

Legislative Council—No 74

As received from the House of Assembly and read a first time, 17 July 2012

South Australia

**Statutes Amendment (Serious Firearm Offences)
Bill 2012**

A BILL FOR

An Act to amend the *Bail Act 1985*, the *Correctional Services Act 1982*, the *Criminal Law (Sentencing) Act 1988*, the *Criminal Law Consolidation Act 1935*, the *Summary Offences Act 1953* and the *Young Offenders Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Serious Firearm Offences) Act 2012*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bail Act 1985*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—before the definition of *bail authority* insert:

ammunition has the same meaning as in the *Firearms Act 1977*;

- (2) Section 3(1)—after the definition of *financial condition* insert:

firearm has the same meaning as in the *Firearms Act 1977*;

5—Amendment of section 10A—Presumption against bail in certain cases

Section 10A(2), definition of *prescribed applicant*—after paragraph (d) insert:

or

- (e) an applicant taken into custody in relation to a serious firearm offence (within the meaning of Part 2 Division 2AA of the *Criminal Law (Sentencing) Act 1988*).

6—Amendment of section 11—Conditions of bail

Section 11(1)—delete subsection (1) and substitute:

- 5
- (1) Subject to this Act, every grant of bail is subject to the following conditions:
- (a) a condition prohibiting the applicant from possessing a firearm, ammunition or any part of a firearm;
- (b) a condition requiring the applicant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by the bail authority, or a person or class of persons or body specified by the bail authority.
- 10
- (1a) A bail authority may only vary or revoke the conditions imposed by subsection (1) if the bail authority is satisfied that—
- (a) there are cogent reasons to do so; and
- (b) the possession of a firearm, ammunition or part of a firearm by the person to whom the bail agreement relates does not represent an undue risk to the safety of the public.
- 15
- (1b) A bail authority that is a court can only be satisfied of the matters referred to in subsection (1a) by evidence given on oath.
- (1c) If a bail authority varies or revokes a condition imposed by subsection (1), the bail authority must make a written record of the reasons for its decision.
- 20
- (1d) Subject to this section, a bail authority may impose 1 or more of the conditions referred to in subsection (2).

7—Insertion of section 11A

25 After section 11 insert:

11A—Bail authority may direct person to surrender firearm etc

- 30
- (1) A bail authority may, in relation to a grant of bail that is subject to the condition imposed by section 11(1)(a), direct the person to whom the grant of bail relates to surrender forthwith at a police station specified by the bail authority any firearm, ammunition or part of a firearm owned or possessed by the person.
- (2) A person who refuses or fails to comply with a direction under subsection (1) is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- 35
- (3) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- (4) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.
- 40
- (5) No compensation is payable by the Crown in respect of the exercise of a power or function under this section.

- (6) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.

Part 3—Amendment of *Correctional Services Act 1982*

8—Amendment of section 4—Interpretation

- 5 Section 4(1), definition of *designated condition*—delete "the Board" and substitute:
this Act, or by the Board,

9—Amendment of section 37A—Release on home detention

- (1) Section 37A(3)—after paragraph (c) insert:
- 10 (ca) a condition prohibiting the prisoner from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm; and
- (cb) a condition requiring the prisoner to submit to such tests (including testing without notice) for gunshot residue as an authorised officer may reasonably require; and
- 15 (2) Section 37A—after subsection (5) insert:
- (5a) The Chief Executive Officer may only vary or revoke the conditions imposed by subsection (3)(ca) and (cb) on the release of a person on home detention if he or she is satisfied that—
- (a) there are cogent reasons to do so; and
- 20 (b) the possession of a firearm, ammunition or part of a firearm by the person does not represent an undue risk to the safety of the public.

10—Amendment of section 66—Automatic release on parole for certain prisoners

- 25 Section 66(2)—after paragraph (ac) insert:
- (ad) a prisoner who is a serious firearm offender (within the meaning of Part 2 Division 2AA of the *Criminal Law (Sentencing) Act 1988*); or

11—Amendment of section 68—Conditions of release on parole

- (1) Section 68(1)(a)—after subparagraph (i) insert:
- 30 (ia) that the prisoner not possess a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm; and
- (2) Section 68(1)(a)(iii)—after subparagraph (B) insert:
- and
- 35 (C) submit to such tests (including testing without notice) for gunshot residue as the community corrections officer may reasonably require,

(3) Section 68—after subsection (2) insert:

- (2a) The conditions set out in subsection (1)(a)(ia) and (iii)(C) are designated as conditions that, if breached, will result in automatic cancellation of parole.

5 **12—Insertion of section 68A**

After section 68 insert:

68A—Board may direct person to surrender firearm etc

- 10 (1) The Board may, in relation to the release of a prisoner on parole that is subject to the condition imposed by section 68(1)(a)(ia), direct the prisoner to surrender forthwith at a police station specified by the Board any firearm, ammunition or part of a firearm owned or possessed by the prisoner.
- 15 (2) A person who refuses or fails to comply with a direction under subsection (1) is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- 20 (4) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.
- (5) No compensation is payable by the Crown in respect of the exercise of a power or function under this section.
- (6) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.

25 **13—Amendment of section 71—Variation or revocation of parole conditions**

Section 71—after subsection (4) insert:

- 30 (5) The Board may only vary or revoke the conditions imposed by section 68(1)(a)(ia) and (iii)(C) on the release on parole of a person if the Board is satisfied that—
- (a) there are cogent reasons to do so; and
- (b) the possession of a firearm, ammunition or part of a firearm by the person does not represent an undue risk to the safety of the public.

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

14—Amendment of section 10—Matters to be considered by sentencing court

Section 10—after subsection (3) insert:

- 5 (3a) A primary policy of the criminal law in relation to offences involving firearms is to emphasise public safety by ensuring that, in any sentence for such an offence, paramount consideration is given to the need for deterrence.

15—Insertion of Part 2 Division 2AA

After section 20 insert:

10 **Division 2AA—Serious firearm offenders**

20AA—Interpretation

(1) In this Division—

15 *serious drug offence* means an offence against section 32, 33, 33A, 33B, 33C, 33F, 33G, 33H, 33I, 33J, 33K, 33LA or 33LB of the *Controlled Substances Act 1984*;

serious firearm offender means a person who is, by virtue of the operation of section 20AAB, a serious firearm offender;

serious firearm offence means—

- 20 (a) an offence against the *Criminal Law Consolidation Act 1935* or the *Firearms Act 1977* involving the use or carriage of—
- (i) a class H firearm—
- (A) that is unregistered at the time of the offence or is registered in the name of a person other than the defendant; and
- 25 (B) for which the defendant does not, at the time of the offence, hold a firearms licence authorising possession of the firearm; or
- (ii) a class C firearm or class D firearm that is an automatic firearm; or
- 30 (iii) a prescribed firearm (other than a firearm declared by the regulations to be excluded from the ambit of this subparagraph); or
- (iv) any other firearm declared by the regulations to be included in the ambit of this paragraph; or
- 35 (b) an offence against the *Criminal Law Consolidation Act 1935* or the *Firearms Act 1977* involving the use or possession of a firearm and committed—

(i) while the defendant is the subject of a control order under the *Serious and Organised Crime (Control) Act 2008*; or

5 (ii) in the circumstances contemplated by section 5AA(1)(ga) of the *Criminal Law Consolidation Act 1935*; or

(iii) while the defendant is the subject of a firearms prohibition order; or

10 (c) an offence against section 29A of the *Criminal Law Consolidation Act 1935*; or

(d) an offence against the *Firearms Act 1977* involving the use or possession of a firearm if the use or possession of the firearm occurred in the course of, or was for a purpose related to, the commission of a serious drug offence; or

15 (e) an offence against the *Firearms Act 1977* committed while the defendant—

(i) is on bail (being bail that was, at the relevant time, subject to the condition imposed by section 11(1)(a) of the *Bail Act 1985*); or

20 (ii) is the subject of a bond under this or any other Act (being a bond that was, at the relevant time, subject to the condition imposed by section 42(a1)(a), or a condition of a similar kind); or

25 (iii) is on release from prison on home detention (being a release subject to the condition imposed by section 37A(3)(ca) of the *Correctional Services Act 1982*); or

30 (iv) is on parole (being parole that was, at the relevant time, subject to the condition imposed by section 68(1)(a)(ia) of the *Correctional Services Act 1982*); or

35 (v) is on release on licence from custody under this or any other Act (being a licence that was, at the relevant time, subject to a condition prohibiting the defendant from possessing a firearm, part of a firearm or ammunition).

(2) In this Division, the following terms have the same meaning as in the *Firearms Act 1977*:

(a) automatic firearm;

40 (b) class C firearm;

(c) class D firearm;

(d) class H firearm;

(e) firearm;

- (f) firearms prohibition order;
- (g) prescribed firearm.

(3) For the purposes of this Division, a reference to imprisonment includes, in the case of a youth, a reference to detention in a training centre or home detention (within the meaning of the *Young Offenders Act 1993*).

20AAB—Serious firearm offenders

- (1) A person will, by force of this section, be taken to be a *serious firearm offender* if he or she is convicted of a serious firearm offence (whether the offence was committed as an adult or as a youth).
- (2) Subsection (1) does not apply in relation to a conviction of a serious firearm offence if—
 - (a) the defendant was prosecuted and punished as a principal offender in respect of the offence pursuant to section 267 of the *Criminal Law Consolidation Act 1935*; or
 - (b) the defendant's liability in respect of the offence derives solely from his or her involvement in a joint criminal enterprise (however described).

20AAC—Sentence of imprisonment not to be suspended

- (1) Subject to subsection (2), but despite any other provision of this Act or any other Act or law, the following provisions apply in relation to the sentencing of a person who is a serious firearm offender for a serious firearm offence (including where the offence is the serious firearm offence that resulted in the person being a serious firearm offender):
 - (a) if the maximum penalty for the serious firearm offence includes a period of imprisonment—a sentence of imprisonment must be imposed on the person;
 - (b) the sentence of imprisonment cannot be suspended;
 - (c) section 18 does not apply in respect of the sentencing of the person;
 - (d) if—
 - (i) the person is also being sentenced in respect of other offences; and
 - (ii) 1 or more of those offences are not serious firearm offences,section 18A does not apply to the sentencing of the person in respect of the serious firearm offence (however nothing in this paragraph affects the operation of section 18A in respect of the other offences).

(2) A court sentencing a person who is a serious firearm offender for a serious firearm offence may declare that subsection (1)(b) does not apply to the person if he or she satisfies the court, by evidence given on oath, that—

- 5 (a) his or her personal circumstances are so exceptional as to outweigh the primary policy of the criminal law in respect of firearms offences set out in section 10(3a); and
- (b) it is, in all the circumstances, appropriate to suspend the sentence.

10 **16—Amendment of section 20A—Interpretation and application**

(1) Section 20A(1)—before the definition of *home invasion* insert:

category A serious offence means any of the following serious offences:

- 15 (a) home invasion;
- (b) a serious and organised crime offence;
- (c) a serious firearm offence;

(2) Section 20A(1)—after the definition of *home invasion* insert:

serious and organised crime offence has the same meaning as in the *Criminal Law Consolidation Act 1935*;

(3) Section 20A(1)—after the definition of *serious drug offence* insert:

20 *serious firearm offence* means a serious firearm offence within the meaning of Part 2 Division 2AA;

(4) Section 20A(1), definition of *serious offence*—after paragraph (c) insert:

- (ca) a serious firearm offence; or
- (cb) a serious and organised crime offence; or

25 (5) Section 20A(1)—after the definition of *serious offence* insert:

serious repeat offender means—

- 30 (a) a person who is a serious repeat offender pursuant to section 20B(a1); or
- (b) a person declared to be a serious repeat offender under section 20B(1); or
- (c) a person declared to be a serious repeat offender under section 20B as in force immediately before the commencement of section 17 of the *Statutes Amendment (Serious Firearm Offences) Act 2012*;

(6) Section 20A(2)—after "offence" first occurring insert:

35 (other than a serious firearm offence)

17—Amendment of section 20B—Serious repeat offenders

(1) Section 20B—before subsection (1) insert:

(a1) A person will, by force of this subsection, be taken to be a *serious repeat offender* if the person (whether as an adult or as a youth)—

- 5 (a) has committed on at least 3 separate occasions a category A serious offence to which this Division applies (whether or not the same offence on each occasion); and
- (b) has been convicted of those offences.

(2) Section 20B(1)—delete "A person" and substitute:

10 Without limiting subsection (a1), a person

(3) Section 20B(1)—after paragraph (b) insert:

or

(c) the person (whether as an adult or as a youth)—

- 15 (i) has committed on at least 2 separate occasions a category A serious offence (whether or not the same offence on each occasion); and
- (ii) has been convicted of those offences.

(4) Section 20B—after subsection (1) insert:

20 (1a) For the purposes of this section, when determining the number of occasions on which a person has committed a particular kind of offence, the offence for which the person is being sentenced is to be included if it is of the relevant kind.

(5) Section 20B(4)—delete subsection (4)

18—Insertion of section 20BA

25 After section 20B insert:

20BA—Sentencing of serious repeat offenders

(1) The following provisions apply in relation to the sentencing of a person who is a serious repeat offender for an offence (including an offence that resulted in the person being a serious repeat offender):

- 30 (a) the court sentencing the person is not bound to ensure that the sentence it imposes for the offence is proportional to the offence;
- (b) any non-parole period fixed in relation to the sentence must be at least four-fifths the length of the sentence.

(2) However, a court that is sentencing a person who is a serious repeat offender for an offence may declare that subsection (1) does not apply if the person satisfies the court, by evidence given on oath, that—

- 5 (a) his or her personal circumstances are so exceptional as to outweigh the primary policy of the criminal law of emphasising public safety; and
- (b) it is, in all the circumstances, not appropriate that he or she be sentenced as a serious repeat offender.

10 **19—Amendment of section 24—Release on licence**

(1) Section 24—after subsection (2) insert:

(2a) Subject to this Act, every release of a person on licence under this section is subject to the following conditions:

- 15 (a) a condition prohibiting the person from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
- (b) a condition requiring the person to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or class of persons or body specified by the appropriate board.

(2) Section 24(3)—delete "The" and substitute:

Without limiting subsection (2a), the

(3) Section 24—after subsection (5a) insert:

25 (5b) The appropriate board may only vary or revoke the conditions imposed by subsection (2a) on the release of a person on licence if the board is satisfied that—

- (a) there are cogent reasons to do so; and
- (b) the possession of a firearm, ammunition or part of a firearm by the person does not represent an undue risk to the safety of the public.

30 **20—Insertion of section 24A**

After section 24 insert:

24A—Appropriate board may direct person to surrender firearm etc

35 (1) The appropriate board may, in relation to the release of a person on licence under section 24 that is subject to the condition imposed by section 24(2a)(a), direct the person to surrender forthwith at a police station specified by the appropriate board any firearm, ammunition or part of a firearm owned or possessed by the person.

- (2) A person who refuses or fails to comply with a direction under subsection (1) is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- (4) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.
- (5) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.
- (6) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.
- (7) In this section—
appropriate board has the same meaning as in section 24.

21—Amendment of section 42—Conditions of bond

(1) Section 42—before subsection (1) insert:

- (a1) Subject to this Act, every bond under section 38 is subject to the following conditions:
- (a) a condition prohibiting the defendant from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
- (b) a condition requiring the defendant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or class of persons or body specified by the court.

(2) Section 42(1)—After "Subject to this Act" insert:

and without limiting subsection (a1)

22—Insertion of section 42A

After section 42 insert:

42A—Court may direct person to surrender firearm etc

- (1) A probative court may, in relation to a bond under section 38 that is subject to the condition imposed by section 42(a1)(a), direct the probationer to surrender forthwith at a police station specified by the court any firearm, ammunition or part of a firearm owned or possessed by the probationer.
- (2) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- (3) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.

- (4) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.
- (5) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.

5 **23—Amendment of section 44—Variation or discharge of bond**

Section 44—after subsection (1b) insert:

- (1c) A probative court may only vary or revoke the conditions imposed by section 42(a1) on a bond if the court is satisfied, by evidence given on oath, that—

- 10 (a) there are cogent reasons to do so; and
- (b) the possession of a firearm, ammunition or part of a firearm by the probationer does not represent an undue risk to the safety of the public.

Part 5—Amendment of *Criminal Law Consolidation Act 1935*

15 **24—Amendment of heading to Part 3**

Heading to Part 3—after "person" insert:

etc

25—Amendment of section 21—Interpretation

- 20 (1) Section 21, definition of *lesser offence*, (a)—delete "some other offence against this Division" and substitute:

another offence against this Division, Division 7AB or section 32A,

- (2) Section 21, definition of *lesser offence*, (b)—delete "some other offence against this Division" and substitute:

another offence against this Division, Division 7AB

25 **26—Insertion of section 29A**

After section 29 insert:

29A—Shooting at police officers

- (1) A person who—
 - 30 (a) discharges a firearm—
 - (i) intending to hit a police officer with shot, or a bullet or other projectile, fired from the firearm; or
 - (ii) being reckless as to whether a police officer is hit with shot, or a bullet or other projectile, fired from the firearm; and

- 35 (b) by that conduct, causes serious harm to the police officer, is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

(2) If, however, the victim in a particular case suffers such serious harm that a penalty exceeding the maximum prescribed in subsection (1) is warranted, the court may, on application by the Director of Public Prosecutions, impose a penalty exceeding the prescribed maximum.

5 (3) In proceedings for an offence against subsection (1), it is not necessary for the prosecution to establish that the defendant intended to cause serious harm to a police officer.

(4) A person who discharges a firearm—

10 (a) intending to hit a police officer with shot, or a bullet or other projectile, fired from the firearm; or

(b) being reckless as to whether a police officer is hit with shot, or a bullet or other projectile, fired from the firearm,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

15 (5) If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against this section has been established; but

20 (b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified lesser offence or any 1 of a number of specified lesser offences; and

(c) the jury is satisfied beyond reasonable doubt that the specified lesser offence, or a particular 1 of the specified lesser offences, has been established,

25 the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the lesser offence.

(6) In this section—

30 *reckless*—a person is reckless as to whether a police officer is hit with shot, or a bullet or other projectile, fired from a firearm discharged by the person if the person—

(a) is aware of a substantial risk that a police officer could be hit with shot, or a bullet or other projectile, fired from the firearm; and

35 (b) discharges the firearm despite the risk and without adequate justification.

27—Insertion of Heading to Part 3 Division 7AB

After section 31 insert:

Division 7AB—Special firearm offences

28—Insertion of section 32AA

After section 32 insert:

32AA—Discharge of firearms to injure etc

(1) A person who, without lawful excuse, discharges a firearm intending to injure, annoy or frighten any person is guilty of an offence.

Maximum penalty: Imprisonment for 8 years.

(2) A person who, without lawful excuse, discharges a firearm intending to damage any property is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(3) A person who, without lawful excuse, discharges a firearm and who is reckless as to whether that act injures, annoys or frightens, or may injure, annoy or frighten, any person is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(4) A person who, without lawful excuse, discharges a firearm and who is reckless as to whether that act damages, or may damage, any property is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

(5) In proceedings for an offence against this section, it is not necessary for the prosecution to establish that a person was, in fact, injured, annoyed or frightened or that property was, in fact, damaged (as the case requires) by the defendant's act.

(6) In this section—

reckless—a person is reckless as to whether an act injures, annoys or frightens, or may injure, annoy or frighten any person, or damages, or may damage, any property, if the person—

(a) is aware of a substantial risk that the act could injure, annoy or frighten any person or damage any property; and

(b) does the act despite the risk and without adequate justification.

29—Amendment of section 269O—Supervision

(1) Section 269O(1)(b)(ii)—delete "on conditions decided by the court and specified in the licence." and substitute:

on the following conditions:

(A) the conditions imposed by subsection (1a);

(B) any other conditions decided by the court and specified in the licence.

(2) Section 269O—after subsection (1) insert:

(1a) Subject to this Act, every licence under subsection (1)(b)(ii) is subject to the following conditions:

- 5
- (a) a condition prohibiting the defendant from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
- (b) a condition requiring the defendant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or body specified by the court.
- 10

(1b) A court may only vary or revoke the conditions imposed by subsection (1a) if the defendant satisfies the court, by evidence given on oath, that—

- 15
- (a) there are cogent reasons to do so; and
- (b) the possession of a firearm, ammunition or part of a firearm by the defendant does not represent an undue risk to the safety of the public.

30—Insertion of section 269OA

After section 269O insert:

20 **269OA—Court may direct defendant to surrender firearm etc**

- 25
- (1) The court by which a defendant is declared to be liable to supervision under this Part may, in relation to a supervision order that is subject to the condition imposed by section 269O(1a)(a), direct the defendant to surrender forthwith at a police station specified by the court any firearm, ammunition or part of a firearm owned or possessed by the defendant.
- (2) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- 30
- (3) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.
- (4) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.
- 35
- (5) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.

Part 6—Amendment of *Summary Offences Act 1953*

31—Substitution of section 51

Section 51—delete the section and substitute:

51—Throwing missiles

5 (1) A person who, without lawful excuse, throws a missile intending to—

- (a) injure, annoy or frighten any person; or
- (b) damage any property,

is guilty of an offence.

10 Maximum penalty: Imprisonment for 2 years.

(2) A person who, without lawful excuse, throws a missile and who is reckless as to whether that act—

- (a) injures, annoys or frightens, or may injure, annoy or frighten, any person; or

- (b) damages, or may damage, any property,

is guilty of an offence.

Maximum penalty: Imprisonment for 1 year.

(3) In proceedings for an offence against this section, it is not necessary for the prosecution to establish that a person was, in fact, injured, annoyed or frightened or that property was, in fact, damaged (as the case requires) by the defendant's act.

(4) In this section—

reckless—a person is reckless as to whether an act injures, annoys or frightens, or may injure, annoy or frighten any person, or damages or may damage any property, if the person—

- (a) is aware of a substantial risk that the act could injure, annoy or frighten any person or damage any property; and
- (b) does the act despite the risk and without adequate justification;

30 *throw* includes to discharge or project by means of any mechanism or device.

Part 7—Amendment of *Young Offenders Act 1993*

32—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *Registrar* insert:

35 *serious firearm offender* means a youth who is, pursuant to section 20AAB of the *Criminal Law (Sentencing) Act 1988*, a serious firearm offender;

33—Amendment of section 15A—Interpretation

Section 15A—after paragraph (b) insert:

- (ba) if the youth is a serious firearm offender;

34—Amendment of section 23—Limitation on power to impose custodial sentence

Section 23(4)(a)—after "offender" second occurring insert:

or a serious firearm offender

35—Amendment of section 37—Release on licence of youths convicted of murder

Section 37—after subsection (3) insert:

- (3a) Subject to this Act, every release of a youth on licence under this section is subject to the following conditions:
 - (a) a condition prohibiting the youth from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
 - (b) a condition requiring the youth to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by the Training Centre Review Board, or a person or class of persons or body specified by the Training Centre Review Board.
- (3b) The Training Centre Review Board may only vary or revoke the conditions imposed the release of a youth on licence by subsection (3a) if the youth satisfies the Training Centre Review Board that—
 - (a) there are cogent reasons to do so; and
 - (b) the possession of a firearm, ammunition or part of a firearm by the youth does not represent an undue risk to the safety of the public.

36—Amendment of section 41A—Conditional release from detention

(1) Section 41A(2)(c)—after subparagraph (ii) insert:

- (iia) a condition prohibiting the youth from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
- (iib) a condition requiring the youth to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by an officer of the Department who is supervising the youth;

(2) Section 41A(3)(c)—after subparagraph (ii) insert:

- (ia) a condition prohibiting the youth from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
- (ib) a condition requiring the youth to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by an officer of the Department who is supervising the youth;

(3) Section 41A—after subsection (4) insert:

- (4a) The Board may only vary or revoke the conditions imposed by subsection (2)(c)(ia) and (ib), or subsection (3)(c)(ia) and (ib), on the release from detention of a youth if the youth satisfies the Board that—
 - (a) there are cogent reasons to do so; and
 - (b) the possession of a firearm, ammunition or part of a firearm by the youth does not represent an undue risk to the safety of the public.

37—Insertion of Part 5 Division 3A

After section 42 insert:

Division 3A—Directions relating to firearms etc

41D—Training Centre Review Board may direct youth to surrender firearm etc

- (1) The Training Centre Review Board may, in relation to the release from detention of a youth that is subject to the condition imposed by section 37(3a)(a), or section 41A(2)(c)(ia) or (3)(c)(ia), direct the youth to surrender forthwith at a police station specified by the Training Centre Review Board any firearm, ammunition or part of a firearm owned or possessed by the defendant.
- (2) A youth who refuses or fails to comply with a direction under subsection (1) is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- (4) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.
- (5) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.
- (6) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.