



TERRITORY OF HEARD ISLAND AND MCDONALD ISLANDS

Weapons Ordinance 2001

Ordinance No. 1 of 2001 as amended

made under the

Heard Island and McDonald Islands Act 1953

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An Ordinance to regulate the manufacture, possession and use of weapons in the Territory

Part 1 Preliminary

1 Name of Ordinance [see Note 1]

This Ordinance is the *Weapons Ordinance 2001*.

2 Commencement

This Ordinance commences on gazettal.

3 Repeals

- (1) The *Weapons Ordinance 1993* is repealed.
- (2) The following laws of the Australian Capital Territory are repealed in their application to the Territory:
 - *Firearms Act 1996*
 - *Prohibited Weapons Act 1996*.

4 Definitions

- (1) In this Ordinance:

authorised AFMA officer means an officer within the meaning of paragraph (a) of the definition of *officer* in subsection 4 (1) of the *Fisheries Management Act 1991*.

Director means the Director of the Division.

Division means the Australian Antarctic Division of the Department.

firearm means a device designed or adapted to discharge shot, bullets or other projectiles by means of an explosive charge or a compressed gas, whether fitted with a magazine or other feeding device or not, but does not include the following devices:

- (a) a nailing or stapling gun;

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- (b) an explosive-powered fixing tool;
- (c) a flare gun, or other signalling device, designed for emergency or life-saving purposes;
- (d) a line-thrower;
- (e) a tranquilliser gun;
- (f) a gun that operates a captive bolt for the slaughter of animals;
- (g) a device for the casting of weighted nets;
- (h) an underwater powerhead.

Register means the register of weapons established under section 19.

weapon means:

- (a) a firearm; or
 - (b) a tranquilliser gun; or
 - (c) a crossbow; or
 - (d) an article of a kind mentioned in item 8, 9, 12, 13, 14, 18, 18A, 18B, 18C, 18D, 19, 19A, 20, 21, 22, 23 or 29A of Schedule 2 to the *Customs (Prohibited Imports) Regulations 1956* of the Commonwealth; or
 - (e) an article prescribed under subsection (2).
- (2) For paragraph (e) of the definition of **weapon** in subsection (1), the Minister may make regulations prescribing an article that is designed or adapted, or is capable of being adapted to harm or incapacitate a person or an animal.

5 Application of this Ordinance

This Ordinance does not apply to the possession or use of a weapon by any of the following persons in the performance of his or her functions or duties:

- (a) a police officer who is on duty;
- (b) a member of the Defence Force;
- (c) an officer of the Australian Protective Service;
- (d) an officer of the Australian Customs Service;
- (e) an authorised AFMA officer.

Section 5A**5A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to offences against this Ordinance.

Note Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Part 2 Possession, use, manufacture and storage of weapons

6 Possession and use of weapons

- (1) A person must not intentionally possess or intentionally use a weapon except as permitted under section 7, 8 or 9.

Penalty: 300 penalty units.

- (2) A person must not intentionally possess or intentionally use an automatic or semi-automatic weapon in the Territory.

Penalty: 300 penalty units.

7 When possession of weapon is permitted

- (1) A person may possess a weapon only if the requirements of subsections (2), (3), (4), (5) and (6), as far as applicable, are complied with.

- (2) A person is permitted to possess a weapon only if:

(a) the weapon is:

- (i) of a kind specified in a declaration under section 14; and
- (ii) for use by a person for the project specified in the declaration; and

(b) the person:

- (i) is working on the project; or
- (ii) has manufactured the weapon for the project in accordance with an approval under section 13.

- (3) If the weapon was acquired by the person in a State or an internal Territory and is of a kind that must be registered in that State or Territory, the weapon must be registered in that State or Territory.

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- (4) If the weapon is of a kind for which a licence or permit is required in the State or internal Territory in which the weapon is registered, the person must hold a licence or permit in a State or an internal Territory for a weapon of that kind.
- (5) If the weapon was manufactured in the Territory, the weapon must have been manufactured in accordance with an approval given under section 13.
- (6) The person must be registered as the owner of the weapon:
 - (a) in the Register; and
 - (b) if subsection (3) applies to the weapon — in the State or Territory in which the weapon is registered.

8 Authorisation by employee of Division

- (1) An employee of the Division may, in accordance with this section, authorise a person to possess or use a weapon referred to in subsection (2).
- (2) For subsection (1), the weapon must be owned by the Division and registered in the employee's name in a State or an internal Territory.
- (3) An employee of the Division must not authorise a person to possess or use a weapon unless:
 - (a) the person requires the weapon for a purpose mentioned or referred to in subsection 7 (2); and
 - (b) if the weapon is of a kind for which a licence or permit is required in the State or internal Territory in which the weapon is registered — the person holds a licence or permit in a State or an internal Territory for a weapon of that kind; and
 - (c) if the weapon was manufactured in the Territory — the weapon was manufactured in accordance with an approval given under section 13.
- (4) An authorisation must:
 - (a) be in writing; and
 - (b) be signed by the employee and the person to be authorised; and

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- (c) include details of the weapon sufficient to identify it; and
 - (d) include the name, address, date of birth and sex of the person to be authorised; and
 - (e) if the weapon is of a kind for which a licence or permit is required in a State or an internal Territory — include details of the licence or permit held by the person to be authorised.
- (5) If an employee of the Division authorises a person under subsection (1), the employee must send a copy of the authorisation to the Director as soon as practicable.
- (6) If the employee refuses to authorise a person, the employee must give written notice to the person of:
- (a) the refusal; and
 - (b) the reasons for the refusal.

9 Use of weapons

A person is permitted to use a weapon if:

- (a) the weapon is of a kind specified in a declaration under section 14; and
- (b) the person is permitted, under section 7 or 8, to possess the weapon; and
- (c) the weapon is used for the project specified in the declaration.

10 Contravention of licence conditions

A person who holds a licence or permit (being a licence or permit that is subject to a condition) for a weapon must not intentionally contravene the condition:

- (a) if the person knows of the existence and terms of the condition; or
- (b) is reckless as to whether the condition exists, or as to its terms.

Penalty: 50 penalty units.

Section 12

11 Manufacture of weapons

- (1) A person must not intentionally:
 - (a) manufacture a firearm in the Territory; or
 - (b) arrange for a firearm to be manufactured in the Territory.Penalty: 300 penalty units.
- (2) A person must not, without the Director's approval under section 13:
 - (a) manufacture a weapon in the Territory; or
 - (b) arrange for a weapon to be manufactured in the Territory.Penalty: 50 penalty units.
- (3) A person who manufactures a weapon in the Territory, or arranges for a weapon to be manufactured in the Territory, must tell the Director in writing about the manufacture as soon as possible.
Penalty: 50 penalty units.
- (4) A contravention of subsection (2) or (3) is an offence of strict liability (within the meaning given by section 6.1 of the *Criminal Code*).

12 Application for approval to manufacture weapons

- (1) A person may apply to the Director for approval to manufacture a weapon other than a firearm in the Territory, or to arrange for a weapon other than a firearm to be manufactured in the Territory, for:
 - (a) a project mentioned in a declaration under section 14; or
 - (b) a project for which the person has applied for a declaration under section 14.
- (2) An applicant for an approval under subsection (1) must specify the kind of weapon to be manufactured and the project for which the weapon is to be used.

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13 Approval to manufacture weapon

- (1) The Director may approve or refuse to approve an application under section 12.
- (2) However, if the weapon to be manufactured is of a kind for which a licence or permit is required in a State or an internal Territory, the Director must not approve an application unless the applicant holds a licence or permit for that kind of weapon in the State or the internal Territory.
- (3) An approval under subsection (1) must:
 - (a) specify the kind of weapon to be manufactured and the project for which the weapon may be used; and
 - (b) be published in the *Gazette*.
- (4) If the Director refuses an application, the Director must give written notice to the applicant of:
 - (a) the refusal; and
 - (b) the reasons for the refusal.

14 Declaration of scientific project

- (1) If there are reasonable grounds for believing that a project is advantageous to scientific research, the Director may declare that:
 - (a) the project is advantageous to scientific research; and
 - (b) a kind of weapon specified in the declaration may be used for the project by a person working on the project.
- (2) A person may apply to the Director for a declaration under subsection (1).
- (3) A declaration under subsection (1) must be published in the *Gazette*.
- (4) If the Director refuses an application for a declaration, the Director must give written notice to the applicant of:
 - (a) the refusal; and
 - (b) the reasons for the refusal.

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15 Movement of weapons into and out of Territory

- (1) A person who brings a weapon into the Territory must tell the Director in writing as soon as practicable after entering the Territory that he or she has done so.

Penalty: 50 penalty units.

- (2) A person who takes a weapon out of the Territory must tell the Director in writing as soon as practicable after leaving the Territory that he or she has done so.

Penalty: 50 penalty units.

- (3) A contravention of subsection (1) or (2) is an offence of strict liability (within the meaning given by section 6.1 of the *Criminal Code*).

Note The *Customs (Prohibited Imports) Regulations 1956* apply to the importation of certain kinds of weapons into Australia from the Territory. If weapons are returned to Australia from the Territory, the importation must comply with those regulations.

16 Safekeeping of weapons

- (1) A person who possesses a weapon must take reasonable precautions to ensure that the weapon:
- (a) is not lost or stolen; and
 - (b) does not come into the possession of a person who is not permitted to possess it.

Penalty: 120 penalty units.

- (2) A person contravenes subsection (1) if the person intentionally does an act or omits to do an act, and is reckless as to whether the act or omission may result in the weapon:
- (a) being lost or stolen; or
 - (b) coming into the possession of a person who is not permitted to possess the weapon.

17 Storage of weapons and ammunition

- (1) If a person possesses a weapon, and the weapon is not being used or carried, the person must store it in a locked container:

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- (a) made of hard wood or steel of a thickness that is not easily penetrable; and
- (b) if weighing less than 150 kilograms when empty — fixed to the floor or wall so that it cannot be easily moved; and
- (c) held closed by locks of solid metal.

Penalty: 50 penalty units.

- (2) A person who possesses a weapon and ammunition for it must store the ammunition in a locked container separate from any weapon.

Penalty: 50 penalty units.

- (3) A contravention of subsection (1) or (2) is an offence of strict liability (within the meaning given by section 6.1 of the *Criminal Code*).

18 Transport of weapons and ammunition

- (1) If:

- (a) a person intends to take a weapon on to a ship; and
- (b) the ship is in, or bound for, the Territory;

the person must tell the master of the ship, before boarding the ship, of his or her intention to take a weapon onto the ship.

Penalty: 50 penalty units.

- (2) If:

- (a) a person takes a weapon on to a ship; and
- (b) the ship is in, or bound for, the Territory;

the person must store the weapon and its ammunition (if any) as directed by the master.

Penalty: 50 penalty units.

Note A ship's master may be authorised under other legislation to refuse to allow the weapon on board.

- (3) If:

- (a) a person intends to take a weapon on board an aircraft; and

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(b) the aircraft is in, or bound for, the Territory;
the person must tell the captain of the aircraft, before boarding the aircraft, of his or her intention to take a weapon into the aircraft.

Penalty: 50 penalty units.

(4) If:

(a) a person takes a weapon on board an aircraft; and

(b) the aircraft is in, or bound for, the Territory;

the person must store the weapon and its ammunition (if any) as directed by the captain.

Penalty: 50 penalty units.

Note An aircraft captain may be authorised under other legislation to refuse to allow the weapon on board.

(5) A contravention of subsection (1), (2), (3) or (4) is an offence of strict liability (within the meaning given by section 6.1 of the *Criminal Code*).

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Part 3 Register of weapons

19 Register of weapons

- (1) The Director must compile and keep a register of weapons in the Territory, including weapons manufactured in the Territory.
- (2) The register must include the following information, as far as applicable, for each weapon:
 - (a) details of the weapon, including its serial number (if any), sufficient to identify the weapon;
 - (b) if the weapon is a firearm — the identifying number of any spare barrel for the firearm, if that barrel and the firearm are of a different calibre;
 - (c) if the weapon is registered in a State or an internal Territory:
 - (i) the name of the State or Territory; and
 - (ii) the name, address, date of birth and sex of the person registered in the State or Territory as the owner of the weapon;
 - (d) if a person is registered in a State or an internal Territory as the owner of the weapon and the weapon is of a kind for which a licence or permit is required in that State or internal Territory — details of the grant to the person of a licence or permit for a weapon of that kind, and of any renewal, suspension, cancellation or surrender of that licence or permit;
 - (e) if the weapon is not registered in a State or an internal Territory — the name, address, date of birth and sex of the owner of the weapon and, if applicable, details of the licence or permit held by the person for a weapon of that kind;
 - (f) if an employee in the Division has, under section 8, authorised another person to use the weapon:
 - (i) the name, address, date of birth and sex of the other person; and

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- (ii) if applicable, details of the licence or permit held by the person for a weapon of that kind;
 - (g) the date when the person recorded in the Register as the owner of the weapon acquired or disposed of the weapon, and the name and address of the person from whom it was acquired or to whom it was disposed of.
- (3) The Register may be kept by means of a computer.

Section 20

Part 4 Administrative review

20 Review of decisions made by employee of Division

- (1) A person may apply to the Director for review of a decision by an employee in the Division to refuse to authorise the person under section 8 to possess or use a weapon.
- (2) An application under subsection (1) must:
 - (a) be in writing; and
 - (b) be made within 28 days after the person receives notice of the employee's decision; and
 - (c) set out the person's reasons for applying for review.
- (3) If the Director receives a request for review mentioned in subsection (1), the Director must review the decision and may confirm, revoke or vary the decision.
- (4) As soon as practicable after the Director confirms, revokes or varies the decision, the Director must give the applicant written notice of:
 - (a) the decision; and
 - (b) the reasons for the decision.
- (5) A failure to comply with subsection (4) in relation to the confirmation, revocation or variation of a decision does not affect the validity of the confirmation, revocation or variation.

21 Review of decisions made by Director

A person may apply to the Administrative Appeals Tribunal for review of a decision by the Director:

- (a) to refuse to approve the manufacture of a weapon under section 13; or
- (b) not to make a declaration under section 14; or
- (c) to confirm, revoke or vary the decision of an employee under section 20.

Table of Ordinances

Notes to the Weapons Ordinance 2001**Note 1**

The *Weapons Ordinance 2001* (in force under the *Heard Island and McDonald Islands Act 1953*) as shown in this compilation comprise Ordinance No. 1 of 2001 amended as indicated in the Tables below.

Table of Ordinances

Year and number	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
No. 1, 2001	10 May 2001	10 May 2001	
No. 1, 2002	21 Feb 2002	21 Feb 2002	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 5A	ad. No. 1, 2002
