

South Australia

# **Summary Offences (Weapons) Amendment Bill 2010**

A BILL FOR

An Act to amend the *Summary Offences Act 1953*; and to make related amendments to the *Protective Security Act 2007*, the *Serious and Organised Crime (Control) Act 2008* and the *Sheriff's Act 1978*.

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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 *Summary Offences (Weapons) Amendment Act 2010*.

#### 2—Commencement

- 5 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 *Summary Offences Act 1953*

#### 10 4—Repeal of sections 15 and 15A

Sections 15 and 15A—delete the sections

## 5—Insertion of Part 3A

After section 21 insert:

### Part 3A—Weapons etc

#### 21A—Interpretation

(1) In this Part—

**body armour** means a protective jacket, vest or other article of apparel designed to resist the penetration of a projectile discharged from a firearm;

**criminal intelligence** means information relating to actual or suspected serious and organised criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

**dangerous article** means an article or thing declared by Schedule 2 Part 2 to be a dangerous article for the purposes of this Part;

**District Court** means the Administrative and Disciplinary Division of the District Court;

**implement of housebreaking** includes a picklock key, crowbar, jack, bit or other implement of housebreaking;

**knife** includes a blade (for example a knife blade or razor blade);

**lawful excuse**—see section 21E;

**licensed premises** means premises licensed under the *Liquor Licensing Act 1997*;

**night** means the interval between 9 pm on one day and 6 am on the next day;

**offence of violence** means an offence where the offender—

- (a) uses a weapon, or threatens to use a weapon, against another; or
- (b) inflicts serious harm on another, or threatens to inflict serious harm on another,

for the purpose of committing the offence, or escaping from the scene of the offence;

**offensive weapon** includes a rifle, gun, pistol, knife, sword, club, bludgeon, truncheon or other offensive or lethal weapon or instrument but does not include a prohibited weapon;

**official ceremony** means a ceremony conducted—

- (a) by the Crown in right of the State or the Commonwealth; or
- (b) by or under the auspices of—

- (i) the Government of the State or the Commonwealth;  
or
- (ii) South Australia Police; or
- (iii) the armed forces;

***prohibited weapon*** means an article or thing declared by Schedule 2 Part 3 to be a prohibited weapon for the purposes of this Part;

***school*** means a primary or secondary school;

***serious and organised criminal activity*** means criminal activity involving 2 or more persons who are reasonably suspected of associating for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity (within the meaning of the *Serious and Organised Crime (Control) Act 2008*);

***suitable for combat***, in relation to a knife, means suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury;

***violent behaviour*** means an unlawful act inflicting injury on a person or causing a person to fear injury.

- (2) For the purposes of this Part, a person will be taken to be ***carrying*** a weapon or article if he or she has the weapon or article on or about his or her person or if it is under his or her immediate control.

#### **21AB—Expiry of criminal intelligence provisions**

Information may not be classified as criminal intelligence for the purposes of this Part after the day on which the *Serious and Organised Crime (Control) Act 2008* expires in accordance with section 39 of that Act.

#### **21B—Body armour**

- (1) A person who, without the approval in writing of the Commissioner—
  - (a) manufactures, sells, distributes, supplies or otherwise deals in, body armour; or
  - (b) uses or has possession of body armour,is guilty of an offence.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) The Commissioner may, subject to such conditions and limitations as the Commissioner thinks fit, give an approval to a person or a class of persons for the purposes of subsection (1) and may revoke an approval or revoke or vary the conditions or limitations under which an approval operates.
- (3) The giving or a variation or revocation of an approval that applies to a class of persons must be notified in the Gazette.

## 21C—Offensive weapons and dangerous articles etc

- (1) A person who, without lawful excuse—
- (a) carries an offensive weapon or an article of disguise; or
  - (b) has possession of an implement of housebreaking,
- is guilty of an offence.  
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) A person who, without lawful excuse—
- (a) manufactures, sells, distributes, supplies, or otherwise deals in, dangerous articles; or
  - (b) uses or has possession of a dangerous article,
- is guilty of an offence.  
Maximum penalty: \$7 500 or imprisonment for 18 months.
- (3) A person who, without lawful excuse, carries an offensive weapon or dangerous article at night while in, or while apparently attempting to enter or leave—
- (a) licensed premises; or
  - (b) a carparking area specifically or primarily provided for the use of patrons of the licensed premises,
- is guilty of an offence.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (4) It is a defence to prosecution for an offence against subsection (3) to prove that—
- (a) if the charge relates to the defendant's being in licensed premises—the defendant did not know and had no reason to believe he or she was in premises where liquor was sold or supplied; or
  - (b) if the charge relates to the defendant's being in the vicinity of licensed premises—the defendant did not know he or she was in the vicinity of premises where liquor was sold or supplied.
- (5) If on the trial of a person for an offence against subsection (3) the court is not satisfied that the person is guilty of the offence charged, but is satisfied that the person is guilty of an offence against subsection (1) or (2), the court may find the person guilty of the offence against subsection (1) or (2).
- (6) A person (being a person who is otherwise entitled to do so) must not use or have possession of a dangerous article unless he or she does so in a safe and secure manner.  
Maximum penalty: \$1 250 or imprisonment for 3 months.

- (7) A person who, without lawful excuse, has possession of an offensive weapon in a school is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$2 500 or imprisonment for 6 months;  
(b) for a subsequent offence—\$5 000 or imprisonment for 12 months.

- (8) A person who, without lawful excuse—

- (a) uses an offensive weapon; or  
(b) carries an offensive weapon that is visible,

in the presence of any person in a school or public place in a manner that would be likely to cause a person of reasonable firmness present at the scene to fear for his or her personal safety, is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (9) For the purposes of an offence against subsection (8), no person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (10) If on the trial of a person for an offence against subsection (7) or (8), the court is not satisfied that the person is guilty of the offence charged, but is satisfied that the person is guilty of an offence against subsection (1)(a), the court may find the person guilty of the offence against subsection (1)(a).

### **21D—Unlawful selling or marketing of knives**

- (1) A person who sells a knife to a minor who is under the age of 16 years is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (1a) Subsection (1) does not apply in relation to the sale of a knife if it is reasonable to infer that the knife was made for the consumption of food.

- (2) It is a defence to prosecution for an offence against subsection (1) to prove that—

- (a) the seller requested the minor to produce evidence of age of a kind prescribed by regulation; and  
(b) the minor made a false statement or produced false evidence in response to that request; and  
(c) in consequence, the seller reasonably assumed that the minor was of or above the age of 16 years.

- (3) A person who makes a false statement or produces false evidence in response to a request by a seller made in accordance with subsection (2)(a) is guilty of an offence.

Maximum penalty: \$1 250.

- (4) A person who markets a knife in a way that—
- (a) indicates, or suggests, that the knife is suitable for combat;  
or
  - (b) is otherwise likely to stimulate or encourage violent  
behaviour involving the use of the knife as a weapon,
- is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (4a) No offence is committed under subsection (4) if a person markets a knife solely in a way that indicates or suggests that the knife is suitable for use in a lawful form of entertainment or a lawful and recognised form of recreation or sport.

- (5) For the purposes of this section, an indication or suggestion that a knife is suitable for combat may (without limitation) be given or made by a name or description—

- (a) applied to the knife; or
- (b) on the knife or on any packaging in which it is contained; or
- (c) included in any advertisement which, expressly or by implication, relates to the knife.

- (6) For the purposes of this section, a person *markets* a knife if the person—

- (a) sells or hires the knife; or
- (b) offers, or exposes, the knife for sale or hire; or
- (c) has possession of the knife for the purpose of sale or hire.

### **21E—Lawful excuse**

- (1) Nothing in this section limits the circumstances in which a person will, or will not, be taken to have a lawful excuse for the purposes of this Part.
- (2) It will be a lawful excuse for a police officer to use, carry or possess an offensive weapon or an implement or article if the use, carrying or possession occurs in the course of the officer's duties as a police officer.
- (3) It will be a lawful excuse for a person to use, carry or possess an offensive weapon if the use, carrying or possession is reasonably required in the course of conducting his or her business or for the purpose or in the course of his or her employment.
- (4) It will be a lawful excuse for a person to use, carry or possess an offensive weapon if the use, carrying or possession is reasonably required in connection with—
- (a) a lawful form of entertainment; or
  - (b) a lawful and recognised form of recreation or sport; or
  - (c) an official ceremony; or



- (d) an official uniform; or
- (e) in the case of a knife—
  - (i) the exhibition of knives for retail or other trade purposes; or
  - (ii) an organised exhibition by knife collectors; or
  - (iii) the preparation or consumption of food.

(5) It will be a lawful excuse for a person to carry or possess an offensive weapon if the carrying or possession is reasonably required in connection with a museum or art gallery.

(6) The regulations may, however, despite a provision of this section, prescribe circumstances in which certain convicted persons will not be taken to have a lawful excuse for the purposes of this Part.

### **21F—Prohibited weapons**

(1) A person who—

(a) manufactures, sells, distributes, supplies or otherwise deals in, prohibited weapons; or

(b) uses or has possession of a prohibited weapon,

is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 2 years.

(2) It is a defence to prosecution for an offence against subsection (1) to prove that the defendant was, in accordance with—

(a) Schedule 2 Part 4; or

(b) a declaration made by the Minister under subsection (4),

an exempt person in the circumstances of the alleged offence.

(4) The Minister—

(a) may declare a person to be exempt from subsection (1) in the circumstances specified in the declaration; and

(b) may, on the Minister's own initiative, vary or revoke such a declaration (provided that such variation or revocation is of no effect unless the person has been given notice of the variation or revocation).

(5) The declaration by the Minister under subsection (4) may be conditional or unconditional.

(6) An application to the Minister for a declaration must be—

(a) in a form approved by the Minister; and

(b) accompanied by the fee prescribed by regulation.

(6a) The Minister must not make a decision on an application for a declaration unless he or she has consulted with the Commissioner.

(7) A person aggrieved by a decision of the Minister to vary or revoke a declaration may appeal against the variation or revocation to the District Court.

(7a) The Minister may delegate his or her powers under this section to any person or body.

(7b) A delegation under subsection (7a)—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) does not derogate from the Minister's ability to exercise the power under this section; and

(d) is revocable at will by the Minister.

(8) If the Minister has not given the person reasons in writing for making the decision appealed against, the Minister must do so on request made within 28 days after the person received notice of the decision.

(9) If a decision was made because of information that is classified by the Commissioner as criminal intelligence, the only reason required to be given is that the decision was made on public interest grounds.

(10) An appeal under this section must be made—

(a) within 28 days after the person received notice of the decision appealed against; or

(b) if a request for reasons in writing is made under subsection (8)—within 28 days after the person received the reasons in writing.

(11) On an appeal under this section, the Court—

(a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

(b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner by way of affidavit of a police officer of or above the rank of Superintendent.

(12) A person who is entitled to use or possess a prohibited weapon in accordance with this section—

(a) must not use or possess the weapon unless he or she does so in a safe and secure manner; and

(b) must take all reasonable steps to prevent access to the weapon by persons who are not entitled to such use or possession.

Maximum penalty: \$1 250 or imprisonment for 3 months.

## 21FA—Information relating to weapons related injuries

(1) If a medical practitioner or a registered or enrolled nurse has reasonable cause to suspect in relation to a person who he or she has seen in his or her professional capacity that the person is suffering from a wound inflicted by a weapon or article of a kind referred to in this Part, the medical practitioner or nurse must, within 1 month after forming the suspicion, make a report to the Department (within the meaning of the *Public and Environmental Health Act 1987*) containing—

- (a) details of the wound; and
- (b) any information provided to the practitioner or nurse about the circumstances leading to the infliction of the wound (other than information tending to identify the person).

(2) Subsection (1) does not apply if, in the opinion of the medical practitioner or the nurse, the injuries are not serious and the medical practitioner or nurse believes on reasonable grounds that the injuries were accidental.

(3) A person incurs no civil or criminal liability in taking action in good faith in compliance, or purported compliance, with this section.

(4) In this section—

***enrolled nurse*** means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the enrolled nurses division of that profession;

***medical practitioner*** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

***registered nurse*** means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

## 21G—Weapons prohibition order issued by Commissioner

(1) The Commissioner may issue a weapons prohibition order against a person if satisfied that—

- (a) the person has (whether before or after the commencement of this section)—
  - (i) been found guilty of an offence of violence; or

(ii) been declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* by a court dealing with a charge of an offence of violence; and

(b) possession of a prohibited weapon by the person would be likely to result in undue danger to life or property; and

(c) it is in the public interest to prohibit the person from possessing and using a prohibited weapon.

(2) A weapons prohibition order must be served on the person personally and is not binding on the person until it has been so served.

(3) If the Commissioner proposes to issue a weapons prohibition order against a person, a police officer may—

(a) require the person to remain at a particular place while the order is prepared and issued so that the order may be served on the person; and

(b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for—

(i) so long as may be necessary for the order to be served on the person; or

(ii) 2 hours,

whichever is the lesser.

(4) A weapons prohibition order served on a person must be accompanied by a notice—

(a) setting out the Commissioner's reasons for issuing the order; and

(b) setting out the terms and the effect of the order; and

(c) stating that the person may, within 28 days, appeal to the District Court against the order.

(5) If the decision to issue the order was made because of information that is classified by the Commissioner as criminal intelligence, the only reason required to be given is that the decision was made on public interest grounds.

(6) Subject to subsection (7), a weapons prohibition order issued against a person remains in force for a period of 3 years from the date on which it was served on the person or for such lesser period as may be specified in the order.

(7) The Commissioner may, on his or her own initiative or on application, by notice in writing served personally or by post on a person, revoke a weapons prohibition order issued against the person.

- (8) For the avoidance of doubt, the fact that a weapons prohibition order issued against a person has ceased to be in force in accordance with subsection (6), or has been revoked in accordance with subsection (7), does not prevent the Commissioner from issuing a subsequent weapons prohibition order against the person in accordance with this section.

### **21H—Effect of weapons prohibition order**

- (1) A person to whom a weapons prohibition order applies is disqualified from obtaining an exemption under section 21F.

- (2) While a weapons prohibition order applies to a person—

(a) any exemption under a regulation made for the purposes of section 21F does not apply in relation to the person unless the regulation expressly provides that it will apply to such a person; and

(b) any exemption held by the person under section 21F is suspended.

- (3) A person to whom a weapons prohibition order applies must not manufacture, sell, distribute, supply, deal with, use or possess a prohibited weapon.

Maximum penalty: \$35 000 or imprisonment for 4 years.

- (4) A person to whom a weapons prohibition order applies—

(a) must not be present at—

(i) a place at which a person carries on the business of manufacturing, repairing, modifying or testing prohibited weapons or buying, selling or hiring out, prohibited weapons; or

(ii) any other place of a kind prescribed by regulation; and

(b) must not be in the company of a person who has a prohibited weapon on or about his or her person or under his or her immediate physical control.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4a) It is a defence to prosecution for an offence against subsection (4)(a) to prove that the person did not know, and could not reasonably be expected to have known, that the place was a place of a kind referred to in that paragraph.

- (5) It is a defence to prosecution for an offence against subsection (4)(b) to prove that the person did not know, and could not reasonably be expected to have known, that the other person had a prohibited weapon on or about his or her person or under his or her immediate physical control.

- (6) A person to whom a weapons prohibition order applies must—
- (a) immediately on becoming aware of the presence of a prohibited weapon on premises at which the person resides, notify the Commissioner of that fact; and
  - (b) comply with—
    - (i) a direction of the Commissioner, given in response to that notification, that the person must not reside at the premises; or
    - (ii) any other direction of the Commissioner, given in response to that notification, in relation to the weapon.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (9) A person must not supply a prohibited weapon to a person to whom a weapons prohibition order applies or permit such a person to gain possession of a prohibited weapon.

Maximum penalty: \$35 000 or imprisonment for 4 years.

- (12) It is a defence to prosecution for an offence against subsection (9) to prove that the person did not know, and could not reasonably be expected to have known, that a weapons prohibition order applies to the person.

- (13) For the purposes of this section, if a person to whom a weapons prohibition order applies is on or in premises or a vehicle, vessel or aircraft (other than any premises, vehicle, vessel or aircraft to which the public are admitted) when a prohibited weapon is found on or in the premises, vehicle, vessel or aircraft, the person will be taken to possess the weapon unless it is proved that—

- (a) the person has notified the Commissioner of the presence of the weapon in accordance with subsection (6); or
- (b) the person did not know, and could not reasonably be expected to have known, that the weapon was on or in the premises, vehicle, vessel or aircraft.

- (14) The Commissioner may exempt a person, unconditionally or subject to conditions, from a specified provision of this section and may vary or revoke an exemption by notice in writing served personally or by registered post on the holder of the exemption.

- (15) The Commissioner may, by notice in the Gazette—

- (a) exempt a class of persons, unconditionally or subject to conditions specified in the notice, from a specified provision of this section; and
- (b) vary or revoke such an exemption.

## 21I—Right of appeal to District Court

- (1) A person aggrieved by a decision of the Commissioner—
- (a) to issue a weapons prohibition order under section 21G; or
  - (b) to vary or revoke an exemption under section 21H(14),
- 5 may appeal against the decision to the District Court.
- (2) If the Commissioner has not given the person reasons in writing for making the decision appealed against, the Commissioner must do so on request made within 28 days after the person received notice of the decision.
- 10 (3) If a decision was made because of information that is classified by the Commissioner as criminal intelligence, the only reason required to be given is that the decision was made on public interest grounds.
- (4) An appeal under this section must be made—
- 15 (a) within 28 days after the person received notice of the decision appealed against; or
  - (b) if a request for reasons in writing is made under subsection (2)—within 28 days after the person received the reasons in writing.
- (5) On an appeal under this section, the Court—
- 20 (a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and
  - 25 (b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner by way of affidavit of a police officer of or above the rank of Superintendent.

## 21IA—Reports relating to weapons prohibition orders

30 The following information must be included in the annual report of the Commissioner under section 75 of the *Police Act 1998* (other than in the year in which this section comes into operation):

- 35 (a) the number of weapons prohibition orders issued under section 21G;
- (b) the number of weapons prohibition orders revoked under section 21G;
- (c) the number of appeals under section 21I and the outcome of each appeal that has been completed or finally determined;
- (d) any other information requested by the Minister.

### **21J—Power to search for prohibited weapons**

- (1) A police officer may, as reasonably required for the purpose of ensuring compliance with a weapons prohibition order issued by the Commissioner—

- (a) detain a person to whom this subsection applies and search the person for prohibited weapons; and
- (b) stop and detain a vehicle, vessel or aircraft to which this subsection applies and search the vehicle, vessel or aircraft for prohibited weapons; and
- (c) enter premises to which this subsection applies and search the premises for prohibited weapons.

- (2) Subsection (1) applies—

- (a) to a person to whom a weapons prohibition order issued by the Commissioner applies; and
- (b) to a vehicle, vessel or aircraft that a police officer suspects on reasonable grounds is in the charge of a person to whom the subsection applies; and
- (c) to premises that a police officer suspects on reasonable grounds are occupied by, or under the care, control or management of, a person—
- (i) who the police officer suspects on reasonable grounds of contravening a weapons prohibition order; or
- (ii) who has previously contravened a weapons prohibition order.

- (3) If a prohibited weapon is delivered or seized under this section, it must be forwarded immediately to the Commissioner.

### **21K—Forfeiture**

A court that has convicted a person of an offence against this Part may order that the weapon, implement or article in relation to which the offence was committed be forfeited to the Crown.

### **21L—General amnesty**

- (1) The Commissioner may, with the approval of the Minister, from time to time declare a general amnesty from 1 or more of the provisions of this Part.
- (2) An amnesty—
- (a) must be declared by notice in the Gazette and in a newspaper circulating generally throughout the State; and



(b) applies in relation to the provision or provisions of this Part specified in the notice, either generally or subject to limitations specified in the notice (the *relevant provisions*); and

(c) applies for the period specified in the notice; and

(d) applies for the benefit of all members of the class or classes of persons affected by the relevant provisions; and

(e) is subject to the terms and conditions (if any) set out in the notice.

(3) The Commissioner may, with the approval of the Minister, vary or revoke the declaration of an amnesty under subsection (1) by notice in the Gazette and in a newspaper circulating generally throughout the State.

### **21M—Regulations**

Regulations made for the purposes of this Part may, without limitation—

(a) provide that this Part or specified provisions of this Part do not apply to a specified class of persons; and

(b) provide that this Part or specified provisions of this Part do not apply to a specified class of weapon, implement or article; and

(c) prescribe evidentiary provisions to facilitate proof of an offence against this Part.

### **6—Redesignation of section 21A—Tattooing of minors**

Section 21A—redesignate the section as section 21N

### **7—Insertion of sections 72A, 72B and 72C**

After section 72—insert:

#### **72A—Power to conduct metal detector searches etc**

(1) Subject to this section, a police officer may, for the purpose of detecting the commission of an offence under Part 3A, carry out a search in relation to—

(a) any person who is in, or is apparently attempting to enter or to leave, an area to which this section applies; and

(b) any property in the possession of such a person.

(1a) A search referred to in subsection (1) in relation to a person or property must be carried out as follows:

(a) the search must, in the first instance, be a metal detector search and must not proceed to a further search unless the metal detector search indicates the presence or likely presence of metal;

(b) if the metal detector search indicates the presence or likely presence of metal, a police officer may—

(i) require the person to produce the item detected by the metal detector; and

(ii) if the person refuses or fails to produce such item—conduct a search of the person for the purpose of identifying the item as if it were a search of a person who is reasonably suspected of having, on or about his or her person—

(A) stolen goods; or

(B) an object, possession of which constitutes an offence; or

(C) evidence of the commission of an indictable offence;

(c) a search will not be taken to be lawfully carried out under this section unless it is carried out in accordance with procedures set out in the regulations (being procedures that seek to minimise, as far as reasonably practicable, any undue delay, inconvenience or embarrassment to persons being subjected to a search under this section).

(2) This section applies to the following areas:

(a) licensed premises;

(b) a public place holding an event (being a community, cultural, arts, entertainment, recreational, sporting or other similar event that is to be held over a limited period of time) declared by the Commissioner by notice in the Gazette under subsection (3);

(c) a car parking area specifically or primarily provided for the use of patrons of an area referred to in paragraph (a) or (b).

(3) A declaration referred to in subsection (2)(b)—

(a) must be made in accordance with guidelines (if any) prescribed by regulation; and

(b) must specify the event and the public place to which the declaration relates; and

(c) must specify that the declaration operates during the period for which the event is held; and

(d) may be subject to conditions specified in the notice.

(4) The Commissioner must cause notice of the declaration to be published in a newspaper circulating throughout the State before the commencement of the period during which the declaration will operate.

(5) Nothing in this section authorises a police officer to carry out a search of a person, or property of a person, in his or her place of residence or in a hotel room, lodging room or any other place in which he or she is temporarily residing.

(7) The following information must be included in the annual report of the Commissioner under section 75 of the *Police Act 1998* (other than in the year in which this section comes into operation):

(a) the number of declarations made under subsection (3);

(b) the following details about each declaration made under subsection (3):

(i) the name and date of the event;

(ii) the location of the public place;

(c) the number of metal detector searches, and the number of searches other than metal detector searches, carried out under this section;

(d) the locations at which those searches were carried out (for example, licensed premises, a public place holding an event or elsewhere);

(e) in the case of a search carried out at a public place holding an event—the event and period specified in the relevant declaration and the date on which the notice of the declaration was published in the Gazette;

(f) the number of occasions on which a metal detector search indicated the presence, or likely presence, of any metal;

(g) the number of occasions on which weapons or articles of a kind referred to in Part 3A were detected in the course of such searches and the types of weapons or articles so detected;

(h) the number of occasions on which other kinds of weapons or articles constituting evidence, or possible evidence, of the commission of an offence were detected in the course of such searches and the types of weapons or articles so detected;

(i) any other information requested by the Minister.

(8a) This section will expire 3 years after it comes into operation.

(9) In this section—

***licensed premises*** means—

(a) premises in respect of which 1 of the following classes of licence is in force under the *Liquor Licensing Act 1997*:

(i) a hotel licence;

(ii) a restaurant licence that includes an extended trading authorisation;

- (iii) an entertainment venue licence;
- (iv) a club licence that includes an extended trading authorisation;
- (v) a special circumstances licence that includes an extended trading authorisation;
- (vi) a licence of a class prescribed by regulation;
- (b) the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates;
- (c) premises subject to a licence prescribed by regulation.

### **72B—Special powers to prevent serious violence**

- (1) Subject to this section, a police officer may, for the purpose of locating weapons and other articles in an area to which this section applies, carry out a search in relation to—
  - (a) any person who is in, or is apparently attempting to enter or to leave the area; and
  - (b) any property in the possession of such a person.
- (1a) A search referred to in subsection (1) in relation to a person or property must be carried out as follows:
  - (a) the search must, in the first instance, be a metal detector search and must not proceed to a further search unless the metal detector search indicates the presence or likely presence of metal;
  - (b) if the metal detector search indicates the presence or likely presence of metal, a police officer may—
    - (i) require the person to produce the item detected by the metal detector; and
    - (ii) if the person refuses or fails to produce such item—conduct a search of the person for the purpose of identifying the item as if it were a search of a person who is reasonably suspected of having, on or about his or her person—
      - (A) stolen goods; or
      - (B) an object, possession of which constitutes an offence; or
      - (C) evidence of the commission of an indictable offence;

- 5 (c) a search will not be taken to be lawfully carried out under this section unless it is carried out in accordance with procedures set out in the regulations (being procedures that seek to minimise, as far as reasonably practicable, any undue delay, inconvenience or embarrassment to persons being subjected to a search under this section).
- (2) This section applies to an area in relation to which the exercise of powers under this section is authorised in accordance with subsection (3).
- 10 (3) A police officer of or above the rank of Superintendent may authorise the exercise of powers under this section in relation to an area if he or she has reasonable grounds to believe—
- (a) that an incident involving serious violence may take place in the area; and
- 15 (b) such powers are necessary to prevent the incident.
- (5) An authorisation granted under subsection (3)—
- (a) must be granted in accordance with guidelines (if any) issued by the Commissioner; and
- 20 (b) must specify the area to which the authorisation relates (which must not be larger than is reasonably necessary for the purposes of the authorisation); and
- (c) must specify the grounds for granting the authorisation; and
- (d) must specify a period of not more than 24 hours during which the authorisation operates (the *authorisation period*);
- 25 and
- (e) may be subject to conditions specified by the police officer granting the authorisation.
- (6) An authorisation granted under subsection (3) may be varied or revoked by a police officer of or above the rank of Superintendent at any time.
- 30 (7) An authorisation granted under subsection (3) or a variation or revocation of such an authorisation must be by instrument in writing unless the police officer granting, varying or revoking the authorisation is satisfied that circumstances of urgency exist in which case the authorisation, variation or revocation may be oral, provided that it is reduced to writing as soon as reasonably practicable.
- 35 (8) If—
- (a) it is proposed to grant an authorisation in relation to an area; and
- 40 (b) a previous authorisation has been granted in relation to that area or a part of that area,

the authorisation period specified in the proposed authorisation must not commence within 48 hours of the end of the authorisation period specified in the previous authorisation, unless the consent of the Commissioner has been obtained in accordance with subsection (9).

(9) The Commissioner may, by instrument in writing, give consent to the granting of an authorisation of a kind specified in subsection (8) if the Commissioner is satisfied that it is in the public interest to do so.

(10) The following information must be included in the annual report of the Commissioner under section 75 of the *Police Act 1998* (other than in the year in which this section comes into operation):

(a) the number of authorisations granted under subsection (3) and the nature of the incidents in relation to which such authorisations were granted;

(b) the number of metal detector searches, and the number of searches other than metal detector searches, carried out under this section, and information identifying the authorisation pursuant to which those searches were carried out;

(c) the number of occasions on which a metal detector search indicated the presence, or likely presence, of any metal;

(d) the number of occasions on which weapons or articles of a kind referred to in Part 3A were detected in the course of such searches and the types of weapons or articles so detected;

(e) the number of occasions on which other kinds of weapons or articles constituting evidence, or possible evidence, of the commission of an offence were detected in the course of such searches and the types of weapons or articles so detected;

(f) the number of occasions on which the Commissioner gave consent under subsection (9);

(g) any other information requested by the Minister.

#### **72C—General provisions relating to exercise of powers under section 72A or 72B**

(a1) A metal detector search carried out under section 72A or 72B must be conducted—

(a) using only a metal detector of a kind approved by the Commissioner; and

(b) in accordance with any directions issued by the Commissioner.

(1) Nothing in section 72A or 72B derogates from the power of a police officer to do anything pursuant to a general search warrant.

(2a) A police officer must ensure that any exercise of powers under section 72A or 72B does not unreasonably interfere with a person's right to participate in lawful advocacy, protest, dissent or industrial action.

5 (4) A police officer conducting a search under section 72A or 72B may—

(a) enter and remain in any premises or place necessary for the purpose of conducting the search; and

10 (b) give such directions as are reasonably necessary for, or incidental to, the effective conduct of the search; and

(c) give such directions as are reasonably necessary to determine the nature of anything found as a result of the search.

15 (5) A police officer may only detain a person, by directions given under section 72A or 72B, for so long as is reasonably necessary to carry out a search in relation to the person and any property in the possession of the person.

(6) A person must not—

20 (a) hinder or obstruct a police officer in the exercise of the powers conferred by section 72A or 72B; or

(b) refuse or fail to comply with a requirement made of the person, or a direction given to the person, pursuant to section 72A or 72B.

Maximum penalty: \$2 500 or imprisonment for 6 months.

25 (7) For the avoidance of doubt, a search may be conducted in accordance with section 72A or 72B whether or not it would be lawful to conduct a search in accordance with any other provision of this Part.

(8) In any proceedings, an apparently genuine document purporting to be a certificate signed by the Commissioner and certifying that—

30 (a) a particular area was subject to an authorisation properly granted in accordance with section 72B during a period specified in the certificate; or

35 (b) a device used during a specified period to carry out metal detector searches within a specified area, or at a specified place, was a metal detector approved by the Commissioner,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

## 8—Amendment of section 74BAAB—Use of detection aids in searches

Section 74BAAB(1)—delete subsection (1) and substitute:

- (1) A police officer may, in exercising powers under this Part, use a drug detection dog, an electronic drug detection system, a metal detector or any other system or device designed to assist in the detection of objects or substances.

## 9—Amendment of section 85—Regulations

(1) Section 85(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) vary the provisions of Schedule 2 (other than clauses 5 to 7 inclusive and 19 to 25 inclusive) by including provisions in, or deleting provisions from, the Schedule;

(2) Section 85—after subsection (2) insert:

(3) The regulations may—

- (a) be of general application or vary in their application according to prescribed factors; and
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Commissioner.

## 10—Insertion of Schedule 2

After Schedule 1 insert:

### Schedule 2—Weapons etc

#### Part 1—Interpretation

##### 1—Interpretation

(1) In this Schedule, unless the contrary intention appears—

*catapult* includes a shanghai and a slingshot;

*designed* includes adapted;

*extendable baton of a prescribed kind* means an extendable baton that can only be extended by means of gravity or centrifugal force;

*number*, in relation to the identification of a weapon, means an identifying mark comprised of either numbers or letters or a combination of both numbers and letters;

*official ceremony* means a ceremony conducted—

- (a) by the Crown in right of the State or the Commonwealth; or
- (b) by or under the auspices of—
- (i) the Government of the State or the Commonwealth; or
- (ii) South Australia Police; or



(iii) the armed forces;

***prescribed masonic organisation*** means—

- (a) the Antient, Free And Accepted Masons Of South Australia and the Northern Territory Incorporated; or
- (b) a Lodge or Order of Freemasons warranted and recognised by the association referred to in paragraph (a); or
- (c) the Lodge of Freemasons named "The Duke of Leinster Lodge";

***prescribed services organisation*** means—

- (a) The Returned and Services League of Australia (S.A. Branch) Incorporated or any of its sub-branches; or
- (b) an association or other body (whether or not incorporated) that is a member of the Consultative Council of Ex-Service Organisations (S.A.).

(2) For the purposes of this Schedule—

- (b) a reference to a particular class of dangerous article is a reference to the class of dangerous article as declared and described in Part 2; and
- (c) a reference to a particular class of prohibited weapon is a reference to the class of prohibited weapon as declared and described in Part 3; and
- (d) if an article could, but for this paragraph, be declared by this Schedule to be both a dangerous article and a prohibited weapon, it will be taken, unless the contrary intention appears, to be declared to be a prohibited weapon and not a dangerous article.

## Part 2—Dangerous articles

### 2—Dangerous articles

Each of the following is declared to be a dangerous article for the purposes of Part 3A of this Act:

- (a) ***anti-theft case***—a case, satchel or similar article designed to administer an electric shock to a person who handles or interferes with the case, satchel or article or its contents;
- (b) ***bayonet***—a stabbing weapon designed to be attached to or at the muzzle of a rifle;
- (c) ***blow gun***—a blow-pipe or similar device or instrument designed to propel an arrow, dart or similar projectile by air expelled from the mouth;
- (d) ***cross-bow***—a cross-bow, other than a pistol cross-bow as described in Part 3 clause 3(s) of this Schedule;

- (e) ***dart projector***—a device (for example, a Darchery Dart Slinger) designed to propel a dart by means of elastic material;
- (f) ***gas injector device***—a device (for example, a Farallon Shark Dart or a WASP Injector Knife) designed to kill or injure an animal by injecting a gas or other substance into the body of the animal;
- (g) ***plain catapult***—a catapult made for commercial distribution, other than a brace catapult as described in Part 3 clause 3(b) of this Schedule;
- (h) ***self-protecting spray***—a device or instrument designed to temporarily or permanently immobilise, incapacitate or injure a person by the emission or discharge of an offensive, noxious or irritant liquid, powder, gas or chemical;
- (i) ***self-protection device***—a hand held device or instrument designed to temporarily or permanently immobilise, incapacitate or injure a person by the emission or discharge of an electric current, sound waves or electromagnetic energy.

## Part 3—Prohibited weapons

### 3—Prohibited weapons

Each of the following is declared to be a prohibited weapon for the purposes of Part 3A of this Act:

- (a) ***ballistic knife***—a device or instrument (other than a dart projector) designed to fire or discharge a knife, dagger or similar instrument by mechanical, percussive or explosive means;
- (b) ***brace catapult***—a catapult (for example, a Saunders Falcon Hunting Sling) that includes or is designed to be used with a brace fitted or resting on the forearm or another part of the body in order to support the forearm or wrist when the catapult is activated;
- (c) ***butterfly knife***—a knife comprised of a blade or spike and a handle, in respect of which—
  - (i) the handle is in 2 sections that fold so as to wholly or partially cover the blade or spike when the knife is not in use; and
  - (ii) the blade or spike can be exposed by gravity or centrifugal force;
- (d) ***chloroacetophenone***—chloroacetophenone (known as CN) in all its forms;
- (e) ***concealed weapon***—an article that appears to be harmless but that conceals a knife, spike or other weapon;

- (f) **dagger**—a sharp, pointed stabbing weapon (other than a bayonet or sword), ordinarily capable of being concealed on the person and having—
- (i) a flat blade with cutting edges on both sides; or
- (ii) a needle-like blade that has a round or elliptical cross section or that has 3 or more sides;
- (g) **dirk** or **sgian dhu**—a ceremonial weapon associated with traditional Scottish culture;
- (h) **dypenylaminechloroarsone**—dypenylaminechloroarsone (known as DM or adamsite) in all its forms;
- (i) **extendable baton**—a baton designed for use as a weapon that can be extended in length by gravity or centrifugal force or by a release button or other device;
- (j) **fighting knife**—a knife (other than a bayonet or sword) designed for hand to hand fighting, for example, a butterfly knife, dagger, flick knife, push knife or trench knife;
- (k) **flick-knife**—a knife in respect of which—
- (i) the blade is concealed when folded or recessed into the handle and springs or is released into the extended position by the operation of a button or other device on the handle; or
- (ii) the blade is wholly or partially concealed by a sheath that can be withdrawn into the handle of the knife by gravity, centrifugal force or by the operation of a button or other device;
- (l) **hand or foot claw**—an article designed as a weapon consisting of prongs or other projections worn on the hands or feet (for example, the martial arts weapons known as ninja hand claws, ninja foot claws or ninja claws);
- (m) **knife belt**—a belt or similar article (for example, a Bowen Knife Belt) designed to hold a knife, dagger or similar instrument so that the presence of the knife, dagger or instrument is concealed or disguised when the belt or article is worn;
- (n) **knuckle duster**—a device or instrument designed to be worn across the knuckles of a hand so as to—
- (i) increase the force or impact of a punch or blow when striking another with the hand; and
- (ii) protect the knuckles from injury,
- including a weighted or studded glove, but not including a boxing glove;

- (o) **laser pointer**—a hand held device, commonly known as a laser pointer, designed to emit a laser beam with an accessible emission level of greater than 1 milliwatt;
- (p) **morning star**—an article designed as a weapon consisting of a weight (whether or not with spikes or blades) attached to a chain, rope or a length of other flexible material;
- (q) **nunchakus**—a device comprised of 2 or more bars joined by a chain, rope or other flexible material so that the bars can swing independently of each other;
- (r) **orthochlorobenzalmalononitrile**—  
orthochlorobenzalmalononitrile (known as CS) in all its forms;
- (s) **pistol cross-bow**—a cross-bow designed for aiming and discharging an arrow, dart, bolt or similar projectile when held in one hand;
- (t) **poniard**—a ceremonial weapon associated with the traditions of a prescribed masonic organisation;
- (u) **push knife**—a knife (for example, an Urban Pal Knife) comprised of a blade or spike with a transverse handle that is designed—
  - (i) to be held between the fingers or the forefinger and thumb with the handle supported by the palm of the hand; and
  - (ii) to inflict injury by a punching or pushing movement;
- (v) **star knife**—a device comprised of a number of points, blades or spikes pointing outwardly from a central axis and designed to spin around that axis, and capable of causing serious injury, when thrown;
- (w) **throwing knife**—a knife that is designed to cause serious injury when thrown;
- (x) **trench knife**—a knife comprised of a blade or spike attached to one end of a handle that is designed to be held in the closed fist with the fingers through the handle which serves as a knuckle duster;
- (y) **undetectable knife**—a knife that—
  - (i) is made wholly or partly of a material that prevents the knife from being detected, or being detected as a knife, by either a metal detector or by a method using X-rays; and
  - (ii) is capable of causing serious injury or death.

## Part 4—Exempt persons—prohibited weapons

### 4—Application of Part

(2) If—

(a) in this Part, a person is expressed to be an exempt person for the purposes of 1 or more offences against section 21F(1) of this Act in relation to a particular class of prohibited weapon; and

(b) the weapon is included in 1 or more of the other classes of prohibited weapon,

the person is an exempt person in relation to that weapon for the purposes of the offences even though he or she is not an exempt person in relation to a prohibited weapon of the other class or classes referred to in paragraph (b).

(3) The provisions of this Part (other than clauses 5, 6, 7 and 8) do not apply to a person who has, whether before or after the commencement of this Part, been found guilty by a court of—

(a) an offence involving violence for which the maximum term of imprisonment is 5 years or more; or

(b) an equivalent offence involving violence under the law of another State or Territory of the Commonwealth or of another country.

(4) If a person is an exempt person in relation to a weapon under a clause in this Part (other than under clauses 5, 6, 7 or 8) and a court finds the person guilty of using the weapon to threaten or injure another person, he or she ceases to be an exempt person in relation to that or any other weapon under that clause and can never again become an exempt person under that clause.

(5) A person who, prior to the commencement of this Part, ceased, in accordance with regulation 7(4) of the *Summary Offences (Dangerous Articles and Prohibited Weapons) Regulations 2000*, to be an exempt person under a particular regulation is taken not to be exempt under any corresponding provision of this Part.

### 5—Police officers

A police officer is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act if the officer uses or has possession of a prohibited weapon for the purpose or in the course of his or her duties as a police officer.

## 6—Delivery to police

A person is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act if the person has possession of a prohibited weapon for the purpose of delivering it as soon as reasonably practicable to a police officer.

## 7—Emergencies

A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act if the person uses or has possession of a prohibited weapon for the purpose, and in the course, of dealing with an emergency (whether as a volunteer or in the course of paid employment), provided that the person does not use the weapon to threaten or injure another person.

## 8—Executors etc

- (1) A person is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act if the person has possession of a prohibited weapon in the course of his or her duties—

- (a) as the executor, administrator or other representative of—
- (i) the estate of a deceased person or a bankrupt; or
  - (ii) a person who is legally incompetent; or
- (b) as receiver or liquidator of a body corporate.

- (2) A person is an exempt person for the purposes of an offence of sale or supply of a prohibited weapon under section 21F(1)(a) of this Act, if the person sells or supplies a prohibited weapon in the course of his or her duties—

- (a) as the executor, administrator or other representative of—
- (i) the estate of a deceased person or a bankrupt; or
  - (ii) a person who is legally incompetent; or
- (b) as receiver or liquidator of a body corporate,

provided that the sale or supply is to a person who is entitled to possession of the weapon under section 21F of this Act.

## 9—Heirlooms

A person is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act if the person has possession of a prohibited weapon that is of sentimental value to him or her as an heirloom and that was previously in the possession of 1 or more of his or her relatives provided that the person keeps the weapon in a safe and secure manner at his or her place of residence and does not remove it except for the purpose of—

- (a) display by a person who is entitled under section 21F of this Act to have possession of it for that purpose; or
- (b) repair or restoration by a person who carries on a business that includes the repair or restoration of articles of that kind; or
- (c) valuation by a person who carries on a business that includes the valuing of articles of that kind; or
- (d) secure storage by a person who carries on the business of storing valuable property on behalf of other persons; or
- (e) permanently transferring possession of the weapon to another person (being a person who is entitled under section 21F of this Act to have possession of it).

## 10—Collectors

- (1) A person is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act if the person has possession of a prohibited weapon as part of a collection of weapons or other artefacts or memorabilia (comprised of at least 3 weapons, whether or not prohibited weapons) that has a particular theme, or that the person maintains for its historical interest or as an investment, provided that—

- (a) the person keeps the following records in a legible manner in a bound book at his or her place of residence for a period that expires at the end of 5 years after he or she ceases to be in possession of the collection:
  - (i) a record describing and identifying the weapon;
  - (ii) a record of the date of each occasion on which he or she obtains or re-obtains possession of the weapon and the identity and address of the person from whom he or she obtains or re-obtains possession;
  - (iii) the date of each occasion on which he or she parts with possession of the weapon to another person and the identity and address of that person; and
- (b) the person keeps the weapon in a safe and secure manner at his or her place of residence and does not remove it except for the purpose of—

- (i) display by a person who is entitled under section 21F of this Act to have possession of it for that purpose; or
  - (ii) repair or restoration by a person who carries on a business that includes the repair or restoration of articles of that kind; or
  - (iii) valuation by a person who carries on a business that includes the valuing of articles of that kind; or
  - (iv) repair, restoration or valuation—
    - (A) by another collector who is, under this clause, an exempt person in relation to a prohibited weapon; or
    - (B) by a person who is, under clause 13, an exempt person in relation to a prohibited weapon; or
  - (v) secure storage by a person who carries on the business of storing valuable property on behalf of other persons; or
  - (vi) storage by another collector who is, under this clause, an exempt person in relation to a prohibited weapon; or
  - (vii) returning it to—
    - (A) another collector who is, under this clause, an exempt person in relation to a prohibited weapon; or
    - (B) a prescribed services organisation that is, under clause 11, an exempt person in relation to a prohibited weapon,  
on whose behalf he or she has repaired, restored, valued or stored the weapon; or
  - (viii) taking it to a meeting but only if the majority of persons at the meeting are collectors who are, under this clause, exempt persons in relation to prohibited weapons; or
  - (ix) its sale or supply to another person in accordance with subclause (2); and
- (c) the person permits a police officer at any reasonable time to enter his or her residential premises to inspect the collection and the records kept under paragraph (a).



(2) A person who is an exempt person under subclause (1) will also be an exempt person for the purposes of an offence of sale or supply of such a weapon under section 21F(1)(a) of this Act if the person sells or supplies the weapon in the normal course of maintaining the collection, to a person who is entitled to possession of a prohibited weapon under section 21F of this Act.

(3) A reference in subclause (1) to the place of residence of a person will be taken, in the case of a body corporate, to be a reference to the registered office of the body corporate.

## 11—Prescribed services organisations (RSL etc)

(1) A prescribed services organisation is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act if it has possession of a prohibited weapon of a kind acquired or used by one of its members (or by a person that it represents) while on active war service as a member of Australia's armed forces, provided that—

(a) the organisation keeps the following records in a legible manner in a bound book at its premises for a period that expires at the end of 5 years after it last ceased to be in possession of the weapon:

(i) a record describing and identifying the weapon;

(ii) a record of the date of each occasion on which the organisation obtains or re-obtains possession of the weapon and the identity and address of the person from whom the organisation obtains or re-obtains possession;

(iii) the date of each occasion on which the organisation parts with possession of the weapon to another person and the identity and address of that person; and

(b) the organisation keeps the weapon in a safe and secure manner at its premises and does not remove the weapon except for the purpose of—

(i) display by a person who is entitled under section 21F of this Act to have possession of it for that purpose; or

(ii) repair or restoration by a person who carries on a business that includes the repair or restoration of articles of that kind; or

(iii) valuation by a person who carries on a business that includes the valuing of articles of that kind; or

(iv) repair, restoration or valuation—

(A) by a collector who is, under clause 10, an exempt person in relation to a prohibited weapon; or

(B) by a person who is, under clause 13, an exempt person in relation to a prohibited weapon; or

(v) secure storage by a person who carries on the business of storing valuable property on behalf of other persons; or

(vi) its sale or supply to another person in accordance with subclause (2); and

(c) the organisation permits a police officer at any reasonable time to enter the premises of the organisation to inspect the weapon and the records kept under paragraph (a).

(2) A person who is an exempt person in relation to a prohibited weapon under subclause (1) will also be an exempt person for the purposes of an offence of sale or supply of such a weapon under section 21F(1)(a) of this Act if the person sells or supplies the weapon in the normal course of maintaining the collection, to a person who is entitled to possession of a prohibited weapon under section 21F of this Act.

## **12—Possession by collector on behalf of prescribed services organisation or another collector**

A person who is, under clause 10, an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act (the **first collector**) will also be an exempt person for the purposes of such an offence in relation to a prohibited weapon that is owned by another collector or a prescribed services organisation if—

(a) possession of the weapon by the first collector is solely for the purpose of repairing, restoring, valuing or storing it on behalf of the prescribed services organisation or the other collector; and

(b) the other collector is, under clause 10, or the prescribed services organisation is, under clause 11, an exempt person in relation to the weapon; and

(c) while the weapon is in the possession of the first collector, the first collector complies with the conditions in clause 10(1)(a) to (c) in relation to the weapon as though it were part of the first collector's collection.

### 13—Manufacturers etc

A person is an exempt person for the purposes of an offence of manufacture, sale, distribution, supply of, or other dealing in, possession or use of a prohibited weapon under section 21F(1) of this Act if—

(a) the person—

(i) has not been found guilty by a court of an offence involving the use, or the threat of using, a weapon; and

(ii) has notified the Commissioner in writing that he or she is, or intends, manufacturing, selling, distributing, supplying or otherwise dealing in prohibited weapons and of—

(A) the person's full name; and

(B) the address of the place or places at which the person is, or intends, conducting those activities; and

(C) the person's residential address; and

(D) in the case of a body corporate—the full name and residential address of each of its directors; and

(iii) the possession and use is, or is to be, only to the extent reasonably necessary for the purpose of manufacturing, selling, distributing, supplying or otherwise dealing in the weapons (as the case requires); and

(b) the weapons are kept in a safe and secure manner; and

(c) in the case of the sale, distribution or supply of, or other dealing in, a prohibited weapon—the weapon is not sold, distributed or supplied to, or dealt in with, a person who is under the age of 18 years; and

(d) a prohibited weapon is not marketed (within the meaning of section 21D of this Act) by the person in a way that—

(i) indicates, or suggests, that the weapon is suitable for combat; or

(ii) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon; and

(e) in the case of the manufacture of prohibited weapons, each weapon manufactured is marked with an identifying brand and number in a manner that ensures that the brand and number cannot be removed easily and will not wear off in the normal course of use of the weapon; and

(f) the person keeps the following records in a legible manner (and in a form that is reasonably accessible to a police officer inspecting the records under paragraph (i)) at his or her business premises for a period of at least 5 years:

(i) a description of each prohibited weapon that is, or has been, in his or her possession;

(ii) the identifying brand and number (if any) that is marked on each of those weapons;

(iii) the name and address of the person to whom he or she sells, distributes, supplies, or with whom he or she otherwise deals in, each of those weapons;

(iv) the date of each transaction; and

(g) the person permits a police officer at any reasonable time to enter his or her premises or a vehicle in which prohibited weapons are carried to inspect the premises or vehicle, the weapons on the premises or in the vehicle or records kept by the exempt person under paragraph (f); and

(h) the person notifies the Commissioner in writing of a change in any of the information referred to in paragraph (a)(i) and (ii) within 7 days after the change occurs.

#### **14—Possession by manufacturer etc on behalf of prescribed services organisation or another collector**

A person who is, under clause 13, an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act (the *manufacturer*) will also be an exempt person for the purposes of such an offence in relation to a prohibited weapon that is owned by a collector or a prescribed services organisation if—

(a) possession of the weapon by the manufacturer is solely for the purpose of repairing or restoring the weapon or valuing or storing it on behalf of the collector or prescribed services organisation; and

(b) the collector is, under clause 10, or the prescribed services organisation is, under clause 11, an exempt person in relation to the weapon.

#### **15—Extendable batons—security agents**

(1) A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act in relation to the use or possession of an extendable baton of a prescribed kind if—

(a) the person is—

- 5
- (i) authorised by a licence granted under the *Security and Investigation Agents Act 1995* to carry on the business of protecting or guarding property as a security agent; and
- (ii) the holder of a firearms licence under the *Firearms Act 1977* authorising the possession and use of a handgun in the course of carrying on the business of guarding property; and
- 10
- (b) the baton is kept in a safe and secure manner at the person's business premises when not being used; and
- (c) the baton is marked with a number for identification and with the name of the person in a manner that ensures that the number and name cannot be removed easily and will not wear off in the normal course of use of the baton; and
- 15
- (d) the baton is not issued to another person unless the other person is—
- (i) an employee in the business; and
- (ii) an exempt person under subclause (2); and
- 20
- (e) the person keeps the following records in a legible manner (and in a form that is reasonably accessible to a police officer inspecting the records under paragraph (f)) at his or her business premises for a period of at least 5 years:
- (i) the make and model of the baton and the identifying number marked on the baton under paragraph (c);
- 25
- (ii) the date and time of every issue of the baton to an employee, the identification number of the baton, the identity of the employee to whom the baton is issued and the date and time when the baton is returned by the employee;
- 30
- (iii) the date or dates (if any) on which a person to whom the baton has been issued uses the baton (as opposed to carrying the baton) in the course of his or her duties and the reason for that use of the baton; and
- 35
- (f) the person permits a police officer at any reasonable time to enter his or her business premises to inspect the baton, the manner in which the baton is kept and the records kept under paragraph (e); and
- (g) in the case of a natural person—
- 40
- (i) the person has completed a course of instruction approved by the Commissioner in the proper use of extendable batons and has been awarded a certificate of competency by the person conducting the course; and

- (ii) the person does not carry the baton while engaged in crowd control.

(2) A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act in relation to the use or possession of an extendable baton of a prescribed kind if the person—

- (a) is employed to protect or guard property by a person who carries on the business of protecting or guarding property; and
- (b) is authorised by a licence granted under the *Security and Investigation Agents Act 1995* to protect or guard property as a security agent; and
- (c) is the holder of a firearms licence under the *Firearms Act 1977* authorising the possession and use of a handgun in the course of employment by a person who carries on the business of guarding property; and
- (d) reasonably requires the possession of an extendable baton for the purposes of carrying out the duties of his or her employment; and
- (e) has completed a course of instruction approved by the Commissioner of Police in the proper use of extendable batons and has been awarded a certificate of competency by the person conducting the course; and
- (f) has not been found guilty by a court of an offence involving the illegal possession or use of an extendable baton, a firearm or any other weapon; and
- (g) does not carry the baton while engaged in crowd control; and
- (h) as soon as reasonably practicable after using the baton in the course of his or her duties, provides his or her employer with a written report setting out the date on which, and the circumstances in which, he or she used the baton.

#### **16—Dirks and sgian dhus—members of Scottish associations**

A person is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act in relation to the possession of a dirk or sgian dhu (alternative spelling "skean dhu") if—

- (a) —
  - (i) the person is a member of an incorporated association that has as its sole or a principal purpose the fostering and preservation of Scottish culture or the playing or singing of Scottish music; or

- 5 (ii) the person is a member of a society, body or other group (whether or not incorporated) that is affiliated with an incorporated association and both the society, body or group and the incorporated association with which it is affiliated have as their sole or a principal purpose the fostering and preservation of Scottish culture or the playing or singing of Scottish music; and
- 10 (b) the person has possession of all of the clothes and other accoutrements traditionally worn with the dirk or sgian dhu (or, if the dirk or sgian dhu is traditionally worn with different clothes on different occasions, he or she has possession of the clothes and accoutrements for at least 1 of those occasions); and
- 15 (c) the person has possession of the dirk or sgian dhu solely for the purpose of wearing it with that clothing and, in the case of a dirk, for the purpose of using it in traditional Scottish ceremonies; and
- 20 (d) in the case of a dirk—the person only uses the dirk for the purposes of traditional Scottish ceremonies; and
- (e) the person keeps the dirk or sgian dhu in a safe and secure manner at his or her place of residence and does not remove it except—
- 25 (i) for the purpose of wearing it with that clothing; or
- (ii) for the purpose of lending it to a person who is entitled under section 21F of this Act to have possession of it; or
- 30 (iii) for the purpose of permanently transferring possession of the dirk or sgian dhu to another person (being a person who is entitled under section 21F of this Act to have possession of it).

### **17—Poniards—lodges of Freemasons etc**

35 A prescribed masonic organisation is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act in relation to the use or possession of a poniard if—

- 40 (a) the poniard is kept at the premises of the association, Lodge or Order concerned in a safe and secure manner and is not removed from the premises except for the purpose of—
- (i) repair or restoration by a person who carries on a business that includes the repair or restoration of articles of that kind; or
- (ii) valuation by a person who carries on a business that includes valuing articles of that kind; or

- (iii) permanently transferring possession of the poniard to another person (being a person who is entitled under section 21F of this Act to have possession of it); and

- (b) the poniard is only used at the premises of the association, Lodge or Order concerned for traditional ceremonial purposes.

### **18—Laser pointers for astronomical use**

A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act in relation to the use or possession of a laser pointer if—

- (a) the person is using or has possession of the laser pointer for the purpose or in the course of participating in astronomy; and
- (b) the person—
  - (i) is a member of—
    - (A) the Astronomical Society of South Australia Incorporated; or
    - (B) the Mars Society Australia Incorporated; or
  - (ii) participates in astronomy under the supervision of a member of a body referred to in subparagraph (i); or
  - (iii) participates in astronomy at an observatory; or
  - (iv) participates in astronomy as part of a course of study conducted by an educational institution.

### **19—Undetectable knives used in food preparation**

A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act in relation to the use or possession of an undetectable knife if the use or possession is solely for the preparation of food or drink for human consumption.

### **20—Business purposes**

A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act if the person uses or has possession of a prohibited weapon in the course of conducting his or her business or in the course of his or her employment, provided that—

- (a) the use or possession of the weapon is reasonably required for that purpose; and
- (b) the use or possession of the weapon is not in the course or for the purpose of manufacturing, selling, distributing, supplying or otherwise dealing in the weapon.



## 21—Religious purposes

A person is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act in relation to the possession of a knife (other than a butterfly knife, flick knife, push knife or trench knife) or dagger if—

- (a) the person is a member of a religious group; and
- (b) the person possesses, wears or carries the knife or dagger for the purpose of complying with the requirements of that religion.

## 22—Entertainment

A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act if the person uses or has possession of a prohibited weapon in the course of providing a lawful and recognised form of entertainment of other persons that reasonably requires the use or possession of the weapon.

## 23—Sport and recreation

A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act if the person uses or has possession of a prohibited weapon in the course of participating in a lawful and recognised form of recreation or sport that reasonably requires the use or possession of the weapon.

## 24—Ceremonies

A person is an exempt person for the purposes of an offence of use or possession of a prohibited weapon under section 21F(1)(b) of this Act if the person uses or has possession of a prohibited weapon in the course of an official ceremony that reasonably requires the use or possession of the weapon.

## 25—Museums and art galleries

A person is an exempt person for the purposes of an offence of possession of a prohibited weapon under section 21F(1)(b) of this Act if the person has possession of a prohibited weapon for the purposes of a museum or art gallery.

## Schedule 1—Related amendments and transitional provision

### Part 1—Amendment of *Protective Security Act 2007*

#### 1—Amendment of section 3—Interpretation

Section 3, definition of *dangerous object or substance*, (b)—delete paragraph (b) and substitute:

(b) a dangerous article, offensive weapon or prohibited weapon, in each case within the meaning of section 21A of the *Summary Offences Act 1953*; or

(ba) a firearm within the meaning of the *Firearms Act 1977*; or

### Part 2—Amendment of *Serious and Organised Crime (Control) Act 2008*

#### 2—Amendment of section 14—Court may make control order

Section 14(5)(b)(ii)—delete "section 15" and substitute:

section 21A

### Part 3—Amendment of *Sheriff's Act 1978*

#### 3—Amendment of section 4—Interpretation

Section 4(1), definition of *restricted item*, (b)—delete paragraph (b) and substitute:

(b) a dangerous article, offensive weapon or prohibited weapon, in each case within the meaning of section 21A of the *Summary Offences Act 1953*;

(ba) a firearm within the meaning of the *Firearms Act 1977*;

### Part 4—Transitional provision

#### 4—Declarations by Minister continue

A declaration by the Minister in force under section 15(2d) of the *Summary Offences Act 1953* immediately before the commencement of section 5 continues in force as if it were a declaration by the Minister under section 21F of that Act (as in force after the commencement of section 5).