

Control of Weapons and Firearms Acts (Search Powers) Act 2003
Act No. 9/2003

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	2
PART 2—AMENDMENT OF THE CONTROL OF WEAPONS ACT 1990	3
3. Definition inserted	3
4. Dangerous articles offence	3
5. New section 8G inserted	3
8G. Power to require production of approval	3
6. Substitution of section 10	4
10. Search without warrant	4
10A. Duty to make records concerning searches	6
10B. Chief Commissioner to report on searches without warrant	7
7. Regulations	7
8. New section 14 inserted	8
14. Transitional provision	8
PART 3—AMENDMENT OF THE FIREARMS ACT 1996	9
9. Section 149 substituted	9
149. Search of persons or vehicles	9
149A. Duty to make records concerning searches	11
10. Power to require production of licence	11
11. Authorised officers	11
12. New sections 153B and 153C inserted	14
153B. Duty to make records concerning searches	14
153C. Annual reports	14
13. Delegation	15
14. Regulations	15
15. New section 209 inserted	16
209. Transitional provisions— Control of Weapons and Firearms Acts (Search Powers) Act 2003	16

<i>Section</i>	<i>Page</i>
16. Consequential amendment	16
17. Wildlife Act 1975—new section 92 inserted	17
92. Transitional provision— Control of Weapons and Firearms Acts (Search Powers) Act 2003	17
ENDNOTES	18



Victoria

No. 9 of 2003

Control of Weapons and Firearms Acts (Search Powers) Act 2003[†]

[Assented to 6 May 2003]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to amend the **Control of Weapons Act 1990** and the **Firearms Act 1996**—

- (a) to amend provisions relating to the power to search without warrant under those Acts; and

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 1—Preliminary

s. 2

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- (b) to require annual reports to the Minister on the exercise of those powers; and
 - (c) to make other miscellaneous amendments.

2. Commencement

- (1) This Part comes into operation on the day after the day on which this Act receives the Royal Assent.
 - (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
 - (3) If a provision referred to in sub-section (2) does not come into operation before 1 January 2004, it comes into operation on that day.
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*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 2—Amendment of the Control of Weapons Act 1990

s. 3

**PART 2—AMENDMENT OF THE CONTROL OF WEAPONS
ACT 1990**

3. *Definition inserted*

In section 3 of the **Control of Weapons Act 1990**, after the definition of "**military officer**" insert—

' "**non-government school**" means—

- (a) a school on the register of schools kept under section 37(1) of the **Education Act 1958**; or
- (b) a school which has been granted approval to open under section 42 of the **Education Act 1958**; or
- (c) the land or premises connected with a school referred to in paragraph (a) or (b);'

See:
Act No.
24/1990.
Reprint No. 3
as at
17 December
2000 and
amending
Act No.
7/2002.
LawToday:
www.dms.
dpc.vic.
gov.au

4. *Dangerous articles offence*

In section 7(1) of the **Control of Weapons Act 1990**, after "public place" insert "or a non-government school".

5. *New section 8G inserted*

After section 8F of the **Control of Weapons Act 1990** insert—

"8G. *Power to require production of approval*

- (1) A member of the police force who—
 - (a) has reasonable grounds for suspecting that a person has committed an offence against section 5 or is carrying or has in his or her possession a prohibited weapon; and

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

s. 6

Part 2—Amendment of the Control of Weapons Act 1990

- (b) produces his or her identification for inspection by the person—
may demand that the person produce an approval under section 8C allowing the person to do the thing otherwise prohibited.
- (2) A person to whom a demand is directed under sub-section (1) must comply with the demand.
Penalty: 30 penalty units.
- (3) This section does not apply to a person who is exempted under section 8B."

6. *Substitution of section 10*

For section 10 of the **Control of Weapons Act 1990** substitute—

'10. *Search without warrant*

- (1) If—
 - (a) a member of the police force has reasonable grounds for suspecting that a person is carrying or has in his or her possession in a public place or a non-government school a prohibited weapon, a controlled weapon or a dangerous article referred to in sub-section (6) contrary to this Act; and
 - (b) the member informs the person of the grounds for his or her suspicion; and
 - (c) the member complies with sub-section (3)—the member may without warrant—
 - (d) search the person and any vehicle, package or thing in his or her possession or under his or her control for the prohibited weapon, controlled

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 2—Amendment of the Control of Weapons Act 1990

s. 6

weapon or dangerous article referred to
in sub-section (6); and

- (e) seize and detain any prohibited weapon,
controlled weapon or dangerous article
referred to in sub-section (6) which the
member finds on the person or on or in
the vehicle, package or thing.
 - (2) For the purposes of sub-section (1)(a), the
fact that a person is present in a location with
a high incidence of violent crime may be
taken into account in determining whether
there are reasonable grounds for suspecting
that the person is carrying or has in his or her
possession a prohibited weapon, a controlled
weapon or a dangerous article referred to in
sub-section (6).
 - (3) Before a member of the police force
commences a search of a person under sub-
section (1), the member must—
 - (a) inform the person of the member's
name, rank and place of duty; and
 - (b) if requested by the person, provide the
information referred to in paragraph (a)
in writing; and
 - (c) produce his or her identification for
inspection by the person, unless the
member is in uniform.
 - (4) In conducting a search of a person under
sub-section (1), a member of the police
force—
 - (a) may request that the person produce
any thing that the member has detected
or seen during the search on the person
or in a vehicle, package or thing in the
possession or under the control of the
person, which the member has
-

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

s. 6

Part 2—Amendment of the Control of Weapons Act 1990

reasonable grounds for suspecting is a prohibited weapon, a controlled weapon or a dangerous article referred to in sub-section (6); and

- (b) if a request is made under paragraph (a), must warn the person that refusal or failure to produce any thing so requested may be an offence.
- (5) A person must not, without reasonable excuse, refuse or fail to produce any thing in accordance with a request made under sub-section (4).

Penalty: 30 penalty units.

- (6) This section applies to a dangerous article within the meaning of paragraph (b) of the definition of "**dangerous article**" in section 3.

10A. *Duty to make records concerning searches*

- (1) A member of the police force who conducts a search under section 10 must make a written record of the search containing the prescribed particulars.
- (2) The record must be made immediately after the completion of the search or, if that is not practicable, as soon as practicable after the completion of the search.
- (3) A person subjected to a search under section 10 is entitled, on request and without charge, to a copy of the record of the search, if the request is made not later than 1 year after the date of the search.
- (4) A request under sub-section (3) is made to the officer in charge of the place of duty, referred to in section 10(3)(a), of the member who conducted the search.
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*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 2—Amendment of the Control of Weapons Act 1990

s. 7

10B. Chief Commissioner to report on searches without warrant

The Chief Commissioner of Police must provide to the Minister for inclusion in the annual report of operations under Part 7 of the **Financial Management Act 1994** a report containing—

- (a) the number of searches without warrant under section 10 conducted during that financial year; and
- (b) the number and type of weapons and dangerous articles found during the course of those searches; and
- (c) any other information requested by the Minister.'

7. Regulations

- (1) In section 12(1) of the **Control of Weapons Act 1990**, after "Act" (where secondly occurring) **insert** "including, but not limited to the following matters—
 - (a) the manner in which searches are to be conducted;
 - (b) particulars to be included in records of searches".
- (2) After section 12(1) of the **Control of Weapons Act 1990 insert**—
 - "(1A) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances."

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

s. 8

Part 2—Amendment of the Control of Weapons Act 1990

8. *New section 14 inserted*

After section 13 of the **Control of Weapons Act 1990** insert—

"14. *Transitional provision*

Section 10 as in force immediately before the commencement of section 6 of the **Control of Weapons and Firearms Acts (Search Powers) Act 2003** continues to apply to searches conducted before that commencement."

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 3—Amendment of the Firearms Act 1996

s. 9

PART 3—AMENDMENT OF THE FIREARMS ACT 1996

9. Section 149 substituted

For section 149 of the **Firearms Act 1996**
substitute—

"149. Search of persons or vehicles

(1) If—

(a) a member of the police force has reasonable grounds for suspecting that a person is committing or is about to commit an offence against this Act and that person has a firearm or cartridge ammunition in his or her possession; and

(b) the member informs the person of the grounds for his or her suspicion; and

(c) the member complies with sub-section (3)—

the member may without warrant—

(d) search the person and any vehicle, package or thing in the possession of the person; and

(e) seize any firearm or cartridge ammunition found during the course of the search.

(2) For the purposes of sub-section (1), the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds for suspecting that the person has a firearm or cartridge ammunition in his or her possession.

See:
Act No.
66/1996.
Reprint No. 2
as at
8 April 1999
and
amending
Act Nos
30/1999,
41/2000,
44/2001 and
72/2001.
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gov.au

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

s. 9

Part 3—Amendment of the Firearms Act 1996

- (3) Before a member of the police force commences a search of a person under sub-section (1), the member must—
 - (a) inform the person of the member's name, rank and place of duty; and
 - (b) if requested by the person, provide the information referred to in paragraph (a) in writing; and
 - (c) produce his or her identification for inspection by the person, unless the member is in uniform.
- (4) In conducting a search of a person under sub-section (1), a member of the police force—
 - (a) may request that the person produce any thing that the member has detected or seen during the search on the person or in a vehicle, package or thing in the possession or under the control of the person, which the member has reasonable grounds for suspecting is a firearm or cartridge ammunition; and
 - (b) if a request is made under paragraph (a), must warn the person that refusal or failure to produce any thing so requested may be an offence.
- (5) A person must not, without reasonable excuse, refuse or fail to produce any thing in accordance with a request made under sub-section (4).

Penalty: 30 penalty units.

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 3—Amendment of the Firearms Act 1996

s. 10

149A. *Duty to make records concerning searches*

- (1) A member of the police force who conducts a search under section 149 must make a written record of the search containing the prescribed particulars.
- (2) The record must be made immediately after the completion of the search or, if that is not practicable, as soon as practicable after the completion of the search.
- (3) A person subjected to a search under section 149 is entitled, on request and without charge, to a copy of the record of the search, if the request is made not later than 1 year after the date of the search.
- (4) A request under sub-section (3) is made to the officer in charge of the place of duty, referred to in section 149(3)(a), of the member who conducted the search."

10. *Power to require production of licence*

In section 150(1)(a) of the **Firearms Act 1996**, for "believing" substitute "suspecting".

11. *Authorised officers*

- (1) For section 153A(1) of the **Firearms Act 1996** substitute—

"(1) If—

- (a) an authorised officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence against this Act and that person has a firearm or cartridge ammunition in his or her possession and—
 - (i) the offence is or is about to be committed on land administered by the Minister administering the

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 3—Amendment of the Firearms Act 1996

s. 11

**Conservation, Forests and
Lands Act 1987**, or on a road
adjacent to such land; or

(ii) the authorised officer is acting
under his or her duties under the
Wildlife Act 1975 or the
Fisheries Act 1995; and

(b) the authorised officer informs the
person of the grounds for his or her
suspicion; and

(c) the authorised officer complies with
sub-section (1B)—

the authorised officer may—

(d) search the person and any vehicle,
package or thing in the possession of
the person; and

(e) seize any firearm or cartridge
ammunition found during the course of
the search.

(1A) Before an authorised officer commences a
search of a person under sub-section (1), the
authorised officer must—

(a) inform the person of the officer's name,
title, the agency employing the officer
and the officer's place of employment;
and

(b) if requested by the person, provide the
information referred to in paragraph (a)
in writing; and

(c) produce his or her identification for
inspection by the person.

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 3—Amendment of the Firearms Act 1996

s. 11

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- (1B) In conducting a search of a person under sub-section (1), an authorised officer—
- (a) may request that the person produce any thing that the authorised officer has detected or seen during the search on the person or in a vehicle, package or thing in the possession of the person, which the authorised officer has reasonable grounds for suspecting is a firearm or cartridge ammunition; and
 - (b) if a request is made under paragraph (a), must warn the person that refusal or failure to produce any thing so requested may be an offence.
- (1C) A person must not, without reasonable excuse, refuse or fail to produce any thing in accordance with a request made under sub-section (1B).
- Penalty: 30 penalty units."
- (2) In section 153A(2)(a) of the **Firearms Act 1996**, for "believing" **substitute** "suspecting".
- (3) After section 153A(3) of the **Firearms Act 1996** **insert—**
- "(3A) A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising a power under this section.
- Penalty: 30 penalty units."
- (4) After section 153A(5) of the **Firearms Act 1996** **insert—**
- "(5A) An authorised officer who institutes a prosecution referred to in sub-section (5) may appear in the proceeding by any other authorised officer."
-

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

s. 12

Part 3—Amendment of the Firearms Act 1996

12. New sections 153B and 153C inserted

After section 153A of the **Firearms Act 1996**
insert—

"153B. Duty to make records concerning searches

- (1) An authorised officer within the meaning of section 153A who conducts a search under section 153A(1) must make a written record of the search containing the prescribed particulars.
- (2) The record must be made immediately after the completion of the search or, if that is not practicable, as soon as practicable after the completion of the search.
- (3) A person subjected to a search under section 153A(1) is entitled, on request and without charge, to a copy of the record of the search if the request is made not later than 1 year after the date of the search.
- (4) A request under sub-section (3) is made to the officer in charge of the place of employment, referred to in section 153A(1A)(a), of the authorised officer who conducted the search.

153C. Annual reports

- (1) The Chief Commissioner of Police must provide to the Minister for inclusion in the annual report of operations under Part 7 of the **Financial Management Act 1994** a report containing—
 - (a) the number of searches without warrant under section 149 conducted during that financial year; and

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 3—Amendment of the Firearms Act 1996

s. 13

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- (b) the number and type of firearms and cartridge ammunition found during the course of those searches; and
 - (c) any other information requested by the Minister.
- (2) The Secretary of the Department of Sustainability and Environment must provide to the Minister for inclusion in the annual report of operations under Part 7 of the **Financial Management Act 1994** a report containing—
- (a) the number of searches under section 153A(1) conducted during that financial year; and
 - (b) the number and type of firearms and cartridge ammunition found during the course of those searches; and
 - (c) any other information requested by the Minister."

13. Delegation

In section 176 of the **Firearms Act 1996**, after "except" **insert** "section 153C(1) and".

14. Regulations

After section 191(1)(q) of the **Firearms Act 1996** **insert**—

- "(qa) the manner in which searches are to be conducted;
 - (qb) particulars to be included in records of searches;"
-

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 3—Amendment of the Firearms Act 1996

s. 15

15. *New section 209 inserted*

After section 208 of the **Firearms Act 1996**
insert—

"209. *Transitional provisions—Control of Weapons and Firearms Acts (Search Powers) Act 2003*

- (1) Section 149 as in force immediately before the commencement of section 9 of the **Control of Weapons and Firearms Acts (Search Powers) Act 2003** continues to apply to searches conducted before that commencement.
- (2) Section 150 as in force immediately before the commencement of section 10 of the **Control of Weapons and Firearms Acts (Search Powers) Act 2003** continues to apply to demands made under section 150(1) before that commencement.
- (3) Section 153A(1) as in force immediately before the commencement of section 11(1) of the **Control of Weapons and Firearms Acts (Search Powers) Act 2003** continues to apply to searches conducted before that commencement.
- (4) Section 153A(2) as in force immediately before the commencement of section 11(2) of the **Control of Weapons and Firearms Acts (Search Powers) Act 2003** continues to apply to demands made under section 153A(2) before that commencement."

16. *Consequential amendment*

In section 60A(1)(a) of the **Wildlife Act 1975**, for "believing" **substitute** "suspecting".

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Part 3—Amendment of the Firearms Act 1996

s. 17

17. *Wildlife Act 1975—new section 92 inserted*

In Part XII of the **Wildlife Act 1975**, after section 91 **insert—**

"92. *Transitional provision—Control of Weapons and Firearms Acts (Search Powers) Act 2003*

Section 60A(1) as in force immediately before the commencement of section 16 of the **Control of Weapons and Firearms Acts (Search Powers) Act 2003** continues to apply to demands made under section 60A(1) before that commencement."

*Control of Weapons and Firearms Acts (Search Powers) Act
2003
Act No. 9/2003*

Endnotes

ENDNOTES

- † *Minister's second reading speech—
Legislative Council: 27 February 2003
Legislative Assembly: 25 March 2003*

The long title for the Bill for this Act was "to amend the **Control of Weapons Act 1990** and the **Firearms Act 1996** and for other purposes."