

Explanatory Statement

FIREARMS LEGISLATION AMENDMENT BILL 2019

SERIAL NO.

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
MINISTER FOR POLICE, FIRE AND EMERGENCY SERVICES
THE HON NICOLE MANISON MLA

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill amends the *Firearms Act 1997* (NT) and the *Firearms Regulations 1997* (NT). The purpose of this Bill is to introduce firearm prohibition orders, increase maximum penalties for certain offences and expand the scope of disqualifying offences.

NOTES ON CLAUSES

Clause 1. Short Title.

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Firearms Legislation Amendment Act 2019* (NT).

Clause 2. Commencement.

This clause sets out how the amendment Act will be commenced. In this case the amendment Act will commence on the day fixed by the Administrator by Gazette notice.

Clause 3. Act Amended.

Identifies the *Firearms Act 1997* (NT) as the Act to which Part 2 of the *Firearms Legislation Amendment Act 2019* (NT) applies.

Clause 4. Definitions.

This clause inserts additional definitions into section 3(1) of the Act.

Attachment C –Explanatory Statement

Adds definitions for **affected person** by reference to section 49L(2) for the purpose of Part 8A.

Adds the definition of **criminal intelligence** as information the Commissioner classifies as criminal intelligence under the *Serious Crime Control Act 2009*.

Adds the definition of **firearm prohibition order** by reference to section 49B for the purpose of Part 8A

Adds the definition of **firearm related item** by reference to section 49C for the purpose of Part 8A.

Adds the definition of **prohibited premises** by reference to section 49D for the purpose of Part 8A.

Adds definitions for **reviewable decision** by reference to section 49L(1) for the purpose of Part 8A.

Clause 5. Section 4A Inserted.

This clause provides that Part IIAA of the *Criminal Code Act 1983* (NT) will apply to the new offence provisions that are inserted in Part 8A of the Act.

Clause 6. Part 8A Inserted.

This clause inserts Part 8A into the Act. Part 8A contains the new provisions in relation to firearm prohibition orders.

New section 49B further confirms the definition of terms specific to firearm prohibition orders by providing the section in which the following terms are found within Part 8A:

Adds the definition of **affected person** by reference to section 49L(2).

Adds the definition of **firearm prohibition order** means an order made under section 49E.

Adds the definition of **firearm related item** by reference to section 49C.

Adds the definition of **prohibited premises** by reference to section 49D.

Adds the definition of **reviewable decision** by reference to section 49L(1).

New section 49C provides the definition of **firearm related item**.

New section 49D provides the definition of **prohibited premises**.

Attachment C – Explanatory Statement

New section 49E provides that the effect of an order is that a person subject to an order is prohibited from acquiring a firearm or firearm related item and from possessing or using any firearm or firearm related item. The section provides that a firearm prohibition order must not be made in relation to anyone under 14 years of age. The section makes it clear that an order may be made even if the person to whom the order relates has never acquired, possessed or used a firearm or firearm related item.

New section 49F sets out the basis on which the Commissioner may issue a firearm prohibition order.

New section 49G sets out the form and content of a firearm prohibition order. Subsection (2) provides that the Commissioner is not required to provide reasons for making an order if the reasons are based on criminal intelligence or other criminal information the Commissioner holds about the person or the people with whom the person associates.

New section 49H provides that a firearm prohibition order served on an adult will remain in force for 10 years. A firearm prohibition order served in a person under 18 years of age will remain in force for five years.

New section 49J provides that a firearm prohibition order is to be personally served on the person by a police officer. The order takes effect immediately on service. The police officer serving the order is to explain the order to the person being served as far as reasonably practicable in a language or in terms understandable to the person.

New section 49K provides that all licences, permits and certificates of registration under the Act held by the person served with a firearm prohibition order are cancelled by the making of the order and that the cancellation has effect on the order being served on the person. The section further provides that if an officer of a body corporate is served with a firearm prohibition order, any licences, permits or certificates of registration under the Act that are held by the body corporate are also cancelled and cancellation has effect on the order being served on the officer. A person served with an order must surrender any firearm or firearm related items to the Commissioner as soon as practicable.

Review of firearm prohibition orders by NTCAT

New section 49L provides that a person served with a firearm prohibition order has an ability to apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) for the order to be reviewed. The *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) sets out the procedures for applying to the Tribunal for review of an order. The section further

Attachment C –Explanatory Statement

provides that NTCAT does not have the power to stay the operation of a firearm prohibition order pending a decision.

New section 49M sets out the further right to apply for a review by NTCAT. The section provides that if a person was under the age of 18 years old when served with a firearm prohibition order, the person has a right to apply for a review of the order at 12 monthly intervals. The application must be made within 28 days of the anniversary of the date the order was served on the person. An application must not be made more than once in any 12 month period after the anniversary of the date the order was served on the person. If the person was 18 years of age or over at the time the order was served, the person has a right to apply for a review of the order at any time after more than half the time for which the order is in force has expired.

New section 49N provides that NTCAT must take steps to maintain the confidentiality of classified information provided to it by the Commissioner. The steps to be taken includes receiving evidence and hearing argument in private in absence of the parties to the proceedings, their legal representatives and the public. If NTCAT considers classified information is not criminal intelligence, NTCAT must allow the Commissioner to withdraw the information from consideration. This section also applies to the Supreme Court if a party appeals a decision of NTCAT. Section 49N also provides a definition for ***classified information***.

Offences

New sections 49P to 49T set out the offences that apply in respect of firearm prohibition orders. New section 49Y also includes an offence with non-compliance with that section.

New section 49P provides that it is an offence if a person subject to a firearm prohibition order intentionally engages in conduct that results in the person acquiring a firearm or firearm related item and the person is reckless in relation to that result occurring. The section further provides that it is an offence if a person subject to a firearm prohibition order intentionally possesses or uses a firearm or firearm related item. The maximum penalty for an offence that involves a firearm is 10 years imprisonment. The maximum penalty for an offence that involves a firearm related item is 5 years imprisonment.

New section 49Q provides that it is an offence if a person knows that another person is subject to a firearm prohibition order and the person intentionally engages in conduct and that conduct results in the other person acquiring, possessing or using a firearm or firearm related item and the person is reckless in relation to that result. The maximum penalty for an

Attachment C –Explanatory Statement

offence that involves a firearm is 10 years imprisonment. The maximum penalty for an offence that involves a firearm related item is 5 years imprisonment.

New section 49R provides that it is an offence if a person subject to a firearm prohibition order intentionally enters or remains at prohibited premises. The maximum penalty is 50 penalty units or 12 months.

New section 49S provides that it is an offence for a person subject to a firearm prohibition order to have a firearm or firearm related item present at the premises at which the person resides. This section includes a grace period of 24 hours after the order is served. The maximum penalty for an offence that involves a firearm is 4 years imprisonment. The maximum penalty for an offence that involves a firearm related item is 2 years imprisonment.

New section 49T provides that it is an offence for a person subject to a firearm prohibition order to intentionally be in the company of another person if the person subject to the firearm prohibition order knows that the other person is possessing or using a firearm or firearm related item. The maximum penalty for an offence that involves a firearm is 4 years imprisonment. The maximum penalty for an offence that involves a firearm related item is 2 years imprisonment.

Police search powers

New sections 49U to 49Y set out the police search powers that apply specifically to firearm prohibition orders.

New section 49U provides that a police officer, without warrant or consent, may search a person or any thing in the person's possession if the person is subject to a firearm prohibition order and the search is reasonably required to determine whether the person has acquired, is in possession of or is using a firearm or firearm related item in contravention of the order. Before commencing the search, the police officer must advise the person of the police officer's name, that the officer intends to search the person and any thing in their possession, and that the officer is empowered to do so under the Act. However, the search will not be unlawful only because the police officer fails to advise the person of such. Police are not permitted to strip search a person. Police may stop and detain the person for so long as is reasonably required to conduct the search. Police may seize any firearm or firearm related item found during the search.

New section 49V provides that a police officer, without warrant or consent, may search a person (an **associate**) or any thing in the person's possession if the person is in the company of a person to whom firearm prohibition order relates and the police officer

Attachment C – Explanatory Statement

reasonably believes that the associate is committing or is about to commit an offence against the Act and has a firearm or firearm related item in their possession. Before commencing the search, the police officer must advise the person of the police officer's name, that the officer intends to search the person and any thing in their possession, and that the officer is empowered to do so under the Act. However, the search will not be unlawful only because the police officer fails to advise the person of such. Police are not permitted to strip search a person. Police may stop and detain the person for so long as is reasonably required to conduct the search. Police may seize any firearm or firearm related item found during the search.

New section 49W provides that a police officer, without warrant or consent, may search a premises, vehicle, aircraft or vessel if the search is reasonably required to determine whether a person to whom a firearm prohibition order relates has acquired, is in possession of or is using a firearm or firearm related item in contravention of the order. Under this section, a police officer may enter and search any premises occupied by, in the care of or under the control or management of the person subject to a firearm prohibition order, including any vehicle, aircraft or vessel on the premises. The police officer may also search any vehicle, aircraft or vessel that is in the charge of the person, or in which the person is a passenger. The police officer may stop and detain the vehicle, aircraft or vessel being searched for so long as is reasonably necessary to conduct the search. Police may seize any firearm or firearm related item found during the search.

If the person to whom the firearm prohibition order relates is present, the police officer must advise the person of the police officer's name and that the officer intends to search the premises, vehicle, aircraft or vessel for any firearm or firearm related item and that the officer is empowered to do so under the Act. If requested by another person who is present at the premises, vehicle, aircraft or vessel before or during a search, the police officer must provide the person with the officer's name and advise the person that the police officer intends to search, or is searching, the premises, vehicle, aircraft or vessel and that the police officer is empowered to do so under the Act. In either situation, if it is not practicable for the police officer to give the required information before or during the search due to a risk to safety, the police officer must give the information after the search has finished. A search will not be unlawful only because the police officer fails to advise the person of the required information.

New section 49X provides that a police officer, without warrant or consent, may search a person who is at a premises, vehicle, aircraft or vessel being searched under section 49W if the police officer believes on reasonable grounds that the person has acquired, possesses or is using a firearm or firearm related item. Police may also search any thing in that

Attachment C –Explanatory Statement

person's possession. Before commencing the search, the police officer must advise the person of the police officer's name and that the officer intends to search the person and any thing in their possession under this power and that the officer is empowered to do so under the Act. However, the search will not be unlawful only because the police officer fails to advise the person of such. Police are not permitted to strip search the person. Police may stop and detain the person for so long as is reasonably required to conduct the search. Police may seize any firearm or firearm related item found during the search.

New section 49Y provides that if a police officer suspects on reasonable grounds that a person is subject to a firearm prohibition order, the police officer may request that the person give the police officer their name or address or both. The section further provides that it is an offence if the person does not comply with the police officer's request.

Forfeiture and return of seized firearms and firearm related items

New sections 49Z to 49ZA sets out how firearms and firearm related items seized or surrendered under Part 8A are to be dealt with. New section 49Z provides that police may retain possession of a firearm or firearm related item if the firearm and firearm related item is evidence of an offence or if it is reasonably necessary to test the firearm or firearm related item to determine if the firearm or firearm related item is evidence of an offence. The section further sets out the circumstances in which a firearm and firearm related item will be forfeited to the Territory. The section provides the Commissioner with a power to declare that a firearm or firearm related item that would otherwise be subject to forfeiture under subsection (3) to not be subject to forfeiture.

New section 49ZA sets out how police are to deal with firearms or firearm related items that are seized or surrendered under Part 8A but not forfeited to the Territory. The section provides that the Commissioner may direct the owner, by written notice, to sell or otherwise dispose of the firearm or firearm related item, or take possession of the firearm or firearm related item, within 28 days. The Commissioner may also dispose of a firearm or firearm related item in whichever manner the Commissioner determines. If the owner does not comply with a direction given by the Commissioner within 28 days or such further time as specified by the Commissioner, the section provides that Commissioner may dispose of the firearm or firearm related item in accordance with s166 of the *Police Administration Act 1978*. The Regulations may prescribe a fee payable in relation to storage of a firearm or firearm related item.

Ombudsman review

Attachment C – Explanatory Statement

New section 49ZB provides that the Ombudsman must review the exercise of powers conferred in police officers under Part 8A and the financial effect of the result of the commission of offences under Part 8A during the first two years of operation of Part 8A. The Ombudsman must give a copy of the report of the review to the Minister as soon as practicable after the two year period has expired.

Clause 7. Section 51 Amended (Notice to Appeal).

Amends section 51(1) to replace “a person” with “except as otherwise expressly provided, a person”. This clarifies that a person aggrieved by a decision by the Commissioner to make a firearm prohibition order cannot apply to the Firearms Appeal Tribunal. New section 49L expressly provides that the person aggrieved may apply to NTCAT for review of the order.

Clause 8. Section 58 Amended (Possession or use of firearms).

Amends section 58(1) to provide that the new maximum penalty is 500 penalty units or imprisonment for 3 years, or if the offence relates to a category A firearm or category B firearm, 400 penalty units or imprisonment for 2 years.

Amends section 58(6) to provide that the new maximum penalty is 500 penalty units or imprisonment for 3 years.

Clause 9. Section 59 Amended (Firearms to be registered).

Amends section 59 to provide that the new maximum penalty is 400 penalty units or imprisonment for 2 years, or if the offence relates to a category A firearm or category B firearm, 200 penalty units or imprisonment for 12 months.

Clause 10. Section 62 Amended (Purchase of firearms).

Amends section 63 to provide that the new maximum penalty is 500 penalty units or imprisonment for 3 years, or if the offence relates to a category A firearm or category B firearm, 400 penalty units or imprisonment for 2 years.

Clause 11. Section 63 Amended (Sale of firearms).

Amends section 63(1), (2) and (3) to provide that the new maximum penalty is 500 penalty units or imprisonment for 3 years, or if the offence relates to a category A firearm or category B firearm, 400 penalty units or imprisonment for 2 years.

Clause 12. Section 63B Amended (Advertising firearm for sale).

Amends section 63B to provide that the new maximum penalty is 50 penalty units or imprisonment for 12 months.

Attachment C –Explanatory Statement

Clause 13. Section 67 Amended (Disposal of firearm by unauthorised holders).

Amends section 67 to provide that the new maximum penalty is 50 penalty units or imprisonment for 12 months.

Clause 14. Section 68 Amended (Altering firearms).

Amends section 68 to provide that the new maximum penalty is 200 penalty units or imprisonment for 4 years.

Clause 15. Section 84 Amended (Discharge of firearm causing danger).

Amends section 84 to provide that the new maximum penalty is 200 penalty units or imprisonment for 4 years.

Clause 16. Section 99A amended (Storage of certain firearms)

Amends s99A(1)(a) to apply confirm that s99A does not apply to Part 8A.

Clause 17. Regulations Amended.

Identifies the *Firearms Regulations 1997* (NT) as the Regulations to which Part 3 of the *Firearms Legislation Amendment Act 2019* (NT) applies.

Clause 18. Regulation 1A Amended (Disqualifying offences).

This clause amends the scope of criminal offences prescribed by regulation 1A. The clause inserts sections 155A (where a custodial sentence is imposed), 161A, 174C (where the circumstances of aggravation specified in sections 174G(a) exists), 180A, 184, 192B, 202B, 202C and 202D of the *Criminal Code Act 1983* (NT). The clause deletes sections 135, 252, 287, 129 and 135 of the *Criminal Code Act 1983* (NT).

Clause 19. Regulation 1B Amended (Offences of violence).

This clause deletes reference to sections 129 and 135 of the *Criminal Code Act 1983* (NT) as these offences have already been repealed from the *Criminal Code Act 1983* (NT).

Clause 20. Repeal of Act.

This is a standard clause for legislation which consists entirely of amendments to other legislation. It provides that the Act ceases to have effect on the day after it commences. As this is an amending Act, there is no need to retain it on the statute book once the amendments to the *Firearms Act 1997* (NT) and the *Firearms Regulations 1997* (NT) have been effected.