

**Authorised Version No. 066**  
**Control of Weapons Act 1990**

**No. 24 of 1990**

Authorised Version incorporating amendments as at  
17 June 2015

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**The Parliament of Victoria enacts as follows:**

**1 Purpose**

The purpose of this Act is to regulate—

- (a) weapons other than firearms; and
- (b) body armour.

S. 1  
substituted by  
No. 26/1997  
s. 4.

**2 Commencement**

This Act comes into operation on a day or days to  
be proclaimed.

**3 Definitions**

(1) In this Act—

S. 3  
amended by  
No. 53/2007  
s. 3(4) (LA  
s. 39B(1)).

*body armour* means a garment or item—

- (a) that is designed, intended or adapted for  
the purpose of protecting the body from  
the effects of a weapon, including a  
firearm; and
- (b) that is prescribed by the regulations to  
be body armour;

S. 3(1) def. of  
*body armour*  
inserted by  
No. 26/1997  
s. 5,  
substituted by  
No. 47/2000  
s. 4,  
amended by  
No. 52/2010  
s. 26(b).

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

S. 3(1) def. of  
*child*  
inserted by  
No. 42/2010  
s. 4.

S. 3(1) def. of  
*controlled  
weapon*  
inserted by  
No. 47/2000  
s. 5(1).

*controlled weapon* means—

- (a) a knife, other than a knife that is a prohibited weapon; or
- (b) an article that is prescribed by the regulations to be a controlled weapon;

S. 3(1) def. of  
*corrections  
officer*  
inserted by  
No. 47/2000  
s. 5(1).

*corrections officer* means—

- (a) a person referred to in section 12(1) of the **Corrections Act 1986**; or
- (b) a person authorised by the Secretary under section 9A of the **Corrections Act 1986**;

S. 3(1) def. of  
*dangerous  
article*  
amended by  
No. 30/1994  
s. 4.

*dangerous article* means—

\* \* \* \* \*

- (b) an article which has been adapted or modified so as to be capable of being used as a weapon; or
- (c) any other article which is carried with the intention of being used as a weapon;

S. 3(1) def. of  
*designated  
place*  
inserted by  
No. 43/2011  
s. 7(b),  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 28.1(b)).

*designated place* has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of  
*firearm*  
inserted by  
No. 52/2010  
s. 26(a).

*firearm* has the same meaning as it has in section 3(1) of the **Firearms Act 1996**;

*imitation firearm* means a device—

- (a) the appearance of which could reasonably be mistaken for that of an operable firearm; but
- (b) which is not designed or adapted to discharge shot or a bullet or other missile by the expansion of gases produced in the device by the ignition of strongly combustible materials or by compressed air or other gases, whether stored in the device in pressurised containers or produced in the device by mechanical means and is not capable of being made to do so;

S. 3(1) def. of *imitation firearm* inserted by No. 52/2010 s. 26(a).

*licensed premises* means any licensed premises within the meaning of the **Liquor Control Reform Act 1998** in respect of which—

- (a) a general licence or a late night (general) licence; or
- (b) an on-premises licence or a late night (on-premises) licence); or
- (ba) a restaurant and cafe licence; or
- (c) a club licence—

S. 3(1) def. of *licensed premises* inserted by No. 53/2007 s. 3(1), amended by Nos 59/2009 s. 34, 42/2010 s. 21(1).

within the meaning of that Act has been issued under that Act;

*member of police personnel* means—

- (a) a police officer; or
- (b) a police reservist, police recruit or protective services officer; or
- (c) a Victoria Police employee within the meaning of the **Victoria Police Act 2013**; or

S. 3(1) def. of *member of police personnel* inserted by No. 37/2014 s. 10(Sch. item 28.1(a)).

- (d) a member of the police force or police service of the Commonwealth or of another State or a Territory;

S. 3(1) def. of *midwife* inserted by No. 52/2010 s. 26(a).

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

- (a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and  
(b) in the register of midwives kept for that profession;

S. 3(1) def. of *military officer* inserted by No. 47/2000 s. 5(1).

*military officer* means a person serving as a member of the naval, military or air forces of the Commonwealth;

S. 3(1) def. of *non-government school* inserted by No. 9/2003 s. 3, substituted by No. 24/2006 s. 6.1.2(Sch. 7 item 9).

*non-Government school* has the same meaning as in the **Education and Training Reform Act 2006**;

S. 3(1) def. of *nurse* inserted by No. 52/2010 s. 26(a).

*nurse* means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3(1) def. of *officer* inserted by No. 53/2007 s. 3(2).

*officer*, in relation to a body corporate, means a director, secretary or executive officer of the body corporate;

*police officer* has the same meaning as in the  
**Victoria Police Act 2013;**

S. 3(1) def. of  
*police officer*  
inserted by  
No. 47/2000  
s. 5(1),  
amended by  
No. 43/2011  
s. 7(a),  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 28.1(c)).

*police recruit* has the same meaning as in the  
**Victoria Police Act 2013;**

S. 3(1) def. of  
*police recruit*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 28.1(a)).

*police reservist* has the same meaning as in the  
**Victoria Police Act 2013;**

S. 3(1) def. of  
*police  
reservist*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 28.1(a)).

*possession* includes—

- (a) actual physical possession; and
- (b) custody or control; and
- (c) having and exercising access either  
solely or in common with others;

\* \* \* \* \*

S. 3(1) def. of  
*prescribed  
weapon*  
repealed by  
No. 47/2000  
s. 5(2).

*prohibited person* has the same meaning as in  
section 3(1) of the **Firearms Act 1996;**

S. 3(1) def. of  
*prohibited  
person*  
inserted by  
No. 47/2000  
s. 5(1).

S. 3(1) def. of  
*prohibited  
weapon*  
inserted by  
No. 47/2000  
s. 5(1),  
amended by  
No. 52/2010  
s. 26(c).

*prohibited weapon* means an imitation firearm or  
an article that is prescribed by the regulations  
to be a prohibited weapon;

S. 3(1) def. of  
*protective  
services  
officer*  
inserted by  
No. 43/2011  
s. 7(b),  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 28.1(d)).

*protective services officer* has the same meaning  
as in the **Victoria Police Act 2013**;

S. 3(1) def. of  
*public place*  
amended by  
No. 53/2007  
s. 3(3).

*public place* has the same meaning as it has under  
the **Summary Offences Act 1966** and also  
includes a non-government school;

S. 3(1) def. of  
*registered  
medical  
practitioner*  
inserted by  
No. 52/2010  
s. 26(a).

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

S. 3(1) def. of  
*registered  
psychologist*  
inserted by  
No. 52/2010  
s. 26(a).

*registered psychologist* means a person registered  
under the Health Practitioner Regulation  
National Law to practise in the psychology  
profession (other than as a student).

S. 3(1) def. of  
*regulated  
weapon*  
repealed by  
No. 47/2000  
s. 5(2).

\* \* \* \* \*

S. 3(2)  
inserted by  
No. 53/2007  
s. 3(4).

(2) A reference in this Act to the immediate vicinity  
of licensed premises means a place that is within  
20 metres of the licensed premises.



#### 4 Application and construction of Act

- (1) This Act applies to weapons other than firearms.
- (2) This Act is to be read and construed as in aid of and not in derogation from any other Act relating to weapons and firearms.
- (3) This Act does not apply to or in relation to any weapon vested in, belonging to or in the possession or control of a person or body of persons by reason of that person or body of persons having the control and management of premises declared by Order of the Governor in Council published in the Government Gazette to be a museum for the purposes of this Act.

S. 4(1)  
amended by  
No. 52/2010  
s. 27.

#### 5 Prohibited weapons

- (1) A person must not—
  - (a) bring into Victoria; or
  - (b) cause to be brought into or sent into Victoria;  
or
  - (c) manufacture; or
  - (d) display or advertise for sale—

S. 5  
substituted by  
No. 47/2000  
s. 6.

S. 5(1)  
amended by  
No. 1/2007  
s. 3.

S. 5(1)(c)  
amended by  
No. 42/2010  
s. 5(1).

S. 5(1)(d)  
amended by  
No. 12/2012  
s. 3(1).

\* \* \* \* \*

S. 5(1)(e)  
repealed by  
No. 12/2012  
s. 3(2).

a prohibited weapon without an exemption under section 8B or an approval under section 8C.

Penalty: 240 penalty units or imprisonment for 2 years.

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**S. 5(1AA)**  
inserted by  
No. 42/2010  
s. 5(2).

- (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.

**S. 5(1AB)**  
inserted by  
No. 42/2010  
s. 5(2).

- (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.

**S. 5(1AC)**  
inserted by  
No. 42/2010  
s. 5(2).

- (1AC) A person must not sell a prohibited weapon to a child.
- Penalty: 240 penalty units or imprisonment for 2 years.

**S. 5(1AD)**  
inserted by  
No. 42/2010  
s. 5(2).

- (1AD) A child must not purchase a prohibited weapon.
- Penalty: 25 penalty units.

**S. 5(1A)**  
inserted by  
No. 53/2007  
s. 4(1).

- (1A) A person who is in licensed premises or in a public place that is in the immediate vicinity of licensed premises must not possess, carry or use a prohibited weapon without—
- (a) an exemption under section 8B; or
  - (b) an approval under section 8C.
- Penalty: 480 penalty units or 4 years imprisonment.

**S. 5(1B)**  
inserted by  
No. 53/2007  
s. 4(1).

- (1B) If a person is convicted or found guilty of an offence against subsection (1A) in respect of an act or omission, that person is not liable to be convicted or found guilty of an offence against subsection (1)(e) in respect of the same act or omission.

- (2) A person must not sell a prohibited weapon unless the person reasonably believes that the purchaser of the weapon has an exemption under section 8B or an approval under section 8C allowing the purchaser to possess the weapon.

S. 5(2)  
amended by  
No. 53/2007  
s. 4(2).

Penalty: 240 penalty units or imprisonment for 2 years.

- (3) Subsections (1), (1AA), (1AB), (1A) and (2) do not apply to an employee of a person who holds an approval under section 8C if the employee is acting in the course of his or her employment and in accordance with the approval.

S. 5(3)  
inserted by  
No. 53/2007  
s. 4(3),  
amended by  
No. 42/2010  
s. 5(3).

**5AA Offence to possess, use or carry a prohibited weapon**

S. 5AA  
inserted by  
No. 12/2012  
s. 4.

A person must not possess, use or carry a prohibited weapon (other than an imitation firearm) without an exemption under section 8B or an approval under section 8C.

Penalty: 240 penalty units or imprisonment for 2 years.

**5AB Offence to possess, use or carry an imitation firearm**

S. 5AB  
inserted by  
No. 12/2012  
s. 4.

- (1) A non-prohibited person must not possess, use or carry an imitation firearm without an exemption under section 8B or an approval under section 8C.

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) A prohibited person must not possess, use or carry an imitation firearm.

Penalty: 1200 penalty units or imprisonment for 10 years.

## 5A Identifying persons purchasing prohibited weapons

S. 5A  
inserted by  
No. 47/2000  
s. 6.

S. 5A(1)  
amended by  
No. 53/2007  
s. 5(1).

(1) A person (the "seller") must require a person attempting to purchase a prohibited weapon from the seller (the "purchaser") to produce evidence as to the purchaser's identity—

(a) by means of a passport, driver licence or other document in one of the prescribed categories, if that document bears a photograph of the purchaser; or

S. 5A(1)(b)  
amended by  
No. 55/2009  
s. 52(a).

(b) by means of 2 documents in the prescribed categories but each in a different category; or

S. 5A(1)(c)  
inserted by  
No. 55/2009  
s. 52(b),  
amended by  
No. 82/2012  
s. 158.

(c) in the case of a purchaser who is authorised under the **Independent Broad-based Anti-corruption Commission Act 2011** to possess, carry and use defensive equipment (within the meaning of that Act), by means of that authorisation and the purchaser's photographic identification as an IBAC Officer within the meaning of that Act.

Penalty: 60 penalty units.

S. 5A(2)  
amended by  
No. 53/2007  
s. 5(2).

(2) A person must not sell a prohibited weapon to a person who is unable to produce the required evidence of identity under subsection (1).

Penalty: 60 penalty units.

S. 5A(3)  
amended by  
No. 53/2007  
s. 5(3).

(3) A person must not produce false evidence of identity under subsection (1).

Penalty: 120 penalty units.

### **5B Recording sales of prohibited weapons**

(1) A person who sells a prohibited weapon must keep a record of the sale in accordance with this section.

Penalty: 20 penalty units.

(2) A record under this section—

(a) must be in the form, and contain the information, prescribed by the regulations; and

(b) must be kept for a period of 3 years after the sale to which it relates.

(3) A police officer, at any reasonable time, may require a person to produce for inspection a record kept under this section.

S. 5B  
inserted by  
No. 47/2000  
s. 6.

S. 5B(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.2).

### **6 Control of controlled weapons**

(1) A person must not possess, carry or use a controlled weapon without lawful excuse.

Penalty: 120 penalty units or imprisonment for 1 year.

(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.

(1AC) For the purposes of subsections (1AA) and (1AB), a controlled weapon does not include a disposable knife made of plastic, bamboo or wood and designed for eating purposes.

S. 6(1)  
amended by  
Nos 47/2000  
s. 7(1)(a),  
1/2007 s. 4.

S. 6(1AA)  
inserted by  
No. 42/2010  
s. 6.

S. 6(1AB)  
inserted by  
No. 42/2010  
s. 6.

S. 6(1AC)  
inserted by  
No. 20/2015  
s. 8.

S. 6(1A)  
inserted by  
No. 53/2007  
s. 6(1).

(1A) A person who is in licensed premises or in a public place that is in the immediate vicinity of licensed premises must not possess, carry or use a controlled weapon without lawful excuse.

Penalty: 240 penalty units or imprisonment for 2 years.

S. 6(1B)  
inserted by  
No. 53/2007  
s. 6(1).

(1B) If a person is convicted or found guilty of an offence against subsection (1A) in respect of an act or omission that person is not liable to be convicted or found guilty of an offence against subsection (1) in respect of the same act or omission.

S. 6(2)  
amended by  
Nos 47/2000  
s. 7(1)(b),  
53/2007  
s. 6(2).

(2) A person must not carry a controlled weapon unless it is carried in a safe and secure manner consistent with the lawful excuse for which it is possessed or is carried or is to be used.

Penalty: 20 penalty units.

(3) In this section *lawful excuse* includes—

- (a) the pursuit of any lawful employment, duty or activity; and
- (b) participation in any lawful sport, recreation or entertainment; and
- (c) the legitimate collection, display or exhibition of weapons—

but does not include for the purpose of self-defence.

S. 6(4)  
inserted by  
No. 47/2000  
s. 7(2).

(4) In considering whether a person has lawful excuse to possess, carry or use a controlled weapon, the court must have regard to the circumstances, such as time and location, of the incident.

## 7 Control of use of dangerous articles

(1) A person must not in a public place possess or carry a dangerous article without lawful excuse.

Penalty: 60 penalty units or imprisonment for 6 months.

S. 7(1)  
amended by  
Nos 9/2003  
s. 4, 53/2007  
s. 7(1).

(1A) A person who is in licensed premises or in a public place that is in the immediate vicinity of licensed premises must not possess or carry a dangerous article without lawful excuse.

Penalty: 120 penalty units or imprisonment for 1 year.

S. 7(1A)  
inserted by  
No. 53/2007  
s. 7(2).

(1B) If a person is convicted or found guilty of an offence against subsection (1A) in respect of an act or omission that person is not liable to be convicted or found guilty of an offence against subsection (1) in respect of the same act or omission.

S. 7(1B)  
inserted by  
No. 53/2007  
s. 7(2).

(2) In this section *lawful excuse* includes—

- (a) the pursuit of any lawful employment, duty or activity; and
- (b) participation in any lawful sport, recreation or entertainment; and
- (c) the legitimate collection, display or exhibition of the article; and
- (d) the use of the article for the purpose for which it is designed or intended—

S. 7(2)  
amended by  
No. 53/2007  
s. 7(3).

but does not include possession or carriage of a dangerous article for the purpose of self-defence.

\* \* \* \* \*

S. 7(2)(d)  
substituted by  
No. 53/2007  
s. 7(3).

S. 7(3)  
repealed by  
No. 53/2007  
s. 7(4).

S. 7(4)  
substituted by  
No. 53/2007  
s. 7(5).

- (4) In considering whether a person has a lawful excuse to possess or carry a dangerous article, the court must have regard to the circumstances, such as time and location, of the incident.

S. 7A  
inserted by  
No. 52/2010  
s. 28.

## **7A Exemption of health service workers**

S. 7A(1)  
amended by  
No. 35/2012  
s. 11(1).

- (1) A health professional or health service security guard who is not a prohibited person and who possesses or carries a prohibited weapon, a controlled weapon or a dangerous article in a health service facility in the circumstances set out in subsection (3) does not commit an offence against section 5, 5AA, 5AB(1), 6 or 7 for so doing.

S. 7A(2)  
amended by  
No. 35/2012  
s. 11(2).

- (2) An ambulance officer who is not a prohibited person and who possesses or carries a prohibited weapon, a controlled weapon or a dangerous article in a health service facility or public place in the circumstances set out in subsection (3) does not commit an offence against section 5, 5AA, 5AB(1), 6 or 7 for so doing.
- (3) For the purposes of subsections (1) and (2), the circumstances are that the health professional, health service security guard or ambulance worker—
- (a) is carrying out his or her duties as a health professional, health service security guard or ambulance worker, as the case may be; and
  - (b) either—
    - (i) is given the prohibited weapon, controlled weapon or dangerous article by a patient; or



- (ii) removes the prohibited weapon, controlled weapon or dangerous article from a patient; or
  - (iii) finds the prohibited weapon, controlled weapon or dangerous article in the vicinity of the patient; or
  - (iv) is given the prohibited weapon, controlled weapon or dangerous article by a health professional or ambulance worker who has taken possession of the weapon or article in the circumstances set out in this subsection.
- (4) A health professional, health security guard or ambulance worker who takes possession of a prohibited weapon, controlled weapon or dangerous article in the circumstances set out in subsection (3) must notify a police officer as soon as practicable after having taken possession of the prohibited weapon, controlled weapon or dangerous article.

S. 7A(4)  
amended by  
Nos 11/2011  
s. 5, 37/2014  
s. 10(Sch.  
item 28.2).

- (5) In this section—

***ambulance worker*** means an operational staff member of the ambulance services as defined in the **Ambulance Services Act 1986**;

***health professional*** means—

- (a) a registered medical practitioner; or
- (b) a nurse or midwife; or
- (c) a registered psychologist;

***health security guard*** means a security guard licensed under the **Private Security Act 2004** when working in a health service facility as a contractor or an employee;

*health service facility* means—

- (a) a day procedure centre; or
- (b) a denominational hospital; or
- (c) a multi purpose service; or
- (d) a private hospital; or
- (e) a public health service; or
- (f) a public hospital—

as defined in the **Health Services Act 1988**.

S. 7B  
inserted by  
No. 11/2011  
s. 6.

**7B Exemption of person exercising power under the  
Education and Training Reform Act 2006**

S. 7B(1)  
amended by  
No. 35/2012  
s. 12.

- (1) A person who possesses or carries a prohibited weapon, controlled weapon or dangerous article in a Government school or public place in the circumstances set out in subsection (2) does not commit an offence against section 5, 5AA, 5AB(1), 6 or 7 for so doing.
- (2) For the purposes of subsection (1), the circumstances are that the person—
  - (a) is exercising a power under Part 5.8A of the **Education and Training Reform Act 2006**; and
  - (b) is not a prohibited person.
- (3) If a prohibited weapon has been seized under Part 5.8A of the **Education and Training Reform Act 2006** in the circumstances set out in subsection (2), the principal must, as soon as possible—

S. 7B(3)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.2).

- (a) advise a police officer of the seizure of the item; and

(b) if so requested, by the police officer,  
surrender the item to a police officer.

S. 7B(3)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.2).

(4) In this section, *public place* includes any premises  
where students are engaged in a teacher  
supervised activity.

### 8 Claim of lawful excuse

Section 72 of the **Criminal Procedure Act 2009**  
applies in respect of a claim of "lawful excuse"  
under this Act.

S. 8 (Heading)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 27.1).  
S. 8  
amended by  
No. 68/2009  
s. 97(Sch.  
item 27.2).

### 8A Control of body armour

S. 8A  
inserted by  
No. 26/1997  
s. 6.

(1) A person must not—

- (a) bring body armour into Victoria; or
- (b) cause body armour to be brought or sent into  
Victoria; or
- (c) manufacture, sell or purchase body armour;  
or
- (d) possess or use body armour—

S. 8A(1)  
amended by  
Nos 47/2000  
s. 8(a),  
53/2007  
s. 8(1).

without an exemption under section 8B or an  
approval under section 8C.

Penalty: 240 penalty units or imprisonment for  
2 years.

S. 8A(2)  
repealed by  
No. 47/2000  
s. 8(b), new  
s. 8A(2)  
inserted by  
No. 53/2007  
s. 8(2).

- (2) Subsection (1) does not apply to an employee of a person who holds an approval under section 8C if the employee is acting in the course of his or her employment and in accordance with the approval.

S. 8A(3)–(9)  
repealed by  
No. 47/2000  
s. 8(b).

\* \* \* \* \*

S. 8B  
inserted by  
No. 47/2000  
s. 9,  
amended by  
No. 78/2005  
s. 67(ILA  
s. 39B(1)).

## **8B Exemptions for prohibited weapons and body armour**

- (1) The Governor in Council may, by Order published in the Government Gazette—

S. 8B(1)(a)  
amended by  
Nos 42/2010  
s. 7(1),  
35/2012 s. 13.

- (a) exempt from any provision of section 5 (except section 5(1AC) or (1AD)), 5AA, 5AB(1) or 8A (as the case requires)—
- (i) a class of persons or class of prohibited weapons or body armour; or

S. 8B(1)(a)(ii)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.3).

- (ii) a corrections officer, military officer or member of police personnel (by name or description of office); and

- (b) specify conditions and limitations to which an exemption under paragraph (a) is subject.

S. 8B(2)  
inserted by  
No. 78/2005  
s. 67.

- (2) An exemption under subsection (1)—
- (a) must not be granted in respect of prohibited persons; and
- (b) if granted in respect of a class of person or persons identified by a particular description, does not apply to any prohibited person who is a member of that class or who satisfies that description (as the case requires).

- (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. **S. 8B(3) inserted by No. 42/2010 s. 7(2).**
- (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.
- 8C Approvals for prohibited weapons and body armour** **S. 8C inserted by No. 47/2000 s. 9.**
- (1) Subject to subsection (2), the Chief Commissioner of Police may grant an approval to a person to do anything that is otherwise prohibited by any provision of section 5 (except section 5(1AC) or (1AD)), 5AA, 5AB(1) or 8A. **S. 8C(1) amended by Nos 42/2010 s. 8, 35/2012 s. 14.**
- (1A) If an approval is granted under subsection (1) to a person who is a member of a partnership, the approval is taken to apply to each member of the partnership. **S. 8C(1A) inserted by No. 53/2007 s. 9(1).**
- (2) The Chief Commissioner cannot grant an approval under this section to—
- (a) a prohibited person; or
  - (b) a corrections officer, military officer or member of police personnel in connection with their official duties; or
- S. 8C(2)(b) amended by Nos 53/2007 s. 9(2), 37/2014 s. 10(Sch. item 28.3).**

S. 8C(2)(c)  
inserted by  
No. 53/2007  
s. 9(3).

(c) a person who is a member of a partnership if another member of the partnership is a prohibited person; or

S. 8C(2)(d)  
inserted by  
No. 53/2007  
s. 9(3).

(d) a body corporate if an officer of the body corporate is a prohibited person.

- (3) An application for approval must be—
- (a) in the form approved by the Chief Commissioner; and
  - (b) contain the information required by the Chief Commissioner; and
  - (c) be accompanied by the prescribed fee.
- (4) Before granting an approval the Chief Commissioner must have regard to the guidelines issued by the Minister under section 8D.
- (5) The Chief Commissioner may—
- (a) grant an approval for a specified period or indefinitely;
  - (b) vary or revoke an approval at any time, including an approval granted for a specified period.
- (6) An approval—
- (a) must be in writing; and
  - (b) is subject to—
    - (i) a condition that the prohibited weapon or body armour is stored safely and securely and in the manner (if any) specified by the Chief Commissioner in the approval; and
    - (ii) any other conditions or limitations that the Chief Commissioner considers appropriate.

- (7) The Chief Commissioner may—
- (a) refuse to grant an approval to an applicant who is under the age of 18 years; or
  - (b) impose conditions or limitations on an approval granted to an applicant who is under the age of 18 years that the Chief Commissioner would not impose on an applicant of or over that age.

**8D Ministerial guidelines**

S. 8D  
inserted by  
No. 47/2000  
s. 9.

- (1) The Minister may issue guidelines relating to the granting of approvals under section 8C, including guidelines prohibiting or restricting the granting of approvals to applicants who are under the age of 18 years.
- (2) Any guidelines issued by the Minister under subsection (1) must be published in the Government Gazette.

**8E Offences regarding exemptions and approvals**

S. 8E  
inserted by  
No. 47/2000  
s. 9.

- (1) A person must not intentionally or recklessly breach a condition to which an exemption under section 8B or an approval under section 8C that applies to the person is subject.

S. 8E(1)  
amended by  
No. 53/2007  
s. 10(1).

Penalty: 20 penalty units.

- (1A) An employee of a person to whom an approval has been granted under section 8C must not intentionally or recklessly breach a condition to which the approval is subject while, in the course of that employment, performing duties for which the approval is required.

S. 8E(1A)  
inserted by  
No. 53/2007  
s. 10(2).

Penalty: 5 penalty units.

S. 8E(2)  
amended by  
No. 53/2007  
s. 10(3).

- (2) A person must not knowingly make a statement in an application for approval under section 8C that is false or misleading in a material particular.

Penalty: 20 penalty units.

S. 8E(3)  
inserted by  
No. 53/2007  
s. 10(4).

- (3) A person who is the holder of an approval under section 8C must not employ a prohibited person, or allow a prohibited person to be employed, to carry out duties for which an approval under section 8C is required.

Penalty: 60 penalty units.

S. 8EA  
inserted by  
No. 53/2007  
s. 11.

#### **8EA Offences by body corporate**

- (1) If a body corporate contravenes a provision of this Act, each officer of the body corporate is deemed to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1) whether or not the body corporate has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

S. 8EB  
inserted by  
No. 53/2007  
s. 11.

#### **8EB Offences by partners**

- (1) If a person who is a member of a partnership contravenes a provision of this Act, the partner or partners of that person are deemed to have contravened the same provision if the partner or partners knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1) whether or not another member of



the partnership has been proceeded against or been convicted under that provision.

**8F Chief Commissioner to report on applications for approval**

S. 8F  
inserted by  
No. 47/2000  
s. 9.

- (1) Within 30 days after the end of each financial year, the Chief Commissioner of Police must make a report to the Minister regarding applications for approval under section 8C in that financial year.
- (2) A report under this section must be in the form, and contain the information, required by the Minister.

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

S. 8G  
inserted by  
No. 9/2003  
s. 5.

- (1) A police officer, or a protective services officer on duty at a designated place, who—
  - (a) has reasonable grounds for suspecting that a person has committed an offence against section 5, 5AA or 5AB(1) or is carrying or has in his or her possession a prohibited weapon; and
  - (b) produces his or her identification for inspection by the person—

S. 8G(1)  
amended by  
Nos 43/2011  
s. 8, 37/2014  
s. 10(Sch.  
item 28.4).

S. 8G(1)(a)  
amended by  
No. 35/2012  
s. 15.

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 subsection (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.

**9 Forfeiture or return of prohibited weapons,  
controlled weapons, dangerous articles or body  
armour**

S. 9(1)  
amended by  
Nos 26/1997  
s. 7, 47/2000  
s. 10(1)(a),  
7/2002 s. 34.

(1) If a court finds a person guilty or not guilty because of mental impairment of an offence under this Act, the prohibited weapon, controlled weapon, dangerous article or body armour to which the offence relates is forfeited to the Crown and must be sold or destroyed unless the court makes an order that it be returned to the person.

S. 9(2)  
amended by  
Nos 26/1997  
s. 7, 47/2000  
s. 10(1)(b)(i)(ii).

(2) A prohibited weapon, controlled weapon, dangerous article or body armour which has been forfeited under subsection (1) cannot be sold or destroyed until the period for an appeal has elapsed, or if an appeal against the conviction has been lodged, unless the appeal has been dismissed.

S. 9(3)  
amended by  
No. 26/1997  
s. 7,  
substituted by  
No. 47/2000  
s. 10(2).

(3) A prohibited weapon, controlled weapon, dangerous article or body armour which has been seized in relation to an offence by a person under this Act must be returned to that person in accordance with this section if—

(a) proceedings for that offence are not commenced within the period of 3 months after the seizure; or

(b) a decision is made within that period not to bring proceedings for that offence.

S. 9(4)  
amended by  
No. 26/1997  
s. 7,  
substituted by  
No. 47/2000  
s. 10(2),  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.4).

(4) The police officer in charge of the police station at which the prohibited weapon, controlled weapon, dangerous article or body armour is kept must give notice to the person from whom the prohibited weapon, controlled weapon, dangerous article or body armour was seized of his or her right to have it returned.

- (5) If a person who is given notice under subsection (4) does not apply within 7 days after the receipt of the notice for the return of the prohibited weapon, controlled weapon, dangerous article or body armour as the case requires, the prohibited weapon, controlled weapon, dangerous article or body armour is forfeited to the Crown and must be sold or destroyed. **S. 9(5) inserted by No. 47/2000 s. 10(2).**
- (6) A person who applies under this section for the return of a prohibited weapon, controlled weapon, dangerous article or body armour, must collect it from the police station at which it is kept. **S. 9(6) inserted by No. 47/2000 s. 10(2).**
- (7) If the person who applies for the return of a prohibited weapon, controlled weapon, dangerous article or body armour is under the age of 18 years, the prohibited weapon, controlled weapon, dangerous article or body armour must not be returned to him or her unless he or she is accompanied by a parent or guardian to collect it. **S. 9(7) inserted by No. 47/2000 s. 10(2).**

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

**S. 9A inserted by No. 42/2010 s. 9.**

- (1) This section applies if a police officer or a protective services officer 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. **S. 9A(1) amended by Nos 43/2011 s. 9, 37/2014 s. 10(Sch. item 28.4).**
- (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
- (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 police officer 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.

S. 9A(3)(e)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.4).

- (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 police officer, whether on a review under section 24 of the **Infringements Act 2006** or otherwise—

S. 9A(4)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.4).

- (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 police officer 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

**S. 9A(5)(a)**  
amended by  
**No. 37/2014**  
s. 10(Sch.  
item 28.4).

(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).

S. 10 substituted by No. 30/1994 s. 5, amended by No. 47/2000 s. 11(a)(i)(ii), substituted by No. 9/2003 s. 6, amended by 53/2007 s. 12, substituted by No. 92/2009 s. 9.

## 10 Search without a warrant

S. 10(1) amended by No. 37/2014 s. 10(Sch. item 28.5(a)(ii)).

(1) If—

S. 10(1)(a) amended by No. 37/2014 s. 10(Sch. item 28.5(a)(i)).

(a) a police officer has reasonable grounds for suspecting that a person is carrying or has in his or her possession in a public place a weapon contrary to this Act; and

S. 10(1)(b) amended by No. 37/2014 s. 10(Sch. item 28.5(a)(ii)).

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

Control of Weapons Act 1990  
No. 24 of 1990

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- (c) the police officer complies with subsection (3)—  
the police officer may, without a warrant—
- (d) search the person and any vehicle or thing in his or her possession or under his or her control for the weapon; and
- (e) seize and detain any item detected during the search that the police officer reasonably suspects is a weapon.
- (2) For the purposes of subsection (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 a weapon or has a weapon in his or her possession.
- (3) Before a police officer commences a search of a person under subsection (1), the police officer must—
- (a) inform the person of the police officer'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 police officer is in uniform; and
- S. 10(1)(c) amended by No. 37/2014 s. 10(Sch. item 28.5(a)(ii)).
- S. 10(1)(e) amended by No. 37/2014 s. 10(Sch. item 28.5(a)(ii)).
- S. 10(3) amended by No. 37/2014 s. 10(Sch. item 28.5(b)(i)(ii)).
- S. 10(3)(a) amended by No. 37/2014 s. 10(Sch. item 28.5(b)(iii)).
- S. 10(3)(c) amended by No. 37/2014 s. 10(Sch. item 28.5(b)(ii)).

S. 10(3)(d)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.5(b)(ii)).

(d) inform the person that the police officer intends to search the person or the vehicle or thing (as the case requires) for weapons and is empowered to do so under this Act.

S. 10(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.5(c)).

(4) Schedule 1 applies to the search of a person or thing under this section.

(5) A police officer must conduct the least invasive search that is practicable in the circumstances.

S. 10(6)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.5(c)).

(6) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.

(7) In this section, *weapon* means—

- (a) a prohibited weapon; or
- (b) a controlled weapon; or
- (c) a dangerous article.

S. 10AA  
inserted by  
No. 43/2011  
s. 10.

#### **10AA Search by protective services officer**

(1) This section applies if a protective services officer on duty at a designated place has reasonable grounds for suspecting that a person at or in the vicinity of a designated place is carrying or has in his or her possession in a public place a weapon contrary to this Act.

(2) Subject to subsection (4), the protective services officer may, without a warrant—

- (a) search the person and any vehicle or thing in the person's possession or under the person's control for the weapon; and
- (b) seize and detain any item detected during the search that the protective services officer reasonably suspects is a weapon.



- (3) For the purposes of subsection (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 is carrying a weapon or has a weapon in his or her possession.
- (4) Before a protective services officer commences a search of a person under subsection (2), the protective services officer must—
- (a) inform the person of the grounds for his or her suspicion; and
  - (b) inform the person of the protective services officer's name, rank and place of duty; and
  - (c) if requested to do so by the person, provide the information referred to in paragraph (b) in writing; and
  - (d) produce his or her identification for inspection by the person, unless the protective services officer is in uniform; and
  - (e) inform the person that he or she intends to search the person or thing (as the case requires) for weapons and is empowered to do so under this Act.
- (5) Clauses 1, 2, 4(2), 4(3), 5(2), 5(3), 5(4), 6, 11(1), 11(5), 12(1) and 12(5) of Schedule 1 apply to the search of a person or thing under this section as if—
- (a) a reference in that Schedule to a police officer were a reference to a protective services officer; and
  - (b) a reference in that Schedule to a search under section 10 were a reference to a search under this section.

**S. 10AA(5)(a)**  
**amended by**  
**No. 37/2014**  
**s. 10(Sch.**  
**item 28.6).**

- (6) A protective services officer must conduct the least invasive search that is practicable in the circumstances.
- (7) A protective services officer may detain a person for so long as is reasonably necessary to conduct a search under this section.
- (8) To avoid doubt, a protective services officer may exercise any power under this section to search or detain a person, or seize and detain any item detected during the search, at or in the vicinity of a designated place.
- (9) In this section, *weapon* means—
  - (a) a prohibited weapon; or
  - (b) a controlled weapon; or
  - (c) a dangerous article.

S. 10A  
inserted by  
No. 9/2003  
s. 6.

#### **10A Duty to make records concerning searches**

S. 10A(1)  
amended by  
Nos 92/2009  
s. 10(a),  
42/2010  
s. 10(1),  
43/2011  
s. 11(1),  
37/2014  
s. 10(Sch.  
item 28.7(a)).

- (1) A police officer who conducts a search under section 10 or a strip search under section 10G, or a protective services officer who conducts a search under section 10AA, 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 or 10AA or a strip search under section 10G 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.

S. 10A(3)  
amended by  
Nos 92/2009  
s. 10(a),  
42/2010  
s. 10(2),  
43/2011  
s. 11(2).

(4) A request under subsection (3) is made to—

S. 10A(4)  
amended by  
No. 92/2009  
s. 10(b),  
substituted by  
No. 43/2011  
s. 11(3).

(a) in the case of a search conducted by a police officer—the police officer in charge of the place of duty that the police officer referred to in section 10(3)(a) or 10I(1)(a) or clause 8(1)(a) of Schedule 1; or

S. 10A(4)(a)  
substituted by  
No. 37/2014  
s. 10(Sch.  
item 28.7(b)).

(b) in the case of a search conducted by a protective services officer—the police officer in charge of the place of duty of the protective services officer referred to in section 10AA(4)(b).

S. 10A(4)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.7(c)).

**10B Chief Commissioner to report on searches without warrant**

S. 10B  
inserted by  
No. 9/2003  
s. 6.

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 or 10AA conducted during that financial year; and

S. 10B(a)  
amended by  
No. 43/2011  
s. 12.

(ab) the number of strip searches conducted under section 10G during that financial year; and

S. 10B(ab)  
inserted by  
No. 92/2009  
s. 11.

(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

S. 10B(ac)  
inserted by  
No. 42/2010  
s. 11(1).

- S. 10B(ad)**  
inserted by  
No. 42/2010  
s. 11(1).
- (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
- S. 10B(b)**  
amended by  
No. 42/2010  
s. 11(2).
- (b) the number and type of weapons and dangerous articles found during the course of searches referred to in paragraphs (a) and (ab); and
- S. 10B(ba)**  
inserted by  
No. 42/2010  
s. 11(3).
- (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
- S. 10B(bb)**  
inserted by  
No. 42/2010  
s. 11(3).
- (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
- S. 10B(bc)**  
inserted by  
No. 42/2010  
s. 11(3).
- (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
- S. 10B(bd)**  
inserted by  
No. 42/2010  
s. 11(3).
- (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
- (c) any other information requested by the Minister.

### 10C Definitions

S. 10C  
inserted by  
No. 92/2009  
s. 12.

In this section and in sections 10D to 10L—

**designated area** means an area in respect of which a declaration under section 10D or 10E is in effect;

**thing** includes any object, article or material;

**weapon** means—

- (a) a prohibited weapon; or
- (b) a controlled weapon; or
- (c) a dangerous article.

### 10D Planned designation of search area

S. 10D  
inserted by  
No. 92/2009  
s. 12.

- (1) The Chief Commissioner may declare an area to be a designated area if the Chief Commissioner is satisfied that—
  - (a) either—
    - (i) more than one incident of violence or disorder has occurred in that area in the previous 12 months that involved the use of weapons; or
    - (ii) an event is to be held in that area and incidents of violence or disorder involving the use of weapons have occurred at previous occasions of that event (wherever occurring); and
  - (b) there is a likelihood that the violence or disorder will recur.

- S. 10D(1A)  
inserted by  
No. 42/2010  
s. 12(1).
- S. 10D(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.8).
- S. 10D(3)  
amended by  
No. 42/2010  
s. 12(2).
- S. 10D(3)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.8).
- S. 10D(3A)  
inserted by  
No. 42/2010  
s. 12(3).
- S. 10D(3B)  
inserted by  
No. 42/2010  
s. 12(3).
- (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) The area designated must not be larger than is reasonably necessary to enable police officers to effectively respond to the threat of violence or disorder.
- (3) The period of operation of a declaration under this section (other than a declaration in relation to an event)—
- (a) must be not longer than is reasonably necessary to enable police officers to effectively respond to the threat of violence or disorder; and
  - (b) must not exceed 12 hours.
- (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) The Chief Commissioner must publish a notice of the declaration of an area under this section in—
- (a) the Government Gazette; and

- (b) in a daily newspaper circulating generally in Victoria; and
- (c) if the declared area is outside the metropolitan area, in a daily newspaper circulating generally within that area, if such a newspaper exists.

(5) The notice must—

- (a) describe the designated area; and

\* \* \* \* \*

S. 10D(5)(b) repealed by No. 20/2015 s. 10(1).

- (c) specify the powers that police officers are authorised to exercise in the designated area while the declaration is in force; and

S. 10D(5)(c) amended by No. 37/2014 s. 10(Sch. item 28.8).

- (d) specify the period or periods of operation of the declaration; and

S. 10D(5)(d) amended by No. 42/2010 s. 12(4).

- (e) if the declaration was made in relation to an event, specify that event.

S. 10D(5)(e) inserted by No. 42/2010 s. 12(5).

(5A) In addition to subsection (5)—

- (a) the notice, as published in the Government Gazette, must include a map of the designated area; and
- (b) the notice, as published in a newspaper, must include a map of the designated area or the address of a Government Internet website at which a map of the designated area is published.

S. 10D(5A) inserted by No. 20/2015 s. 10(2).

S. 10D(6)  
amended by  
No. 42/2010  
s. 12(6),  
substituted by  
No. 12/2012  
s. 5.

(6) A declaration under this section has effect, after the date of publication of the notice in the Government Gazette, for the period or periods specified in the notice.

S. 10D(7)  
repealed by  
No. 42/2010  
s. 12(7).

\* \* \* \* \*

S. 10D(8)  
amended by  
No. 42/2010  
s. 12(8).

(8) If a declaration (the *earlier declaration*) is made under this section in respect of an area, a further declaration under this section cannot take effect in respect of that area until after the end of the period of 10 days after the end of the period, or the last of the periods, of operation of the earlier declaration.

S. 10D(9)  
amended by  
No. 42/2010  
s. 12(9).

(9) Nothing in subsection (8) prevents a declaration being made under section 10E in respect of that area during the 10-day period referred to in that subsection.

(10) In this section, *metropolitan area* means the area or areas specified by the Governor in Council for the purposes of this section by Order published in the Government Gazette.

S. 10E  
inserted by  
No. 92/2009  
s. 12.

## 10E Unplanned designation of search area

S. 10E(1)  
substituted by  
No. 42/2010  
ss 13(1), 22(1).

(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 police officers 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. **S. 10E(1)(b) amended by No. 37/2014 s. 10(Sch. item 28.8).**
- (1A) For the avoidance of doubt, the Chief Commissioner may determine under subsection (1) that there is a likelihood that violence or disorder involving weapons will occur even if that likelihood is less than more likely than not. **S. 10E(1A) inserted by No. 42/2010 s. 13(2), amended by No. 42/2010 s. 22(2).**
- (2) The declaration under this section must specify—
- (a) the designated area; and
- (b) the period of operation of the declaration.
- (3) The area designated under this section must not be larger than is reasonably necessary to enable police officers to effectively respond to the threat of violence or disorder. **S. 10E(3) amended by Nos 42/2010 ss 13(3), 22(3), 37/2014 s. 10(Sch. item 28.8).**
- (4) The period of operation of a declaration under this section—
- (a) must be not longer than is reasonably necessary to enable police officers to effectively respond to the threat of violence or disorder; and **S. 10E(4)(a) amended by Nos 42/2010 ss 13(4), 22(4), 37/2014 s. 10(Sch. item 28.8).**
- (b) must not exceed 12 hours.
- (5) A declaration under this section has effect for the period specified in the declaration.
- 10F Delegation by Chief Commissioner**
- Despite section 19 of the **Victoria Police Act 2013**, the Chief Commissioner may delegate a power under section 10D or 10E only to a police officer of or above the rank of Assistant Commissioner of Police. **S. 10F inserted by No. 92/2009 s. 12, amended by Nos 42/2010 s. 14, 37/2014 s. 10(Sch. item 28.9).**

S. 10G  
inserted by  
No. 92/2009  
s. 12.

### **10G Power to search persons in designated area**

S. 10G(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.10).

(1) A police officer may, without a warrant, stop and search a person, and search any thing in the possession of or under the control of the person for weapons, if the person and, if applicable, the thing are in a public place that is within a designated area.

(2) Schedule 1 applies to the search of a person or thing under this section.

S. 10G(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.10).

(3) A police officer must conduct the least invasive search that is practicable in the circumstances.

S. 10G(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.10).

(4) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.

S. 10H  
inserted by  
No. 92/2009  
s. 12.

### **10H Power to search vehicles**

S. 10H(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.10).

(1) A police officer may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, for weapons if—

(a) the vehicle is in a public place that is within a designated area; and

(b) there is a person in or on the vehicle.

S. 10H(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.10).

(2) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.

**10I Information to be given before search occurs**

S. 10I  
inserted by  
No. 92/2009  
s. 12.

- (1) When a police officer detains a person or a vehicle under section 10G or 10H to conduct a search, the police officer must—
- (a) if requested by the person, inform the person to be searched or a person in or on the vehicle, as the case requires, of the police officer'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 police officer is in uniform; and
- (d) inform the person that the police officer intends to search the person or the vehicle (as the case requires) for weapons and is empowered to do so under this Act; and
- (e) give the person a search notice that complies with subsection (3).
- (2) Subsection (1)(e) does not apply if the person has been offered the search notice and has refused or does not wish to accept it.
- (3) A search notice must state that—
- (a) the person or vehicle is in a public place that is within a designated area; and
- (b) a declaration is in force under section 10D or 10E (as the case requires); and

S. 10I(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.11(a)(i)(ii)).

S. 10I(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.11(a)(iii)).

S. 10I(1)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.11(a)(ii)).

S. 10I(1)(d)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.11(a)(ii)).

S. 10(3)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.11(b)(i)).

(c) police officers are empowered to search the person and any thing in the possession or control of the person, or the vehicle (as the case requires) for weapons; and

S. 10(3)(d)  
amended by  
Nos 42/2010  
s. 21(2),  
37/2014  
s. 10(Sch.  
item  
28.11(b)(ii)).

(d) it is an offence for the person to obstruct or hinder a police officer in the exercise of a power to stop and search a person or a vehicle.

S. 10J  
inserted by  
No. 92/2009  
s. 12.

### **10J Seizure of suspected weapons**

S. 10J(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.12(a)).

(1) A police officer may seize and detain any item detected during a search under section 10G or 10H that the police officer reasonably suspects is a weapon.

S. 10J(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.12(b)).

(2) If a police officer who seizes and detains an item under this section, determines after examination of the item that it is not a weapon, the police officer must return the item to the person from whom it was seized, without delay.

S. 10K  
inserted by  
No. 92/2009  
s. 12.

### **10K Power to obtain disclosure of identity**

S. 10K(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.13).

(1) A police officer may request a person who is to be subject to a strip search under Schedule 1 and whose identity is unknown to the police officer to disclose his or her identity.

(2) A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.

Penalty: 1 penalty unit.

(3) A person must not, without reasonable excuse, in response to any such request—

- (a) give a name that is false in a material particular; or
- (b) give an address other than the person's full and correct address.

Penalty: 1 penalty unit.

**10L Offence to obstruct or hinder search or other powers or fail to comply with direction**

S. 10L  
inserted by  
No. 92/2009  
s. 12.

A person must not, without reasonable excuse—

- (a) obstruct or hinder a police officer in the exercise of a power under section 10, 10G, 10H or 10J to stop and search a person or vehicle or to seize and detain a thing; or
- (b) fail to comply with a direction given by a police officer under clause 7(2) of Schedule 1.

S. 10L(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.14).

S. 10L(b)  
amended by  
Nos 42/2010  
s. 21(3),  
37/2014  
s. 10(Sch.  
item 28.14).

Penalty: 2 penalty units.

**11 Warrant to search**

(1) If a magistrate is satisfied by the evidence, on oath or by affidavit, of any police officer of or above the rank of sergeant or for the time being in charge of a police station that there is reasonable ground for suspecting that an offence against section 5, 5AA or 5AB has been or is being committed, he or she may grant a search warrant authorizing any police officer named therein—

S. 11(1)  
amended by  
Nos 35/2012  
s. 16, 37/2014  
s. 10(Sch.  
item 28.14).

- (a) to enter at any time by day or by night any premises or place named in the warrant, if necessary by force; and
- (b) to search the premises or place and every person found therein; and

S. 11(1)(c)  
amended by  
Nos 47/2000  
s. 11(b),  
35/2012 s. 16.

(c) to seize and detain any prohibited weapon which he or she finds on the premises or place or on any such person and in respect of which or in connection with which he or she has reasonable grounds for suspecting that an offence against section 5, 5AA or 5AB has been or is being committed.

(2) Except as provided in subsection (1), the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

S. 11A  
inserted by  
No. 53/2007  
s. 13,  
amended by  
No. 12/2012  
s. 6.

#### **11A Indictable offence**

An offence under section 5(1A) or section 5AB(2) is an indictable offence.

S. 11B  
inserted by  
No. 42/2010  
s. 15.

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

S. 11B(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.14).

(1) Subject to subsection (2), a police officer 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).

S. 11B(1A)  
inserted by  
No. 43/2011  
s. 13(1).

(1A) Subject to subsection (2), a protective services officer may serve an infringement notice on any person who he or she has reason to believe has committed an offence against section 6(1) at or in the vicinity of a designated place.

(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.

S. 11B(3)  
amended by  
No. 43/2011  
s. 13(2).

(3) An offence referred to in subsection (1) or (1A) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

### **11C Infringement penalty**

The infringement penalty for an infringement offence referred to in section 11B 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.

S. 11C  
inserted by  
No. 42/2010  
s. 15,  
amended by  
No. 20/2015  
s. 9.

### **12 Regulations**

(1) The Governor in Council may make regulations for or with respect to generally prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act including, but not limited to the following matters—

S. 12(1)  
amended by  
No. 9/2003  
s. 7(1).

- (a) the manner in which searches are to be conducted;
- (b) particulars to be included in records of searches.

S. 12(1)(a)  
inserted by  
No. 9/2003  
s. 7(1).

S. 12(1)(b)  
inserted by  
No. 9/2003  
s. 7(1).

(1A) The regulations—

S. 12(1A)  
inserted by  
No. 9/2003  
s. 7(2).

- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place or circumstances.

(2) Regulations made under subsection (1) may be disallowed in whole or in part by resolution of either House of Parliament.

S. 12(2)  
amended by  
No. 78/2010  
s. 24(Sch. 1  
item 6.1).

S. 12(3)  
repealed by  
No. 78/2010  
s. 24(Sch. 1  
item 6.2).

\* \* \* \* \*

- (4) If, under subsection (2), either House of the Parliament disallows a regulation, no regulation, being the same in substance as the regulation so disallowed shall be made within 6 months after the date of the disallowance unless the resolution to disallow the regulation has been rescinded by the House of the Parliament by which it was passed.
- (5) Any regulation made in contravention of subsection (4) is void.

### 13 Repeals and savings

- (1) The **Prescribed Weapons Act 1989** is repealed.
- (2) The amendments made to any other Act by the **Prescribed Weapons Act 1989** cease to have effect on the day on which subsection (1) comes into operation and on and after that day any Act amended by the **Prescribed Weapons Act 1989** has effect as if the **Prescribed Weapons Act 1989** had not been enacted except for the purposes of paragraphs (c) to (g) of section 14(2) of the **Interpretation of Legislation Act 1984**.
- (3) Despite the repeal of the **Prescribed Weapons Act 1989**—

S. 13(3)(a)  
amended by  
Nos 30/1994  
s. 6, 47/2000  
s. 12(1).

- (a) any exemption in force under section 31A of the **Firearms and Other Weapons Act 1958** immediately before the repeal continues in force until the date specified in that exemption or, if no date is specified, until revoked by an exemption made under section 8B; and



- (b) the **Prescribed Weapons Regulations 1989** continue in force until revoked by regulations made under this Act or by the **Subordinate Legislation Act 1962** and until revoked may be amended by regulations made under this Act.
- (4) An exemption under section 5(2) as in force immediately before the commencement of section 6 of the **Control of Weapons (Amendment) Act 2000** continues to be in force after that commencement according to its tenor as if it were an exemption given under section 8B. S. 13(4)  
repealed by  
No. 26/1997  
s. 8,  
new s. 13(4)  
inserted by  
No. 47/2000  
s. 12(2).
- (5) An exemption under section 8A(2) as in force immediately before the commencement of section 8 of the **Control of Weapons (Amendment) Act 2000** continues to be in force after that commencement according to its tenor as if it were an exemption given under section 8B. S. 13(5)  
repealed by  
No. 26/1997  
s. 8,  
new s. 13(5)  
inserted by  
No. 47/2000  
s. 12(2).
- (6) An approval under section 8A as in force immediately before the commencement of section 8 of the **Control of Weapons (Amendment) Act 2000** continues to be in force after that commencement according to its tenor as if it were an approval given under section 8C. S. 13(6)  
inserted by  
No. 47/2000  
s. 12(2).
- (7) Any reference to a prescribed weapon in any document, including an exemption referred to in subsection (4), must be construed, so far as it relates to any period after the commencement of section 5 of the **Control of Weapons (Amendment) Act 2000**, as a reference to a prohibited weapon. S. 13(7)  
inserted by  
No. 47/2000  
s. 12(2).
- (8) Any reference to a regulated weapon in any document must be construed, so far as it relates to any period after the commencement of section 5 of the **Control of Weapons (Amendment) Act 2000**, as a reference to a controlled weapon. S. 13(8)  
inserted by  
No. 47/2000  
s. 12(2).

S. 14  
repealed by  
No. 26/1997  
s. 8, new s. 14  
inserted by  
No. 9/2003  
s. 8.

#### 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.

S. 15  
repealed by  
No. 26/1997  
s. 8,  
new s. 15  
inserted by  
No. 53/2007  
s. 14.

#### 15 Transitional provision—Justice Legislation Amendment Act 2007

- (1) The amendments made to this Act by sections 7(3), 7(4) and 7(5) of the **Justice Legislation Amendment Act 2007** apply only to offences alleged to have been committed on or after the commencement of those sections.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates and the provision of the **Justice Legislation Amendment Act 2007** effecting the amendment commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that provision.

S.16  
repealed by  
No. 26/1997  
s. 8, new s. 16  
inserted by  
No. 42/2010  
s. 16.

#### 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.

**17 Savings provision—Police and Emergency Management Legislation Amendment Act 2012**

- (1) On and from the commencement of section 4 of the **Control of Weapons and Firearms Acts Amendment Act 2012**, any Order made by the Governor in Council under section 8B(1), being an Order in force immediately before that commencement exempting a class of person, or a class of prohibited weapons (other than imitation firearms) or a corrections officer, military officer or police officer from any provision of section 5(1) is taken also to have the effect of an exemption from the provisions of section 5AA, to the same extent as that Order has provided for an exemption from the provisions of section 5(1).
- (2) On and from the commencement of section 4 of the **Control of Weapons and Firearms Acts Amendment Act 2012**, any Order made by the Governor in Council under section 8B(1), being an Order in force immediately before that commencement exempting a class of person, or a class of prohibited weapons (being imitation firearms) or a corrections officer, military officer or police officer from any provision of

S. 17  
repealed by  
No. 26/1997  
s. 8, new s. 17  
inserted by  
No. 35/2012  
s. 17.

section 5(1) is taken also to have the effect of an exemption from the provisions of section 5AB(1), to the same extent as that Order has provided for an exemption from the provisions of section 5(1).

- (3) On and from the commencement of section 4 of the **Control of Weapons and Firearms Acts Amendment Act 2012**, any approval granted by the Chief Commissioner under section 8C, being an approval in force immediately before that commencement, that—
- (a) in relation to prohibited weapons (other than imitation firearms), approves a person to do anything that is otherwise prohibited by any provision of section 5 (except section 5(1A) or (1D)) is taken also to have the effect of an approval to do anything otherwise prohibited by any provision of section 5AA, to the same extent as the approval provides for section 5(1); or
  - (b) in relation to imitation firearms, approves a person to do anything that is otherwise prohibited by any provision of section 5 (except section 5(1A) or (1D)) is taken also to have the effect of an approval to do anything otherwise prohibited by any provision of section 5AB(1), to the same extent as the approval provides for section 5(1).
-

**SCHEDULE 1**

Sections 10 and 10G(2)

Sch. 1  
inserted by  
No. 92/2009  
s. 13.

**CONDUCT OF SEARCHES**

**1 Application of Schedule**

This Schedule applies to any search of a person or any thing in the possession or under the control of a person carried out, or authorised to be carried out, by a police officer under section 10 or 10G, except as otherwise provided by this Act or the regulations.

Sch. 1 cl. 1  
amended by  
Nos 42/2010  
s. 21(4),  
37/2014  
s. 10(Sch.  
item 28.15).

**2 Definitions**

In this Schedule—

\* \* \* \* \*

Sch. 1 cl. 2  
def. of  
*child*  
repealed by  
No. 42/2010  
s. 17(a).

*electronic metal detection device* means an electronic device that is capable of detecting the presence of metallic objects;

*impaired intellectual functioning* means—

- (a) total or partial loss of a person's mental functions; or
- (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
- (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour;

Sch. 1 cl. 2  
def. of  
*planned  
designation  
search*  
inserted by  
No. 42/2010  
s. 17(b).

***initial electronic device search*** means a search of a person or thing by passing an electronic metal detection device over or in close proximity to the person's outer clothing or the thing;

***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.

***strip search*** of a person means a search of the person or of a thing in the possession or under the control of the person that may include—

- (a) requiring the person to remove all of his or her clothes; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes;

***thing*** includes any object, article or material;

\* \* \* \* \*

Sch. 1 cl. 2  
def. of  
*transgender  
person*  
repealed by  
No. 42/2010  
s. 17(a).

***weapon*** means—

- (a) a prohibited weapon; or
- (b) a controlled weapon; or
- (c) a dangerous article.

### 3 Initial electronic device search

A police officer who is authorised to search a person or thing under section 10G may carry out an initial electronic device search of that person or thing.

Sch. 1 cl. 3  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.15).

### 4 Examination of things

(1) If, as a result of an initial electronic device search under clause 3, a police officer considers that a person may be concealing a weapon, the police officer may examine any thing in the possession or under the control of the person in accordance with subclause (3).

Sch. 1 cl. 4(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.16(a)).

(2) A police officer who is authorised to search a thing under section 10 may examine the thing in accordance with subclause (3).

Sch. 1 cl. 4(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.16(b)).

(3) The police officer may—

(a) request the person—

- (i) to produce and empty of its contents any bag, basket or other receptacle; or
- (ii) to turn out his or her pockets; or

(b) search through any bag, basket or other receptacle; or

(c) search through and move the contents of any bag, basket or other receptacle; or

(d) if the police officer considers it appropriate in the circumstances, pat down the area of the person's pockets; or

(e) search through and move the contents of the person's pockets turned out in accordance with paragraph (a)(ii) or patted down under paragraph (d).

Sch. 1 cl. 4(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.16(c)(i)).

Sch. 1  
cl. 4(3)(d)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.16(c)(ii)).

## 5 Outer search of the person

Sch. 1 cl. 5(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.17(a)).

(1) If, as a result of an initial electronic device search under clause 3, a police officer considers that a person may be concealing a weapon, a police officer may conduct a further search of the person in accordance with subclauses (3) and (4).

Sch. 1 cl. 5(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.17(a)).

(2) A police officer who is authorised to search a person under section 10 may conduct a search of the person in accordance with subclauses (3) and (4).

Sch. 1 cl. 5(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.17(b)).

(3) The police officer may run his or her hands over the person's outer clothing.

Sch. 1 cl. 5(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.17(b)).

(4) The police officer may ask the person to remove his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes or hat and the police officer may then—

- (a) pass an electronic metal detection device over or in close proximity to the person's outer clothing after the overcoat, coat or jacket is removed; and
- (b) run his or her hands over the person's outer clothing after the overcoat, coat or jacket is removed; and
- (c) search the person's items of clothing that were removed by examining the interior and exterior of the item and by passing an electronic metal detection device over or in close proximity to the item.

## 6 Preservation of dignity during outer search

Sch. 1 cl. 6(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.18(a)).

(1) A police officer who searches a person under clause 5 must, as far as is reasonably practicable in the circumstances, comply with this clause.



- (2) The police officer must inform the person to be searched of the following matters—
- (a) whether the person will be required to remove clothing during the search;
  - (b) if the person will be required to remove clothing during the search, why it is necessary to remove the clothing.
- (3) The police officer must ask for the person's cooperation.
- (4) The police officer must conduct the search—
- (a) in a way that provides reasonable privacy for the person searched; and
  - (b) as quickly as is reasonably practicable.
- (5) The police officer must conduct the least invasive kind of search that is reasonably necessary in the circumstances.
- (6) A search that involves running hands over the outer clothing of a person must, if reasonably practicable, be conducted by a police officer who is of the same sex as the person being searched.

Sch. 1 cl. 6(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.18(b)).

Sch. 1 cl. 6(3)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.18(b)).

Sch. 1 cl. 6(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.18(b)).

Sch. 1 cl. 6(5)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.18(b)).

Sch. 1 cl. 6(6)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.18(c)).

## 7 Strip searches

- (1) A police officer is authorised to conduct a strip search of a person if—
- (a) a search of the person or a thing in the possession or under the control of the person has been conducted under clause 4 or 5; and
  - (b) the police officer reasonably suspects that the person has a weapon concealed on his or her person; and

Sch. 1 cl. 7(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.19(a)(i)).

Sch. 1  
cl. 7(1)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.19(a)(ii)).

Sch. 1  
cl. 7(1)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.19(a)(iii)).

(c) the police officer believes on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

Sch. 1 cl. 7(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.19(b)).

(2) A police officer may direct the person to accompany the police officer to a police vehicle or other private area nearby for the purposes of the search.

## **8 Information to be provided before strip search**

Sch. 1 cl. 8(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.20(a)(i)(ii)).

(1) Before a police officer commences a strip search of a person, the police officer must—

Sch. 1  
cl. 8(1)(a)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.20(a)(iii)).

(a) inform the person to be searched of the police officer'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

Sch. 1  
cl. 8(1)(c)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.20(a)(ii)).

(c) produce his or her identification for inspection by the person, unless the police officer is in uniform; and

Sch. 1  
cl. 8(1)(d)  
amended by  
No. 37/2014  
s. 10(Sch.  
item  
28.20(a)(ii)).

(d) inform the person that the police officer intends to search the person for weapons and is empowered to do so under this Act.

- (2) A police officer is not required to provide this information to a person if the police officer provided the information to the person under section 10(3) or 10L.
- Sch. 1 cl. 8(2) amended by No. 37/2014 s. 10(Sch. item 28.20(b)).

## 9 Rules for strip searches

- (1) A police officer who conducts a strip search of a person must comply with this clause.
- Sch. 1 cl. 9(1) amended by Nos 42/2010 s. 21(5), 37/2014 s. 10(Sch. item 28.21(a)).
- (2) The police officer must inform the person to be searched of the following matters—
- Sch. 1 cl. 9(2) amended by No. 37/2014 s. 10(Sch. item 28.21(b)).
- (a) as to whether the person will be required to remove clothing during the search;
- (b) if the person will be required to remove clothing during the search, why it is necessary to remove the clothing.
- (3) The police officer must ask for the person's cooperation.
- Sch. 1 cl. 9(3) amended by No. 37/2014 s. 10(Sch. item 28.21(b)).
- (4) The police officer must conduct the least invasive kind of search that is reasonably necessary in the circumstances.
- Sch. 1 cl. 9(4) amended by No. 37/2014 s. 10(Sch. item 28.21(b)).
- (5) The strip search must be conducted in a manner that preserves the dignity and self-respect of the person being searched.
- (6) The strip search must be conducted in a private area and in a way that provides reasonable privacy for the person being searched.
- (7) The strip search must be conducted as quickly as is reasonably practicable.

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Sch. 1 cl. 9(9)  
substituted by  
No. 42/2010  
s. 18(1),  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.21(c)).

- (8) The strip search must be conducted in a manner that avoids unnecessary force.
- (9) The strip search must be conducted by a police officer, or a person under the direction of a police officer, 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.

Sch. 1 cl. 9(10)  
substituted by  
No. 42/2010  
s. 18(2).

- (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.

Sch. 1 cl. 9(11)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.21(d)).

- (11) The strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search or the safety of the person or the police officers engaged in the search.

Sch. 1 cl. 9(12)  
amended by  
Nos 42/2010  
s. 18(3),  
37/2014  
s. 10(Sch.  
item 28.21(e)).

- (12) The police officer must not search the genital area of the person searched, or in the case of a female or a person who identifies as a female, the person's breasts unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.
- (13) A strip search must not involve a search of a person's body cavities or an examination of the body by touch.
- (14) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.

- (15) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (16) A person must be allowed to dress as soon as a search is finished.

**10 Examination of clothing**

A police officer may search any item of clothing of a person removed during a strip search by examining the interior and exterior of the item and by passing an electronic metal detection device over or in close proximity to the item.

Sch. 1 cl. 10  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.22).

**11 Rules for searches of children**

- (1) This clause applies if a police officer reasonably believes that a person to be searched by the police officer under clause 5 or 7 is a child.
- (2) This clause does not apply to a search of a child under clause 5 that is a search by means of an electronic metal detection device.
- (3) A planned designation search of a child must be conducted in the presence of—
- (a) a parent or guardian of the child being searched; or
  - (b) if the child is mature enough to express an opinion and indicates that the presence of the parent or guardian is not acceptable to the child, in the presence of an independent person who is capable of representing the interests of the child and who, as far as is practicable in the circumstances, is acceptable to the child.

Sch. 1 cl. 11(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.23(a)).

Sch. 1 cl. 11(3)  
amended by  
No. 42/2010  
s. 19(1).

- (4) Subclause (3) does not apply if—
- (a) a parent or guardian is not then present; and
  - (b) the seriousness and urgency of the circumstances require the search to be conducted without delay; and
  - (c) the search is conducted in the presence of an independent person who is capable of representing the interests of the child and who, as far as is practicable in the circumstances, is acceptable to the child.
- (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 police officer) other than a police officer who is conducting the search.

Sch. 1 cl. 11(5)  
inserted by  
No. 42/2010  
s. 19(2).

Sch. 1  
cl. 11(5)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.23(b)).

## **12 Rules for searches of persons with impaired intellectual functioning**

- (1) This clause applies if a police officer reasonably believes that a person to be searched by the police officer under clause 5 or 7 is a person with impaired intellectual functioning.
- (2) This clause does not apply to a search under clause 5 of a person with impaired intellectual functioning if the search is by means of an electronic metal detection device.
- (3) A planned designation search of a person who has impaired intellectual functioning, must be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the person, in the presence of an

Sch. 1 cl. 12(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.24(a)).

Sch. 1 cl. 12(3)  
amended by  
No. 42/2010  
s. 20(1).

independent person who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.

(4) Subclause (3) does not apply if—

- (a) a parent or guardian is not then present; and
- (b) the seriousness and urgency of the circumstances require the search to be conducted without delay; and
- (c) the search is conducted in the presence of an independent person who is capable of representing the interests of the person to be searched and who, as far as is practicable in the circumstances, is acceptable to the person.

(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—

**Sch. 1 cl. 12(5)  
inserted by  
No. 42/2010  
s. 20(2).**

- (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 police officer) other than a police officer who is conducting the search.

**Sch. 1  
cl. 12(5)(b)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 28.24(b)).**

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Council: 26 October 1989*

*Legislative Assembly: 15 May 1990*

The long title for the Bill for this Act was "A Bill to regulate weapons other than firearms, to repeal the **Prescribed Weapons Act 1989**, to amend the **Crimes Act 1958**, the **Firearms Act 1958**, the **Summary Offences Act 1966** and the **Vagrancy Act 1966** and for other purposes."

The **Control of Weapons Act 1990** was assented to on 5 June 1990 and came into operation on 31 August 1990: Government Gazette 29 August 1990 page 2616.



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## 2 Table of Amendments

This Version incorporates amendments made to the **Control of Weapons Act 1990** by Acts and subordinate instruments.

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### **Control of Weapons (Amendment) Act 1994, No. 30/1994**

*Assent Date:* 31.5.94  
*Commencement Date:* Ss 1, 2 on 31.5.94: s. 2(1); rest of Act on 30.11.94: Special Gazette (No. 92) 30.11.94 p. 1  
*Current State:* All of Act in operation

### **Police and Corrections (Amendment) Act 1997, No. 26/1997**

*Assent Date:* 20.5.97  
*Commencement Date:* Pt 2 (ss 3–8) on 31.12.97: Government Gazette 18.12.97 p. 3614  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

### **Control of Weapons (Amendment) Act 2000, No. 47/2000**

*Assent Date:* 14.6.00  
*Commencement Date:* 17.12.00: Government Gazette 14.12.00 p. 2915  
*Current State:* All of Act in operation

### **Forensic Health Legislation (Amendment) Act 2002, No. 7/2002**

*Assent Date:* 9.4.02  
*Commencement Date:* S. 34 on 1.7.02: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

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

*Assent Date:* 6.5.03  
*Commencement Date:* Ss 3–8 on 5.10.03: Government Gazette 2.10.03 p. 2538  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

### **Firearms (Further Amendments) Act 2005, No. 78/2005**

*Assent Date:* 22.11.05  
*Commencement Date:* S. 67 on 1.1.06: Government Gazette 22.12.05 p. 2972  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

### **Education and Training Reform Act 2006, No. 24/2006**

*Assent Date:* 16.5.06  
*Commencement Date:* S. 6.1.2(Sch. 7 item 9) on 1.7.07: Government Gazette 28.6.07 p. 1304  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

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**Control of Weapons Amendment (Penalties) Act 2007, No. 1/2007**

*Assent Date:* 6.3.07  
*Commencement Date:* Ss 3, 4 on 1.7.07: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Justice Legislation Amendment Act 2007, No. 53/2007**

*Assent Date:* 17.10.07  
*Commencement Date:* Ss 3(2), 4(3), 7(3)-(5), 8(2), 9, 10(2)(4), 11 on 18.10.07: s. 2(1); s. 14 on 18.10.07: Government Gazette 18.10.07 p. 2360; ss 3(1)(3)(4), 4(1)(2), 5, 6, 7(1)(2), 8(1), 10(1)(3), 12, 13 on 8.11.07: Government Gazette 8.11.07 p. 2579  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Justice Legislation Further Amendment Act 2009, No. 55/2009**

*Assent Date:* 22.9.09  
*Commencement Date:* S. 52 on 30.10.09: Government Gazette 29.10.09 p. 2729  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Liquor Control Reform Amendment (Licensing) Act 2009, No. 59/2009**

*Assent Date:* 21.10.09  
*Commencement Date:* S. 34 on 1.1.10: Government Gazette 29.10.09 p. 2729  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 27) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Summary Offences and Control of Weapons Acts Amendment Act 2009, No. 92/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* Ss 9–13 on 16.12.09: s. 2  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Control of Weapons Amendment Act 2010, No. 42/2010**

*Assent Date:* 10.8.10  
*Commencement Date:* Ss 4, 5, 7–21 on 22.8.10: Government Gazette 19.8.10 p. 1799; s. 6 on 1.1.11: Government Gazette 19.8.10 p. 1799; s. 22 on 22.8.13: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

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**Firearms and Other Acts Amendment Act 2010, No. 52/2010**

*Assent Date:* 7.9.10  
*Commencement Date:* S. 28 on 1.11.10: Government Gazette 28.10.10 p. 2583; ss 26, 27 on 1.7.11: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Subordinate Legislation Amendment Act 2010, No. 78/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* S. 24(Sch. 1 item 6) on 1.1.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Education and Training Reform Amendment (School Safety) Act 2011, No. 11/2011**

*Assent Date:* 10.5.11  
*Commencement Date:* S. 5 on 24.11.11: Special Gazette (No. 379) 22.11.11 p. 1; s. 6 on 1.1.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Justice Legislation Amendment (Protective Services Officers) Act 2011, No. 43/2011**

*Assent Date:* 6.9.11  
*Commencement Date:* Ss 7–13 on 28.11.11: Special Gazette (No. 379) 22.11.11 p. 1  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Control of Weapons and Firearms Acts Amendment Act 2012, No. 12/2012**

*Assent Date:* 20.3.12  
*Commencement Date:* Ss 3–6 on 16.5.12: Special Gazette (No. 157) 15.5.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Police and Emergency Management Legislation Amendment Act 2012, No. 35/2012**

*Assent Date:* 13.6.12  
*Commencement Date:* Ss 11–14, 17 on 16.5.12: s. 2(2); ss 15, 16 on 14.6.12 s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

**Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* S. 158 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2  
*Current State:* This information relates only to the provision/s amending the **Control of Weapons Act 1990**

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**Victoria Police Amendment (Consequential and Other Matters) Act 2014,  
No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 28) on 1.7.14: Special Gazette  
(No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s  
amending the **Control of Weapons Act 1990**

**Justice Legislation Amendment Act 2015, No. 20/2015**

*Assent Date:* 16.6.15  
*Commencement Date:* Ss 8–10 on 17.6.15: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Control of Weapons Act 1990**

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**3 Amendments Not in Operation**

Not updated for this publication.

#### **4 Explanatory details**

There are no entries at date of publication.