

## **ACTS AMENDMENT (WEAPONS) BILL 2008**

### **Explanatory Memorandum**

The purpose of the *Acts Amendment (Weapons) Bill 2008* is to enhance public safety, particularly in entertainment precincts, by introducing a series of four new offences into *The Criminal Code* and increasing existing penalties for offences under the *Weapons Act 1999*.

In recent years there have been a number of incidents involving attacks on patrons in nightclubs and surrounding entertainment precincts. Police intelligence information has also highlighted as an area of concern the possession of weapons in and around nightclub areas by gang members and by persons involved in the illicit drug trade.

The new offences to be introduced into *The Criminal Code* are targeted towards the possession of dangerous or offensive weapons or instruments (which include firearms) in and around places of public entertainment, by gang members in public places and by persons who may be involved in illicit activities such as the drug trade.

Possession of weapons for defence will not generally be a defence to the proposed offences. Certain exceptions are however to be created for consistency with the approach in the *Weapons Act 1999*. Under proposed s.66D, in certain circumstances possession of oleoresin capsicum spray or certain types of briefcases or suitcases for defence will be a lawful excuse for possessing those items in or near a place of public entertainment (s.66A), whilst being in company with others in a public place (s.66B) or whilst having ready access to a prescribed amount of cash (s.66C). Certain other exceptions are provided for in s.66D to ensure certain categories of persons such as police officers and prison officers who may be carrying weapons in the course of their duties do not contravene ss.66A to 66C.

### **Clause Notes**

#### **Part 1 – Preliminary Matters**

**Part 1** Comprises clauses 1 and 2. It contains the title of the Act and the commencement provisions.

**Clause 2** Provides for Part 1 of the Act to come into operation on the day on which the Act receives Royal Assent and the rest of the Act on the day after that.

**Part 2 - *The Criminal Code* amended**

**Part 2** Comprises clauses 3 and 4 and amends *The Criminal Code* by inserting four new offences that broadly relate to the possession of dangerous or offensive weapons or instruments (which, within the ordinary meaning of those terms, include firearms) in specified circumstances. The penalty for each of the new offences is imprisonment for 5 years with a summary conviction penalty of imprisonment for 3 years and a fine of \$36 000.

**Clause 4** Inserts sections 67A to 67F.

**Section 67A** Creates an offence if a person, without lawful excuse, is armed with any dangerous or offensive weapon or instrument in, or with intent to enter, a prescribed place.

The new offence will apply to all licensed premises such as pubs and nightclubs and to all places of public entertainment including concerts, sporting events and places where free public entertainment is provided. It will also apply to an area within 50 metres of those places and to persons intending to enter those areas.

The offence will apply to places of public entertainment in the period before, during and after public entertainment has been performed, such as when members of the public are gathering for an event or in the process of leaving the event.

**"prescribed place"** is defined in subsection (1) to mean a place of public entertainment or a public place within 50 metres of a place of public entertainment.

**"place of public entertainment"** is defined in subsection (1) to mean a place where the public is present and where entertainment of any kind is about to be, is being, or has just been provided to the public, whether on payment or not; or licensed premises as

that term is defined in the *Liquor Control Act 1988* section 3(1).

**“licensed premises”** is defined in s.3(1) of the *Liquor Control Act 1988* to mean the premises specified or defined by the licensing authority in relation to a licence, protection order or permit as the building or place to which that licence, order or permit relates.

Inclusions and exclusions of circumstances that amount to a lawful excuse for the purposes of this section (and section 67B and 67C) are dealt with in s.67D (see below). The onus of establishing that a person has a lawful excuse rests on the accused person, consistently with the approach in the *Weapons Act 1999* s.11 (see s.67E below).

**Section 67B** Creates an offence if a person, without lawful excuse, is armed with any dangerous or offensive weapon or instrument in a public place when in company with 2 or more other persons. The offence is intended to discourage persons from carrying weapons whilst in company with a group of other persons in a public place and is directed, in particular, towards members of gangs.

**Section 67C** Creates an offence if a person has ready access to a dangerous or offensive weapon or instrument and cash equal to or more than an amount prescribed which is presently \$3,000. (See the *Firearms Act 1973* s.19(1ab)(a)(ii) and the *Firearms Regulations 1974* reg.2B).

Section 67C and 67E are principally directed towards persons involved in activities such as the illicit drug trade who carry weapons, creating potential risks for the safety of members of the public and law enforcement officers. Such persons, particularly drug couriers, often carry weapons, drugs and money or have them located nearby where they can be readily accessed.

**Section 67D** Sets out some of the matters which are excluded or included as possible lawful excuses for offences under section 67A, 67B and 67C.

Under subsection (1), being armed for defence is not generally a lawful excuse. It will only be a lawful excuse if the person has reasonable grounds to apprehend that circumstances necessitating self defence may arise, is armed only for defence and is armed only with a weapon or instrument the sole purpose of which is to spray oleoresin capsicum or certain types of briefcases or suitcases commercially designed and made to discharge an electric current so as to deter theft.

These exceptions are based on the exceptions provided under the *Weapons Act 1999* s.7(3) and (4) and the *Weapons Regulations 1999* reg. 6 and 7.

Under subsection (2) certain categories of persons are deemed to have a lawful excuse when carrying a weapon in circumstances that may otherwise contravene section 67A, 67B and 67C. These include police officers, prison officers and court security officers exercising certain powers, acting in the course of their duties. Licensed security officers who are engaged in activities authorised by their licence whilst armed in accordance with Part 3 Division 3 of the *Security and Related Activities (Control) Act 1996* are also protected by this subsection. Part 3 Division 3 provides, in certain circumstances, for certain security officers to be permitted to carry firearms in connection with the escort of money or valuable items and for certain security officers to carry batons if endorsed on their licences.

**Section 67E** Creates an offence if a person has ready access to a dangerous or offensive weapon or instrument and a prohibited drug or a prohibited plant that the person is not authorized to possess under section 6 or 7 of the *Misuse of Drugs Act 1981*. This offence complements proposed new s.67C (see above).

Importantly, under s.67E(1) being armed for defence is not a lawful excuse. This is in recognition that if a person has ready access to prohibited drugs or plants when not authorized the person should not be permitted to have ready access to a weapon for defence.

**Section 67F** Provides that in a prosecution for an offence under section 67A, 67B, 67C or 67E the accused has the onus of proving that the accused had a lawful excuse. This provision is consistent with the approach in the *Weapons Act 1999* s.11 in relation to offences under that Act.

### **Part 3 – *Weapons Act 1999* amended**

- Part 3** Comprises clauses 5 to 8 and increases penalties for offences under the *Weapons Act 1999*.
- Clause 6** Increases the penalty relating to offences concerning importing into the State, carrying, possessing, purchasing, selling, supplying or manufacturing prohibited weapons or attempts to do any of those things. The penalty is increased from \$8,000 or imprisonment for 2 years to imprisonment for 3 years and a fine of \$36,000.
- Clause 7** Increases the penalty relating to offences concerning the carriage or possession of controlled weapons from \$4,000 or imprisonment for 1 year to imprisonment for 2 years and a fine of \$24,000.
- Clause 8** Increases the penalty relating to offences concerning the carriage or possession of other items as weapons from \$4,000 or imprisonment for 1 year to imprisonment for 2 years and a fine of \$24,000.