prohibition Act*, the process for amending the list

would be less flexible and responsive – potentially a cost to stakeholders and/or the community as a whole;

- As the Regulation is empowered to amend the Schedule of Prohibited Weapons (Schedule 1 of the Act), having no Regulation would make amending the Schedule of Prohibited Weapons significantly more difficult and costly.

Conclusion:

Option 1 would result in a structure which could not be properly administered. In a number of respects, the intent of the Act would not be achieved, possibly resulting in financial loss to consumers, industry and Government. In particular, the cost to the wider public in terms of safety and security would be potentially damaging and the opportunity for a fair and balanced regulatory system for prohibited weapons may be lost.

Summary - Option 1: no regulation

- Fails to meet the regulatory objectives; and
- Involves a high financial and intangible overall cost to consumers, industry and Government.

Therefore Option 1 is ***not supported***.

Option 2: Self-regulation

The Government could choose to place the onus on the weapons industry, dealers in particular, to establish procedures aimed at regulating prohibited weapons, including the payment of permit fees. This would be a new role for the industry and would most likely require negotiation, start-up costs and training.

Possible consequences of this would be:

- The potential impact on public safety of transferring this responsibility to the industry;
- The potential for this change to be interpreted by the general public, media, etc as being a derogation of duty by the NSW Police Force with respect to managing this issue;
- The new role for dealers, etc that such a change would represent may impact significantly on the management of their own businesses and would require them to serve competing regulatory and commercial interests simultaneously;
- The need for industry to collaborate on a 'Code of Practice' and/or other business rules to govern the sale of prohibited weapons;

- The need for payment systems to be established to ensure payments made under the *Weapons Prohibition Act 1998* were able to be audited and accounted for;
- Compliance and enforcement action from the NSW Police Force would still be required to ensure legislative provisions were being adhered to; and
- Adequate provisions would need to be established to ensure the effective administration of a permits scheme for prohibited weapons, including the renewal and replacement of permits.

Conclusion:

The impact of this option is essentially the same as Option 1, as outlined above. Making dealers responsible for regulating the activities of their own customer base, is not considered sound in terms of providing effective and accountable regulation. An external regulatory body, with no competing objectives would be a more preferable option in terms of ensuring the overall goal of maintaining public safety is achieved.

Summary - Option 2: Self-regulation

- Fails to meet the regulatory objectives; and
- Involves a high financial and intangible overall cost to consumers, industry and Government.

Therefore Option 2 is ***not supported***.

Option 3 -- make Regulation

Under this scenario, the Government would make the proposed *Weapons Prohibition Regulation 2009*, thus enabling the *Weapons Prohibition Act 1998* to operate with the Regulation to provide the required administrative detail for the operation of the Act and the following would apply:

- The re-made Regulation, reflecting stakeholder and operational feedback would commence on 1 September 2009;
- The Regulation would continue to provide a vehicle for responsive and efficient administration of current prohibited weapons legislation;
- The Regulation would continue to provide additional detail aimed at assisting all stakeholders to interpret and comply with legislative requirements; and
- The Regulation would retain the power to amend Schedule 1 of the Act, making it easier to amend the current listing of prohibited weapons and remain responsive to newly-emerging weaponry.

Conclusion:

The proposed Regulation provides the administrative detail required to support the operation of the Act by prescribing requirements for:

- Provisions relating to permits;
- Fees payable for permits, as well as conditions under which fees can be exempted, waived or refunded; and
- The list of persons exempted from the requirement for a permit.

Summary - Option 3: make Regulation

- Prescribes a fair and equitable regulatory system that is responsive to the needs of stakeholders;
- Minimises red tape to provide a regulatory system that is both efficient and transparent.

Option 3 provides the greatest net benefit to the community and is the **preferred option**.

The following Table provides a summary of the overall assessment of the options, as drawn from the analysis contained in this Document.

OPTIONS	COMPLIANCE WITH ASSESSMENT CRITERIA				
	BENEFIT	COST	INCENTIVE FOR GOOD BUSINESS PRACTICE	PROTECTION OF CONSUMER FUNDS	OVERALL EFFICIENCY
NO REGULATION	LOW	HIGH	LOW	LOW	LOW
SELF-REGULATION	LOW	HIGH	LOW	LOW	LOW
MAKE REGULATION	HIGH	LOW	HIGH	HIGH	HIGH

Costs and Benefits of the Proposed Regulation

Costs

The potential costs associated with the proposed regulation fall into two broad categories:

- Financial
- Social

The NSW Police Force advises that the proposed changes to the Regulation are not considered to involve any significant establishment or compliance costs, either to the

NSW Firearms Registry as the current administrator of prohibited weapons permits, or to applicants or current holders of permits.

However, stakeholders are invited to make submissions addressing the issue of any additional compliance costs identified in the event that the proposed Regulation is made.

It is noted that Proposal 8 of the Review recommends the broadening of current legislative provisions in relation to safe storage requirements for prohibited weapons.

It is intended that the structure and scope of these provisions mirror sections 39 to 42A of the *Firearms Act 1996*, from the perspective of providing specific requirements for different categories of stakeholders, such as theatrical armourers, weapons dealers and other commercial entities holding weapons perm

Rather, the net effect of two of the major changes proposed to the Regulation – the deletion of the re-enactment event participant and arms fair participant categories of permit - are likely to represent a net decrease to stakeholders in terms of the resources required to ensure compliance with the provisions of the Regulation.

The proposed Regulation also seeks to introduce higher probity standards for permit applicants. Whilst this may be viewed by some permit applicants as a cost, this is outweighed by the potential benefits to public safety that this represents.

Benefits

The benefits from the proposed regulation fall into three broad categories:

- a) Benefits to stakeholders;
- b) Benefits to public safety; and
- c) General.

The main changes proposed to the Regulation are aimed at reducing red tape for stakeholders and increasing the probity standards required of applicants for prohibited weapons permits. These changes represent benefits both to stakeholders and public safety in general.

The proposed changes also serve to update and align the probity regime for prohibited weapons permits with that already in place for firearms. This is viewed as providing greater transparency and simplicity for stakeholders and will also make administration of the permit scheme easier.

More broadly, the proposed changes seek to enhance the operation of the Regulation generally, but generally streamlining processes and reducing red tape where possible. This will help to ensure the continued smooth operation of the *Weapons Prohibition Act 1998* (which the Regulation supports) and the permit system for prohibited weapons generally.

TAB A: RELATIONSHIP BETWEEN THE WEAPONS PROHIBITION ACT 1998 AND THE PROPOSED NEW REGULATION			
Power provided by the Act	Section	Scope of the proposed Regulation	Clause
Part 1 Preliminary			
The regulations may: (a) amend Schedule 1 by adding the name or description of anything, or (b) amend Schedule 1 by omitting the name or description of anything, or (c) amend Schedule 1 by amending the name or description of anything for the purpose of more accurately describing the thing concerned, or (d) omit Schedule 1 and insert in its place a Schedule containing the names or descriptions of anything.	5	Unchanged from previous version	
The regulations may exempt any person or class of persons from the operation of any provision or requirement of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.	6(4)	The new Regulation will provide clarification that security licensees eligible for an exemption must provide evidence of training in batons and handcuffs in order to be granted an exemption by the Commissioner Civilian staff members of the NSW Police Force and officers of the Australian Customs Service will be exempted from the requirement to obtain a permit to possess or use batons or handcuffs during the course of their ordinary duties. They must also demonstrate completion of training in order to be granted this exemption.	Sch 1
Part 2 Permits for Prohibited Weapons			
The regulations may prescribe different types of general permits. The authority conferred by a permit is subject to the regulations.	8(2)(3)	The Commissioner will be authorised to approve associations, bodies or organisations that conduct prohibited weapons instructor accreditation schemes and approve instructors who work in a voluntary capacity. Two types of current permits will be deleted under the new Regulation: prohibited weapons – re-enactment event participant and prohibited weapons – arms fair participant permit. The RSL Club Display permit will be amended to reflect the structural	cl. 14, 20 – 23. 24

		change of the RSL. The terms of the animal management permit will be amended to cover a person undertaking veterinary science studies with an approved tertiary institution, but only in the course of their studies.	26
Prescribe permit application fees, as well as other information and particulars in relation to permit applications	9(2)	Unchanged from previous version	
Prescribe the mandatory or discretionary grounds for refusing the issue of a permit.	10	Updated to mirror the equivalent provision in the <i>Firearms Regulation 2006</i>	5
Provide additional reasons which may be taken as 'genuine reasons' for issuing of prohibited weapons permits	11	Unchanged from previous version	
Prescribe additional specifications for a permit	13(2)	Unchanged from previous version	
Prescribe additional conditions to which a permit is subject	14(3)	Unchanged from previous version	
Part 3 Weapons dealers and theatrical weapons armourers—special provisions			
Prescribe additional requirements with respect to authorised weapons dealers and authorised theatrical weapons armourers	21(2)	The holder of a theatrical armourers' permit will be required to demonstrate active participation or employment in the industry for a significant proportion of the term of their previous permit.	32
Part 6 – Miscellaneous provisions			
Regulations may prescribe an additional class of health practitioner	38	Unchanged from previous version	
Regulations may prescribe additional persons to be included within the category of 'relevant person'.	41	Unchanged from previous version	
Regulations may prescribe offences for which penalty notices may be issued and amount for those offences	42	Unchanged from previous version	
The regulations may make provision for or with respect to the following matters:	50		

<p>(a) the acquisition, possession, storage, safe keeping, maintenance, repair, testing and use of prohibited weapons,</p> <p>(b) training courses in relation to the use of prohibited weapons (in particular in relation to the use of any batons that are prohibited weapons),</p> <p>(c) weapons dealers and theatrical weapons armourers, and their functions,</p> <p>(d) any matter relating to permits,</p> <p>(e) fees payable under this Act or the regulations (including fees for the issuing of permits),</p> <p>(f) exempting persons from specified requirements of this Act or the regulations.</p> <p>(3) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.</p>			
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