

# Control of Weapons Amendment Act 2010

No. 42 of 2010

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Victoria

# **Control of Weapons Amendment Act 2010<sup>†</sup>**

**No. 42 of 2010**

[Assented to 10 August 2010]

**The Parliament of Victoria enacts:**

## **1 Purpose**

The main purpose of this Act is to amend the  
**Control of Weapons Act 1990**—

- (a) to provide for separate offences of selling a controlled weapon or a prohibited weapon to a child; and
- (b) to provide for separate offences for a child to buy a controlled weapon or a prohibited weapon; and

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- (c) to allow infringement notices to be served for certain offences under that Act; and
  - (d) to make further provision in relation to—
    - (i) exemptions granted by the Governor in Council, and approvals granted by the Chief Commissioner, in respect of prohibited weapons; and
    - (ii) records and reports of searches; and
    - (iii) planned and unplanned designations of search areas; and
    - (iv) the application of search procedures to children, persons with impaired intellectual functioning and persons identifying as being of a particular gender; and
  - (e) to provide for the repeal of certain amendments relating to unplanned designations of search areas after 3 years.

## **2 Commencement**

- (1) Subject to subsection (2), this Act (other than section 22) comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act (other than section 22) does not come into operation before 1 July 2011, it comes into operation on that day.
- (3) Section 22 comes into operation on the day that is the third anniversary of the day on which section 13 came into operation.

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### 3 Principal Act

In this Act the **Control of Weapons Act 1990** is called the Principal Act.

See:  
Act No.  
24/1990.  
Reprint No. 4  
as at  
8 November  
2007  
and  
amending  
Act Nos  
55/2009,  
59/2009,  
68/2009 and  
92/2009.  
LawToday:  
www.  
legislation.  
vic.gov.au

### 4 Definitions

In section 3(1) of the Principal Act **insert** the following definition—

"*child* means a person under the age of 18 years;"

### 5 Prohibited weapons

(1) In section 5(1)(c) of the Principal Act, for "manufacture, sell or purchase" **substitute** "manufacture".

(2) After section 5(1) of the Principal Act **insert**—

"(1AA) A person must not sell a prohibited weapon to a person (other than a child) without an exemption under section 8B or an approval under section 8C.

Penalty: 240 penalty units or imprisonment for 2 years.

(1AB) A person (other than a child) must not purchase a prohibited weapon without an exemption under section 8B or an approval under section 8C.

Penalty: 240 penalty units or imprisonment for 2 years.

(1AC) A person must not sell a prohibited weapon to a child.

Penalty: 240 penalty units or imprisonment for 2 years.

(1AD) A child must not purchase a prohibited weapon.

Penalty: 25 penalty units."

(3) In section 5(3) of the Principal Act, after "(1)," **insert** "(1AA), (1AB),".

## **6 Control of controlled weapons**

After section 6(1) of the Principal Act **insert**—

"(1AA) A child must not purchase a controlled weapon.

Penalty: 12 penalty units.

(1AB) A person must not sell a controlled weapon to another person knowing that the other person is a child.

Penalty: 20 penalty units."

## **7 Exemptions for prohibited weapons and body armour**

(1) In section 8B(1)(a) of the Principal Act, after "section 5" **insert** "(except section 5(1AC) or (1AD))".

(2) After section 8B(2) of the Principal Act **insert**—

"(3) An exemption granted under subsection (1) in respect of a class of person or persons may be subject to a condition that the exemption does not apply to a person until that person has been a member of that class for a specified minimum period of up to 6 months.

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- (4) The Governor in Council may—
- (a) grant an exemption under subsection (1) for a specified period or indefinitely;
  - (b) vary or revoke an exemption at any time including an exemption granted for a specified period."

### **8 Approvals for prohibited weapons and body armour**

In section 8C(1) of the Principal Act, for "section 5 or 8A" **substitute** "any provision of section 5 (except section 5(1AC) or (1AD)) or 8A".

### **9 New section 9A inserted**

After section 9 of the Principal Act insert—

#### **"9A Forfeiture of controlled weapons if infringement notice served**

- (1) This section applies if a member of the police force serves a person (the *recipient*) with an infringement notice in respect of an offence against section 6(1), (1AA) or (1A) and seizes a controlled weapon to which the offence relates.
  - (2) The controlled weapon is forfeited to the Crown.
  - (3) Subject to subsection (4), the controlled weapon may be sold or destroyed if—
    - (a) the recipient pays the infringement penalty stated in the infringement notice; or
    - (b) the recipient commences a payment plan, under section 48 of the **Infringements Act 2006**, for the infringement penalty stated in the infringement notice; or
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- (c) the recipient requests the addition of the infringement penalty stated in the infringement notice to a payment plan under Part 3 of the **Infringements Act 2006**; or
  - (d) the payment period specified in the infringement notice expires and the recipient has not applied, under section 22 of the **Infringements Act 2006**, for review of the decision to serve the infringement notice; or
  - (e) the recipient applies, under section 22 of the **Infringements Act 2006**, for review of the decision to serve the infringement notice and a member of the police force decides, on review—
    - (i) to confirm the decision to serve the infringement notice; or
    - (ii) to withdraw the infringement notice and serve an official warning (within the meaning of that Act) in place of the infringement notice—and 28 days have elapsed since that decision.
- (4) Subsection (3) does not apply if—
- (a) the recipient elects, under section 16 of the **Infringements Act 2006**, to have the matter of the infringement offence heard and determined in the Magistrates' Court or the Children's Court; or
  - (b) a member of the police force, whether on a review under section 24 of the **Infringements Act 2006** or otherwise—
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- (i) refers the matter for which the infringement notice has been served to the Magistrates' Court under section 17(1) of that Act; or
  - (ii) withdraws the infringement notice and files a charge-sheet and summons in the Children's Court for the matter of the infringement offence to be dealt with.

**Note**

Section 9 applies if the matter of the infringement offence is heard and determined in the Magistrates' Court or the Children's Court.

- (5) Subject to subsection (6), the controlled weapon must be returned to the recipient in accordance with this section if—
  - (a) a member of the police force withdraws the infringement notice without—
    - (i) referring the matter for which the infringement notice has been served to the Magistrates' Court under section 17(1) of the **Infringements Act 2006**; or
    - (ii) filing a charge-sheet and summons in the Children's Court for the matter of the infringement offence to be dealt with; or
    - (iii) serving, on that person, an official warning (within the meaning of the **Infringements Act 2006**) in place of the infringement notice; or
  - (b) the Magistrates' Court cancels the infringement notice under section 38 of the **Infringements Act 2006**; or



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- (c) the Children's Court cancels the infringement notice under clause 16 of Schedule 3 to the **Children, Youth and Families Act 2005**.
  - (6) Subsection (5) does not apply if the controlled weapon has been sold or destroyed under subsection (3).
  - (7) Section 9(4), (5), (6) and (7) apply to the return of a controlled weapon under subsection (5)."

**10 Duty to make records concerning searches**

- (1) In section 10A(1) of the Principal Act, for "10G" **substitute** "a strip search under section 10G".
- (2) In section 10A(3) of the Principal Act, for "10G" **substitute** "a strip search under section 10G".

**11 Chief Commissioner to report on searches without warrant**

- (1) After section 10B(ab) of the Principal Act **insert—**
  - "(ac) the number of strip searches conducted under section 10G during that financial year in any area in respect of which a declaration under section 10D was in effect at the time of the search; and
  - (ad) the number of strip searches conducted under section 10G during that financial year in any area in respect of which a declaration under section 10E was in effect at the time of the search; and"
- (2) In section 10B(b) of the Principal Act, for "those searches" **substitute** "searches referred to in paragraphs (a) and (ab)".

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(3) After section 10B(b) of the Principal Act **insert**—

"(ba) the number of persons who were—

- (i) the subject of a strip search referred to in paragraph (ab); and
- (ii) charged with offences against this Act in relation to a weapon or dangerous article found during the course of that search; and

(bb) the number of persons who were—

- (i) the subject of a strip search referred to in paragraph (ac); and
- (ii) charged with offences against this Act in relation to a weapon or dangerous article found during the course of that search; and

(bc) the number of persons who were—

- (i) the subject of a strip search referred to in paragraph (ad); and
- (ii) charged with offences against this Act in relation to a weapon or dangerous article found during the course of that search; and

(bd) the number of persons who were—

- (i) the subject of a search conducted under section 10G; and
- (ii) charged with offences against this Act in relation to a weapon or dangerous article found during the course of that search; and".

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## 12 Planned designation of search area

(1) After section 10D(1) of the Principal Act **insert**—

"(1A) For the avoidance of doubt, the Chief Commissioner may determine under subsection (1) that there is a likelihood that violence or disorder involving the use of weapons will recur even if that likelihood is less than more likely than not."

(2) In section 10D(3) of the Principal Act, after "section" **insert** "(other than a declaration in relation to an event)".

(3) After section 10D(3) of the Principal Act **insert**—

"(3A) A declaration under this section in relation to an event may operate for more than one period.

(3B) Each period of operation of a declaration under this section in relation to an event must be during that event.

### Example

If an event takes place from 10 a.m. to midnight on 2 consecutive days, a declaration made in relation to that event must not operate—

- (a) before 10 a.m. on the first day; or
- (b) between midnight and 10 a.m. on the second day; or
- (c) after midnight on the second day."

(4) In section 10D(5)(d) of the Principal Act—

- (a) after "period" **insert** "or periods";
- (b) for "declaration." **substitute** "declaration; and".

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- (5) After section 10D(5)(d) of the Principal Act **insert**—
- "(e) if the declaration was made in relation to an event, specify that event."
- (6) In section 10D(6) of the Principal Act, for "takes effect on the date and time specified in the notice which" **substitute** "has effect for the period or periods specified in the notice which or the earliest of which".
- (7) Section 10D(7) of the Principal Act is **repealed**.
- (8) In section 10D(8) of the Principal Act—
- (a) after "If a declaration" **insert** "(the *earlier declaration*)";
- (b) for "previous order ceases to have effect" **substitute** "end of the period, or the last of the periods, of operation of the earlier declaration".
- (9) In section 10D(9) of the Principal Act, for "that period" **substitute** "the 10-day period referred to in that subsection".

### **13 Unplanned designation of search area**

- (1) For section 10E(1) of the Principal Act **substitute**—
- "(1) The Chief Commissioner may, in writing, declare an area to be a designated area if—
- (a) the Chief Commissioner is satisfied that—
- (i) there is a likelihood that unlawful possession, carriage or use of weapons or violence or disorder involving weapons will occur in that area during the period of intended operation of the declaration; and

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- (ii) it is necessary to designate the area for the purpose of enabling members of the police force to exercise search powers to prevent or deter the unlawful possession, carriage or use of weapons or violence or disorder involving weapons; or
- (b) the Chief Commissioner is satisfied that—
- (i) more than one incident of unlawful possession, carriage or use of weapons or violence or disorder involving weapons has occurred in that area in the previous 12 months; and
- (ii) there is a likelihood that the unlawful possession, carriage or use of weapons or the violence or disorder involving weapons will recur."
- (2) After section 10E(1) of the Principal Act **insert**—
- "(1A) For the avoidance of doubt, the Chief Commissioner may determine under subsection (1) that there is a likelihood that unlawful possession, carriage or use of weapons or violence or disorder involving weapons will occur or recur even if that likelihood is less than more likely than not."
- (3) In section 10E(3) of the Principal Act, after "effectively" **insert** "prevent or deter the unlawful possession, carriage or use of weapons or".
- (4) In section 10E(4)(a) of the Principal Act, after "effectively" **insert** "prevent or deter the unlawful possession, carriage or use of weapons or".
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**14 Delegation by Chief Commissioner**

In section 10F of the Principal Act, for "inspector" **substitute** "Assistant Commissioner of Police".

**15 New sections 11B and 11C inserted**

After section 11A of the Principal Act **insert**—

**"11B Power to serve infringement notice**

- (1) Subject to subsection (2), a member of the police force may serve an infringement notice on any person who he or she has reason to believe has committed an offence against section 6(1), (1AA) or (1A).
- (2) An infringement notice in respect of an offence against section 6(1), (1AA) or (1A) must not be served on a person who is under 16 years of age at the time of the alleged offence.
- (3) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

**11C Infringement penalty**

The amount payable for an alleged offence for which an infringement notice may be served is—

- (a) in the case of an offence against section 6(1)—\$1000;
- (b) in the case of an offence against section 6(1AA)—2 penalty units;
- (c) in the case of an offence against section 6(1A)—\$2000."

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**16 New section 16 inserted**

After section 15 of the Principal Act **insert—**

**"16 Transitional provision—Control of Weapons Amendment Act 2010**

- (1) An exemption granted by the Governor in Council under section 8B(1) before the commencement of section 7 of the **Control of Weapons Amendment Act 2010—**
  - (a) does not exempt any class of persons or any class of prohibited weapons from section 5(1AC) or (1AD); and
  - (b) may be varied or revoked by the Governor in Council under section 8B(4).
- (2) An approval granted by the Chief Commissioner under section 8C(1) before the commencement of section 8 of the **Control of Weapons Amendment Act 2010** does not include an approval to do anything that is prohibited by section 5(1AC) or (1AD).
- (3) Sections 11B and 11C apply only to offences alleged to have been committed on or after the commencement of section 15 of the **Control of Weapons Amendment Act 2010**.
- (4) For the purposes of subsection (3), if an offence is alleged to have been committed between two dates and section 15 of the **Control of Weapons Amendment Act 2010** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that provision."

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## 17 Schedule 1—Definitions

In clause 2 of Schedule 1 to the Principal Act—

(a) the definitions of *child* and *transgender person* are repealed;

(b) insert the following definition—

*"planned designation search* means a search conducted under section 10G in an area in respect of which a declaration under section 10D is in effect;

**Note**

Section 10D provides for the planned designation of a search area."

## 18 Schedule 1—Rules for strip search

(1) For clause 9(9) of Schedule 1 to the Principal Act substitute—

"(9) The strip search must be conducted by a member of the police force, or a person under the direction of a member of the police force, who is of—

(a) unless paragraph (b) applies, the same sex as the person being searched; or

(b) if the person being searched identifies as a member of a particular gender, that gender."

(2) For clause 9(10) of Schedule 1 to the Principal Act substitute—

"(10) The strip search must not be conducted in the presence or view of a person who is not of—

(a) unless paragraph (b) applies, the same sex as the person being searched; or

(b) if the person being searched identifies as a member of a particular gender, that gender."

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- (3) In clause 9(12) of Schedule 1 to the Principal Act **omit** "transgender".

**19 Schedule 1—Rules for searches of children**

- (1) In clause 11(3) of Schedule 1 to the Principal Act, for "search" **substitute** "planned designation search".

- (2) After clause 11(4) of Schedule 1 to the Principal Act **insert**—

"(5) A search (other than a planned designation search) of a child must, if practicable in the circumstances, be conducted in the presence of—

(a) a parent or guardian of the child being searched; or

(b) if it is not practicable in the circumstances for a parent or guardian of the child to be present, any person (whether or not he or she is a member of the police force) other than a member of the police force who is conducting the search."

**20 Schedule 1—Rules for searches of persons with impaired intellectual functioning**

- (1) In clause 12(3) of Schedule 1 to the Principal Act, for "search" **substitute** "planned designation search".

- (2) After clause 12(4) of Schedule 1 to the Principal Act **insert**—

"(5) A search (other than a planned designation search) of a person who has impaired intellectual functioning must, if practicable in the circumstances, be conducted in the presence of—

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- (a) a parent or guardian of the person being searched; or
  - (b) if it is not practicable in the circumstances for a parent or guardian of the person to be present, any person (whether or not he or she is a member of the police force) other than a member of the police force who is conducting the search."

## 21 Statute law revision

- (1) In section 3(1) of the Principal Act, in the definition of *licensed premises*, in paragraph (b), for "licence);or" **substitute** "licence); or".
- (2) In section 10I(3)(d) of the Principal Act, after "is" **insert** "an".
- (3) In section 10L(b) of the Principal Act, after "member of the" **insert** "police".
- (4) In clause 1 of Schedule 1 to the Principal Act, after "member of the" **insert** "police".
- (5) In clause 9(1) of Schedule 1 to the Principal Act, after "member of the" **insert** "police".

## 22 Sunset provision

- (1) For section 10E(1) of the Principal Act **substitute**—
  - "(1) The Chief Commissioner may, in writing, declare an area to be a designated area if the Chief Commissioner is satisfied that—
    - (a) there is a likelihood that violence or disorder involving weapons will occur in that area during the period of intended operation of the declaration; and

- 
- (b) it is necessary to designate the area for the purpose of enabling members of the police force to exercise search powers to prevent or deter the occurrence of any violence or disorder that the Chief Commissioner is satisfied is likely to occur."
- (2) In section 10E(1A) of the Principal Act—
- (a) **omit** "unlawful possession, carriage or use of weapons or";
- (b) **omit** "or recur".
- (3) In section 10E(3) of the Principal Act **omit** "prevent or deter the unlawful possession, carriage or use of weapons or".
- (4) In section 10E(4)(a) of the Principal Act **omit** "prevent or deter the unlawful possession, carriage or use of weapons or".

### **23 Repeal of amending Act**

This Act is **repealed** on 1 July 2015.

#### **Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## ENDNOTES

- † *Minister's second reading speech—*  
*Legislative Assembly: 27 May 2010*  
*Legislative Council: 24 June 2010*

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