

DRAFT HUMAN RIGHTS CERTIFICATE

Firearms Regulations 2018

I, Lisa Neville, Minister for Police and Minister responsible for administering the *Firearms Act 1996* certify that, in my opinion, the proposed **Firearms Regulations 2018** (Regulations) do not limit the human rights set out in the **Charter of Human Rights and Responsibilities Act 2006** (Charter); however, to the extent that they might, those limitations are reasonable and demonstrably justified in a free and democratic society.

1. Provision of Personal Information

Section 13 of the Charter provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The collection, storage and use of personal information is relevant to a person's enjoyment of this right.

Regulations 10, 12, 13 and schedules 1 and 2 specify the particulars of information to be recorded in a register as required by sections 24 and 87 of the *Firearms Act 1996* (Act). Regulation 27 prescribes the particulars of search records for the purposes of sections 149A(1) and 153B(1) of the Act. Schedule 9 of the Regulations sets out the form of the report required to be produced under section 123C of the Act. The particulars of information required by schedules 1, 2 and 9 include the provision of personal information such as a person's name and address, date of birth and details of club memberships. Regulation 8 also requires that a name, address and contact telephone number be provided when a police officer is notified that sport or target shooting will be conducted on a private property.

Regulations 10, 12, 13 and schedules 1, 2 and 9 engage section 13 of the Charter, however, the right is not limited as it is lawful and authorised by the Act and the Regulations. Additionally, the section 13 Charter right is not arbitrary as the aforementioned regulations are limited and confined to the provision of personal information necessary for the regulation administration of firearms. Victoria Police may use personal information collected under the Regulations to trace firearms and determine whether they have been misused or diverted to the illegal market. To the extent that the Regulations might limit the section 13 Charter right, those limitations are reasonable and justified because the disclosure of personal information is necessary for the purpose of the proper regulation of firearms in the interests of safety and public peace.

2. Searches of persons or vehicles

(a) The right to privacy

Section 13 of the Charter provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Regulation 25 outlines the manner in which searches may be conducted by a police officer or an authorised officer (an Officer) when a search is conducted pursuant to section 149 or 153A of the Act. Regulation 25(1)(c) provides that an Officer may request that a person remove their outer clothing, gloves, shoes or headgear for the purposes of conducting a 'pat down' search or for an electronic metal detection device to be utilized (the search powers). The search power in regulation 25 is not arbitrary as sections 149 and 153A of the Act provide

that a person may only be searched in circumstances where an Officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence under the Act, and has firearms, ammunition or related items in their possession. The search powers may give rise to a prima facie interference with a person's right to privacy; however, the interference is not arbitrary because firearms, ammunition or related items could be concealed in or by clothing, such as a bulky coat or jacket. The search powers enable an Officer to locate firearms and related items quickly, in the interests of their own safety and that of the community.

To the extent that regulation 25(1)(c) might limit the right to privacy under section 13 of the Charter, the limitation is lawful as the search is authorised by the Regulations. The search powers are not arbitrary and are reasonable and proportionate to ensure that an Officer has the authority to locate firearms, ammunition and related items that may be concealed in or by outer clothing, such as a bulky coat or jacket. The purpose of the search powers is to protect the safety of the community and protect the rights to life, liberty and security of others. Those rights are expressly protected by the Charter (sections 9 and 21). There are no less restrictive means reasonably available to achieve the purpose, with the search powers subject to the following limitations:

- an Officer must afford the person being searched reasonable privacy (regulation 25(4)(a));
- the search must be conducted as quickly as is reasonably practicable (regulation 25(4)(b));
- if the search involves the running of hands over a person's outer clothing the person is to be searched by an Officer who is of the same gender as the gender identified by the person to be searched (regulations 25(1)(b), 25(1)(b)(ii) and 25(5));
- the regulation does not confer a strip-searching power, nor does it permit a person to be exposed down to their underwear.

Accordingly, to the extent that regulation 25 limits section 13 of the Charter, the limits are reasonable and justified.

(b) Freedom of thought, conscience, religion and belief and cultural rights

Section 14 of the Charter provides that every person has the right to freedom of thought, conscience, religion or belief. Section 19 of the Charter also recognises a person's right to enjoy their culture and to declare and practice their religion. Regulation 25(1)(c) outlines the search powers of an Officer. In some cases it may be necessary for the person being searched to remove items that may be contrary to that person's religious beliefs or contrary to their religious or cultural practices. Regulation 25(2) provides that an Officer must, if reasonably practicable, permit any such item to be removed out of public view. To the extent that regulation 25(1)(c) may limit sections 14 and 19 of the Charter, the limitations are reasonable and justifiable in a free and democratic society for the same reasons discussed in the 'right to privacy' section above. It is important to note that if an Officer requests the removal of an item of clothing they believe is being worn for religious or cultural reasons, the person must be permitted to remove the item out of public view. Therefore, to the extent that regulation 25 limits section 14 and 19 of the Charter, those limits are reasonable and justified.

(c) Searching children

Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in their best interests and is needed by them by reason of being a child. The right recognises the special vulnerability of children. Section 3 of the Charter defines a child as a person under the age of 18. As the search powers in sections 149 and 153A of the Act authorise searches of children as well as adults, the search provisions contained in regulations 25 and 26 engage section 17(2) of the Charter.

The search power safeguards that apply to adults in regulation 25 (outlined above) will also apply to children. Accordingly, a search must afford the child reasonable privacy; be conducted as quickly as is reasonably practicable; and be conducted by an Officer of the same gender as the gender identified by the child to be searched. The regulation does not allow a child to be strip-searched or exposed down to their underwear. Regulation 26 provides additional safeguards for children when being searched. Pursuant to regulation 26(1) when a search is to be conducted on a child who is a student at a school, the child may nominate an adult who is on school premises to be present during the conduct of a search, if this is reasonably practicable. Regulation 26(2) provides that if the child nominates an adult, reasonable steps must be taken to ensure that the adult is present during the search. Regulation 27 provides that searches undertaken for the purposes of sections 149A(1) and 153B(1) of the Act are to be recorded. The record must include the details of the nominated adult who was present during the search of the child at school.

The search powers applicable to children may limit the section 17(2) Charter right however, the limitation is reasonable and justifiable in a free and democratic society. It is acknowledged that the impact of a search on a child is likely to be more adverse as a result of their special vulnerability of being a child. The safeguards provided in regulations 25 and 26 represent the least restrictive means reasonably available to achieve the objectives. In particular, the requirement that an adult be present during the search of a child at a school seeks to protect the child's best interests by allowing for an independent third party to be present, thereby minimising the potential harm caused by the search. It may not always be practicable to have the adult as nominated by the child present when a search at a school is being conducted; for example, the adult may not be available due to counselling or teaching duties. Additionally, there may be an immediate need to protect the child from harm or to protect the safety and wellbeing of students at the school where firearms or related items may be in the child's possession.

The safeguards limit the intrusion of child's best interests as is needed by reason of them being children. When conducting a search of a child, an Officer can protect the child's best interests by taking into account their age and special vulnerability and ensuring that reasonable privacy is provided to the child. Limiting searches to only a child's outer clothing also reduces the intrusiveness of a search and thereby limits the harm that may be caused to a child by the search. Likewise, the requirement that, where practicable, the search be conducted by an Officer of the same gender identified by the child minimises harm caused by the search.

The purpose of the limitation is to protect the safety of the community and protect the rights to life, liberty and security of others. Those rights are expressly protected by the Charter (sections 9 and 21). The limitation will only manifest when the exigencies of the circumstances require that the child be searched. If a child has possession of firearms, ammunition or related items it is imperative that an Officer can conduct a search to prevent firearm-related offending occurring irrespective of whether the child's nominated adult is present. If the safety of the child or the school is at risk there is no less restrictive means reasonably available to achieve the purpose. The limit upon the rights of the child is therefore

reasonable and justifiable in a free and democratic society based on human dignity, equality and freedom.

(d) Other rights

The exercise of search powers in accordance with regulation 25 may also limit rights such as the right to freedom of movement (section 12 of the Charter) and the right not to be subjected to degrading treatment (section 10 of the Charter). However, for the same reasons as set out above, these limits are reasonable and justified in a free and democratic society. As explained above, safeguards have been included to ensure that the search powers are exercised in the least restrictive way, to respect the dignity of the person whilst balancing the interests of community safety.

Dated:

LISA NEVILLE
Minister for Police