

New weapons legislation: Implications for Victorian health services

health

Factsheet

Background

Amendments to the *Firearms Act 1996* and the *Control of Weapons Act 1990* that came into effect on 1 November 2010 have implications for health services. This factsheet highlights what health services should consider when implementing these legislative changes. The factsheet should be read in conjunction with *Deter, detect and manage. A guide to better management of weapons in health services*, available at: www.health.vic.gov.au/nursing/promoting/noviolence/strategy-3#ddm#ddm

Relevant legislation

The Firearms Act, Control of Weapons Act and other relevant Acts can be accessed at: www.legislation.vic.gov.au

Click on **Victoria Law Today**, select **Acts** and then use the alphabetical listing to find the Act you are seeking.

To establish compliance with amendments to the *Firearms Act 1996* and the *Control of Weapons Act 1990*, all Victorian public health services will ensure that:

- ✓ their local weapons management policies and procedures are developed and/or reviewed in consultation with their local police and legal counsel to ensure joint agreement about how weapons will be managed within their specific environment, taking into consideration variables such as access to gun safes (or agreed alternatives) and proximity of police (particularly in rural environments)
- ✓ there are clear policies and procedures that identify which workers are specified as exempt in the Firearms Act and the Control of Weapons Act, including through contractual arrangements (for example, external security contracts or 'agency' staff), as well as the specific circumstances under which the exemptions apply

- ✓ relevant policies and procedures include information about what is meant by a 'prohibited person', as set out in section 3(1) of the Firearms Act
- ✓ employment processes are in place to keep the health service informed of any *current* or *potential* employees who are 'prohibited persons' (and therefore not exempt from the specific breaches of the Acts), and that these employees and their managers are aware that the exemptions do not apply to prohibited persons
- ✓ affected staff members are aware of their responsibilities under the Firearms Act and Control of Weapons Act and that policies and procedures reflect and support lawful actions
- ✓ these legislative changes and this factsheet are included on the agenda of the organisation's *Police and other key agencies collaborative committee* (however titled)
- ✓ joint agreements with local police are in place regarding the processes for safe storage of weapons while awaiting collection by the police and the safe disposal of weapons
- ✓ processes are in place for accurate reporting and reviewing of incidents where health care workers need to take possession of a firearm or other weapon in the course of carrying out their duties.

Health services are encouraged to consult their local police and legal counsel when developing or reviewing policies and procedures that are affected by these legislative changes.

The changes and implications for health service employers and employees

What are the new sections in the *Firearms Act 1996* and the *Control of Weapons Act 1990*?

A new section 54AA has been inserted into the Firearms Act and a new section 7A has been inserted into the Control of Weapons Act. These new sections should be read in conjunction with other relevant sections.

What are the exemptions?

Section 54AA of the Firearms Act exempts specified health service workers, in specific circumstances, from committing an offence when 'possessing' a firearm. Section 7A of the Control of Weapons Act exempts specified health service workers from committing an offence when 'possessing' a controlled weapon, prohibited weapon or dangerous item.

What are the specific circumstances?

The specific circumstances under which the exemptions apply are that the health service worker, in the course of carrying out his or her duties, takes possession of a firearm or other weapon that is either:

- a) given to them by a patient; or
- b) removed from a patient; or
- c) found in the vicinity of the patient; or
- d) given to them by a health service worker who has taken possession of the firearm or weapon in one of the above circumstances.

Which health service workers are exempt?

The exemptions only apply to the health service workers specified in the new sections of the Firearms Act and Control of Weapons Act. The specified health service workers are:

- health professionals (nurses and midwives, registered medical practitioners, registered psychologists)
- health service security guards (defined in the Firearms Act and Control of Weapons Act as 'a security guard licensed under the *Private Security Act 2004* when working in a health service facility as a contractor or an employee')
- ambulance workers (defined in the Firearms Act and Control of Weapons Act as 'an operational staff member of the ambulance services as defined in the *Ambulance Services Act 1986*').

Note: The exemptions do not apply to a health service worker who is a 'prohibited person'.

What is a 'prohibited person'?

The definition of 'prohibited person' as set out in the 'definitions' section 3(1) of the Firearms Act includes (but is not limited to) a person who is convicted of an indictable offence or assault, or who is subject to a final order under the *Family Violence Protection Act 2008* or *Stalking Intervention Orders Act 2008*.

In what areas do the exemptions apply?

For specified health professionals and health service security guards, these exemptions only apply within a health service facility. For ambulance workers, exemptions extend to public places. A health service facility is:

- a day procedure centre; or
- a denominational hospital; or
- a multi purpose service; or
- a private hospital; or
- a public health service; or
- a public hospital;

as defined in the *Health Services Act 1988*.

What requirement is there to notify police?

Section 54AA (4) of the Firearms Act and section 7A (4) of the Control of Weapons Act require the police to be notified as soon as practicable after a health service worker has taken possession of a weapon. Joint agreements should be negotiated to ensure that weapons are then collected by Victoria Police, in accordance with agreed local procedures and timeframes. Principles 2.3 and 3.3 in the *Deter, detect and manage* guide continue to apply in relation to these requirements.