



LAW REFORM COMMISSION
of
WESTERN AUSTRALIA

REVIEW OF THE *FIREARMS ACT* *1973 (WA)*

PROJECT 105 DISCUSSION PAPER

OCTOBER 2015

THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA

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ABBREVIATIONS USED

2008 Police Review	The review of the <i>Firearms Act 1973</i> (WA) conducted by the Western Australia Police in 2008
Commission	The Law Reform Commission of Western Australia
Firearms Act	<i>Firearms Act 1973</i> (WA)
Firearms Regulations	<i>Firearms Regulations 1974</i> (WA)
Police Commissioner	The Commissioner of Police, Western Australia
SAT	State Administrative Tribunal

SUBMISSIONS

The Law Reform Commission welcomes your submission and response.

Please send your submission to the email address firearmsreview@justice.wa.gov.au

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ACKNOWLEDGEMENTS

Sarah Burnside conducted the research and wrote the Discussion Paper.

Dominic Fernandes conducted the editing and prepared the Discussion Paper for publication.

1. TERMS OF REFERENCE

On 24 February 2014 the Attorney General requested that the Law Reform Commission report on the *Firearms Act 1973* (WA). In particular, the Commission was asked to:

1. provide advice on and recommend appropriate legislative and/or procedural changes with regard to the licensing and storage of firearms, definitions and categorisation of firearms, and effects of changes in firearm technology incorporating national initiatives where appropriate.
2. provide advice on and recommend appropriate legislative changes regarding penalties for firearm offences and, in so doing, consider consistency with penalties in other Australian states and territories.
3. review any relevant issues arising from the recent 'Operation Unification', the Auditor General's Reports on firearms licensing, Joint Standing Committee on Delegated Legislation Report 68, Explanatory Report in relation to the Firearms Amendment Regulations 2013 and any other relevant Parliamentary Inquiry.
4. provide advice on any other relevant matters.

1.1 Background to Reference

The *Firearms Act 1973* (WA) has come under sustained criticism in recent years by firearms owners, dealers and their representative bodies, and the need for a review has been raised in several different contexts.

In 2008 the Western Australia Police conducted a review of the *Firearms Act 1973* (WA) (hereinafter referred to as 'the 2008 Police Review'), noting that there had never been a full review of the Act and that many of the amendments made to the Act were 'expedited due to the nature of the incidents prompting the legislative change' and that accordingly the legislation was 'a patchwork of amendments that make it quite fragmented and difficult to read'.¹ This review did not result in any amendments to the *Firearms Act*, but its recommendations for legislative change are discussed below where relevant.

More recently, a report of the Joint Standing Committee on Delegated Legislation in relation to the Firearms Amendment Regulations 2013 suggested that, given concerns expressed by stakeholders about the administrative processes undergone to obtain a licence, the *Firearms Act* 'should be reviewed as a matter of urgency to eliminate double handling and inconsistencies and clarify legislative intent' and that such a review 'should ensure that any future licensing process is as cost-efficient as possible'.² The Committee formally recommended that 'the Minister initiate a review of the *Firearms Act 1973* (WA) and advise the Legislative Council and the Legislative Assembly of the timeframe for the review'.³

Speaking in Parliament on 28 November 2013 in response to a grievance about the administration of the *Firearms Act*, the Police Minister, the Hon Liza Harvey MLA, stated:

Police processes for firearms licensing have been established to comply with the *Firearms Act 1973* and are based on extensive legal interpretation and case law that has been built up over a considerable time. Therefore, it is my view that to make the firearms licensing process more efficient and for the process to meet the expectations of the Western Australian community, we need to make legislative changes and modernise the Act. That is why I have been liaising with the Attorney General, who has agreed to the Law Reform Commission undertaking a review of the *Firearms Act 1973*...I believe that [the review] will provide the right balance between the needs and the requirements of not only consumers in the recreational shooting community, but also police compliance and community public safety requirements.⁴

This review, in short, stems from criticisms made of the Western Australian firearm regulation system over a number of years. Speaking in Parliament on 21 October 2014, the Attorney General, the Hon Michael Mischin MLC, stated: 'I entirely accept, the Minister for Police entirely accepts and the government entirely accepts that the licensing system is broken and that the *Firearms Act 1973*, that forms the linchpin to it and the regulations that flow from that, need to be reviewed'.⁵

1 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 9.

2 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations, October 2013, 16.

3 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, i.

4 Extract from *Hansard*, Legislative Assembly, Thursday 28 November 2013, 2.

5 *Hansard*, Legislative Council, 21 October 2014, 7524.

1.2 Scope of Reference

The Commission's Terms of Reference are broad in scope. Firstly, they require the Commission to consider and make recommendations on both legislative and procedural changes in the areas of licensing, storage, definitions, categorisations and effects of changes in firearm technology. These are all areas on which there has been debate in recent years.

The Commission is also asked to provide advice on and recommend appropriate legislative changes regarding penalties and, in so doing, to consider consistency with penalties in other Australian jurisdictions. This Term of Reference refers to 'penalties for firearm offences' and, as not all offences involving firearms are contained in the *Firearms Act*, it has also been necessary to consider some other legislation, in particular the *Criminal Code*.

The Commission is also to review relevant issues arising from:

- the recent 'Operation Unification' (a two-week national campaign against unlicensed firearms, which took place in Western Australia in June 2013 and June 2014);
- the Auditor General's Reports on the firearms licensing system used by Western Australia Police;
- Report 68 of the Joint Standing Committee on Delegated Legislation – 'Explanatory Report in relation to the Firearms Amendment Regulations 2013'; and
- any other relevant Parliamentary Inquiry.

The named reports are largely procedural in nature. Since the Terms of Reference were set, two additional parliamentary inquiries have been held which are relevant to this review. These are:

- the inquiry conducted by the Western Australian Standing Committee on Public Administration into recreational hunting systems on public lands,⁶ and
- the inquiry conducted by the Senate Legal and Constitutional Affairs References Committee into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community.⁷

Each of these reports and inquiries are considered in the Discussion Paper. In addition, in Annexure 1, relevant aspects of the Joint Commonwealth–New South Wales review of the tragic Martin Place siege, which took place in December 2014, are summarised.

Finally, the Terms of Reference require the Commission to provide advice on any other relevant matters.

As discussed in this paper, the *Firearms Act* operates within a national context and has been amended in line with National Agreements from 1996 and 2002. The Terms of Reference do not require the Law Reform Commission to deviate from these National Agreements. Instead, in the first Term of Reference, the Commission has been asked to 'incorporate national initiatives where appropriate' and the second Term of Reference refers to consistency with other Australian jurisdictions with respect to penalties. However, neither do the Terms of Reference limit the Commission to the parameters of existing licensing frameworks in Australia. In exploring proposed changes to the *Firearms Act* raised by the Terms of Reference, the Commission has given due weight to the status of the 1996 and 2002 National Agreements but has also considered suggestions that differ from them.

1.3 Methodology

The Commission received draft Terms of Reference on 13 December 2013 and the final Terms of Reference were made available on 24 February 2014. In June 2014 the Commission commenced preliminary research on the *Firearms Act*.

While there is no formal call for submissions at the pre-Discussion Paper stage, the Commission conducted targeted consultation to flesh out the issues raised by the Terms of Reference and also received submissions from a number of interested parties.

Consultations began on 30 June 2014 and continued throughout the preparation of this Discussion Paper. The Commission consulted on multiple occasions with personnel from Western Australia Police, including officers who are responsible for implementing the *Firearms Act* as well as seeking information from Australia Post, which also plays a role in the licencing process, and from the State Administrative Tribunal.

6 Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 10 March 2015, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

7 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

The Commission also consulted with the firearms owners who are members of the Firearms Reference Group, which meets with Western Australia Police on a regular basis. The Firearms Reference Group includes individuals from a number of different interest groups within the firearms community, including the WA Firearms Traders Association, the West Australian Field & Game Association Inc., the West Australian Rifle Association, the Sporting Shooters Association of Australia (WA), the WA Arms & Armour Society, the International Practical Shooting Confederation of Western Australia, the WA Farmers Federation, the WA Shooting Association, the Western Australian Clay Target Association and the WA Pistol Association. In addition to consulting with the Firearms Reference Group, the Commission attended several meetings that took place between Western Australia Police and the Firearms Reference Group. The Commission also met with the Hon Rick Mazza MLC of the Shooters and Fishers Party and the Public Health Association of Western Australia (WA Branch) and received 17 written submissions.

The Commission attended the Western Australia Police Licensing Centre to observe how licence applications are processed, and also visited the dealership and workshop of Mr Ron Bryant, President of the Sporting Shooters Association of Australia (WA), and the private Colonial Arms Museum maintained by Dr Leo Laden. The Commission attended a presentation on 3D printing by Mr John Hornick from the United States firm Finnegan Henderson, hosted by LESANZ, the Licensing Executives Society.

The Commission requested and obtained information and data from Western Australia Police regarding the operation of the *Firearms Act*. In addition, the Commission received information from the Police Ministers of the Northern Territory, Queensland, South Australia, Tasmania and Victoria about the operation of firearms legislation in those jurisdictions.

The information provided by stakeholders was invaluable in the preparation of this Discussion Paper. The Commission is very grateful to all the stakeholders who took the time to provide what was in many instances extremely detailed feedback on the operation of the *Firearms Act* and of other relevant legislation.

2. THE NATIONAL FRAMEWORK

2.1 Firearms Legislation in Western Australia

The first piece of legislation passed in Western Australia to regulate firearms was the *Gun License Act 1885 (WA)*, which was repealed and replaced by the *Firearms and Guns Act 1931 (WA)*. The 1931 Act was subsequently repealed and replaced in turn by the *Firearms Act*.

The licensing regime in the *Firearms Act*, whereby both firearms and their holders are subject to licensing requirements, is of long duration. In the second reading speech in 1973 the then Police Minister, the Hon John Dolan, noted that the new Act proposed to include the following provisions:

- '(1) Every person who handles a firearm to be subject to some form of licensing.
- (2) Every firearm in Western Australia to be subject to licensing, registration and identification and linked with an individual owner. This excludes affiliated members of the WA Rifle Association and the Small Bore Rifle Association, who possess a rifle for range shooting and are subject to Commonwealth Defence Act regulations appertaining to rifle clubs.
- (3) The prohibition of certain types of firearms considered undesirable.
- (4) More stringent control on types of weapons, not generally acquired by the public but by sporting persons.
- (5) For certain types of firearms in common use for destruction of vermin by farmers and sporting purposes no changes are intended'.⁸

The *Firearms Act* has been amended several times since its passage, most notably in 1996 following the National Firearms Agreement, which is discussed further below at paragraph 2.3. However, Western Australia has had strong laws regarding the possession, ownership and use of firearms for many decades. It was noted during preliminary consultations that the Western Australian laws go well beyond those required to implement the 1996 and 2002 agreements.

In the second reading speech to the *Firearms Act Amendment Bill 1996*, The Hon Robert Wiese MLA, the then Minister for Police, advised that the amendments came about as a result of longstanding concerns about the adequacy of the Act 'expressed by members of the firearms trade, the judiciary, the police, shooting organisations and other interested parties', as well as the need to implement the 1996 National Firearms Agreement.⁹ By virtue of the 1996 National Firearms Agreement and other National Agreements discussed below, the *Firearms Act* does not sit in isolation but forms part of a national framework of firearm regulation.

All Australian jurisdictions have legislation¹⁰ that regulates the supply and use of firearms, establishes licensing systems and provides that the possession, use or sale of a firearm without the relevant authority constitutes an offence. This framework was arrived at via agreements made at various meetings of the Australasian Police Ministers' Council.

2.2 Background to the National Framework

Aspects of the National Agreements set out below were of long gestation, having already been proposed, both at earlier meetings of the Australasian Police Ministers' Council and in other fora. In particular, resolutions relating to uniformity were made and discussed at successive meetings of the Australasian Police Ministers' Council prior to 1996.

In 1987, in response to a mass shooting in Hoddle Street in Melbourne in which a gunman killed seven people and injured 19 others, a National Committee on Violence was established by agreement between the Prime Minister, Premiers and the Chief Minister of the Northern Territory. The National Committee on Violence was asked to report on issues including the contemporary state of violent crime in Australia, related social, economic, psychological and environmental aspects, and the development of strategies to prevent violence.¹¹

⁸ *Hansard*, Legislative Council, 3 April 1973, 548-549.

⁹ *Hansard*, Legislative Assembly, Thursday 26 September 1996, 6301, 6302.

¹⁰ *Firearms Act 1996 (ACT)*; *Firearms Act 1996 (NSW)*; *Firearms Act (NT)*; *Weapons Act 1990 (Qld)*; *Firearms Act 1977 (SA)*; *Firearms Act 1996 (TAS)*; *Firearms Act 1996 (Vic)*.

¹¹ National Committee on Violence, *Violence: Directions for Australia*, Canberra: Australian Institute of Criminology, 1990, xxi.

Its 1990 report, *Violence: Directions for Australia*, recommended, among other things, the enactment of uniform legislation throughout Australia to regulate the acquisition and possession of firearms, the introduction of uniform guidelines for all Australian police forces in the enforcement of firearms legislation, and the development of a national gun control strategy aimed at reducing the number of firearms in Australian society and preventing access to firearms by individuals who are not fit and proper persons, such as those who have been convicted of a violent crime or who have demonstrated a propensity for violence.¹² More specifically, the report recommended that state and territory governments prohibit all automatic longarms and certain types of ammunition, restrict semi-automatic longarms to individuals with a specific need, require the registration of all firearms in a computerised national firearms registry, institute a 28-day cooling-off period for applications, and require that only fit and proper persons with a genuine reason be able to obtain a licence.¹³

Following the Strathfield massacre in Sydney on 17 August 1991, at which a gunman killed seven people and wounded six before killing himself, a special meeting of the Australasian Police Ministers' Council was convened in October 1991 to discuss gun control. At this meeting, the Council made several recommendations for uniform firearm laws, including a ban on the sale of all military and military-style semi-automatic firearms, except for 'government and government-approved' purposes; a special licence required for possession of other centre-fire semi-automatic and self-loading shotguns; licensing for other classes of longarms based on a genuine reason (undefined) to own; national character checks on licence applications; a 28-day cooling-off between application and licence; that guns and ammunition must be stored separately and securely; and compulsory confiscation of guns on domestic violence call-outs or breach of licence conditions.¹⁴ However, the meeting did not come to an agreement on registration of firearms, which was opposed by New South Wales, Queensland and Tasmania.¹⁵

2.3 1996 amendments – the National Firearms Agreement

On Sunday 28 April 1996, Australia experienced the worst mass murder in its modern history when a lone gunman killed 35 people and injured 18 others at Port Arthur in south-eastern Tasmania. This tragedy, the Port Arthur Massacre, prompted substantial changes to firearms legislation throughout Australia. The 1996 National Firearms Agreement¹⁶ was reached twelve days after the massacre by the Australasian Police Ministers' Council. It resulted in the replacement or amendment of all existing firearms legislation, creating a high degree of commonality between the various Acts.¹⁷

The National Firearms Agreement resulted in all Australian jurisdictions banning all automatic and semi-automatic self-loading and pump action longarms, except where used for military, police or other government purposes, or for certain occupations (such as extermination of feral animals).¹⁸ Overall, the National Firearms Agreement comprised 11 subject headings and included agreement on:

- the need for nationwide registration of all firearms;
- the need for a genuine reason for owning, possessing or using a firearm (and that personal protection should not be regarded as a genuine reason for owning, possessing or using a firearm);
- the use of particular classifications to define the 'genuine reason' an applicant must show for owning, possessing or using a firearm;
- an additional requirement that over and above satisfaction of the 'genuine reason' test, an applicant for a licence for the categories B, C, D and H (see below) must demonstrate a genuine need for the particular type of firearm;
- the need for licence applicants to be over 18 years, be a fit and proper person, prove their identity and undertake adequate safety training;

12 National Committee on Violence, *Violence: Directions for Australia*, Canberra: Australian Institute of Criminology, 1990, 175.

13 National Committee on Violence, *Violence: Directions for Australia*, Canberra: Australian Institute of Criminology, 1990, 176.

14 See Dr Sandra Egger and Rebecca Peters, 'Firearms Law Reform: The Limitations of the National Approach' in Heather Strang and Sally-Anne Gerull (eds), *Homicide: Patterns, Prevention and Control*, Australian Institute of Criminology, Canberra, 1993, 202, accessed at http://aic.gov.au/media_library/publications/proceedings/17/egger-peters.pdf.

15 The proposals made at the October 1991 meeting of the Australasian Police Ministers' Council are discussed in Dr Sandra Egger and Rebecca Peters, 'Firearms Law Reform: The Limitations of the National Approach' in Heather Strang and Sally-Anne Gerull (eds), *Homicide: Patterns, Prevention and Control*, Australian Institute of Criminology, Canberra, 1993, 201-204, accessed at http://aic.gov.au/media_library/publications/proceedings/17/egger-peters.pdf.

16 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

17 Dixon N, 'Firearms offences in Queensland and other jurisdictions', e-research brief 2010/30, Queensland Parliamentary Library, 2.

18 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 2, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

- specifically, that licence applications are to be refused, or licences are to be cancelled, where a person is not of good character, has a conviction for an offence involving violence within the past five years, no longer has a genuine reason to possess a firearm, has been the subject of an Apprehended Violence Order, Domestic Violence Order, or restraining order, or is not mentally or physically fit;
- the adoption of a 28-day cooling-off period before licences are issued;
- the need for a separate permit to acquire in respect of each firearm obtained;
- uniform standards for the security and storage of firearms; and
- recording of sales of firearms, and that firearm sales only be conducted by or through licensed dealers.¹⁹

Jurisdictions also agreed on the following categories of firearms:

- Licence Category A: air rifles; rimfire rifles (excluding self-loading); single and double barrel shotguns;
- Licence Category B: muzzle-loading firearms; single shot; double barrel and repeating centre fire rifles; break-action shotgun/rifle combinations;
- Licence Category C (prohibited except for occupational purposes): semi-automatic fire rifles with a magazine capacity no greater than 10 rounds; semi-automatic shotguns with a magazine capacity no greater than five rounds; pump action shotguns with a magazine capacity no greater than five rounds;
- Licence Category D (prohibited, except for official purposes): self-loading centre fire rifles designed or adapted for military purposes or a firearm which substantially duplicates those rifles in design, function or appearance; non-military style self-loading centre fire rifles with either an integral or detachable magazine; self-loading shotguns with either an integral or detachable magazine and pump action shotguns with a capacity of more than five rounds; self-loading rimfire rifles with a magazine capacity greater than 10 rounds; and
- Licence Category H (Restricted): all handguns, including air pistols.

These categories, and the differences between types of firearms included in them, are discussed further in this paper at paragraph 7.4.

There was also a gun buyback scheme in operation during 1996–1997, during the course of which ‘643,726 newly prohibited semi-automatic and pump-action rifles and shotguns were purchased by the federal government from their civilian owners at market value’ and ‘[t]ens of thousands of gun owners also voluntarily surrendered additional, non-prohibited firearms without compensation’.²⁰

2.4 The 2002 National Firearms Agreements

Two additional agreements were developed in 2002.

The Australasian Police Ministers’ Council agreed to the National Firearms Trafficking Policy Agreement on 17 July 2002.

Later in 2002, a shooting occurred at Monash University in which two people were killed and five wounded. It was subsequently reported that the alleged assailant was a licensed pistol owner with access to several handguns.²¹ This incident led the Australasian Police Ministers’ Council to develop the National Handgun Agreement.

2.4.1 The 2002 National Firearms Trafficking Policy Agreement

The National Firearms Trafficking Policy Agreement sought to address the illegal firearms trade, and included matters such as:

- increasing border protection against illegal firearms;
- ensuring that provisions in the *Australian Postal Corporation Act 1989* (Cth) do not render invalid provisions in state and territory legislation regarding the sending of firearms through the mail;
- ensuring substantial penalties for the illegal possession of a firearm;
- introducing nationally consistent regulation of the manufacture of firearms;
- introducing offences relating to defacing serial numbers;
- introducing an offence of illegal manufacture that attracts substantial penalties;

19 Australasian Police Ministers’ Council, Special Firearms Meeting, 10 May 1996, Resolutions, 2–14, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

20 Chapman S, Alpers P Agho K and Jones M, ‘Australia’s 1996 gun law reforms: faster falls in firearm deaths, firearm suicides, and a decade without mass shootings’ (2006) 12 *Injury Prevention*, 365.

21 Phillips J, Park M and Lorimer C, ‘Firearms in Australia: A Guide to Electronic Resources’, Parliamentary Library, 9 August 2007, accessed at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0708/FirearmsAustralia.

- ensuring substantial penalties for the illegal possession of a firearm;
 - extending the definition of ‘possession’ to include circumstances where an illegal firearm is found in premises with a person or persons but is not actually physically possessed by any person;
 - proscribing certain persons from employment in firearm dealerships and introducing close association provisions for firearm dealers;
 - making it an offence to conspire to commit an interstate firearm offence;
 - introducing substantial penalties for firearm record falsification; and
 - establishing a Commonwealth cross-border firearms trafficking offence.²²
- if a club certifies that a person has satisfactorily complied with the conditions attached to the first six months’ probation, then during the second six months a person will only be permitted to own one .22” calibre pistol and .177” air pistol or one centrefire pistol and .177” calibre air pistol; and
 - after the initial 12-month period, the acquisition of additional handguns is subject to demonstration of genuine need and confirmation that the licensee has adequate storage arrangements in place and specification of the competition shooting discipline for which the handgun is required.²⁵

It was also agreed that a sporting shooter must be a member of a club to obtain a licence and that clubs required the power to request a police check on a person prior to accepting them as a member. Further, to prevent ‘club shopping’, it was agreed that a person wishing to join a club must provide details to the club of any other shooting clubs to which they belong and firearms they own, and that clubs should be able to request information from licensing authorities on a member’s or applicant’s ownership of handguns and membership of other clubs.²⁶

The National Handgun Agreement also included provisions regarding the refusal and revocation of handgun licences on the basis of criminal intelligence or any other relevant information.²⁷

In addition, the National Handgun Agreement set out additional requirements for collectors of historical firearms. These included:

2.4.2 The National Handgun Agreement 2002

The National Handgun Agreement comprised 28 resolutions aimed at restricting access to handguns in Australia. The Council of Australian Governments (COAG) endorsed these resolutions on 6 December 2002, which included restricting the classes of legal handguns that could be imported or possessed for sporting purposes to those which meet recognised sporting shooter classifications in the Olympic and Commonwealth Games and other accredited events.²³

The National Handgun Agreement included specific licensing requirements for handguns, providing for the introduction of graduated access to handguns for legitimate sporting shooters over a period of 12 months on the basis of training, experience and event participation.²⁴ The process agreed to was as follows:

- a person must obtain a police check and submit this with their application to join a shooting club (NSW agreed that police checks are required but reserved the right to determine the process);
- during the first six months the person must not be permitted to own a handgun, must satisfactorily complete a firearm safety training course and meet minimum participation rates;
- that states and territories would accredit historical societies;
- that historical societies would be required to notify police of a member’s expulsion and the reasons for expulsion; and
- that accredited historical societies would be indemnified from civil or legal liability where they notify police in good faith of their belief that a person is unfit to hold a collector’s licence.²⁸

A Handgun Buyback Scheme was also implemented in 2003, and recovered 70,000 handguns.²⁹

22 See Bricknell S, ‘Firearm trafficking and serious and organised crime gangs’, Research and Public Policy Series no. 116, Canberra: Australian Institute of Criminology, June 2012, 9–10, accessed at http://www.aic.gov.au/media_library/publications/rpp/116/rpp116.pdf.

23 Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 2, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

24 Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 3, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

25 Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 3, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

26 Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 4, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

27 Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 4, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

28 Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 3, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

29 Phillips J, Park M and Lorimer C, ‘Firearms in Australia: a guide to electronic resources’, 9 August 2007, accessed at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0708/FirearmsAustralia.

2.5 Approaches to the National Framework

Given the above background, there is substantial commonality between firearms legislation in the Australian states and territories, but each Australian jurisdiction has applied the 1996 and 2002 National Agreements in a slightly different way. Indeed, in 2007 an Australian Institute of Criminology report concluded that 'while much progress has been made in the attempt to standardise firearm regulation across Australia, divergence from the resolutions of the firearm agreements has significantly weakened the national framework for the control of firearms as envisaged by the Australasian Police Ministers' Council'.³⁰ Within Western Australia, there has been some debate as to whether the *Firearms Act* extends too far beyond the requirements of the 1996 National Agreement and 2002 Agreements.³¹

It should be noted that the *Firearms Act* was already strict in its terms prior to the 1996 National Agreement; stricter than Acts that existed in other Australian jurisdictions. For instance, prior to the 1996 amendments, section 11 of the *Firearms Act* already provided that 'the Commissioner shall not grant a permit or issue a licence under this Act to a person if in his opinion:

- (a) it is not desirable in the public interest; or
- (b) that person is unfit to hold a licence; or
- (c) that person does not have a good reason for acquiring or possessing the firearm or ammunition to which the application relates'.³²

In 1995, the Supreme Court observed that the *Firearms Act* was one which 'generally prohibits the holding or use of firearms without the grant of a licence', that it was 'clear that public safety in the sense of not wanting these weapons to be used by or fall into the hands of criminals is a paramount consideration', that there was no entitlement to a licence under the Act, and that the 'discretion given to the licensing authority under the Act to refuse the grant of a licence is very wide'.³³

Western Australia Police note that at the time of the 1996 National Firearms Agreement, the state's firearms legislation was 'significantly more stringent than any other jurisdiction' and that the underlying principles of the *Firearms Act* were and remain 'accountability and responsibility'.³⁴

It is often argued that there is an inherent benefit in consistency of laws throughout all jurisdictions in Australia. According to this viewpoint, firearms legislation should aim for parity between different states and territories.³⁵ There is also a contrary view: that the 1996 National Agreement and 2002 National Agreements represent a baseline and that jurisdictions such as Western Australia are free to impose additional safety measures above this minimum standard.

Matters relating to firearms regulation are considered at meetings of the Law, Crime and Community Safety Council, which meets twice a year and which comprises a maximum of two ministers from the Commonwealth, each state and territory and New Zealand with portfolio responsibility for law and justice, police and emergency management.³⁶

There is also a senior officers' group, the National Firearms and Weapons Policy Working Group, which also meets biannually. In addition to representatives from state and territory jurisdictions, the National Firearms and Weapons Policy Working Group includes representatives from the Australian Customs and Border Protection Service, the Australian Institute of Criminology, the Australian Crime Commission, the Defence Export Control Office, CrimTrac and the Australian Federal Police.³⁷ CrimTrac, which was established in 2000 under an intergovernmental agreement, is an executive agency responsible for developing and maintaining national information-sharing services between state, territory and commonwealth law enforcement agencies.

30 Davies M and Mouzos J, Australian Institute of Criminology Special Report, June 2007, 7, accessed at http://www.aic.gov.au/media_library/publications/special/003/firearms-legislative-review.pdf.

31 The Sporting Shooters Association of Australia (WA) advised that it supported harmonisation of firearms regimes across Australia and submitted that its members experienced 'frustration that [the National Agreement] is used by Western Australia Police to oppose many proposals by the SSAA (WA) to ease the needless bureaucratic burden faced by firearms users'. The Association advised that a 'review by [the Law Reform Commission] that establishes that Western Australia has met its obligations under COAG would be welcomed by the SSAA (WA)'; Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 7.

32 *Firearms Act 1973* (WA), (11 April 1983 reprint), s 11.

33 *Re Brown (SM); Ex parte Scudds* (1995) 14 WAR 270 per Kennedy, Rowland and Anderson JJ at 9, 12–13, 16.

34 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 8.

35 Some stakeholders have suggested that there should be greater harmonisation between the *Firearms Act 1973* (WA) and legislation in other Australian jurisdictions; Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 1.

36 On 13 December 2013 the Council of Australian Governments (COAG) replaced its 22 councils with eight, one of which is the Law, Crime, and Community Safety Council, which effectively replaces the Standing Council on Law and Justice (SCLJ) and the Standing Council on Police and Emergency Management (SCPEM). The SCPEM had previously replaced the Australasian Police Ministers' Council. See 'About the Law, Crime and Community Safety Council', accessed at http://www.lccsc.gov.au/scj/ccsc_about_us.html.

37 Australian Federal Police, Submission 182, Legal and Constitutional Affairs References Committee, Inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community, 3.

3. PERSPECTIVES ON THE PURPOSE OF FIREARMS REGULATION

3.1 Differing views on firearm regulation and the *Firearms Act 1973* (WA)

Debate continues as to the effectiveness and fairness of Australia's firearms regulation system. In particular, nearly two decades after the 1996 National Agreement, there remains lively debate as to the effectiveness of both the amendments made in response to this Agreement and the gun buyback scheme that followed it.³⁸

A common theme in criticism of firearm legislation in Australia is that these regulatory regimes unnecessarily punish and burden law-abiding firearms owners. Further, it is argued that these regimes concentrate police resources on regulating the activities of lawful firearms owners and users at the expense of investigating criminal firearm users, who possess unlicensed firearms.³⁹ Among firearm owners, it is often argued that strict regulations around firearm ownership can have no effect on crime and will only affect the law-abiding, on the basis that criminals by definition do not obey the law. Such arguments must be viewed with some caution; the assertion that the *Firearms Act* is pointless because criminals do not obey it could easily be applied to each and every piece of legislation, including the *Criminal Code*. However, it is equally true to say that regulation beyond that necessary to meet the objectives of the *Firearms Act* serves little purpose other than to be counterproductive.

These arguments were ventilated during the 2015 Senate Inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community, which is discussed below at paragraph 16.2. Renewed discussion on the aims of firearms regulation was also ignited by the tragic events which took place on 15–16 December 2014,

when a gunman took hostages in a café in Martin Place, and two of those hostages were tragically killed. The specific circumstances of what has become known as the Sydney siege are discussed further below in Annexure 1.

There have been some suggestions that firearm regulation should be loosened in Australia and in Western Australia more specifically. For instance, some firearm owners consider that licensing and registration of Category A and B firearms should be abandoned entirely.⁴⁰ In this regard, the Commission's attention has also been drawn to the firearms regulation systems in New Zealand and Canada, both of which have more limited regulatory requirements for longarms.⁴¹ It is also sometimes asserted that firearm regulation in Australia generally, and in Western Australia in particular, is so onerous as to risk driving firearm ownership and use underground. While this risk is considered to be a real one, the Commission is cautious to place undue weight on the regulatory regimes that have been implemented in other jurisdictions where the culture of firearms ownership and use may be different. The Commission is also cautious to consider such a drastic step as abandonment of the requirement to register whole categories of firearms, because it would likely encourage more people to become firearms owners and thereby increase the number of firearms within the community. This would be in circumstances where the Commission has not been shown any compelling need for, and there would remain obvious concerns with, more widespread firearms ownership. In any event, were such a step to be contemplated, it would likely conflict with the terms of one or more of the 1996 or 2002 National Agreements.

38 The ongoing debate is exemplified in the recent reports of the Senate Standing Committee on Legal and Constitutional Affairs on the ability of Australian law enforcement authorities to eliminate gun-related violence in the community. As discussed elsewhere in this Discussion Paper at paragraph 16.2, members of the Committee tabled two separate reports which made different findings and recommendations. On the matter of the effectiveness of the 1996 National Firearms Agreement, one of the reports concluded that 'the majority of studies examining [the 1996 National Firearms Agreement's] impact on gun violence in Australia have concluded that the reforms "have been responsible for substantial reductions in the Australian firearm death rate and have also put an end to mass shooting"'. The other report stated 'At an international level, there is no consensus on whether there exists a relationship between the level of firearm availability and firearm-related violence', and noted that New Zealand had declined the invitation to join with Australia in adopting firearms registration in 1996 while Canada had since abandoned longarm registration'. See, respectively, Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 9, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf, citing Lauren Hirsh, 'Brothers in Arms Control: Introducing Australian-Style Gun Control in the United States' [2013] 12 *Macquarie Law Journal*, 89–91, and Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 147, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

39 For instance, the *Report by a Majority of Senators Attending the Inquiry* into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community quoted a Mr Tim Bannister, Chief Executive Officer of the Sporting Shooters Association of Australia, as stating 'here in Australia the vast majority of state and federal law enforcement resources and strategies are now, and have been for the past 18 years, mistakenly focused on spending massive amounts of their time and efforts on monitoring and restricting the activities of just one sector of our society, the licensed firearms owners, which every statistic and every example show are responsible for almost no gun-related violence'. See Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 143, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

40 Submission from Mr Bryan Finlay, 10 August 2014, 7.

41 Meeting with Hon Rick Mazza MLC, 2 December 2014, see also Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 147–148, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

Much of the criticism of the *Firearms Act* that has been articulated to the Commission reflects the broad theme set out above; in essence, stakeholders within the firearms community⁴² consider that the Act and its associated processes have an unfairly and counter-productively punitive effect on law-abiding people who have a legitimate purpose for possessing and/or using firearms.

This is one way of considering the Act and the activities it regulates, and could be referred to as the owner/user perspective. There are also alternative conceptual frameworks. For instance, from a public health perspective, the division between 'good' and 'bad' firearm users may be something of a red herring. Self-evidently there is a clear difference between law-abiding firearm owners and persons who are involved in organised crime, and it is important to ensure that persons in the latter category do not have access to firearms, but on this view the key issue is the possession and use of a dangerous thing, albeit one which is largely used in a safe and responsible manner. Firearms are capable of causing serious harm; as such, they are subject to restrictive regulations, which are imposed on all members of the community in order to protect that community. As two gun control advocates wrote in 2000, '[i]t seems sensible and obvious that guns, like cars and other dangerous products, should be regulated for safety. Marching in the streets against gun control seems as silly as marching against seatbelts or against residential building standards'.⁴³

The Public Health Association of Australia (WA Branch) submits that any review of the *Firearms Act* must be guided by the precautionary principle: the organisation considers that, given the Act's function in protecting the Western Australian community, the onus is on advocates of any changes to the Act to provide sound evidence that such changes would not cause harm to the community.⁴⁴ Relevantly, firearms owners often contend that the laws themselves are not based on evidence but on irrational fears, and result from a prejudice against firearms. For instance, one stakeholder submits that there is 'no evidence of any notable links between licensed firearm owners and firearm-related crime in the Australian community' and that the licensing regime in Western Australia acts as an artificial restraint on the shooting sports in

the state with no demonstrable associated benefit to the community'.⁴⁵ As previously noted, there remains controversy as to the outcomes of the 1996 National Firearms Agreement and the associated gun buyback scheme, with some reports finding that these have been effective in reducing firearm deaths⁴⁶ and others drawing the reverse conclusions.⁴⁷ Firearm regulation remains a contentious issue in Australia, including in Western Australia.

The relevance of this background is that the perspective of an individual or organisation on firearms will influence their conceptualisation of the legitimate goals of legislation like the *Firearms Act* and the way in which such legislation should operate. For instance, from an owner/user point of view, the overall number of firearms in the Western Australian community may be largely irrelevant to public safety concerns, provided that they are all owned by fit and proper persons who abide by the *Firearms Act* and other relevant legislation. From some public health/harm minimisation perspectives, the control and potential reduction of the number of firearms in circulation is a legitimate goal even where they are owned by law-abiding citizens, owing to the inherently dangerous nature of firearms and the potential for harm that they pose.⁴⁸ There is a longstanding tension between these approaches and the Commission has sought to consider and present all views fairly, noting the existing policy scheme of the *Firearms Act*.

3.2 The Commission's view

The Commission takes the view that the primary aim of firearms regulation is to prevent the harm that firearms may cause as dangerous items. Acts of actual or threatened violence may constitute harm, and it should be noted that, in its offence provisions, the Act adopts an understanding of harm that extends beyond physical harm – the use of a firearm to create fear is an offence.⁴⁹

The *Firearms Act* does not contain specific principles or objects. Instead, it simply provides that it is an Act 'to make provision for the control and regulation of firearms and ammunition, the licensing of persons possessing, using, dealing with, or manufacturing firearms and ammunition ...'

42 It should be noted that firearms users are not a homogenous group; they have different reasons for possessing and/or using firearms. Some people, such as primary producers and professional shooters working in pest extermination, require firearms for work; in these contexts firearms are a tool of trade. Other people possess and use firearms as a hobby either for recreational hunting purposes, for target shooting or other club purposes. Shooting is also an Olympic sport. Still other people possess firearms, but do not use them, as part of a collection. At several points this Discussion Paper uses 'the firearms community' as shorthand to refer to firearms owners, but it needs to be borne in mind that this community has internal variations.

43 Rebecca Peters and Roland Browne, 'Australia's New Gun Control Philosophy: Public Health is Paramount', *The Drawing Board: An Australian Review of Public Affairs*, Vol 1, No 1, November 2000, 64, accessed at http://www.australianreview.net/journal/v1/n2/peters_browne.pdf.

44 Meeting with the Public Health Association of Australia (WA Branch), 8 October 2014.

45 Submission from Mr Jeff Stuart, President, the Australian Deer Association, 31 January 2015, 2.

46 See for instance Dr Andrew Leigh and Dr Christine Neill, 'Do Gun Buybacks Save Lives? Evidence from Panel Data' *American Law and Economics Review*, Advance Access publication 20 August 2010, accessed at http://andrewleigh.org/pdf/gunbuyback_panel.pdf.

47 See for instance Dr Wang-Sheng Lee and Dr Sandy Suardi, 'The Australian Firearms Buyback and Its Effect on Gun Deaths', Melbourne Institute Working Paper Series, Working Paper No. 17/08, accessed at https://www.melbourneinstitute.com/downloads/working_paper_series/wp2008n17.pdf.

48 As one paper on the 1996 firearm reforms put it, following the gun buyback scheme: 'What can be said with certainty... is that 700,000 fewer guns were available to be stolen or otherwise leaked from lawful owners to criminals'; Chapman S, Alpers P, Agho K and Jones M, 'Australia's 1996 gun law reforms: faster falls in firearm deaths, firearm suicides, and a decade without mass shootings' (2006) 12 *Injury Prevention*, 370.

49 *Firearms Act 1973* (WA) s 23(9a).

Jurisdictions other than Western Australia have included specific principles and objects in their legislation to make clear this underlying purpose of firearms legislation and to prioritise community safety over the ability of individuals to possess or use firearms. For instance:

- The *Firearms Act 1996* (NSW) provides that its underlying principles are 'to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety', to improve public safety by 'imposing strict controls on the possession and use of firearms' and by 'promoting the safe and responsible storage of firearms', and 'to facilitate a national approach to the control of firearms', and the same wording is used in the *Firearms Act 1996* (ACT).⁵⁰
- The *Weapons Act 1990* (Qld), which regulates firearms as well as other weapons, provides that its underlying principles include 'weapon possession and use are subordinate to the need to ensure public and individual safety' and that 'public and individual safety is improved by imposing strict controls on the possession of weapons and requiring the safe and secure storage and carriage of weapons'.⁵¹

The *Weapons Act 1990* (Qld) provides that this object is to be achieved for firearms by prohibiting the possession and use of all automatic and self-loading rifles and automatic and self-loading shotguns except in special circumstances; establishing an integrated licensing and registration scheme for all firearms; requiring each person who wishes to possess a firearm under a licence to demonstrate a genuine reason for possessing the firearm; providing strict requirements that must be satisfied for licences authorising possession of firearms and for the acquisition and sale of firearms; and ensuring that firearms are stored and carried in a safe and secure way.⁵²

- The *Firearms Act 1996* (Vic) provides that its purposes include 'to give effect to the principle that the possession, carriage, use, acquisition and disposal of firearms are conditional on the need to ensure public safety and peace'.⁵³

- The *Firearms Act 1996* (Tas) does not contain principles or objects, but its preamble refers to 'the tragic events which occurred at Port Arthur on 28 April 1996', the agreement reached by all parliamentary parties in Tasmania 'that the laws relating to the control of firearms in Tasmania should be consistent with the laws applying in other States and Territories of the Commonwealth of Australia', and the resolutions made by the Australasian Police Ministers' Council.⁵⁴

Those Acts articulate their respective jurisdictions' views of the purpose of firearms regulation in a way that the *Firearms Act* does not. However, the purpose of the Act becomes clear from its content.

The State Administrative Tribunal (SAT) has observed that the 'licence to acquire a firearm, or to continue to hold a firearm, is not a right, but a privilege; hence the regulatory regime imposed by Parliament whereby the obligation is on the applicant to demonstrate why he should be licensed'.⁵⁵ In a 2008 case before the SAT, the presiding member noted that the 'overarching object of the Firearms Act is to ensure public safety'.⁵⁶ This object was made plain during the course of parliamentary debates in 1973 on the then Firearms Bill prior to its passage. During these debates, the then Minister for Police, the Hon John Dolan MLC, stated:

I repeat what I had to say when I introduced the Bill: The legislation has to keep up with modern times and there must not be any lessening of the safeguards applied to ensure that every firearm used is in the hands of a responsible person. The restrictions which apply must not be removed so that weapons can be identified with their licensees ... it is much better to have strict safeguards rather than to lessen or ease the present restrictions which apply to the use of firearms. Any lessening of the restrictions could, perhaps, increase the number of fatalities. The number of fatalities which occur in this State at present are few. I think that in the last year there were 13 deaths, and of those seven were homicides and two were suicides. When compared with other parts of the world we are a reasonably safe community, and we want to keep it that way.⁵⁷

50 *Firearms Act 1996* (NSW) s 3(1). See also s 5(1) of the *Firearms Act 1996* (ACT).

51 *Weapons Act 1990* (Qld) s 3(1).

52 *Weapons Act 1990* (Qld) s 4.

53 *Firearms Act 1996* (Vic) s 1.

54 *Firearms Act 1996* (Tas), Preamble.

55 See, for instance, *Knight and Commissioner of Police* [2010] WASAT 104 at [17] and *Cutbush and Commissioner of Police* [2010] WASAT 45 at [17].

56 *O'Dwyer and Commissioner of Police* [2008] WASAT 33 per Ms J Hawkins at [49].

57 J. Dolan, Extract from *Hansard*, Legislative Council, 2 May 1973, 1253.

The *Firearms Act* reflects a prioritisation of community safety and a concern to prevent harm, particularly fatalities, caused by firearms. In the Commission's view, these are appropriate aims for such legislation.

However, community safety is not the only relevant consideration. Firearms are also capable of being used for many entirely legitimate purposes – such as being enjoyed for their historical value as collectors' items, shooting at targets in sport, or serving as essential tools of trade in the agricultural sector and in pest management. Ensuring that people may obtain and use firearms for purposes such as farming, sport, hunting, pest control and collection, are legitimate aims of legislation such as the *Firearms Act*, just as harm minimisation is also a legitimate aim.

Further, harm prevention is distinct from punishment. That is, the harm prevention aims of the legislation should be achieved in such a way that as little burden as possible is imposed on people who are complying, or seeking to comply, with the *Firearms Act*. Therefore, measures taken to protect the public must be appropriately adapted so as not to impose too great a burden on persons who possess or use firearms for reasons recognised as legitimate by the Act, and care should be taken not to expose people seeking to comply with the Act to the risk of inadvertent non-compliance. Therefore, legislation such as the *Firearms Act* should provide certainty to firearms owners about their legal obligations in a clear and easily understood manner, so that to the greatest extent possible there is clarity in all situations as to what they need to do to comply with the Act.

In the Commission's view, it is appropriate both that the *Firearms Act* seeks to uphold community safety, and that it places no greater burden on firearms owners and users than is reasonably necessary in order to achieve this aim. Legislation such as this must cast out a regulatory net wide enough to catch behaviours that pose a danger to the community while not unduly impacting on innocent actions that do not pose a threat. The Commission considers it particularly important that legislation such as the *Firearms Act* be seen to be just and proportionate to its aims in order to preserve respect for the law within the community.

4. THE COMMISSION'S PROPOSALS AND QUESTIONS AT A GLANCE

Our proposals and questions are set out below together with the page numbers and the section headings under which they can be found.

5. THE FIREARMS ACT 1973 (WA) – OVERVIEW

5.9 Structure of the *Firearms Act 1973* (WA)

Page: 43

Proposal 1:

- that the *Firearms Act 1973* (WA) be re-enacted;
- the new Act be restructured in order to improve clarity of parts such as the Administration/Licensing process, Police Powers and Offences; and
- in the new Act, where appropriate, provisions be worded to provide greater clarity than is provided under the current Act and Regulations.

6. ADMINISTRATION OF THE FIREARMS ACT 1973 (WA)

6.1 Licensing and application process

Page: 47

Proposal 2:

- that section 5A of the *Firearms Act 1973* (WA) be amended to provide more flexibility to the Police Commissioner in delegating functions under the Act; and
- Western Australia Police review the use of its staff with a view to eliminating double-handling and streamlining the application process.

6.2 Information storage – 2013 Information Systems Audit Report by the Auditor General

Page: 52

Proposal 3:

- that Western Australia Police conduct a review of the new firearms licensing and registry system after its first year of operation to verify that it is functioning as intended;
- the review should be made publicly available; and
- any deficiencies revealed by the review must be addressed as a matter of priority.

6.3 Application processing – time delays

6.3.1 Role of Australia Post

Page: 54

Question 1:

- Do you have any comment on the role of Australia Post in the licensing process, including as to whether adequate quality assurance occurs to ensure Western Australia Police information requirements are met when applications are initially lodged?

6.4 Application processing – storage and pre-approval

Page: 56

Proposal 4:

that application forms should be amended to provide that:

- applicants for additional firearms may provide photographic evidence of their ability to comply with storage requirements with their initial application; and
- applicants can provide a serviceability certificate minus the serial number of a firearm to support their application, with the serial number to be provided once the application has been pre-approved.

Page: 56

Proposal 5:

- that the *Firearms Regulations 1974* (WA) be amended to provide that the licensee must take possession of the firearm or firearms as soon as is practicable once a licence application has been approved.

6.5 Fees for applications under the *Firearms Act 1973* (WA)

Page: 56

Question 2:

- Should a discount on licensing fees be available for pensioners and/or any other ascertainable category of firearms owner?

7. DEFINITIONS AND CATEGORISATION OF FIREARMS

7.2 Definition of ‘firearm’ in other jurisdictions

Page: 61

Proposal 6:

that the definition of ‘firearm’ in the *Firearms Act 1973* (WA) be amended to specifically exclude:

- captive bolts;
- industrial tools such as nail guns;
- promotional type implements such as pneumatic t-shirt launchers; and
- as in Victoria, ‘any compressed air or gas powered device with a calibre no greater than seven millimetres and a maximum muzzle velocity no greater than 50 metres per second that is designed to be mounted on a radio-controlled model warship and when used in a model warship’.

Page: 61

Question 3:

- What other items, if any, should be excluded from the definition of ‘firearm’ in the *Firearms Act 1973* (WA)?
- How should ‘spud guns’ be dealt with in Western Australia?
- What other changes, if any, should be made to the definition of ‘firearm’ in the *Firearms Act 1973* (WA)?

7.3 The *Weapons Act 1999* (WA)

Page: 63

Question 4:

- Should the *Weapons Act 1999* (WA) and *Firearms Act 1973* (WA) be merged as has been done in Queensland?
- Is the distinction between the items regulated by the two Acts sufficiently clear?

7.4 Categories of firearms

Page: 66

Proposal 7:

- that Western Australia Police review the existing firearm categories in conjunction with other Australian jurisdictions to ensure that the categories take into account changes in technology and are internally consistent.

Page: 66

Question 5:

- Do you have any comment on the categories in the *Firearms Regulations 1974* (WA)?

7.5 Prohibited firearms

7.5.3 Firearms which 'closely resemble' prohibited firearms^{16.2}

Page: 70

Question 6:

- Is regulation 26B(2)(a) of the *Firearms Regulations 1974* (WA) necessary?
- Should a similar limitation be introduced in relation to 'imitation firearms' (including firearms that have been rendered inoperable), which are classed as 'controlled weapons' under the *Weapons Regulations 1999* (WA), so as to prevent a person from owning an imitation firearm that closely resembles a prohibited firearm?

7.5.3.1 Administration of regulation 26B(2)(a)

Page: 72

Proposal 8:

- that Western Australia Police formally adopt and publically release a policy that provides certainty about the way in which the appearance of firearms is assessed to determine whether it 'closely resembles' prohibited firearms in design, function or appearance;
- provision be made for a formal pre-approval process for individual firearms to determine whether they fall under regulation 26, regulation 26B, or Category D1 of the *Firearms Regulations 1974* (WA), and that written reasons be given for such determinations; and
- any decision made under regulation 26B(2) (a) be included as a 'decision' for the purposes of section 22 in order for the applicant to seek a review of the decision in the SAT.

7.6 Antique mechanism firearms

Page: 74

Question 7:

- Should the definition of 'antique mechanism firearm' in the *Firearms Act 1973* (WA) be amended so that it is not limited to breech-loading firearms but also includes firearms manufactured before 1900 for which ammunition is not commercially available?

7.6.2 Working replicas of 'antique mechanism firearms'

Page: 75

Question 8:

- Should working replicas of 'antique mechanism firearms', like 'antique mechanism firearms' themselves, be exempt from the licensing requirements of the *Firearms Act 1973* (WA);
- the exemption in section 8(1)(mc) of the *Firearms Act 1973* (WA) that applies to 'antique mechanism firearms' be removed so that these firearms also require licences under the *Firearms Act 1973* (WA), just as working replicas of these firearms require licences; or
- the status quo remain in place so that 'antique mechanism firearms' are exempt from the licensing requirements of the *Firearms Act 1973* (WA) but working replicas of these firearms are not exempt.

7.7 Inoperable firearms

Page: 78

Proposal 9:

- that Western Australia Police participate in adopting a national standard for the means of making firearms inoperable, and that ultimately this standard be prescribed in the *Firearms Regulations 1974* (WA).

Page: 78

Question 9(a):

How should inoperable firearms be treated? In particular:

- should all firearms that have been permanently rendered inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA);
- should prohibited firearms (as defined in Regulation 26) that have been permanently rendered inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA); or
- should the status quo remain, so that firearms that have been permanently rendered inoperable continue to be excluded from the definition of 'firearm' in the *Firearms Act 1973* (WA) and regulated under the *Weapons Act 1999* (WA)?

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Question 9(b):

Should provision be made to allow firearms to be made temporarily inoperable and if so:

- what methods might be acceptable to temporarily render firearms inoperable;
- what role, if any, should Western Australia Police have in temporarily rendering a firearm inoperable;
- in what circumstances might it be acceptable to reverse a temporary rendering of a firearm inoperable and who should be authorised to do so;
- should all firearms that have been rendered temporarily inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA);
- should prohibited firearms (as defined in Regulation 26) that have been temporarily rendered inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA); or
- should the status quo remain, so that firearms that have been temporarily rendered inoperable continue to be excluded from the definition of 'firearm' in the *Firearms Act 1973* (WA) and regulated under the *Weapons Act 1999* (WA)?

Question 9(c):

- Should the *Firearms Act 1973* (WA) be amended to provide that it is an offence to render operable a firearm that has been rendered inoperable, unless with prior approval of the Police Commissioner?

8. APPLICATION OF THE *FIREARMS ACT 1973* (WA) – ‘FIT AND PROPER PERSON’

Proposal 10:

- that section 11(3) be amended to provide that it shall also be sufficient grounds for forming an opinion that a person is not a fit and proper person if the Police Commissioner is satisfied that at any time within the period of five years before the person applies for the approval, permit or licence the person was convicted of a serious sexual or a serious drug-related offence.

Practical application of the ‘fit and proper person’ test

Proposal 11:

- that, if it has not already occurred, a requirement be formally approved by the Police Commissioner under regulation 7(3) (b) and 7B of the *Firearms Regulations 1974* (WA) that an applicant for a licence, permit, approval or authorisation under the *Firearms Act 1973* (WA) and *Firearms Regulations 1974* (WA) provide evidence of identity based on a 100-point check, similar to the checking procedure adopted by banks.

8.2 Fit and proper person – additional firearms

Proposal 12:

- that section 18(10) of the *Firearms Act 1973* (WA) be amended to clarify its operation.

Question 10:

- Should the ability to grant an application for expedited approval under section 18(10) be subject to the satisfaction of other provisions of the Act, including, in particular, section 11(1)?
- Should the discretion to grant an application for expedited approval under section 18(10) be extended beyond circumstances that are in the public interest to include:
 - experienced/sophisticated shooters who seek a licence for a firearm or firearms which are in other than Category D or Category H;
 - persons, such as primary producers, who require firearms for their employment; and
 - any other categories of persons or circumstances?

8.2.2 ‘Licence the person, not the firearm’

Question 11:

Should the ‘fit and proper person’ test be permitted and/or required to be applied

- each time a person seeks to license an additional firearm and/or each time a person renews a licence;
- at regular intervals during the life of a licence; and/or
- only once, when an initial licence application is made?

9. APPLICATION OF THE FIREARMS ACT 1973 (WA) – ‘GENUINE REASON’ AND ‘GENUINE NEED’

9.1 ‘Genuine reason’

9.1.1 Section 11A(2)(c) – ‘property letters’ – concerns

Page: 89

Proposal 13:

- that circumstances under which ‘property letters’ are issued be restricted to ensure that they are only issued to bona fide users;
- persons who provide ‘property letters’ be required to have their details entered on a register maintained by Western Australia Police;
- property size requirements (i.e. the size of property that is generally deemed appropriate for particular calibres of firearms) be included on the Western Australia Police website to provide clarity, noting that the location of a property is also a relevant factor to be considered; and
- to avoid uncertainty, the Act be amended to explicitly enable the Police Commissioner to impose conditions or restrictions in relation to the locations where a licence holder may use and store a licensed firearm.

Page: 89

Question 12:

- Should holders of a firearm licence who have nominated section 11A(2)(c) of the *Firearms Act 1973* (WA) as their ‘genuine reason’ be restricted to shooting on a property or properties in respect of which they have provided a property letter?
- Alternatively, should a requirement be imposed on a landowner who gives permission to a person to shoot on their property to maintain a register of the permission and person/s to whom it was granted and, if so, in what circumstances?
- Should a property letter be valid for a fixed period, such as two years, or until a specified event, such as a change in ownership of the property, occurs, after which a further letter is required to be obtained by a licence holder?
- Should a property owner who issues a property letter be required to provide adequate storage facilities, approved by the Police Commissioner, which must be used by a person who brings a firearm onto the property in accordance with a property letter, except while the person is in the course of engaging in hunting or shooting of a recreational nature?

9.1.3 Section 11A(2)(a) – club membership and licence restrictions

Page: 91

Question 13:

- Should a person who has been granted a licence for the genuine reason set out in section 11A(2)(a) of the *Firearms Act 1973* (WA) also be able to use firearms held under that licence for recreational hunting and shooting, with the permission of the relevant property owner?

9.1.4 'Genuine reason' – multiple reasons

Page: 91

Question 14:

- Does the licensing process adequately accommodate an application made for more than one genuine reason?

9.1.5 'Genuine reason' – multiple firearms – policy and practice

Page: 95

Question 15:

- Should there be an upper limit on the number of firearms a single firearm licence holder (as distinct from the holder of a corporate, collector's, dealer's, repairer's, manufacturer's or shooting gallery licence) may possess?

Page: 95

Proposal 14:

- that the Western Australia Police website be updated to include a checklist of the kind of information that might be required by Western Australia Police to determine whether a genuine reason is made out, such as the kinds of animals proposed to be hunted, why existing firearms owned by the applicant would not be suitable, and so forth.

9.2 'Genuine need'

Page: 98

Proposal 15:

- that the terminology in the *Firearms Act 1973 (WA)* and *Firearms Regulations 1974 (WA)* be changed from 'genuine need' to 'special need' to reduce confusion between the 'genuine reason' and the 'genuine need' requirements.

9.2.1 Membership of approved shooting club as a 'genuine need'

Page: 100

Question 16:

Should any amendments be made to the *Firearms Act 1973 (WA)* or *Firearms Regulations 1974 (WA)* to:

- prevent 'club shopping', including clubs advising Western Australia Police of any applications that are refused; and
- otherwise regulate membership of shooting clubs?

'Genuine need'

Page: 101

Proposal 16:

that section 23BA(1) and 23BA(2) of the *Firearms Act 1973 (WA)* be amended to more clearly provide that an officer of an approved club or approved organisation must, within a specified period, notify the Police Commissioner of, respectively,

- his or her opinion that a person who is a member of the approved club or approved organisation is not a fit and proper person to possess, carry or use a firearm;
- his or her decision to refuse a person's application for membership or renewal of membership, and the reasons for that decision; and
- that a penalty be imposed for breach of these obligations consistent with the penalty specified in section 15B(1).

9.2.2 'Genuine need' – Category D firearms – pest control

Page: 102

Proposal 17:

- that the *Firearms Regulations 1974 (WA)* be amended to provide that persons who require a firearm for their occupation may be permitted to retain the right to possess, but not to use, such firearms in between contracts.

Question 17:

- Do you have any comment on interactions between the *Firearms Act 1973* (WA) and Codes of Practice or Standard Operating Procedures regarding the humane killing of animals?

9.2.3 'Genuine need' and primary producers

Question 18:

- Does the *Firearms Act 1973* (WA) provide sufficient flexibility for, and adequately accommodate, the needs of primary producers?

10. APPLICATION OF THE FIREARMS ACT 1973 (WA) – OTHER CONCERNS

10.1 Persons Under 18

Question 19:

Should the *Firearms Act 1973* (WA) be amended to provide:

- for junior licences and, if so, in what circumstances; and/or
- for the ability of an unlicensed adult to use a firearm under the supervision of the licensed owner, on his or her property; and
- that only one person may use a firearm under the owner's supervision at one time?

10.2 Lending firearms

Proposal 18:

- that the *Firearms Act 1973* (WA) be amended to facilitate lending arrangements between licensed firearms owners, provided that the borrower is licensed to possess a firearm of the same category as the firearm being lent.

Question 20:

If you agree with the above proposal, in what circumstances, and subject to what restrictions, should lending be permitted? In particular:

- how long should a person be able to borrow a firearm for; and
- should there be a requirement to have an approved person witness the loan agreement, and/or to inform Western Australia Police of the loan?

10.3 Licence terms and renewals

Proposal 19:

that the *Firearms Act 1973* (WA) be amended to provide that:

- the term of licences which are currently valid for only one year be increased to five years;
- holders of licences must re-confirm their genuine reason and genuine need (where relevant) at least upon renewal of a licence; and
- the terms of licences may be aligned where a licence holder applies for an additional licence and pays any adjusted licensing fee.

Proposal 20:

- that Western Australia Police be required to send reminder notices regarding licence renewal; and
- the *Firearms Regulations 1974* (WA) be amended to provide that a renewal payment which is dishonoured by the relevant bank results in a licence being deemed expired.

10.4 Serviceability certificates

Question 21:

Is the serviceability certificate requirement necessary?

10.5 Extracts of Licence

Proposal 21:

- that a 'smart card' licence system be developed by Western Australia Police;
- a requirement be introduced that licensed dealers, manufacturers and repairers provide and maintain suitable computer systems to accommodate the introduction of a 'smart card' licence;
- that the current paper licence and extract of licence be replaced by a single 'smart card' licence; and
- persons who may possess, carry and use firearms under a Corporate Licence be issued with a 'smart card' (or, failing the introduction of a smart card system, with a card similar to an Extract of Licence), which sets out the basis of their authority to possess, carry and use firearms.

10.6 Training

Proposal 22:

- that the training requirements in the *Firearms Regulations 1974* (WA) be amended to include practical instruction in handling and shooting firearms for first-time applications.

10.7 Recognition of interstate licences

Proposal 23:

- that the *Firearms Act 1973* (WA) be amended to include recognition of interstate licences where licensees visit or reside in Western Australia on a temporary basis.

Question 22:

In relation to the proposed recognition of interstate licences:

- in respect of which categories of licence and firearms;
- subject to what, if any, conditions; and
- for what period of time should recognition occur?

10.8 International permits

Proposal 24:

- that Western Australia contributes to the development of a nationally recognised permit for international participants in firearm competitions.

10.9 Sports shooting

Page: 118

Question 23:

- At the completion of a person's first six months as a member of an approved shooting club, where the person wishes to compete in the Single Action shooting discipline, should it be possible for the person to be granted a licence, permit or approval for two Single Action revolvers?

10.10 Replacement firearms

Page: 119

Proposal 25:

- that a licence for a firearm should also authorise the possession of a replacement firearm that has previously been approved as being in the same category as the original firearm, if exchanged at a licenced dealer; and
- sections 30B(1) and (2) of the *Firearms Act 1973* (WA) be amended to replace 'is required to' with 'must'.

Unserviceable firearms

Page: 120

Proposal 26:

that the *Firearms Act 1973* (WA) be amended to

- make it an offence to possess an unsafe or unserviceable firearm; and
- provide that a dealer or manufacturer who becomes aware that a person is in possession of an unsafe or unserviceable firearm must advise Western Australia Police within a specified period.

11. STORAGE OF FIREARMS AND AMMUNITION

11.2 Storage requirements – category and number of firearms

Page: 124

Proposal 27:

- that firearms dealers, and persons who own ten or more firearms, be required to install and maintain a burglar alarm at the place where the firearms are stored.

Page: 124

Question 24:

- Should storage requirements differ according to the type of firearm or firearms being stored?
- Should 24-hour remotely monitored burglar alarms also be required in remote and regional areas?

11.3 Storage of firearms – possession and allowing access

Page: 125

Proposal 28:

- that the *Firearms Act 1973* (WA) be amended to provide that a licensed firearms owner can store a firearm or firearms belonging to another licensed firearms owner on a temporary basis, in specified circumstances, provided that the person storing the firearm holds a licence for a firearm or firearms of that category.

Question 25:

In respect of Proposal 28:

- how long should a person be able to store a firearm or firearms belonging to another person;
- in what circumstances should this be specified as being permitted, including in relation to what categories and number of firearms; and
- should the possession be subject to any conditions, including a requirement to notify Western Australia Police of the temporary storage arrangements?

Question 26:

- Should co-habiting persons who are both licensed in respect of different firearms be able to store them in the same safe?
- Do you have any comment on the process for adding a co-licensee to an existing licence?

11.4 Storage and safekeeping – obligations of licensees

Proposal 29:

- that the *Firearms Act 1973* (WA) and, in particular, sections 23(9)(a) and 23(9)(d) be amended to:
 - more clearly specify when a licensee is under an obligation in relation to the storage or safeguarding of a firearm and what steps the licensee is required to take to comply with the licensee's obligations; and
 - provide that the Regulations may make provision as to the kinds of precautions that will be considered to constitute 'reasonable precautions';
- the *Firearms Regulations 1974* (WA) be amended to specify precautions that are reasonable precautions including, (based on the *Weapons Regulations 1996* (Qld)) that:
 - the person must, when the firearm is not in the person's physical possession, store it unloaded in a locked case or safe, of a type approved by the Police Commissioner, with the bolt removed or with a trigger lock fitted; and
 - the case or safe must be out of sight in a locked room of a permanent building; or locked in the boot of a vehicle; or out of sight, locked in a vehicle that does not have a boot.
 - where a person is culling animals and moving between areas of land while doing so, he or she is not required to comply with the above requirements while the firearm or firearms are in his or her physical possession during the culling.

11.5 Storage of ammunition

11.5.1 Definition of 'ammunition'

Page: 132

Proposal 30:

that the definition of 'ammunition' in the *Firearms Act 1973 (WA)* be amended so as to specifically exclude:

- empty cases that are not able to be reused; and/or
- spent primers when they are not fitted into a case.

12. CATEGORIES OF LICENCE; PROPOSALS FOR NEW CATEGORIES

12.1 Heirloom firearms

Page: 134

Proposal 31:

- that heirloom licences not be adopted in Western Australia.

12.2 Warehousemen

Page: 135

Proposal 32:

that the *Firearms Act 1973 (WA)* be amended to provide:

- for new licence categories for commercial carriers and warehousemen; and
- that Firearm Dealer's licences automatically include the ability to warehouse firearms.

Page: 135

Question 27:

- Should Approved Clubs be automatically approved to warehouse firearms?
- Do you have any comment on the requirements under which approved commercial carriers operate in Western Australia?
- Should a party that is entitled to store firearms on behalf of third parties be permitted to deliver an uncollected firearm to Western Australia Police after a set period, with Western Australia Police being able to destroy it after certain required steps are taken to notify the firearm owner?

12.3 Collector's licences

Page: 136

Question 28:

Should the *Firearms Act 1973 (WA)* be amended to provide that:

- firearms held under a Collector's Licence may also be carried and used, and if so, under what circumstances; and
- firearms in a collection which have been manufactured after 1 January 1946 must be rendered (temporarily or permanently) inoperable in accordance with such specifications as may be approved by the Police Commissioner?

12.4 Corporate licences

Page: 139

Proposal 33:

that the *Firearms Act 1973* (WA) be amended to provide that:

- a new category of licence/approval be established for individuals wishing to use firearms under a Corporate Licence;
- the requirements that must be satisfied before such a licence/approval is obtained include that the Police Commissioner is satisfied that the person is a fit and proper person;
- the licence/approval relate to particular firearms or categories of firearms that are the subject of one or more specified Corporate Licences;
- an individual may not access firearms held under a Corporate Licence unless the individual has obtained a licence/approval within that new category;
- prescribed details of an individual holding such a licence/approval be included on the firearms register together with the details of the relevant Corporate Licence holder;
- the Police Commissioner's decisions made regarding the new proposed category of individual licence/approval constitute a 'decision' for the purposes of section 22 of the *Firearms Act 1973* (WA) and therefore be subject to review by the State Administrative Tribunal; and
- terms and conditions on the use of firearms under Corporate Licences be included in the *Firearms Regulations 1974* (WA).

Page: 139

Question 29:

- Do you have any comment on the use of the Nominated Persons Authorisation with respect to Dealer's Licences?

12.5 Repairer's licences

Page: 140

Proposal 34:

that the *Firearms Act 1973* (WA) be amended to provide that:

- a new category of licence/approval be established for individuals wishing to use firearms under a Repairer's Licence, Dealer's Licence or a Manufacturer's Licence;
- the requirements that must be satisfied before such a licence/approval is obtained include that the Police Commissioner is satisfied that the person is a fit and proper person;
- the licence/approval relate to one or more specified Repairer's Licence, Dealer's Licence or Manufacturer's Licence;
- an apprentice over a prescribed age, such as 16 years, is eligible to apply for an individual licence/approval in connection with a Repairer's Licence or Manufacturer's Licence;
- an individual may not access firearms held under a Repairer's Licence, Dealer's Licence or Manufacturer's Licence unless the individual has obtained a licence/approval within that new category;
- prescribed details of an individual holding such a licence/approval be included on the firearms register together with the details of the relevant Repairer's Licence, Dealer's Licence or Manufacturer's Licence holder;
- the Police Commissioner's decisions made regarding the new proposed category of individual licence/approval constitute a 'decision' for the purposes of section 22 of the *Firearms Act 1973* (WA) and therefore be subject to review by the State Administrative Tribunal; and
- licensed repairers working for one business/company may have their records submitted on one form under the business name in order to clarify that these returns need not be submitted separately by each individual repairer.

12.6 Theatrical licences

Page: 141

Proposal 35:

- that the *Firearms Act 1973* (WA) be amended to provide for a new category of ‘theatrical licence’.

12.7 Shooting gallery licences and the lack of shooting range licences

12.7.1 Shooting gallery licences

Page: 142

Question 30:

- Are the restrictions imposed on shooting galleries in the *Firearms Regulations 1974* (WA) appropriate?

12.7.2 Approved shooting ranges

Page: 143

Proposal 36:

- that the *Firearms Act 1973* (WA) be amended to require that persons conducting, or wishing to conduct, a shooting range be licensed under the Act for this specific purpose; and
- the *Firearms Regulations 1974* (WA) prescribe specifications for approved shooting ranges, as they do in respect of approved shooting galleries.

12.8 Possible exemption – court employees

Page: 143

Question 31:

- Should section 8(1) of the *Firearms Act 1973* (WA) be amended to include employees and officers of a court, or any other persons, who may have occasion to possess firearms in the course of their official duties; and
- should a court conducting proceedings in respect of which a firearm is a potential exhibit be explicitly empowered to require or permit that steps be taken to temporarily disable the firearm where it considers it to be appropriate in the interests of safety?

13. CHANGES IN FIREARM TECHNOLOGY

Page: 149

Proposal 37:

- that Western Australia Police continues to monitor developments in firearm technology, including the manufacture of 3D printed firearms, raise related issues at an inter-jurisdictional level where appropriate and ensures that state legislation is updated as appropriate;
- should it be determined at an inter-jurisdictional level that the technical elements of the 1996 National Firearms Agreement require updating, or that definitions of ‘firearm’ require finessing across jurisdictions, Western Australia Police participates fully in this process;
- technological advancements in air rifles be addressed by amending the *Firearms Regulations 1974* (WA) to include the following classifications:

Category A1: An air rifle of calibres .177, .22 or .25 of break, pump lever or bolt action single shot or repeater, pre-charge pneumatic or CO2 canisters

Category B1.2 An air rifle of calibre greater than .25

Category C5: An air rifle of any calibre that is self-loading with a magazine capacity of no more than 10 rounds

Category D7: An air rifle of any calibre that is self-loading with a magazine capacity of more than 10 rounds.

14. OFFENCES AND PENALTIES IN THE FIREARMS ACT 1973 (WA)

14.1 Offences of possession – concerns, deceased estates, and proposals regarding amnesties

Page: 154

Proposal 38:

- that an exemption be included in sections 8, 19(1) and 23(3) of the *Firearms Act 1973* (WA) for people who are temporarily in possession of, or carrying, a firearm for the legitimate purpose of handing it in to Western Australia Police;
- the *Firearms Act 1973* (WA) be amended to, in effect, provide a statutory amnesty under which a person who voluntarily surrenders an unlicensed firearm to Western Australia Police, or to a licensed dealer, will not face criminal charges connected with the possession of that firearm; and
- the Western Australia Police website be updated to include detailed, specific information on the course of action to be followed in the case of firearms that form part of deceased estates, including information as to timeframes for providing firearms to Western Australia Police.

14.1.1 Offences of possession – definitions

Page: 155

Question 32:

- Is the current definition of 'possession' in the *Firearms Act 1973* (WA) appropriate?

14.2 Renewals and issue of infringement notices

Page: 157

Proposal 39:

- that the *Firearms Act 1973* (WA) be amended to provide that infringement notices may be issued in respect of a failure to renew a Firearm Licence, Firearm Collector's Licence, Ammunition Collector's Licence, Dealer's Licence, Repairer's Licence, Manufacturer's Licence and Corporate Licence where three months have passed since the expiry date unless Western Australia Police has been notified within that period that the previous licence holder does not intend to renew the licence;
- the *Firearms Act 1973* (WA) be amended to provide that infringement notices may be issued in respect of the holders of Dealer's Licences who fail to submit monthly reports as required by r 18(1)(b) of the *Firearms Regulations* (1974); and
- those offences in sections 22A(2), 22A(3), 22B, 22C, 23, 30, 30A, 30B, 31 and 32 of the *Firearms Act 1973* (WA) that do not include imprisonment as a penalty be prescribed as offences in respect of which infringement notices may be issued.

Page: 157

Question 33:

- Should sections 9A(6) and (7) of the *Firearms Act 1973* (WA) be amended to reduce the 12-month 'grace period' to three months?

14.3 General offences – location

Page: 157

Question 34:

- Should indictable offences in the *Firearms Act 1973* (WA) be retained in that Act or moved to the *Criminal Code*.

14.4 General offences – other

Page: 159

Question 35:

- Are the current restrictions on the use of silencers in the *Firearms Act 1973* (WA) appropriate; and
- should the ability to approve possession and use of a silencer lie with the Police Commissioner rather than the Minister for Police?

14.6 Similar elements in offences

Page: 160

Question 36:

- Should the offences in sections 19(1ab) of the *Firearms Act 1973* (WA) and sections 68D(2) and 68E(2) of the *Criminal Code*; and sections 23(9a) of the *Firearms Act 1973* (WA) and section 68(1) of the *Criminal Code* be consolidated respectively?
- If not, should the penalties be amended to provide for greater parity between the penalties for the above respective categories of offences?

14.7 Parties to offences

Page: 161

Question 37:

- Should any amendment be made to the *Firearms Act 1973* (WA) to give full effect to the above resolution recorded in the 2002 National Firearms Trafficking Policy Agreement?

14.8 Penalties – consistency with other jurisdictions

Page: 163

Question 38:

- Should the offence of trafficking in firearms be dealt with separately in the *Firearms Act 1973* (WA)?

14.9 Enforcement of the *Firearms Act 1973* (WA) – police powers

Page: 165

Question 39:

Should section 24 of the *Firearms Act 1973* (WA) be amended to provide:

- in section 24(1), that the officer must be satisfied on reasonable grounds that a person's possession of firearms or ammunition is not authorised before the officer is empowered to seize the firearms or ammunition;
- in section 24(2), that the officer's opinion that possession of a firearm or ammunition by a person may result in harm being suffered by any person, or that the person is not at the time a fit and proper person to be in possession of it, must be based on reasonable grounds;
- in section 24(3), that the officer's opinion that a firearm is unsafe or unserviceable must be based on reasonable grounds; and
- in section 24(6), that the offence of wilfully misleading or wilfully attempting to mislead any member of the Western Australia Police in any particular way likely to affect the discharge of his or her duty under the *Firearms Act 1973* (WA) also applies with respect to persons administering the Act who are not members of the Western Australia Police?

14.10 Seizure and disposal of firearms under the *Firearms Act 1973* (WA)

Page: 167

Proposal 40:

- that the *Firearms Regulations 1974* (WA) be amended to provide that the requirements of Regulation 22A apply to all firearms and ammunition seized by Western Australia Police, whether under the *Firearms Act 1973* (WA) or any other power.

14.11 Firearms prohibition orders

Page: 170

Question 40:

- Should the *Firearms Act 1973* (WA) be amended to provide for firearms prohibition orders, as in New South Wales?

14.11.2 Restrictions on Dealer's Licences

Page: 171

Question 41:

- Should the restrictions on Dealer's Licences be extended to Repairer's Licences, Manufacturer's Licences and Corporate Licences?

14.12 Domestic violence, restraining orders and the *Firearms Act 1973* (WA)

Page: 173

Question 42:

- Is the interaction between the *Firearms Act 1973* (WA) and the *Restraining Orders Act 1997* (WA) operating effectively?

14.13 Convictions and charges for offences involving violence

Page: 175

Proposal 41:

- that section 106 of the *Sentencing Act 1995* (WA) be amended to provide for a rebuttable presumption that a disqualification order will be made where a person is sentenced for a 'firearms offence', an offence involving assault with a weapon, or an offence involving violence, unless it would be contrary to the interests of justice to do so;
- section 20 of the *Firearms Act 1973* (WA) be amended to make clear:
 - the period during which a person must dispose of firearms and ammunition following revocation of his or her licence; and
 - when and how Western Australia Police may seize firearms and ammunition following revocation of a licence; and
- section 28 of the *Firearms Act 1973* (WA) be amended to extend its operation to allow forfeiture of any firearms where the charge or offence either involves physical violence, or involves the use or threatened use of a firearm.

Page: 176

Proposal 42:

that the *Firearms Act 1973* (WA) be amended to provide:

- for automatic temporary suspensions of licences, permits and approvals, and temporary surrender of firearms and ammunition, where a person has been charged with a 'firearms offence', an offence involving assault with a weapon, or an offence involving violence; and
- for a mechanism allowing the person charged to apply to the court to have that suspension overturned.

15. OPERATION UNIFICATION

Page: 179

Question 43:

- Do you have any comment on any issues arising from Operation Unification?

16. OTHER RELEVANT PARLIAMENTARY INQUIRIES

Page: 184

Proposal 43:

that the *Firearms Act 1973* (WA) be amended:

- to include a definition of 'major firearm part';
- to provide that these items cannot be possessed without a licence; and
- to provide that the manufacture of major firearm parts without a licence is an offence.

17. OTHER ISSUES

17.1 Reviews and appeals

Page: 188

Proposal 44:

- that the *Firearms Act 1973* (WA) be amended to provide for a preliminary internal review mechanism, pursuant to which objections to a decision are considered by an officer of at least a specified rank, such as inspector.

17.2 Use of firearms by Aboriginal people for traditional purposes

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Proposal 45:

- that the 'genuine reason' requirement in section 11A(1) of the *Firearms Act 1973* (WA) be amended to include 'traditional hunting';
- where a person has nominated 'traditional hunting' as his or her genuine reason, in lieu of a 'property letter' he or she ought to be able to provide evidence of:
 - his or her membership of a registered or determined native title claim over an area; or
 - his or her identity as an Aboriginal person wishing to engage in traditional hunting in accordance with section 23 of the *Wildlife Conservation Act 1950* (WA), section 23A of the *Conservation and Land Management Act 1984* (WA) and section 104 of the *Land Administration Act 1997* (WA); and
- that a person's status as an Aboriginal person engaging in traditional hunting, a registered native title claimant or determined native title holder be accepted as 'reasonable excuse' for the purposes of sections 23(10) and 23(10a) of the *Firearms Act 1973* (WA).

17.3 Ammunition sales

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Proposal 46:

- that Form 19 in Schedule 1 of the *Firearms Regulations 1974* (WA) be amended to remove the 'address' column.

17.4 Prescribed forms

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Question 44:

- Should the *Firearms Act 1973* (WA) be amended to facilitate forms being approved by the Police Commissioner rather than prescribed in the *Firearms Regulations 1974* (WA)?

5. THE FIREARMS ACT 1973 (WA) – OVERVIEW

5.1 Licensing regime – grant of licences, permits and approvals

The *Firearms Act 1973 (WA)* establishes a licensing regime to control possession, ownership and use of firearms in Western Australia. The system it creates is one of dual licensing, in which both the person and each individual firearm are licensed. Other Australian jurisdictions take a different approach whereby the person obtains a licence to use or possess firearms and then must acquire a permit for each firearm purchased,⁵⁸ which must then in turn be registered.

The *Firearms Act* provides for eight categories of licences which, depending on the specific licence, permit possession and/or use of firearms and/or ammunition.⁵⁹ The Act also provides for temporary permits for purposes including transport of firearms, allowing for persons from interstate to bring firearms into WA to participate in shooting events, or for any other cases where the Police Commissioner considers that it is not in the public interest to require a person to apply for a licence.⁶⁰

Provision is also made for the Police Commissioner to grant approvals for activities that would otherwise be contrary to the Act. For instance, a person who is an approved commercial carrier or approved warehouseman who, in the ordinary course of his or her business, carries or stores firearms or ammunition for another person is exempted from the requirement to obtain a licence.⁶¹

Licences, approvals and permits:

- are granted by the Police Commissioner, although he or she may delegate these functions to another member of the Western Australia Police;⁶²
- may be made subject to restrictions, limitations or conditions;⁶³ and
- are not transferable.⁶⁴

The Act also provides that regulations made under it may prescribe fees to be paid 'in relation to the issue, grant, variation or renewal of licences, permits and approvals' as well as fees payable in relation to other matters under the Act.⁶⁵

5.2 Powers of the Governor

The Act is strict in its terms and contains a wide regulation-making power which provides, for instance, that the Governor may on the recommendation of the Police Commissioner 'make regulations to prohibit the acquisition, sale, possession or use of any firearm, silencer, or other contrivance of a similar nature, or ammunition, whether licensed under this Act or not'. Such prohibitions may be absolute or conditional.⁶⁶

The Governor is also empowered, where he or she is of the opinion that an emergency has arisen or is likely to arise, to declare by proclamation that all dealers, manufacturers and repairers in the state, or in any part of the state, must render their firearms or ammunition innocuous, or must deliver them to the Police Commissioner for safekeeping.⁶⁷

5.3 Application process – discretion of the Commissioner

The Act makes it clear that a person cannot be granted an approval, permit or licence as of right, and sets conditions on the Police Commissioner's power to make such grants. Section 11 provides that the Commissioner cannot grant an approval or a permit or issue a licence to a person if he or she is of the opinion that:

- to do so would be contrary to section 11A or regulations under section 11B or 11C;⁶⁸
- it is not desirable in the interests of public safety;⁶⁹ or
- the person is not a fit and proper person to hold the approval, permit or licence.⁷⁰

58 See *Firearms Act 1996 (ACT)*, s 143, *Firearms Act 1996 (NSW)*, s 31, *Firearms Act (NT)*, s 35, *Weapons Act 1990 (Qld)*, s 39, *Firearms Act 1977 (SA)*, s 15, *Firearms Act 1996 (Tas)*, s 58.

59 *Firearms Act 1973 (WA)*, s 16.

60 See *Firearms Act 1973 (WA)*, sections 17 and 17A.

61 *Firearms Act 1973 (WA)*, s 8(1)(g).

62 *Firearms Act 1973 (WA)*, s 5A.

63 *Firearms Act 1973 (WA)*, s 21.

64 *Firearms Act 1973 (WA)*, s 9.

65 *Firearms Act 1973*, s 34(3)(b).

66 *Firearms Act 1973 (WA)*, s 6(1).

67 *Firearms Act 1973 (WA)*, s7(1).

68 *Firearms Act 1973 (WA)*, s 11(1)(a).

69 *Firearms Act 1973 (WA)*, s 11(1)(b).

70 *Firearms Act 1973 (WA)*, s 11(1)(c).

In addition, and again without limiting the grounds on which an application may be refused, the Commissioner may refuse an application if he or she is satisfied that the applicant has:

- failed to comply with requirements regarding photographic ID on an Extract of Licence;⁷¹
- failed to provide (following a written request) a statement as to what the applicant intends to do to ensure that firearms or ammunition in his or her possession are stored in accordance with the Act;⁷² or
- refused to permit a member of the Western Australia Police (following a written request) to inspect the storage facilities for any firearms or ammunition that the applicant would be entitled to possess.⁷³

Further, where the Police Commissioner requests, in writing, that an applicant for an approval, permit or licence supply information that the Commissioner considers necessary to enable the application to be properly determined and that information is not supplied within 28 days, or such further period as the Commissioner may approve, and in the manner and form requested by the Commissioner, the application will lapse and the approval, permit, or licence sought cannot be granted or issued.⁷⁴

Section 11A provides that an approval or permit cannot be granted, and a licence cannot be issued, to a person who in the Police Commissioner's opinion has not been shown to have a genuine reason for acquiring or possessing the firearm or ammunition for which the approval, permit or licence is sought.⁷⁵ It also lists the reasons that will be accepted as 'genuine',⁷⁶ provides that 'personal protection' is *not* a genuine reason,⁷⁷ and states that the Commissioner must be satisfied not only as to the person's reason for acquiring or possessing a firearm but also that the particular kind of firearm or ammunition can be reasonably justified.⁷⁸

Section 11B provides that regulations may provide that, for prescribed categories of firearms or ammunition, an approval or permit cannot be granted, and a licence cannot be issued to a person unless the Police Commissioner is satisfied that the person has a genuine need to acquire or possess a firearm or ammunition in that category. It further provides that the regulations may set out circumstances in which a

person cannot be considered to have a genuine need to acquire or possess a firearm or ammunition of a particular category.

Section 11C provides, in addition, that the regulations may restrict the grant, issue or renewal of licences, permits, or approvals under the Act.

Further, section 12 provides that, except as allowed under that section, a licence or permit cannot be issued in respect of any firearm which, in the Police Commissioner's opinion, is unsafe or unserviceable.⁷⁹ However, a licence or permit can be issued to a dealer in respect of such a firearm for the purpose of enabling it to be tested, dismantled for parts or repaired; to someone conveying the firearm to a dealer or holder of a Repairer's Licence or to another person authorised to take possession of it; or to a person holding a Collectors' Licence.⁸⁰

5.4 Categories and duration of licences

Section 16 of the *Firearms Act* sets out the categories of licences that may be issued, as follows:

- a Firearm Licence, which entitles the holder to possess, carry, and lawfully use the firearm named and identified in that licence, and ammunition for that firearm;⁸¹
- a Firearm Collector's Licence, which entitles the holder to possess, but not to carry or use, the firearm named and identified in that licence;⁸²
- a Corporate Licence, which may be issued in the corporate or trading name of any bank, financial institution, government department, state instrumentality or other organisation approved by the Police Commissioner and entitles that organisation to possess the firearms named and identified in that licence, together with ammunition;⁸³
- a Dealer's Licence, which entitles the holder to deal in firearms and ammunition on the premises named and identified in that licence, to receive firearms for the purpose of their being dismantled for parts, and to arrange for the repair or servicing of firearms by the holder of a Repairer's Licence, and authorises the holder or an employee or partner of the holder to have in his or her possession, and to carry in the ordinary course of the business of that dealer, any such firearm or ammunition or to use it for the purpose of testing it or of demonstrating it to a prospective purchaser;⁸⁴

71 *Firearms Act 1973* (WA), s 11(7)(a).

72 *Firearms Act 1973* (WA), s 11(7)(b).

73 *Firearms Act 1973* (WA), s 11(7)(c).

74 *Firearms Act 1973* (WA), s 11(8).

75 *Firearms Act 1973* (WA), s 11A(1).

76 *Firearms Act 1973* (WA), s 11A(2).

77 *Firearms Act 1973* (WA), s 11A(5).

78 *Firearms Act 1973* (WA), s 11A(3).

79 *Firearms Act 1973* (WA), s 12(1).

80 *Firearms Act 1973* (WA), s 12(2), (3), and (4).

81 *Firearms Act 1973* (WA), s 16(1)(a).

82 *Firearms Act 1973* (WA), s 16(1)(b).

83 *Firearms Act 1973* (WA), s 16(1)(c).

84 *Firearms Act 1973* (WA), s 16(1)(d).

- a Repairer’s Licence, which entitles the holder to repair firearms belonging to persons who are authorised by this Act or any other law to possess them; and to possess ammunition for those firearms, on the premises named and identified in that licence, and authorises the holder or an employee or partner of the holder to have in his possession, and to carry in the ordinary course of the business of that repairer, any such firearm or ammunition and to use any such firearm or ammunition for the purpose of testing it;⁸⁵
- a Manufacturer’s Licence, which entitles the holder to manufacture firearms or ammunition of the kind specified in that licence on the premises named and identified in that licence and to sell and dispose of such firearms and ammunition at those premises, and authorises the holder or an employee or partner of the holder to have in his or her possession, and to carry in the ordinary course of the business of that manufacturer, any such firearm or ammunition and to use any such firearm or ammunition for the purpose of testing it or of demonstrating it to a prospective purchaser;⁸⁶
- a Shooting Gallery Licence, which entitles the holder to conduct a shooting gallery in accordance with the regulations on the premises specified in that licence;⁸⁷ and
- an Ammunition Collector’s Licence, which entitles the holder to possess and carry, but not to use, ammunition not exceeding such quantity as may be specified in that licence and not being of a type prescribed as being ammunition to which such a licence does not apply.⁸⁸

- that if there is any reliable indication that the person may not meet standards of mental or physical fitness, sufficient evidence has been provided to the Commissioner to satisfy him or her that the person does meet those standards;⁹⁰ and
- that if there is any apparently reliable indication that for any other reason the person may not be a fit and proper person to hold the licence, permit or approval, sufficient evidence has been provided to the Commissioner to satisfy him or her that the person is a fit and proper person.⁹¹

The *Firearms Act* also sets out the duration of licences, the majority of which last for a year. An Ammunition Collector’s Licence is valid for a period of five years from the day on which it was issued or last renewed,⁹² a Firearm Collector’s Licence is valid for a period of three years from the day on which it was issued or last renewed,⁹³ and all other licences under the Act are valid for a period of 12 months from the day on which they were issued or last renewed.⁹⁴

A licence is not renewable as of right.⁹⁵ The Act provides that a licence may be renewed, from time to time where the licensee pays the prescribed fee and makes an application within one month before, or within 12 months after, its expiry.⁹⁶ Where a person applies to renew their licence within one month before or within three months after its expiry, the licence is deemed to have been renewed immediately after its expiry and the renewal is deemed a continuation of the licence.⁹⁷ Where a person applies to renew their licence for more than 3 months, but not more than 12 months, after its expiry, the renewal takes effect on the day when the licence is renewed but, for the purposes of determining the day when the renewed licence expires, it is deemed to have been renewed immediately after it previously expired.⁹⁸ Section 9A of the Act also provides that the holder of a licence under the Act cannot renew their licence under this section more than 12 months after its expiry, but he or she is not prevented from making a fresh application for a licence.⁹⁹

Section 18 of the Act sets out the procedure and fees for applications for licences and permits (other than interstate group permits under section 17A). This section further constrains the Police Commissioner’s discretion by requiring that, before granting or issuing a licence, permit or approval, the Commissioner must ensure, for the purposes of forming an opinion as to whether the person is a fit and proper person:

- that a reference has been made where practicable to relevant criminal records in Western Australia and elsewhere in Australia;⁸⁹

85 *Firearms Act 1973* (WA), s 16(1)(e).

86 *Firearms Act 1973* (WA), s 16(1)(f).

87 *Firearms Act 1973* (WA), s 16(1)(g).

88 *Firearms Act 1973* (WA), s 16(1)(h).

89 *Firearms Act 1973* (WA), s 18(4a)(a).

90 *Firearms Act 1973* (WA), s 18(4a)(b).

91 *Firearms Act 1973* (WA), s 18(4a)(c).

92 *Firearms Act 1973* (WA), s 9A(2).

93 *Firearms Act 1973* (WA), s 9A(2a). However, if the day when the Firearm Collector’s Licence was issued or last renewed was before the day on which the *Firearms Amendment Act 2004* section 12 came into operation, the licence is valid for a period of five years from the day on which it was issued or last renewed.

94 *Firearms Act 1973* (WA), s 9A(3).

95 *Firearms Regulations 1974* (WA), r 3B(3).

96 *Firearms Act 1973* (WA), s 9A(4).

97 *Firearms Act 1973* (WA), s 9A(5).

98 *Firearms Act 1973* (WA), s 9A(6).

99 *Firearms Act 1973* (WA), s 9A(7).

5.5 Conditions and endorsements on licences

The *Firearms Act* provides that a licence, permit or approval issued or granted under the Act may be made subject to restrictions, limitations or conditions, which are specified either in the licence, permit or document evidencing the approval or in a supplementary document, and which are entered in the Register.¹⁰⁰ It is an offence for a person to commit a breach of, or fail to observe, a restriction, limitation or condition to which a licence, permit or approval issued or granted under the *Firearms Act* was made subject, if that person ought reasonably to have known of the existence of that restriction, limitation or condition. This offence is punishable by 18 months' imprisonment or a \$6,000 fine.¹⁰¹

The *Firearms Regulations* set out particular notations (such as 'rifle range only' and 'club purposes only') which can be endorsed on a licence or permit,¹⁰² but it should be noted that the ability to impose restrictions, limitations and conditions is open-ended, and not expressed to be limited to notations set out in the *Firearms Regulations*.

5.6 Exemptions

There are also exemptions from the licensing regime. The following persons are not required to obtain a licence under the *Firearms Act*:

- holders of a relevant permit under the *Firearms Act*;¹⁰³
- the Governor;¹⁰⁴
- a member of the Western Australia Police or employee of the Police Department having a firearm or ammunition in his or her possession in connection with the performance of his or her duties;¹⁰⁵
- a member of the armed forces, or of any other disciplined force specified by the Governor by notice in the Gazette, having a firearm or ammunition in his or her possession for the performance of his or her duties;¹⁰⁶
- a person permitted to possess, carry or use a firearm or ammunition by virtue of a Corporate Licence;¹⁰⁷
- approved commercial carriers or warehousemen;¹⁰⁸
- a person who in the ordinary course of his practice, trade or business uses that firearm for the purpose of dealing a blow to any animal with intent to slaughter it or to render the animal insensible prior to slaughtering;¹⁰⁹
- persons working for a primary producer, or who are family members of a primary producer, and who are using a firearm licensed to that primary producer for the purpose of destroying vermin or stock, where the use of the firearm and ammunition is expressly authorised by the primary producer for the purpose of primary production; or who are in possession of such firearm or ammunition while carrying it directly between two such pieces of land or directly between such land and any other place where it is authorised by law to be held; if the use of the firearm and ammunition by that person is expressly authorised by the primary producer;¹¹⁰
- a person who uses or possesses a firearm designed for signalling or lifesaving purposes in the course of rescue or attempted rescue operations or in rehearsal or training for such operations, or possesses or uses ammunition for that firearm;¹¹¹
- a person who possesses or uses an approved firearm or ammunition for the purpose of starting races at any athletic or other sporting meeting where the firearm is held under a licence or permit granted under the *Firearms Act* by another person with his or her permission;¹¹²
- a person who, as an employee or partner of the holder of a licence to conduct a shooting gallery, or as a customer of a shooting gallery being conducted pursuant to this Act, handles or uses a firearm or ammunition at that shooting gallery in accordance with the conditions, restrictions and limitations, if any, specified in the licence relating to that shooting gallery;¹¹³

100 *Firearms Act 1973* (WA), s 21(1)(a) and (b).

101 *Firearms Act 1973* (WA), s 21(2).

102 *Firearms Regulations 1974* (WA), r 6(2).

103 *Firearms Act 1973* (WA), s 8(1)(a).

104 *Firearms Act 1973* (WA), s 8(1)(b).

105 *Firearms Act 1973* (WA), s 8(1)(d)(i) and (ii).

106 *Firearms Act 1973* (WA), s 8(1)(e).

107 *Firearms Act 1973* (WA), s 8(1)(f).

108 *Firearms Act 1973* (WA), s 8(1)(g).

109 *Firearms Act 1973* (WA), s 8(1)(h).

110 *Firearms Act 1973* (WA), s 8(1)(i)(i) and (ii). The State Administrative Tribunal has found that section 8(1)(i) of the Act does not preclude a family member of a primary producer from applying for a licence in his or her own right, and has noted that section 8 is 'intended to be a relaxation of what is otherwise a very strict licensing regime, but is not intended to be restrictive in itself'; see *Cutbush and Commissioner of Police* [2010] WASAT 45 at [38], [36].

111 *Firearms Act 1973* (WA), s 8(1)(j).

112 *Firearms Act 1973* (WA), s 8(1)(k).

113 *Firearms Act 1973* (WA), s 8(1)(l).

- a person who, with the permission of the owner of the firearm on an approved range, possesses, handles or uses a firearm or ammunition for a firearm that is the property of, or is the property of a member of, an approved club or other approved organisation and is held by that owner under a licence or permit granted under the *Firearms Act*;¹¹⁴
- a person at an approved paintball venue who possesses, handles or uses a prescribed paintball gun or prescribed paintball pellets with the permission of the owner of the paintball gun; or if the owner of the paintball gun is an approved club or other approved organisation, as a member of that club or other organisation;¹¹⁵
- a person in possession of prescribed paintball pellets;¹¹⁶
- a person who is in possession of, or carries, but does not use, an ‘antique mechanism firearm’;¹¹⁷
- a person under the age of 18 who uses a firearm (other than a handgun) or ammunition for that firearm under the supervision of the owner, being a person who holds an appropriate licence or permit under the Act.¹¹⁸
- that a licence or permit was issued, or an approval was given, incorrectly because of an administrative or procedural error;¹²¹
- that to do so is in the public interest;¹²²
- that a person holding or applying for the renewal of a licence, permit or approval who has failed to comply with requirements regarding photographic ID on an Extract of Licence; failed to provide (following a written request) a statement as to what the applicant has done to ensure that firearms or ammunition in his or her possession are stored in accordance with the Act; or refused to permit a member of the Western Australia Police to inspect storage facilities;¹²³
- that a particular firearm is unsafe or unfit for use;¹²⁴
- that a particular place or premises, range or gallery does not comply with the Act’s requirements;¹²⁵ or
- that the circumstances in which his or her approval under the Act was given in relation to any person or matter no longer prevail.¹²⁶

Some of these exemptions will be discussed more fully in this Discussion Paper.

5.7 Revocation and refusal of licences, permit and approvals; appeals

Section 20 of the *Firearms Act* gives the Police Commissioner the ability to revoke a licence, permit or approval, or to refuse to renew it or to impose reasonable restrictions, limitations or conditions on it. The Commissioner may do so where he or she is satisfied that the holder obtained it by fraud or deception; that the holder has breached or failed to observe a condition; or that the holder could not, by virtue of section 11, be granted the licence if the person were then applying for it.¹¹⁹

The Commissioner may also revoke, refuse to renew or impose reasonable restrictions, limitations or conditions on a licence, permit or approval if satisfied:

- that harm may be suffered by any person as a result of a person retaining or regaining possession of a firearm or ammunition;¹²⁰

The Police Commissioner may also revoke a licence, permit or approval where the holder fails to supply information that the Commissioner considers to be necessary in order to determine whether the holder remains a fit and proper person within 28 days of a written request; or where the holder fails to make a submission to show cause why the power of revocation should not be exercised within 28 days of a written request.¹²⁷

5.8 Reviews of decisions made under the *Firearms Act 1973 (WA)*

Any person who is aggrieved by a decision made by or on behalf of the Police Commissioner may apply to the State Administrative Tribunal for a review of the decision.¹²⁸ It should also be noted that the *State Administrative Tribunal Act 2004 (WA)* provides that the right to have a decision reviewed by the SAT does not exclude any right to take judicial review proceedings in relation to the decision,¹²⁹ but a decision cannot be subject to both review by the SAT and judicial review.¹³⁰

114 *Firearms Act 1973 (WA)*, s 8(1)(m).

115 *Firearms Act 1973 (WA)*, s 8(1)(ma)(i) and (ii).

116 *Firearms Act 1973 (WA)*, s 8(1)(mb).

117 *Firearms Act 1973 (WA)*, s 8(1)(mc).

118 *Firearms Act 1973 (WA)*, s 8(1)(n).

119 *Firearms Act 1973 (WA)*, s 20(1).

120 *Firearms Act 1973 (WA)*, s 20(1)(aa).

121 *Firearms Act 1973 (WA)*, s 20(1)(ab).

122 *Firearms Act 1973 (WA)*, s 20(1)(ac).

123 *Firearms Act 1973 (WA)*, s 20(1)(ad).

124 *Firearms Act 1973 (WA)*, s 20(1)(b).

125 *Firearms Act 1973 (WA)*, s 20(1)(c).

126 *Firearms Act 1973 (WA)*, s 20(1)(d).

127 *Firearms Act 1973 (WA)*, s 20(1a)(a) and (b).

128 *Firearms Act 1973 (WA)*, s 22.

129 *State Administrative Tribunal Act 2004 (WA)*, s 19(2).

130 *State Administrative Tribunal Act 2004 (WA)*, s 19(3)(a), (b) and (c).

When dealing with a matter in the exercise of its review jurisdiction, the SAT has the same jurisdiction, functions and discretions as those of the maker of the reviewable decision.¹³¹ In the case of decisions made under the *Firearms Act*, this person will be the Police Commissioner or a person acting on his or her behalf. The role of the SAT is considered at paragraph 17.1.1.

5.9 Structure of the *Firearms Act 1973* (WA)

The review conducted by Western Australia Police in 2008 recommended changes to the structure of the Act, proposing that the *Firearms Act* be separated into three distinct parts dealing respectively with 'Administration/Licensing', 'Police Powers' and 'Offences'.¹³² The report noted that 'Western Australia is the only jurisdiction whose firearms legislation does not have a contents page structured by way of Parts and Divisions'.¹³³ No amendments have been made to date to implement this recommendation.

Clarity of legislation is obviously of great importance, particularly when that legislation is intended to be used by laypeople. Some sections of the Act, such as those discussed below at paragraph 14.10 relating to the seizure of firearms and ammunition, are unclear. Further, the language used in some sections of the Act is convoluted. One example is the wording in section 23BA(3), which relates to the disclosure of certain information by approved club and organisation members and reliance by the Police Commissioner on that information.

There are also aspects of the *Firearms Regulations* that are cumbersome to read, such as Schedule 3, which contains details of the genuine need tests pertaining to particular categories of firearms, and the restrictions on those firearms.

Western Australia Police has recently reiterated its support for a restructure of the Act.¹³⁴

Proposal 1:

- that the *Firearms Act 1973* (WA) be re-enacted;
- the new Act be restructured in order to improve clarity of parts such as the Administration/Licensing process, Police Powers and Offences; and
- in the new Act, where appropriate, provisions be worded to provide greater clarity than is provided under the current Act and Regulations.

¹³¹ *State Administrative Tribunal Act 2004* (WA), s 29(1).

¹³² *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008.

¹³³ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 12.

¹³⁴ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 24.

6. ADMINISTRATION OF THE FIREARMS ACT 1973 (WA)

The *Firearms Act 1973 (WA)* is administered by Western Australia Police. In terms of licensing, applications are initially made through Australia Post and are then processed by the Licensing Enforcement Division within Western Australia Police. This Division has been in existence for approximately seven years. When appearing before the Joint Standing Committee on Delegated Legislation in 2013, Western Australia Police Detective Superintendent James Migro advised:

In about 2008, we moved into and established the Licensing Enforcement Division ... it is our main licensing area for Western Australia Police. We moved into there with Australia Post taking over the process of accepting applications. They then come into our area where the applications are assessed and processed. Previous to that, they were all done at individual police stations and a decision was really made at the whim of the officer at the police station. Now we have a centralised area, and there are constant decisions that are made in accordance with the [*Firearms Act 1973 (WA)*].¹³⁵

The Western Australia Police Licensing Enforcement Division undertakes activities falling under several Acts administered by Western Australia Police, being the *Firearms Act* (including issues arising under the *Weapons Act 1999 (WA)*), the *Security and Related Activities (Control) Act 1996 (WA)*, and the *Pawnbrokers and Second-hand Dealers Act 1994 (WA)*. Licensing systems under all of these Acts operate on a full or partial cost-recovery basis.¹³⁶

The Licensing Enforcement Division contains a specific Licensing Services (Firearms) branch. Currently this branch has 28 staff, of whom eight are classed as assessors, who assess applications under the *Firearms Act*. There is some flexibility within the branch, and the Commission understands that staff can act as assessors on a temporary basis where the need arises.

The Licensing Enforcement Division contains a Compliance Unit, which is managed by the Officer in Charge of Licensing Services and has a total of 15

staff: the sergeant in charge, seven police officers and seven police staff members who are vested with special powers for investigation of compliance offences.

Compliance officers carry out licensing functions that are the responsibility of the Western Australia Police, undertaking investigations within the licensing scope of Licensing Services. Their role is to ensure that the security industry, pawnbroker and second-hand dealer licence holders and dealers licensed under the *Firearms Act* comply with legislative requirements. Compliance officers investigate criminal activity, conduct compliance checks and audits of licence holders, and the unit has a liaison and information role with all licence holders. Police officers within the Compliance Unit take the lead role and make decisions in relation to prosecution. As with other police officers, their powers are not exclusive to any particular Act and they may be called on to deal with other matters.

A new system for administering the licensing system, which is expected to be implemented shortly, is discussed below at paragraph 6.2.

6.1 Licensing and application process

The licence application process is administered by both Australia Post (in the initial stages) and Western Australia Police (within which the final decision is made whether or not to grant an application).

The *Firearms Regulations* provide that licence applications must be lodged at an Australia Post Office in Western Australia,¹³⁷ the General Post Office in the capital city of another state or territory,¹³⁸ or at a place approved by the Police Commissioner.¹³⁹ Applications may be accessed online,¹⁴⁰ filled out and printed before being brought to the post office, or hard copy forms may be obtained from a police station or from Police Licensing Services. Applications for a temporary permit may be made to the officer in charge of any police station, but should normally be made at the police station nearest to where the applicant lives.¹⁴¹

135 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, Transcript of Evidence Taken at Perth, Wednesday 11 September 2013, 2.

136 The Western Australia Police 2014 Annual Report notes: 'WA Police charges for goods and services are rendered on a full or partial cost-recovery basis. These fees and charges were determined in accordance with the Costing and Pricing of Government Services – Guidelines for use by agencies in the WA Public Sector published by the Department of Treasury and the annual instructions to agencies for the preparation of the budget'; see Western Australia Police, *Annual Report 2014*, 117, accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=pgoQta8o54o%3D&tabid=935>.

137 *Firearms Regulations 1974 (WA)*, r 7(1)(a).

138 *Firearms Regulations 1974 (WA)*, r 7(1)(b).

139 *Firearms Regulations 1974 (WA)*, r 7(1)(c).

140 Application for a Western Australia Firearms Licence, accessed via <https://smarteform.com.au/onlineforms/WAPOL/application-for-a-western-australia-firearms-licence/>.

141 *Firearms Regulations 1974 (WA)*, r 7(2).

Applications for licences must be provided together with a current firearm serviceability certificate for the firearm the subject of the application,¹⁴² evidence of the applicant's identity,¹⁴³ and (unless the application is for the addition of a new firearm to an existing licence)¹⁴⁴ evidence in a prescribed form that the applicant has passed a firearms safety test conducted by the holder of a Dealer's Licence or an officer of an approved shooting club or other approved organisation.¹⁴⁵

The Western Australia Police website advises that the current 'smart form' now enables applicants to apply for up to ten firearms within the form, whereas previously the form would only allow for five firearms to be included in an application. Applicants who wish to apply for more than ten firearms can attach a blank A4 sheet to the back of their application detailing all relevant information.¹⁴⁶

After receiving an application the Police Commissioner may write to the applicant to direct the applicant to arrange for the relevant firearm to be produced for inspection at a specified police station.¹⁴⁷

As at 1 September 2015 there were 289,125 licensed firearms in Western Australia.¹⁴⁸

As at 16 June 2015 the number of licences by type, and the end total, was as follows:

Ammunition Collector's Licence	233
Firearm Collector's Licence	2,986
Firearm Licence	81,277
Corporate Licence	359
Dealer's Licence	196
Manufacturer's Licence	29
Repairer's Licence	15
Total	85,095 ¹⁴⁹

The following table¹⁵⁰ sets out the number of firearm applications made during the previous five years:

	2010	2011	2012	2013	2014
Additional	5023	5314	5630	6461	6559
Original	1882	2788	2713	3256	3521
Total	6905	8102	8343	9717	10080

Based on the above figures, the average number of firearms per person who is licensed to own a firearm is 3.3.¹⁵¹

6.1.1 Concerns raised with the Commission

Members of the firearms community have expressed dissatisfaction with the current licensing process, with a particular focus on the time taken to process applications, and have suggested that a purely online system would be quicker and more efficient.¹⁵² It has been suggested that, from a dealers' perspective, recordkeeping relating to firearm repairs and the recording of major firearm parts should be simplified and that, rather than being reported to Western Australia Police, this information could simply be recorded and held in a separate file for inspection when required.¹⁵³ The Commission has also been advised that it is not possible to print out an application form in full; only a summary may be printed which does not include all the information in the form.¹⁵⁴

In addition, specific concerns about the licensing system have previously been explored by the Joint Standing Committee on Delegated Legislation, in a report which is considered below.

6.1.2 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013

The Terms of Reference requires the Commission to consider the above report, which was made in reference to the *Firearms Amendment Regulations 2013*. This amending regulation increased licensing fees in order to achieve cost recovery, and was the subject of an unsuccessful disallowance motion in Parliament. The fee increases were in some instances substantial. For instance, the fee in respect of an application for a firearms licence by a person with such a licence who seeks a licence for one or more additional firearms increased by 133.8 per cent – from \$72.50 to \$169.50.¹⁵⁵

142 *Firearms Regulations 1974* (WA), r 7(3)(a).

143 *Firearms Regulations 1974* (WA), r 7(3)(b). The Regulations provide further, at r 7(8), that if an applicant appears to be under 18 years old, the person to whom the application is made may require proof of the applicant's age.

144 *Firearms Regulations 1974* (WA), r 7(5).

145 *Firearms Regulations 1974* (WA), r 7(3)(c).

146 See 'Ability to apply for a number of firearms', accessed via <http://www.police.wa.gov.au/OurServices/PoliceLicensingServices/Firearms/Licenceapplications/tabid/1905/Default.aspx>.

147 *Firearms Regulations 1974* (WA), r 7(4).

148 Correspondence from Michelle Fyfe APM, Acting Deputy Commissioner (Specialist Services) of Western Australia Police, 4 September 2015, 1.

149 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 30.

150 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 29.

151 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 30.

152 Submission from Roy Alexander & Sons, provided 8 September 2014, 1, 3.

153 Submission from Roy Alexander & Sons, provided 8 September 2014, 3.

154 Meeting with Hon Rick Mazza MLC, 18 June 2015.

155 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 5.

The Joint Standing Committee on Delegated Legislation considered the *Firearms Amendment Regulations 2013* and ultimately concluded that they were within the power of the *Firearms Act*. However, due to the volume of unsolicited submissions the Committee received from 'outraged firearms owners' regarding the fee increases,¹⁵⁶ it held a public hearing to consider the quantum of the fees.¹⁵⁷

Usefully, in its report the Joint Standing Committee set out in detail a description of the processing of an original class A, low-powered firearm licence for recreational hunting and shooting¹⁵⁸ as follows:

- A person goes to a dealer, obtains a dealer's certificate and details of the relevant firearm, applies online, fills out the application, prints it out, takes it to Australia Post, pays the fee and submits the appropriate forms.
- Forty-eight hours later the application comes through electronically, arriving at the firearms licensing services probity area, not the firearms branch.
- The probity area's unsworn officers (overseen by sworn officers) consider the application details and the applicant's antecedents, including conducting CrimTrac checks to determine the applicant's suitability under the *Firearms Act* – a process that takes approximately five days.
- The application is given to an unsworn firearm licensing services assessor, who considers the requirements of sections 11A and 11B of the *Firearms Act* (including comparing the calibre of the relevant firearm and in some cases contacting a property owner to ensure that the applicant has authority to shoot on the property). At this stage a changeover occurs from a civilian assessor to the supervisor, who is normally a police sergeant.
- If the application is satisfactory, the assessor makes a recommendation and a sergeant then makes his or her own assessment of it.
- If pre-approved, the application is returned to the assessor for a Form 22 assessment, which concerns the storage security system for the firearm.
- The assessor fills out forms and sends a statutory declaration form to the applicant for photographs and details as to how the firearm will be stored.

The declaration is returned within 28 days and then sent to the approver for final approval in the event that everything is correct.

- The approver sends the forms to a 'loading' clerk. Up to this point, the application has been in the 'firearm processing portal', but the actual licence must be issued in the firearm registry system. There is no automatic link between these two systems, so the details from the former are manually entered into the latter by an unsworn officer. Once this has been done, the details are sent to Post Connect and the licence is sent to the successful applicant.¹⁵⁹ In response to questions from the Chair of the Committee, Mr Fisher advised that the manual entry process takes 'about ten minutes per application, as long as there is no issue with it'.¹⁶⁰

The Committee described this system as 'a convoluted and complex processing system of firearm licensing which involves double and manual handling as well as third party outsourcing'.¹⁶¹

One aspect of the existing system is its involvement of both sworn and unsworn officers at several stages. For instance, as noted above, the probity area's unsworn officers consider application details and applicants' antecedents while overseen by sworn officers. Subsequently, an unsworn firearm licensing services assessor makes a recommendation about an application, and then his or her supervisor (usually a police sergeant) makes his or her own assessment of it. This system is multi-layered and resource-intensive and appears to reflect the Police Commissioner's limited ability to delegate his or her functions under the *Firearms Act*.

Section 5A(1) of the *Firearms Act* provides that the Firearms Regulations may permit prescribed members of the Western Australia Police to perform the Police Commissioner's functions upon an application being made for the grant of an approval or permit or the issue of a licence under the *Firearms Act* in respect of a firearm or ammunition.¹⁶² Section 5A(3) further provides that the Police Commissioner may delegate to a member of the Western Australia Police any power or duty under the Act, other than a function the performance of which is permitted by regulations under section 5A(1),¹⁶³ and the power of delegation itself.¹⁶⁴

156 The Committee received 89 unsolicited submissions from 'outraged firearms owners'; see Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 2.

157 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, i.

158 The Committee's report states that this description of the licensing process was provided by Mr Carl Fisher, Senior Sergeant, Western Australia Police, Officer in Charge, Firearms Licensing Services.

159 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 11-12.

160 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 13.

161 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 11.

162 *Firearms Act 1973* (WA), s 5A(1). Subsection 5A(2) provides that sections 58 and 59(1)(a) and (f), (2), and (3) of the *Interpretation Act 1984* (WA) apply as if a function that a member of the Western Australia Police may perform under subsection (1) had been delegated to the person by the Police Commissioner.

163 *Firearms Act 1973* (WA), s 5A(3)(a).

164 *Firearms Act 1973* (WA), s 5A(3)(b).

The 2008 Police Review considered section 5A and observed that this provision was 'very specific in regard to the delegation being to a member of the Western Australia Police' which was 'very limiting and doesn't allow for future arrangements that the Commissioner may put in place in respect to the operation and administration of the *Firearms Act*'.¹⁶⁵

Noting in particular the then restructure of the Firearm Inquiry Unit to create Police Licensing Services and the Licensing Crime Squad, the 2008 review concluded that these changes had 'highlighted the need to expand the ability of the Commissioner to delegate certain functions to police staff', that is, to unsworn officers.¹⁶⁶ Accordingly the review recommended that 'the powers of the Commissioner to delegate his functions under section 5A of the *Firearms Act* be amended to allow delegation to occur to persons other than police officers, including police staff'.¹⁶⁷ This recommendation has not been implemented.

The *Firearms Regulations* set out the current delegations as follows, providing that in respect of an item set out in the table, the Police Commissioner's functions set out in that item may be performed by the nominated officer:

Item	Type of firearm	Functions	Officer who may perform function
1.	Firearm described in Schedule 2	Grant a permit without conditions	Any officer
2.	Firearm described in Schedule 2	Issue a firearm licence without conditions Refuse to grant a permit (as referred to in item 1) or issue a licence	Any officer employed in the Department to carry out licensing functions in respect of firearms
3.	Firearm or ammunition other than a firearm of category D	Grant a permit or approval, or issue a licence, without conditions Grant a permit or approval, or issue a licence, with conditions Refuse to grant a permit or approval, or issue a licence	Any officer holding the rank of, or performing the functions of, senior sergeant or holding a commission under the Police Act 1892 section 6 and employed in the Department to carry out licensing functions in respect of firearms
4.	Firearm of category D	Issue a licence without conditions Issue a licence with conditions Refuse to issue a licence	Assistant Commissioner of Police responsible for licensing functions in respect of firearms ¹⁶⁸

Proposal 2:

- that section 5A of the *Firearms Act 1973* (WA) be amended to provide more flexibility to the Police Commissioner in delegating functions under the Act; and
- Western Australia Police review the use of its staff with a view to eliminating double-handling and streamlining the application process.

6.2 Information storage – 2013 Information Systems Audit Report by the Auditor General

There are also concerns about the completeness and accuracy of the records that are created through the licensing process. These concerns have been expressed in a series of reports by the Auditor General in 2000,¹⁶⁹ 2004,¹⁷⁰ 2009¹⁷¹ and 2013,¹⁷² to which the Commission is required by its Terms of Reference to have regard.

The 2000 report focused on the implementation of the 1996 amendments to the *Firearms Act* and it found, for instance, that 'available information

¹⁶⁵ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 28.

¹⁶⁶ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 28.

¹⁶⁷ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 29.

¹⁶⁸ *Firearms Regulations 1974* (WA), r 25.

¹⁶⁹ Auditor General Western Australia, *Surrender Arms? Firearm Management in Western Australia*, Report No. 7 September 2000, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2000_07.pdf.

¹⁷⁰ Auditor General Western Australia, 'Surrender Arms? Firearm Management in Western Australia: Follow-Up Performance Examination', in *Public Sector Performance Report 2004*, Report 1, May 2004, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2004_01.pdf, 42-52.

¹⁷¹ Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 5-19.

¹⁷² Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf.

indicates an unknown, though significant number of pre-1996 licence holders of restricted and prohibited firearms have not been required to surrender their weapons or meet the new eligibility requirements'.¹⁷³ The report also noted that the Firearms Licensing System was seriously affected by inaccurate and incomplete data, and that core functions of the Firearms Branch were either not undertaken or not done in a timely manner, including: the follow-up of firearms belonging to deceased estates and overdue firearm infringement notices; audit and inspections of firearms dealers and shooting ranges; and monitoring of licensing procedures at police stations across Western Australia.¹⁷⁴

The 2000 report expressed some substantive concerns, including noting that there was 'some small risk that a person bound by a [violence restraining order] may successfully apply for a firearm licence'.¹⁷⁵ In addition, the report noted that the exercise of discretion as to whether an applicant's criminal records made them unsuitable to be licensed was inadequately documented. The report noted that 'in ten per cent of approved applications examined, applicants were found to have a criminal record that was not referred to in the file documentation. Consequently, it is not possible to determine if a check was done and the police simply failed to record their determination of a lack of seriousness or currency of the offence or more seriously but less likely, they failed to check for a criminal record'.¹⁷⁶ The 2000 report made a series of recommendations, including that Western Australia Police 'give priority to systematically addressing faults, deficiencies and inaccuracies in the Firearm Licensing System'.¹⁷⁷

The Auditor General conducted a 'follow-up examination' in 2004, which concluded that Western Australia Police had 'largely implemented the ... recommendations contained in the 2000 report', with three exceptions:

- that decisions regarding the issue of licences to persons with a criminal record were not documented;
- consistent procedures for inspecting secure storage of firearms had not been implemented; and

- the Firearm Licensing System continued not to have the capacity to produce summary management information to assist Western Australia Police to effectively manage and monitor firearm licensing.¹⁷⁸

The 2004 report recommended that Western Australia Police should:

- improve the way it identifies and assesses licence applicants' criminal histories;
- implement a consistent, risk-based procedure across districts to inspect firearm storage by licence applicants;
- improve the Firearm Licensing System's capacity to produce summary management information to capitalise on technology, streamline processes, and achieve more timely updates of system performance; and
- consider giving write access to police stations to enable issuing officers to enter licence and registration details directly into the Firearm Licensing System when data integrity issues have been fully resolved.¹⁷⁹

The 2009 report re-examined the firearms regulation system. It concluded that Western Australia Police was 'not adequately regulating and overseeing the possession, use, dealing and manufacture of firearms' and that while Western Australia Police had 'sound procedures for assessing applications for firearm licences' there were 'serious weaknesses in how these were carried out, in how information was handled, and in how [Western Australia Police] monitored whether licence-holders had met their obligations'.¹⁸⁰ For instance, officers were not required to document the results of their checks against all the eligibility criteria for licence applications, which limited the assurance that could be provided that all required checks were carried out. Specifically, there were concerns about the checks done regarding the 'genuine need' requirement. The report noted that nine per cent of sampled applications did not show whether the requirement to establish genuine need had been checked. Conversely, 93 per cent of applications for Category A firearms did include an assessment of 'genuine need', despite this not being a legislative requirement.¹⁸¹

173 Auditor General Western Australia, *Surrender Arms? Firearm Management in Western Australia*, Report No. 7 September 2000, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2000_07.pdf, 6-7.

174 Auditor General Western Australia, *Surrender Arms? Firearm Management in Western Australia*, Report No. 7 September 2000, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2000_07.pdf, 8.

175 Auditor General Western Australia, *Surrender Arms? Firearm Management in Western Australia*, Report No. 7 September 2000, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2000_07.pdf, 17.

176 Auditor General Western Australia, *Surrender Arms? Firearm Management in Western Australia*, Report No. 7 September 2000, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2000_07.pdf, 18.

177 Auditor General Western Australia, *Surrender Arms? Firearm Management in Western Australia*, Report No. 7 September 2000, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2000_07.pdf, 9.

178 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 42.

179 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 42.

180 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 5.

181 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 14.

In addition, the 2009 report noted that in some instances procedures were not followed; for instance 25 per cent of sampled applications were assessed and the licence granted by the same person.¹⁸² The report found no instances of licences having been issued to people who were clearly not eligible.¹⁸³ The 2009 report acknowledged that since January 2008 Western Australia Police had dedicated specialist resources to monitoring whether licence holders were meeting their obligations. However, it noted that there was no risk-based program for monitoring licensees' compliance with legislative requirements;¹⁸⁴ Western Australia Police did not check whether storage facilities complied with regulations when licensees moved house; and they also did not check that shooting ranges and clubs were meeting their obligations to ensure the safe use of firearms.¹⁸⁵ There were also inaccuracies in the firearms register.¹⁸⁶

The most recent and relevant of these reports, from 2013, is the *Information Systems Audit Report*. In June 2013 the Auditor General's annual information systems audit report examined five key business applications at four agencies, including the Firearms Management System managed by Western Australia Police. The report noted that 'ninety per cent of the agencies ... reviewed had serious gaps in their management of information security when assessed against better practice information standards'.¹⁸⁷ However, the Auditor General singled out firearms as an area of particular concern, noting that 'a number of serious weaknesses' had been identified in the Firearms Management System managed by Western Australia Police.

The Auditor General concluded that because of these weaknesses Western Australia Police 'lacks reliable information to effectively manage licensing and regulations of firearms in Western Australia'.¹⁸⁸ Previous performance audits on the management and regulation of firearms conducted in 2000, 2004 and 2009 had each 'identified various problems with the systems and processes for the licensing and management of firearms in Western Australia', with the 2009 report raising 'specific concerns with the Firearms Register and related systems' which had the effect that Western Australia Police 'could not rely on the accuracy of the information held in the register'.¹⁸⁹

Following the 2009 report, the Parliament's Public Accounts Committee requested that Western Australia Police provide an update of progress for remedying the issues which had been identified. Western Australia Police reported to the Committee in September 2011 that a stabilisation project had been completed, at the cost of \$720,000, and that the Firearms Systems were 'stable, satisfactory and functional' as a result.¹⁹⁰ Nevertheless, the 2013 report 'identified some concerning issues that result directly or indirectly from the lack of reliable data and difficulties in accessing basic management information from the Firearms Registry System'.¹⁹¹ These issues included:

- The audit revealed that 988 firearms had not been recovered from deceased estates dating back to 1983 and no records could be found in the Incident Management System or Firearms Registry System to ascertain if the firearms had been seized.
- The audit revealed at least one case in which an applicant for a recreational licence had purchased a 'property letter' (a letter of approval from a property owner to use a licensed firearm on their property), and that the Firearms Registry System did not have the capacity to search or report on the number of letters associated with individual properties, although a sample of applications disclosed that one property owner had provided letters to over 270 applicants over the previous 17 months.
- The audit revealed that 300 firearm licence holders still had firearms listed against their licence despite being classified by Western Australia Police as unfit to possess a firearm. As at the audit's completion, Western Australia Police had followed up approximately 50 per cent of the 'unfit to issue' licence holders listed in the system and found no firearms in their possession – in some cases a firearm had been seized but this had not been recorded in the system, and in others the firearm was in the possession of a co-licence holder, which was also not recorded in the system.

182 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 15.

183 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 5.

184 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 15.

185 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 16.

186 Auditor General Western Australia, 'Regulation of Firearms – Follow-Up', in *Third Public Sector Performance Report 2009*, Report 11 – October 2009, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/05/report2009_11.pdf, 17–18.

187 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 5.

188 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 4.

189 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 14.

190 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 14.

191 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 14.

- The audit revealed that the Firearms Registry System did not have the capacity to produce simple management reports, for instance on the number of expired licences, or verifications of previously reported firearms statistics. Requests for such reports needed to be submitted to another branch of Western Australia Police and took more than five working days to process; in addition, Western Australia Police could not guarantee the accuracy of the information requested. The Auditor General's report noted that as a result of these issues, staff members manually create management reports in spreadsheets.
 - The audit found over 25,000 instances where data could not be reconciled between the Western Australia Police firearms register and the national CrimTrac database, 1,000 of which were linked to deceased estate and persons unfit to issue, and the remaining 24,000 of which related to the reason and conditions associated with the issue of a firearms licence. These errors were caused by data incompatibilities between the systems, and consequently, the national database may not contain up-to-date or accurate records for WA firearms or licensees.
 - The audit found that the details of nominated persons who have access to firearms under a corporate licence but do not require an individual firearms licence are maintained in a spreadsheet completely separate to the firearms register, which is a risk due to the possibility of unauthorised access; the lack of audit trails and history of changes; and the risk that data could be lost as a result of human error.
 - The audit identified a number of concerns with Firearm Identification Cards including persons with more than one card, missing signatures, photos which did not match the licence holder's name, and cards with no details.
 - The audit noted that manual processing was required for the Firearms Registry System to operate effectively – including the need to reconcile the accuracy of data back to the Incident Management System and other Western Australia Police systems and then manually change information as required.
 - The audit found no policies or procedures in place relating to log access, changes and reviews of logs for databases, and noted that the application used for logging user activities and changes, Audittrak, did not detect unauthorised access.
 - The audit report also noted that, when requested, Western Australia Police had been unable to provide the contract with Australia Post for firearms application processing, fee collection and letter printing.¹⁹²
- The Auditor-General's report recommended that Western Australia Police must:
- ensure that the integrity and timely input of information into firearms management systems is performed to ensure that firearms can be suitably managed;
 - ensure that business requirements for the new firearms management systems are adequately defined to ensure they support the business of managing firearms. Strong consideration needs to be given to management reporting. Good project management practices are essential from initiation to completion;
 - retrieve firearms from deceased estates promptly and ensure that the information is entered correctly into firearms management systems;
 - ensure effective verification of information and supporting documentation provided by firearms license applicants;
 - review controls for logging and monitoring of access and changes to back end systems including the Databases and Servers that support firearms management; and
 - consider developing recommendations for amendments to the Firearms Act and the *Firearms Regulations 1974 (WA)*.¹⁹³
- Western Australia Police provided the following response to the Auditor-General's report:
- The Western Australia Police acknowledge the issues in the current Firearms Registry system, all of which Police have been aware of and responding to whilst developing the new Licensing and Registry system. Full implementation of the new system should address these issues, however is dependent on funds being made available. The Western Australia Police will continue its endeavour to improve its capacity and competence to fulfil its obligations under the *Firearms Act*.¹⁹⁴

192 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 14-16.

193 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 17.

194 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 17.

Western Australia Police – new licensing system

The Commission understands that Western Australia Police intends to implement a new firearm Licensing and Registry system. Western Australia Police have advised that the new system will operate in the case of an original firearm application as follows:

- An applicant will complete a form on the Australia Post website.
- Within 1–2 days the application will be received at Licensing Services for probity checking.
- Within 5–10 days the application will pass probity and be moved to the firearm assessment stage. (Western Australia Police advise that probity can take 2–3 days if the applicant is local and has no criminal history, but it may take longer if the applicant is from interstate or overseas as this process is dependent on other jurisdictions' advice).
- The application will be placed in the assessing queue (which will depend on the number of applications) but ordinarily assessment (where there are no impediments and all necessary information is supplied by the applicant) will take 2–3 days (noting that a 28-day cooling-off period applies).
- The application will be forwarded to an Approver (a police officer for pre-approval), which will take 1 day.
- The application will be returned to the assessor for a Form 22 Storage Statement (Statutory Declaration) to be forwarded to the applicant requesting advice and photographic proof of cabinet storage.
- Upon return of the document by the applicant (which sometimes takes up to 2–3 weeks) the application will be returned to the Approver.
- The Approver will provide final approval, the licence detail will be recorded and the licence will be forwarded to the applicant.¹⁹⁵

Western Australia Police advises, further, that under the new system, an original application would not go through the present second process of loading individual applications into the Firearms Registry System,¹⁹⁶ that is, the present issue of double entry would be avoided.

The Commission is advised that the new system will have the following advantages:

- All transactions and details of any officer making notes in the Licensing and Registry system will be recorded and this information will be capable of being extracted if required.
- Applications will be accurately recorded.
- It will be possible to retain images of applicants and firearms.
- It will be possible to record and track approved nominated persons handling an organisation's firearms.
- It will be possible to track B709 Customs permits for weapons being brought into Western Australia.
- It will be possible to track approved couriers or transport companies authorised to carry firearms.
- Through links with other Western Australian databases, it will be possible to identify deceased persons, expired licences, court orders and so forth.
- It will be possible to report on firearm numbers, licences, individual firearms, types and classes.¹⁹⁷

Western Australia Police has also advised that there will be links between the Licensing and Registry system and the Incident Management System, which is used to record firearms that are seized. When a firearm is seized and this is recorded in the Incident Management System, the Licensing and Registry system will automatically be updated.¹⁹⁸ Some examples of the kind of data that will be capable of being extracted from the system are:

- information on deceased firearm holders;
- infringement notices and payment status thereof;
- information on instances where licences have been cancelled or licence applications have been refused, and on what grounds;
- current total number of firearms;
- current total number of licence holders;
- total number of approved applications, lapsed applications, pending applications, withdrawn applications, and refused applications.¹⁹⁹

Overall, Western Australia Police has advised that the new Licensing and Registry system is designed to provide an efficient process flow and accountability, as distinct from providing a means to 'short-cut' licensing requirements for applicants.²⁰⁰

195 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 1.

196 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 1.

197 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 1-2.

198 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 2.

199 Appendix A to Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015.

200 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 2.

As the new system is not yet in place, the Commission is unable to assess its efficacy and determine whether it will address the concerns identified by both the Joint Standing Committee on Delegated Legislation and the Auditor General. The Commission would welcome information on the functioning of the new system as soon as it comes into operation.

Proposal 3:

- that Western Australia Police conduct a review of the new firearms licensing and registry system after its first year of operation to verify that it is functioning as intended;
- the review should be made publicly available; and
- any deficiencies revealed by the review must be addressed as a matter of priority.

6.3 Application processing – time delays

A major concern within the firearms community is the time taken to process applications for licences under the *Firearms Act*. The time taken to process applications must be viewed in the context of the number of applications received by Western Australia Police; as noted above, 10,080 applications were made in 2014 alone.²⁰¹

Nevertheless, it appears that the time taken to process applications is a matter of great concern to many applicants. As well as causing inconvenience to licence applicants (some of whom require firearms for use in the course of their work), the Commission is advised that the time taken to process applications also affects licensed dealers. Many dealers are small businesses and the Commission has been advised that lengthy licensing processes have a negative impact on their business and cashflow.²⁰² Handgun dealers and purchasers have particularly been affected given that the process for purchasing a handgun is more involved. In order to purchase a handgun, an individual must be a member of an association, the president must support the licence through letters of authorisation from the association, and all documentation is then reviewed by Western Australia Police.

The 1996 National Agreement provides that licence applications must be subject to a cooling-off period of not less than 28 days.²⁰³ This requirement has been

interpreted, in Western Australia and elsewhere, to apply only to initial applications for a licence, and not to applications to possess and/or use subsequent firearms. Thus the *Firearms Act* provides that, where an application is for the first issue of a Firearm Licence to a person, the Police Commissioner can only grant the application if a period of 28 days has elapsed since the making of the application and the applicant has confirmed his or her desire to proceed with the application.²⁰⁴ The Commission is advised that statistics are not kept on the question of the number of applications which are discontinued by applicants after the 28-day cooling-off period, but this number is believed to be extremely low, perhaps one or two applications per year.²⁰⁵ It is unknown how many persons may decide not to make an application because they are aware there is a mandatory cooling-off period.

A certain delay is, therefore, built into the Act. However, it has been suggested that the time taken to process applications often exceeds the 28-day period, and there have been queries as to why this is the case. It has also been submitted that Western Australia Police does not provide any indicative timeframe for applications and that it can take thirty working days, or longer, for a person to obtain a firearm.²⁰⁶ Some stakeholders have suggested that time limits be included in the Act; that, for example, applications for licences in respect of additional firearms should be required to be processed within seven to ten calendar days.²⁰⁷

Western Australia Police advises that the average time taken to licence a firearm is two hours in direct work, but this does not include the additional time it takes for Western Australia Police to seek and obtain record checks from other jurisdictions. In addition, it also does not include the time taken to conduct property, security and council approval checks in the case of applications for corporate licences.²⁰⁸

Western Australia Police has also noted that some of the delays in the processing of licences are due to not enough information being provided by the applicant or storage requirements not being met.²⁰⁹ For instance, Western Australia Police has advised that during the month of September 2014, 933 applications were made for licences under the *Firearms Act*, of which 90 were incomplete.²¹⁰ Errors included failure to provide information about previous licences held under the Act; failure to provide an accurate street address; failure to provide

201 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 29.

202 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

203 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 6, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>

204 *Firearms Act 1973* (WA), s 18(6).

205 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 30.

206 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

207 Submission from Roy Alexander & Sons, provided 8 September 2014, 5.

208 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 30.

209 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

210 Meeting with Mr Carl Fisher, Senior Sergeant, Western Australia Police, Officer in Charge, Firearms Licensing Services, 11 November 2014.

a phone number; and illegible responses to these and other questions on the application form.²¹¹ This in turn raises for consideration whether many of these issues should be identified at the initial lodgement stage at Australia Post and whether adequate quality assurance is occurring at that stage of the licensing process, to avoid delays from errors being identified at later stages.

A 'Frequently Asked Questions' document on the Western Australia Police website includes the question 'Can I have my application expedited?', and the answer: 'No. Your application will be processed 'in turn' with all other applications'.²¹² However, some other jurisdictions expressly provide for reduced application periods in particular instances. For example, the *Firearms Act 1977 (SA)* provides that where a person applies for a permit to acquire a firearm, and that person already owns a registered firearm of the same class as that sought to be acquired under the permit, the Registrar must grant the permit as soon as practicable after receiving the application.²¹³ The Commission understands that this has the effect that the 28-day waiting period may be dispensed with if the applicant already has a firearm of the same class as the firearm applied for.²¹⁴

It is clear that some Australian jurisdictions are able to process applications faster than in Western Australia. For instance:

- Queensland has an online application and payment system (Weapons Applications Online) for new licence applications and applications for permits to acquire. The Queensland Police Service has advised that, as at 1 January 2015, online applications for new licences take five weeks to complete, paper applications for new licences take seven weeks to complete, and online and paper applications for a permit to acquire take five business days.²¹⁵ Further, applicants are able to contact Weapons Licensing with a view to fast-tracking a permit to acquire application, and such requests are determined on a case-by-case basis.²¹⁶
- The Commission understands that in South Australia, the average time taken to renew a licence, or to vary a licence to add a new category of firearms to the licence, is fourteen calendar days.²¹⁷

- The Commission is further advised that in Victoria, the average time taken to process a first-time application for a firearm licence is three days; however such applications cannot be granted until the end of the 28-day waiting period. The Commission understands that the average time taken to process an application for an additional firearm (made by way of applying for a permit to acquire a firearm) is 24 hours.²¹⁸ The *Firearms Act 1996 (Vic)* provides that where a person who does not already possess a registered firearm under a licence applies for a permit to acquire a firearm, the Chief Commissioner must not issue the permit until 28 days have expired. However, in any other case, the Chief Commissioner 'must not issue the permit until sufficient time has expired to allow the Chief Commissioner to consider the application properly'.²¹⁹

6.3.1 Role of Australia Post

Since 2008, the administration of the licensing application process has been outsourced to Australia Post.²²⁰ When appearing before the Joint Standing Committee on Delegated Legislation in 2013, Western Australia Police Detective Superintendent James Migro advised:

Back in about 2007, the Western Australia Police had a look at a number of issues and our Frontline First policy was a major concern about getting police on to the frontline of services. As part of that, there was a look at what were the things that got the general public to go to police stations. It identified that the three main reasons people went to police stations were, firstly, to report traffic crashes; secondly, to apply for police clearance certificates; and, thirdly, to apply for police firearm licences. So that was looked upon as a way that if we can do away with those administrative functions at police stations, it would make police more available for operational frontline duties. Stemming from that a decision was made that firearms licensing applications were to be processed through Australia Post'.²²¹

To explain the basis for the change, Mr Migro noted that Australia Post's Western Australian outlets outnumbered Western Australia Police stations, that Australia Post's opening hours were convenient for applicants, and that there was a desire to end the

211 Meeting with Mr Carl Fisher, Senior Sergeant, Western Australia Police, Officer in Charge, Firearms Licensing Services, 11 November 2014.

212 'Frequently Asked Questions', 3, accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=NhmlmbEisl8%3d&tabid=1802>.

213 *Firearms Act 1977 (SA)*, s 15(4a).

214 Correspondence from the Office of the Hon Tony Piccolo MP, Minister for Police, South Australia, 29 May 2015.

215 Correspondence from Craig Rolls, Inspector, Weapons Licensing, Queensland Police Service, received 16 January 2015, 3. The Commission is advised that the numbers provided reflect the outside or maximum processing times, except in the case of applications that are deficient in some way.

216 Correspondence from Craig Rolls, Inspector, Weapons Licensing, Queensland Police Service, received 16 January 2015, 3.

217 Correspondence from the Hon Tony Piccolo MP, Minister for Police, South Australia, 5 March 2015, 2.

218 Correspondence from the Hon Wade Noonan MP, Victorian Minister for Police, 20 May 2015, 3.

219 *Firearms Act 1996 (Vic)* ss 107(1) and (2).

220 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 13.

221 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, Transcript of Evidence Taken at Perth, Wednesday 11 September 2013, 2.

practice of having applicants bring firearms to police stations, for safety reasons.²²²

Australia Post has advised the Commission that from its perspective, the licensing process works as follows:

- An applicant for a licence under the *Firearms Act* can either fill out a form in hard copy at an Australia Post outlet, or can fill one in online, print it out and bring it in.
- When the applicant brings his or her form in to Australia Post, an identity verification is completed over the counter.
- The forms are sent to Australia Post's Decipha subsidiary, which extracts the relevant information.
- The information is then sent to Western Australia Police so that Western Australia Police can carry out its own checks.
- Western Australia Police completes all the checks it needs to do, and then sends information to Post Connect²²³ if it is determined that a licence will be issued.
- Post Connect then prints and mails a form (called a 'renewal') to the applicant. This form must be returned to the post office to complete the transaction.
- On receipt of the form, the applicant must go to an Australia Post outlet to pay a fee and have their photo taken. The photograph is sent to AB Note, which prints the card. The person is ultimately issued with an extract of licence which is printed out at Australia Post.
- The fee paid to Australia Post is determined by the over-the-counter common use agreement between Australia Post and the Department of Finance (WA) and there is no profit component for Western Australia Police.²²⁴

Licence renewals may be completed at either Department of Transport or Australia Post outlets.²²⁵

Members of the firearms community have queried the need for the involvement of Australia Post, and some have posited that the partial outsourcing of firearms licence administration has created inefficiencies, delays and cost increases, and should on that basis be ceased.²²⁶ Some stakeholders have asked why

an applicant cannot simply submit an application directly to Western Australia Police online, as occurs with license applications for licences administered by the Department of Fisheries. It has also been posited that, if it is considered necessary to have people make in-person applications, a person could be required to make an in-person application at the licensing centre for their first licence application, and then be able to use an online system for additional applications.²²⁷

With respect to the involvement of Australia Post, it has been queried why a Commonwealth agency is being used instead of the state vehicle licensing system, and there has been some suggestion that employees of Australia Post are not subject to the same level of rigour as officers of Western Australia Police, which may be of concern given that they now have access to information about who in the community possesses firearms.²²⁸ In addition, concern has been expressed about the possibility of Australia Post being franchised.²²⁹ At a more practical level, the Commission understands that there is no 'preview' function on applications which are completed online before being printed out, to the frustration of some applicants.

Question 1:

- Do you have any comment on the role of Australia Post in the licensing process, including as to whether adequate quality assurance occurs to ensure Western Australia Police information requirements are met when applications are initially lodged?

6.3.2 Role of Western Australia Police

Some firearms owners have expressed disappointment that the firearms licensing section within Western Australia Police is presently located in the State Crime Division, as this is seen to be stigmatising.²³⁰ There has also been some suggestion within the firearms community that, due to the time and costs involved, it is no longer viable for Western Australia Police to have carriage of the licencing application process.

Some stakeholders conclude that there is 'no longer a convincing public interest argument that can be mounted to keep responsibility for firearms licensing within Western Australia Police', arguing that 'Western Australia Police would still retain their enforcement

222 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, Transcript of Evidence Taken at Perth, Wednesday 11 September 2013, 2.

223 Post Connect has recently been sold to AB Note.

224 Email from Ms Lorraine McGann, Client Executive, State Government WA, Government and Enterprise, Australia Post, 11 December 2014.

225 Email from Ms Lorraine McGann, Client Executive, State Government WA, Government and Enterprise, Australia Post, 11 December 2014.

226 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 3, Submission from Roy Alexander & Sons, provided 8 September 2014, 1.

227 Meeting with Hon Rick Mazza MLC, 2 December 2014.

228 Meeting with Hon Rick Mazza MLC, 2 December 2014.

229 Meeting with Hon Rick Mazza MLC, 2 December 2014.

230 Submission from Roy Alexander & Sons, provided 8 September 2014, 1.

role, which should not be devolved, but consideration of alternatives for licensing should be contemplated by the review'.²³¹ More specifically, some firearms owners have proposed that the licensing function could be performed by Driver and Vehicle Services within the Department of Transport.²³² It has been suggested that such a transfer 'would negate the need for Australia Post's involvement and provide a more efficient and cost-effective processing system', noting that the Department of Transport 'already communicates and cooperates with Western Australia Police in areas such as tests, issuance and administration of drivers' licences'.²³³

It should be noted that processing licensing applications would still require access to Western Australia Police databases in order to conduct background checks, and that due to their potential to cause harm, firearms are not an ordinary commodity. The licensing regime for firearms therefore differs from other such regimes (such as drivers' licences and recreational fishing licences) administered by the State Government. In addition, the Commission is not aware of other jurisdictions in Australia that outsource the processing of licensing applications for firearms, as distinct from outsourcing some administrative aspects of the process.²³⁴

6.4 Application processing – storage and pre-approval

In Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013 – the Committee noted that when an application for a firearm licence is made it will be returned to the assessor for a Form 22 assessment (regarding storage security) at pre-approval stage. The Committee further noted that it had received anecdotal opinion from a member of the Sporting Shooters Association that the Form 22 process could be shortened by providing photographs of security storage at the time the application is uploaded.²³⁵

Form 22, which can be found in the *Firearms Regulations*,²³⁶ requires applicants to attach proof of purchase or fitting of the storage facilities as well as providing photographs of the storage

facilities, including the anchor points of the cabinet or container. If such evidence were required to be provided with the initial application, persons making an original application (and who therefore did not already own firearms) would need to purchase a safe before they had received any indication that they would be permitted to purchase a firearm to store in it. The existing process ensures that the applicant need not purchase a safe until they have had their application pre-approved. This approach makes sense from the perspective of persons making applications for original licences.

In the case of additional applications, Western Australia Police has advised that in the second half of 2014 a process was implemented whereby photographs of security cabinets are only requested where the firearm assessor notes that there has been a change of address since the previous application, or where there is a concern in the application.²³⁷

The Commission is advised that the current system, whereby a person purchases the firearm, which is then stored by the dealer, before making their application for a licence, can cause financial hardship.²³⁸ If an application is refused, the person will be out of pocket and will need to seek a refund from the dealer, who may in the interim have been deprived of the opportunity to sell the firearm to another person. The Commission understands that the reason a firearm must be purchased before the application is made is that applications must be accompanied by a serviceability certificate that includes the serial number of the relevant firearm.²³⁹ The Commission further understands that to obtain the serial number for a firearm, the firearm must be in a dealer's stock, so the dealer undergoes a financial outlay to obtain the firearm; this will then be passed on to the customer.²⁴⁰ It has been suggested that the application should require a serviceability certificate minus the serial number, and that once an application receives pre-approval, the applicant should then be required to provide the serial number.²⁴¹

The Commission has also been advised that there is currently no set time period during which a person is required to collect his or her firearm from a dealer once a licence application is accepted, and that Western

231 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 4.

232 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

233 Submission from Hon Rick Mazza MLC, 4 December 2014, 2.

234 The Commission understands that in Victoria, some aspects of the process are outsourced but the bulk of the application processing, including determining the suitability of the applicant, is done by Victoria Police. The Commission understands that Victoria Police has an agreement with VicRoads whereby the licence photograph is taken at VicRoads authorised photo points and the plastic licence is prepared and then issued to the licence holder. In addition, an agreement exists with Direct Mail Solutions, which operates a mail house where firearm renewals are sent and mailed out, and payments are made at Westpac Bank. (Correspondence from the Hon Wade Noonan MP, Victorian Minister for Police, 20 May 2015, 3.) The Commission also understands that in Tasmania, a number of processes to support firearms licensing are outsourced, however Tasmania Police manages and controls the licensing and registration process. The aspects that are outsourced are: the lodging of applications, dealt with by Service Tasmania (the 'shopfront' for Tasmanian government business), the required firearms safety training course, conducted by TasTafe, licence printing, undertaken by ABNote Australasia Pty Ltd, and the printing of various application forms by Print Mail Logistics Limited. (Correspondence from Hon MT Hidding MP, Tasmanian Minister for Police, 16 June 2015, 2.)

235 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 12, fn 22.

236 *Firearms Regulations 1974* (WA), Schedule 1.

237 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 2.

238 Submission from Roy Alexander & Sons, provided 8 September 2014, 5.

239 See *Firearms Regulations 1974* (WA), r 7(3)(a) and Schedule 1, Form 3.

240 Conversation with Mr Murray Alexander, 27 May 2015.

241 Conversation with Mr Murray Alexander, 27 May 2015.

Australia Police do not conduct checks to ensure that a person who is licensed to possess a firearm has in fact taken possession of the firearm. The Commission understands that this means that dealers may be in the position of warehousing additional stock and that this causes inconvenience.²⁴²

Proposal 4:

that application forms should be amended to provide that:

- applicants for additional firearms may provide photographic evidence of their ability to comply with storage requirements with their initial application; and
- applicants can provide a serviceability certificate minus the serial number of a firearm to support their application, with the serial number to be provided once the application has been pre-approved.

Proposal 5:

- that the *Firearms Regulations 1974 (WA)* be amended to provide that the licensee must take possession of the firearm or firearms as soon as is practicable once a licence application has been approved.

The Commission also notes that there have been some suggestions that a discounted fee structure should be available to pensioners.²⁴⁴ Some other jurisdictions do provide discounts for pensioners in respect of firearms licences and permits to acquire firearms. For instance, New South Wales exempts pensioners from the requirements to pay an application fee for an initial or subsequent category A, B or H licence,²⁴⁵ an application fee in respect of a permit to acquire a firearm,²⁴⁶ and a fee in relation to registration of a firearm.²⁴⁷ In Tasmania, eligible pensioners are charged fees that are 80 per cent of the fee paid by other applicants.²⁴⁸ However, given that the licensing system in Western Australia is run on a cost-recovery basis, it appears that under the current system any discount provided to pensioners would presumably have the result of increasing the cost to other applicants.

Question 2:

- Should a discount on licensing fees be available for pensioners and/or any other ascertainable category of firearms owner?

6.5 Fees for applications under the *Firearms Act 1973 (WA)*

In addition to the fee increases of 2013 discussed above, there was an additional fee increase in 2014. These increases were considerably less substantial than the 2013 increases; for instance the fee for a firearms licence, for a person who does not already have such a licence, increased from \$246.30 to \$252 and the fee for renewing such a licence increased from \$51.80 to \$52.²⁴³ The current fees payable in Australian jurisdictions are set out in Annexure 2.

²⁴² Submission from Roy Alexander & Sons, provided 8 September 2014, 5.

²⁴³ *Firearms Amendment Regulations 2014*, r 4, in *Government Gazette*, WA, 17 June 2014, 1991.

²⁴⁴ Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 3, Hon Rick Mazza MLC, *Hansard*, Legislative Council, 21 October 2014, 7542.

²⁴⁵ *Firearms Regulation 2006* (NSW), r 100(2)(a).

²⁴⁶ *Firearms Regulation 2006* (NSW), r 100(2)(b).

²⁴⁷ *Firearms Regulation 2006* (NSW), r 100(2)(c).

²⁴⁸ *Firearms Regulation 2006* (Tas), r 15(2).

7. DEFINITIONS AND CATEGORISATION OF FIREARMS

7.1 Definition of 'firearm' in Western Australia

Some concerns have been expressed, both within the firearms community and from Western Australia Police, that the definition of 'firearm' in the *Firearms Act* is overly broad. The Act defines 'firearm' to include:

any lethal firearm and any other weapon of any description from which any shot, bullet, or other missile can be discharged or propelled or which, by any alteration in the construction or fabric thereof, can be made capable of discharging or propelling any shot, bullet or other missile, but does not include anything that is prescribed in regulations under the *Weapons Act 1999* (WA) to be a prohibited weapon or a controlled weapon.²⁴⁹

'Missile' in turn is defined as 'any solid substance or liquid chemical which when discharged or propelled from any weapon from any distance is capable of causing physical injury to persons'.²⁵⁰

There is some confusion about this definition and, in particular, the interaction between the *Weapons Act 1999* (WA) and *Weapons Regulations 1999* (WA) and the *Firearms Act*. For instance, some firearms owners have suggested that the definition of 'firearm' is so broad as to encompass, theoretically, items such as slingshots.²⁵¹ Certain slingshots are excluded from the *Firearms Act* by virtue of being classed as 'prohibited weapons' under the *Weapons Regulations 1999* (WA) while others such as a home-made slingshot without an arm brace may fall under the definition of 'firearm' in the *Firearms Act*.²⁵²

Similarly, firearms that have been rendered inoperable are specifically not regulated under the *Firearms Act*. They are included within the definition of 'imitation firearms', which are listed in Schedule 2 of the *Weapons Regulations 1999* (WA) as 'controlled weapons',²⁵³ and are defined as 'an article, not being an article that is clearly a toy, that has the appearance of being a firearm but is not capable of discharging

a missile'.²⁵⁴ Western Australia Police has advised that there is no policy or guideline on interpreting the phrase 'clearly a toy', and has suggested that it would be difficult to formulate such guidelines.²⁵⁵

The breadth of the definition of 'firearm' in the *Firearms Act* has given rise to concerns that it could *prima facie* encompass toys, collectibles and curios as well as many other non-lethal items. One stakeholder has even suggested that, technically, a champagne bottle may be encompassed by the present definition given that it discharges a cork – a solid substance which could cause physical injury.²⁵⁶ Examples have also been given of items that fit within the Act's definition but that are novelties, being very small and incapable of firing anything larger than a pin.²⁵⁷

The 2008 Police Review made two recommendations regarding the Act's definition of 'firearms'. The report of the review observed that the definition of 'firearm' in the Act is very broad, noting that it -

seems to capture such things as industrial tools, nail guns, and geological machinery that fire shotgun cartridges for the purpose of gathering samples. Clearly these items, even though they might be lethal if used inappropriately, are not firearms and were only intended to be used as industrial tools. Similarly, items built on model naval boats to imitate anti-aircraft guns, machine guns, etcetera that are used in hobbies and often played by enthusiasts in naval battles, attract the same licensing questions. To the letter of the law, these items fall within the definition of a firearm, but clearly they are a toy and non-lethal. Accordingly, there needs to be some distinction in the definition for a firearm that clears up any ambiguity. It might be necessary to identify certain items and have them excluded from the definition.²⁵⁸

The review recommended that further research be conducted on the definition of a firearm from other jurisdictions, both nationally and internationally, and that the items that were not intended to be firearms, but are toys or industrial tools, be clearly differentiated.²⁵⁹

249 *Firearms Act 1973* (WA), s 4.

250 *Firearms Act 1973* (WA), s 4.

251 Submission from Mr Ross Allanson, 6 October 2014, 1.

252 *Weapons Regulations 1999* (WA), Schedule 1, Items 5 and 6.

253 *Weapons Regulations 1999* (WA), Schedule 2, Item 10.

254 *Weapons Regulations 1999* (WA), Schedule 2, Item 10.

255 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 13.

256 Submission from Mr T O'Brien, 11 August 2014, 2.

257 Discussion with Dr Leo Laden, 16 December 2014.

258 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 27.

259 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 27.

More recently, Western Australia Police has also advised that it would support the exclusion of industrial tools, promotional type implements and toys' (such as nail guns, pneumatic t-shirt launchers and star chaser toys) from the definition of 'firearm'.²⁶⁰ Western Australia Police also note that 'spud guns' or 'spud cannons' fall within the definition of 'firearm' in the *Firearms Act* but cannot currently be licensed. Western Australia Police contend that although it is not illegal to construct a spud gun, 'possession and/or use of one is not in the public interest', and recommends that 'the status of spud guns be reviewed with reference to the definition of a firearm'.²⁶¹

In terms of the concern expressed by the Western Australia Police review as to the need to exclude items that are used 'by enthusiasts in naval battles', it should be noted that the Victorian legislation excludes 'any compressed air or gas powered device with a calibre no greater than 7 millimetres and a maximum muzzle velocity no greater than 50 metres per second that is designed to be mounted on a radio-controlled model warship and when used in model warship activities'²⁶² from its definition of 'firearm' and that this wording could also be adopted in Western Australia.

7.1.1 Captive bolts

Specific concerns have been expressed about the inclusion of captive bolts in the definition of 'firearm' in Western Australia. 'Captive bolts' (also known as 'captive bolt guns') are devices used in the humane killing of animals. They fire a bolt which remains part of the device during and after firing; the bolt is fired into the brain of an animal in order to kill it.

In Western Australia captive bolts are listed as a Category E firearm.²⁶³ However, captive bolts are specifically excluded from the definition of 'firearm' in Queensland,²⁶⁴ Victoria²⁶⁵ New South Wales,²⁶⁶ South Australia,²⁶⁷ and the Australian Capital Territory,²⁶⁸ and the Commission understands that captive bolts are excluded from the definition of 'firearm' in the Northern Territory.²⁶⁹ In Tasmania, an amending Act has recently been passed that, among other things, enables items to be excluded from the definition of

'firearm' by regulation,²⁷⁰ and in the Second Reading Speech the Minister for Police advised specifically that the 'definition of firearm has been amended to ensure that items which may unintentionally fit within this definition, but are not intended to be firearms, such as flare guns, nail guns and captive bolt devices for farmers are able to be excluded from the auspices of the Act by regulatory amendment'.²⁷¹ The amending Act has not yet come into effect.

Several stakeholders have suggested that captive bolts should be excluded from the definition of 'firearm' in Western Australia.

As captive bolts are classed as firearms, a licence is ordinarily required to obtain these items, with an exception: the *Firearms Act* provides that no licence is required 'in relation to an approved firearm or ammunition for that firearm, by a person who in the ordinary course of his practice, trade or business uses that firearm for the purpose of dealing a blow to any animal with intent to slaughter it or to render the animal insensible prior to slaughtering'.²⁷² This exemption is limited to persons who use firearms to slaughter animals, or render them insensible prior to slaughtering, as part of the ordinary course of their practice, trade or business. Some stakeholders have indicated that the exemption is too narrow. It does not appear to cover situations (such as saleyards, shearing sheds, markets and during transit) where animals are not ordinarily required to be slaughtered but the need to humanely kill an animal may arise if, for instance, the animal becomes injured.²⁷³

A submission from the Department of Agriculture and Food, Western Australia, observes that it is not uncommon for sheep, cattle, goats and other livestock species to be found injured on a farm, in saleyards, on trucks or elsewhere, and that in such situations, the person in charge has a duty to take reasonable steps to prevent an animal from suffering harm. The submission noted further that in many circumstances killing a compromised animal in a humane way is the only reasonable course of action. However, the submission observes that 'the restrictions on the possession and use of captive bolt

260 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 24.

261 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 24.

262 Sections 3(1)(j) of the *Firearms Act 1996* (Vic) and regulation 20(c) of the *Firearms Regulations 2008* (Vic).

263 *Firearms Regulations 1974* (WA), Schedule 3, Division 5, cl. 9.

264 *Weapons Act 1990* (Qld), Schedule 2.

265 *Firearms Act 1996* (Vic), s 3(1)(d).

266 *Firearms Regulation 2006* (NSW), r 4(e).

267 *Firearms Regulations 2008* (SA), r 6(a).

268 *Firearm Regulation 2008* (ACT), s 6(1)(g).

269 The definition of 'firearm' in section 3(1) of the *Firearms Act* (NT) includes 'a device (whether or not assembled, operable or temporarily or permanently inoperable) that is designed or adapted to discharge shot, a bullet or other projectile (a) by expanding gases produced in the device; or (b) by igniting combustible material; or (c) by compressed air or other compressed gases (whether stored in the device or attached to the device in pressurised containers)'. The Commission understands that as bolts are not completely discharged, they do not fall within this definition; email correspondence from Mr Peter Ruzsicska, Sergeant Officer In Charge, Firearms Policy & Records Unit, Northern Territory Police, Fire and Emergency Services, 1 May 2015 and 5 May 2015.

270 *Firearms (Miscellaneous Amendments) Act 2015* (Tas), s 4(c).

271 Hon M. T. Hidding MP, Second Reading Speech, *Firearms (Miscellaneous Amendments) Bill 2015* (Tas), 1-2, accessed at http://www.parliament.tas.gov.au/bills/Bills2015/pdf/notes/3_of_2015-SRS.pdf.

272 *Firearms Act 1973* (WA), s 8(1)(h).

273 Submission from Ms Dawn Lowe, Head of Investigations, Animals' Angels, 8 April 2015, 1, 2; Submission from Mr Andy Madigan, Chief Executive Officer, Australian Livestock & Property Agents Association Ltd, 16 April 2015, 3.

guns make them an uncommon tool amongst those in charge of livestock in WA' and that often 'the only alternative is to cut a compromised animal's throat'.²⁷⁴ The submission noted that this method raises two significant issues: firstly, it causes the animal pain and for that reason is not recommended, and secondly that the prospect of having to cut an animal's throat often prevents any action at all from being taken, leading to livestock being abandoned to die without intervention. The submission concludes that the 'removal of any licence conditions for captive bolt gun possession and use would enhance the choices available to people handling livestock ... it would give them an option for euthanasia that is recommended, which is stunning before taking any additional action to ensure death'.²⁷⁵

The Royal Society for the Protection of Animals (RSPCA) agrees, contending that Western Australia's restrictions on captive bolts make it 'difficult for those with a duty of care to livestock to have to hand a means of rapidly, effectively, and humanely euthanasing domesticated livestock'.²⁷⁶ The RSPCA contends further that a captive bolt 'kills the animal as effectively as a firearm with a live bullet but ... is safer to use' and that the presence of a captive bolt in all facilities where animals are handled would mean that 'animals can be euthanased immediately rather than the process being delayed because a firearm and licensed operator need to be brought in'.²⁷⁷ Further, the RSPCA advises that the use of a captive bolt to replace blunt trauma of young animals, particularly in the dairy and pig industries, is 'strongly encouraged', as is its use on farms, during transport of animals and at saleyards.²⁷⁸

Similarly, the Western Australian Meat Industry Authority has emphasised the need to kill animals 'promptly, safely and in a humane manner', and advised that it would support a 'scaling back, or removal, of licence and storage requirements for captive bolt guns which would enable and encourage suitable, trained persons with a demonstrated need to carry and use them'.²⁷⁹ With respect to storage requirements in particular, the Western Australian Meat Industry Authority advises that 'it is practically impossible under current legislation for livestock transporters to carry a firearm (including a captive bolt) in their truck to euthanase animals in distress' which 'may lead to prolonged suffering of animals'.

²⁸⁰ The Western Australian Meat Industry Authority expressed the view that operators of captive bolts should be appropriately trained to ensure correct, humane use and that, when not in use, the captive bolt should be appropriately secured (such as in a locked vehicle toolbox). However, the organisation reiterated that 'the current onerous requirements for the licensing and storage of captive bolt guns in Western Australia should be relaxed or discontinued'.²⁸¹

In view of these submissions, the Commission considers that the removal of captive bolts from the definition of 'firearm' is worth exploring, and has made a proposal to this effect below.

7.1.2 Paintball guns

It should also be noted that some specific types of firearms are regulated differently under the *Firearms Act*. Paintball guns are defined in the Act as a 'firearm designed to discharge or propel paintball pellets'.²⁸² Following changes made in 2004 by the *Firearms Amendment Act 2004* (WA), the game of paintball can legally be played in Western Australia.²⁸³ Section 8 of the *Firearms Act* specifically provides that no licence is required under the Act by a person who is in possession of, handles or uses a prescribed paintball gun or prescribed paintball pellets at an approved paintball venue with the permission of the owner.²⁸⁴ Similarly, the Act provides that no licence is required by a person who is in possession of prescribed paintball pellets.²⁸⁵

However, the Act does provide for licensing of paintball guns; it specifically provides that a 'genuine reason' for the grant of a licence in respect of a paintball gun is that it is 'required by the person to conduct or engage in paintball in accordance with this Act'.²⁸⁶ That is, a person seeking to operate an approved paintball venue will require a licence. Paintball guns are differentiated from other firearms at several points throughout the *Firearms Act*; for instance, the Act specifically provides that it is not an offence for a player of a paintball game conducted in accordance with a licence under the Act to point a paintball gun, named and identified in that licence, at another person while playing the game.²⁸⁷ The Commission does not propose to make any recommendations regarding paintball guns.

274 Correspondence from Peter Metcalfe, Executive Director, Livestock Industries, Department of Agriculture and Food, Western Australia, 13 March 2015.

275 Correspondence from Peter Metcalfe, Executive Director, Livestock Industries, Department of Agriculture and Food, Western Australia, 13 March 2015.

276 Correspondence from Heather Neil, Chief Executive Officer, RSPCA Australia Inc, 1 April 2015, 1.

277 Correspondence from Heather Neil, Chief Executive Officer, RSPCA Australia Inc, 1 April 2015, 1.

278 Correspondence from Heather Neil, Chief Executive Officer, RSPCA Australia Inc, 1 April 2015, 1.

279 Correspondence from Andrew Williams, Chief Executive, Western Australian Meat Industry Authority, 27 March 2015, 1.

280 Correspondence from Andrew Williams, Chief Executive, Western Australian Meat Industry Authority, 27 March 2015, 1.

281 Correspondence from Andrew Williams, Chief Executive, Western Australian Meat Industry Authority, 27 March 2015, 1.

282 *Firearms Act 1973* (WA), s 4.

283 Extract from *Hansard*, Legislative Assembly, 19 November 2003, 13385b-13388a.

284 *Firearms Act 1973* (WA), s 8(1)(ma).

285 *Firearms Act 1973* (WA), s 8(1)(mb).

286 *Firearms Act 1973* (WA), s 11A(2)(da).

287 *Firearms Act 1973* (WA), s 23(8a).

7.2 Definition of 'firearm' in other jurisdictions

As to the definition of 'firearm', there is some variation among Australian jurisdictions. The *Weapons Act 1990* (Qld) provides that a 'firearm' means:

- (a) a gun or other thing ordinarily described as a firearm; or
- (b) a thing ordinarily described as a weapon that, if used in the way for which it was designed or adapted, is capable of being aimed at a target and causing death or injury by discharging—
 - (i) a projectile; or
 - (ii) noxious, corrosive or irritant liquid, powder, gas, chemical or other substance; or
- (c) a thing that would be a firearm mentioned in paragraph (a) or (b), if it were not temporarily inoperable or incomplete; or
- (d) a major component part of a firearm;

but does not include—

- (e) an antique firearm, explosive tool, captive bolt humane killer, spear gun, longbow or crossbow; or
- (f) a replica of a spear gun, longbow or crossbow; or
- (g) a slingshot, shanghai or sword; or
- (h) a public monument.²⁸⁸

To provide further clarification, this definition sets out an example, noting that a 'replica of a gun capable of causing death or injury by discharging a projectile is a firearm. However, a replica of a gun not capable of causing death or injury by discharging a projectile is not a firearm'.²⁸⁹

Similarly, the ACT legislation provides that 'firearm':

- (a) means a gun, or other weapon, that is, or at any time was, capable of propelling a projectile by means of an explosive force, however caused; and
- (b) includes—
 - (i) a blank fire firearm; and
 - (ii) an airgun; and
 - (iii) a paintball marker; and
 - (iv) something declared to be a firearm under section 31; and
 - (v) a modified item; and
 - (vi) a firearm frame or firearm receiver that does not form part of a firearm.

- (c) However, **firearm** does not include—
 - (i) something prescribed by regulation not to be a firearm; or
 - (ii) something declared not to be a firearm under section 31.
- (d) In this section:
modified item means something that would be a firearm if—
 - (i) it did not have something missing from it, or a defect or obstruction; or
 - (ii) something had not been added to it.²⁹⁰

The Victorian legislation provides that 'firearm' means any device, whether or not assembled or in parts:

- (a) which is designed or adapted, or is capable of being modified, 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
- (b) whether or not operable or complete or temporarily or permanently inoperable or incomplete—
and which is not—
- (c) an industrial tool powered by cartridges containing gunpowder or compressed air or other gases which is designed and intended for use for fixing fasteners or plugs or for similar purposes; or
- (d) a captive bolt humane killer; or
- (e) a spear gun designed for underwater use; or
- (f) a device designed for the discharge of signal flares; or
- (g) a device commonly known as a kiln gun or ringblaster, designed specifically for knocking out or down solid material in kilns, furnaces or cement silos; or
- (h) a device commonly known as a line thrower designed for establishing lines between structures or natural features and powered by compressed air to other compressed gases and used for rescue purposes, rescue training or rescue demonstration; or
 - (i) a device of a prescribed class.²⁹¹

²⁸⁸ *Weapons Act 1990* (Qld), Schedule 2.

²⁸⁹ *Weapons Act 1990* (Qld), Schedule 2.

²⁹⁰ *Firearms Act 1996* (ACT), s 6.

²⁹¹ *Firearms Act 1996* (Vic), s 3(1). Regulation 20 of the *Firearms Regulations 2008* (Vic) includes the following as 'prescribed classes of device' for the purposes of this definition: (a) any cannon or field gun, by whatever name known, which has been constructed as a piece of military ordinance (sic) and which has a calibre in excess of 25 millimetres and (i) which is rendered permanently inoperable; or (ii) for which fixed ammunition is not commercially available; (b) any device which is designed for and used to throw a net to catch animals (commonly known as a cannon net); (c) any compressed air- or gas-powered device with a calibre no greater than 7 millimetres and a maximum muzzle velocity no greater than 50 metres per second that is designed to be mounted on a radio-controlled model warship and when used in model warship activities.

The *Firearms Act 1996* (Tas) provides that a 'firearm' is:

- (a) a gun or other weapon that is capable of propelling anything wholly or partly by means of an explosive; and
- (b) a blankfire firearm; and
- (c) an air rifle; and
- (d) an air pistol; and
- (e) an imitation firearm, other than a toy; and
- (f) any other prescribed thing; and
- (g) anything that would be a firearm under paragraph (a), (b), (c) or (d) if it did not have something missing from it or a defect or obstruction in it.²⁹²

Tasmania has recently amended its definition of 'firearm' to add after paragraph (g) the words 'but does not include any device declared by the regulations not to be a firearm'.²⁹³

The *Firearms Act 1977* (SA), provides that 'firearm' means:

- (a) a device designed to be carried by hand and to fire shot, bullets or other projectiles by means of burning propellant or by means of compressed air or other compressed gas; or
- (b) a device of a kind declared by regulation to be a firearm for the purposes of this Act;
and includes a receiver of a firearm and any device which, if in working order, would be a firearm within the meaning of this definition (except such a device that has been rendered unusable in a manner stipulated in the regulations or by the Registrar) but does not include an antique firearm, or a device of a kind excluded by regulation from the provisions of this Act.²⁹⁴

The South Australian definition limits its ambit by referring only to devices 'designed to be carried by hand', thereby excluding items which are designed to be vehicle or aircraft mounted.

Shorter still is the definition in the *Firearms Act 1996* (NSW), which simply provides that a 'firearm' means 'a gun, or other weapon, that is (or at any time was) capable of propelling a projectile by means of an explosive, and includes a blank fire firearm, or an air gun, but does not include anything declared by the regulations not to be a firearm'.²⁹⁵ The *Firearms Regulation 2006* (NSW) includes a list of items declared not to be firearms.²⁹⁶

The definition adopted in the Northern Territory legislation states: 'firearm means a device or part of a device (whether or not assembled, operable or temporarily or permanently inoperable) that is designed or adapted to discharge shot, a bullet or other projectile:

- (a) by expanding gases produced in the device; or
- (b) by igniting combustible material; or
- (c) by compressed air or other compressed gases (whether stored in the device or attached to the device in pressurised containers)'.²⁹⁷

It is clear that there are a variety of ways in which 'firearm' can be defined to exclude items that are not considered to merit regulation under firearms legislation, and the Commission considers that there is merit in exploring the possibility of a tighter definition. Any definition should, however, remain broad enough to include 3D printed firearms– the issue of 3D printing is discussed at chapter 13.

Proposal 6:

that the definition of 'firearm' in the *Firearms Act 1973* (WA) be amended to specifically exclude:

- captive bolts;
- industrial tools such as nail guns;
- promotional type implements such as pneumatic t-shirt launchers; and
- as in Victoria, 'any compressed air or gas powered device with a calibre no greater than seven millimetres and a maximum muzzle velocity no greater than 50 metres per second that is designed to be mounted on a radio-controlled model warship and when used in a model warship'.

Question 3:

- What other items, if any, should be excluded from the definition of 'firearm' in the *Firearms Act 1973* (WA)?
- How should 'spud guns' be dealt with in Western Australia?
- What other changes, if any, should be made to the definition of 'firearm' in the *Firearms Act 1973* (WA)?

292 *Firearms Act 1996* (Tas), s 3.

293 *Firearms (Miscellaneous Amendments) Act 2015* (Tas), s 4(c).

294 *Firearms Act 1977* (SA), s 5.

295 *Firearms Act 1996* (NSW), s 4.

296 *Firearms Regulation 2006* (NSW), r 4.

297 *Firearms Act* (NT), s 3(1).

7.3 The Weapons Act 1999 (WA)

The *Weapons Act 1999 (WA)* is the product of inter-jurisdictional agreement and was passed specifically to address items that were not firearms, including imitation firearms. The genesis of this Act was a resolution of the Australasian Police Ministers' Council, at a meeting on 17 November 1998, to endorse the development of uniform laws to prohibit certain weapons, including an agreed list of prohibited weapons.²⁹⁸ Following this agreement, the Western Australian Parliament enacted the *Weapons Act 1999 (WA)*.²⁹⁹

The *Weapons Act 1999 (WA)* establishes three categories of weapons. The first category is 'prohibited weapons',³⁰⁰ which encompasses 'weapons that have no other purpose than to cause injury'.³⁰¹ Prohibited weapons include items such as acoustic shock weapons, blow pipes, disguised knives or swords, and knuckledusters.³⁰² These items are banned outright. Unless exemptions apply, a person who brings or sends a prohibited weapon into Western Australia, carries or possesses a prohibited weapon, purchases, sells or supplies a prohibited weapon, manufactures a prohibited weapon, or attempts to do any of these things, commits an offence punishable by three years' imprisonment and a fine of \$36,000.³⁰³

The second category established by the *Weapons Act 1999 (WA)* is 'controlled weapons', which are not banned outright but are regulated – they may be possessed for lawful purposes such as sport, employment, duty, recreation, entertainment, collection, display or exhibition.³⁰⁴ Relevantly, 'imitation firearms' (including firearms that have been permanently rendered inoperable) are included in this category – they are not banned outright and can be possessed.³⁰⁵ Controlled weapons also include daggers, double-end knives, imitation firearms, light pointers, machetes and swords.³⁰⁶ Subject to particular exceptions,³⁰⁷ a person who carries or possesses a controlled weapon without lawful excuse³⁰⁸ commits an offence punishable by two years' imprisonment and a \$24,000 fine.³⁰⁹ Further, a person who has a lawful excuse to carry or possess a controlled weapon

commits an offence with the same penalty if he or she does so in a manner that could reasonably be expected to cause someone to be injured or disabled, or to fear that someone will be injured or disabled.³¹⁰

The third category established by the *Weapons Act* is 'other articles carried or possessed as weapons'.³¹¹ This category relates to household items and includes articles such as baseball bats, which can be used in a lethal manner but which are also capable of non-lethal, non-harmful use. For this category of weapons, intent is an element of the offence of possession. Therefore, the *Weapons Act 1999 (WA)* provides that a person who carries or possesses an article, not being a firearm, a prohibited weapon or a controlled weapon, with the intention of using it, whether or not for defence, to injure or disable any person or to cause any person to fear that someone will be injured or disabled by that use, commits an offence punishable by two years' imprisonment and a \$24,000 fine.³¹²

The *Weapons Act 1999 (WA)* sets out exemptions to offences of possessing prohibited weapons, controlled weapons and articles carried or possessed as weapons, including where a person is performing their functions as a member of the Western Australia Police.³¹³

The *Weapons Act 1999 (WA)* has coexisted with the *Firearms Act* since its passage, and the Discussion Paper in respect of the 2008 Police Review observed that the existence of two separate pieces of legislation for the control of weapons created confusion, particularly given that the two Acts had very different structures. The Discussion Paper in respect of the 2008 Police Review further noted that the *Firearms Act* has provisions for licensing and the *Weapons Act 1999 (WA)* does not, which means that, effectively, 'no weapons (other than firearms) can be licensed unless it is approved through the Minister of Police'. The Discussion Paper also noted that 'Queensland is the only state who has uniform legislation (the *Weapons Act 1990 (Qld)*) which effectively encompasses both firearms and other weapons, allowing for licensing of varied weapons under prescribed means'.³¹⁴ The

298 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 20.

299 In the Second Reading Speech, the then Attorney General stated: 'This Bill, in addition to combining into one piece of legislation the powers that police need to protect our community, incorporates controls relating to replica firearms and non-firearm weapons and reflects the recent resolutions of the Australasian Police Ministers' Council'; see Peter Foss, *Hansard*, Legislative Council, 19 August 1998, 450.

300 *Weapons Act 1999 (WA)*, s 6.

301 Peter Foss, *Hansard*, Legislative Council, 19 August 1998, 450.

302 *Weapons Regulations 1999 (WA)*, Schedule 1, Items 1, 3, 7 and 12.

303 *Weapons Act 1999 (WA)*, s 6(1)(a), (b), (c), and (d).

304 Peter Foss, *Hansard*, Legislative Council, 19 August 1998, 450-451.

305 *Weapons Regulations 1999 (WA)*, Schedule 2, Item 10.

306 *Weapons Regulations 1999 (WA)*, Schedule 2, Items 5, 6, 10AA, 10A and 19.

307 *Weapons Act 1999 (WA)*, s 10.

308 The Act provides that a lawful excuse to carry a controlled weapon does not include the excuse that the weapon is carried or possessed for defence; see *Weapons Act 1999 (WA)*, s 7(3). However, section 7(4) provides that section 7(3) does not apply to a controlled weapon of a kind prescribed for the purposes of this subsection as long as it is carried or possessed in such circumstances, if any, as the regulations may prescribe.

309 *Weapons Act 1999 (WA)*, s 7(1).

310 *Weapons Act 1999 (WA)*, s 7(2).

311 *Weapons Act 1999 (WA)*, s 8.

312 *Weapons Act 1999 (WA)*, s 8(1)(a) and (b).

313 *Weapons Act 1999 (WA)*, s 10(1)(a).

Discussion Paper asked whether the *Firearms Act* and the *Weapons Act 1999* (WA) should be merged to create a single Act. Stakeholder responses were equivocal: 47.6% of stakeholders agreed with this proposal, 38.6% disagreed, and 13.7% were undecided.³¹⁵ The review made no recommendations on this matter.

A major difference between the *Firearms Act* and the *Weapons Act 1999* (WA) is that the former establishes a licensing system to allow people to use and possess firearms; the latter simply prohibits some weapons outright and provides that others are controlled. It is possible that given the different aims of the two pieces of legislation, a merger could create further confusion and many of the key aspects of the *Firearms Act* would not be relevant to non-firearms. In addition, a merged Act could be long and unwieldy to read and interpret.

Western Australia Police does not support the merging of the two Acts, although it does support transferring 'imitation firearms' from the *Weapons Act 1999* (WA) to the *Firearms Act*.³¹⁶ This issue is discussed elsewhere in this Discussion Paper at paragraph 7.5.3.

Question 4:

- Should the *Weapons Act 1999* (WA) and *Firearms Act 1973* (WA) be merged as has been done in Queensland?
- Is the distinction between the items regulated by the two Acts sufficiently clear?

7.4 Categories of firearms

The categories of firearms adopted in Western Australia and other Australian jurisdictions stem from the 1996 National Firearms Agreement, although jurisdictions have added additional categories.

Western Australia Police has advised that while jurisdictions 'may have slightly different wording' around the categories, 'the intention is the same'.³¹⁷ Accordingly, Western Australia Police consider it preferable that 'any major changes to the firearm categories defined in the [1996 National Firearms

Agreement] be considered and agreed at Ministerial Council Level'.³¹⁸ Matters relating to firearms regulation are considered at meetings of the Law, Crime and Community Safety Council, which meets twice a year and which comprises a maximum of two ministers from the Commonwealth, each state and territory and New Zealand with portfolio responsibility for law and justice, police and emergency management.³¹⁹

The Commission also understands that new technology and proposed categorisation are discussed at the National Firearms and Weapons Policy Working Group forum to ensure national uniformity, where possible.³²⁰

In Western Australia, the *Firearms Regulations* set out the firearms which fall within each category.³²¹ There has been some suggestion that the use of the categories and the sub-categories within them are a complicating factor. One stakeholder has observed that 'the grouping of firearm types within categories could be described as almost miscellaneous' and suggested that 'the opportunity for error caused by double handling and transcription errors as identified by the Auditor General's report on firearms licensing must be compounded by this desire to catalogue firearms'. This stakeholder also suggested that it was likely that 'fees for services could be reduced if these administrative complexities were reformed'.³²²

The major factors that determine into which category a firearm falls are the **action type** (such as single shot, repeating action, lever action, pump action, self-loading or semi-automatic and automatic), the **magazine** (integral or detachable), and the **ammunition**. The firearms in Category A will have a lower degree of functionality or capacity, and this degree increases as one moves up through the categories.

The categories are as set out below, and where relevant, the 'genuine need' tests applicable to particular categories of firearms are discussed at paragraph 9.2.

314 Western Australia Police, *Review of the Firearms Act 1973* (WA), Discussion and Submission Paper, October 2007, Item 1.

315 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 40.

316 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 14.

317 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 5.

318 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 5.

319 On 13 December 2013 the Council of Australian Governments (COAG) replaced its 22 councils with eight, one of which is the Law, Crime, and Community Safety Council which effectively replaces the Standing Council on Law and Justice (SCLJ) and the Standing Council on Police and Emergency Management (SCPEM). The SCPEM had previously replaced the Australasian Police Ministers' Council. See 'About the Law, Crime and Community Safety Council', accessed at http://www.lccsc.gov.au/scj/ccsc_about_us.html.

320 Correspondence from Craig Rolls, Inspector, Weapons Licensing, Queensland Police Service, received 16 January 2015, 4.

321 *Firearms Regulations 1974* (WA), r 6A(1) provides that 'For the purposes of these regulations a firearm is of the category indicated in Schedule 3'.

322 Submission from the Pastoralists & Graziers Association of Western Australia (Inc), 13 February 2015, 4.

Category A Firearms³²³

Sub category	Description
A1	an air rifle
A2.1	a single shot rim fire rifle
A2.2	a repeating rim fire rifle
A3.1	a single shot shotgun
A3.2	a double barrel shotgun
A3.3	a repeating shotgun (lever or bolt action)
A4.1	a combination firearm made up of a shotgun and a rifle each of which would individually be of category A
A4.2	a rifle combination made up of rifles each of which would individually be of category A

An applicant is not required to demonstrate a genuine need for a Category A firearm, although he or she must have a genuine reason.

Western Australia Police has raised concerns that due to changes in technology, air rifles are becoming more powerful and should in some instances be classed as Category B or Category C firearms, rather than Category A firearms.³²⁴ There has been some suggestion that Western Australia Police is currently acting on these concerns by not licensing air rifles;³²⁵ the specific concerns expressed by Western Australia Police regarding 'new generation' air rifles are discussed at paragraph 13.5.

The need to obtain licences for air rifles has in any event been queried,³²⁶ though these are classed as Category A firearms³²⁷ in accordance with the 1996 National Agreement.

Category B firearms³²⁸

Sub category	Description
B1	a muzzle-loading firearm (except a handgun)
B2.1	a single shot centre fire rifle
B2.2	a double barrel centre fire rifle
B2.3	a repeating centre fire rifle
B3.1	a combination firearm, not of category C or D, made up of a shotgun and a rifle at least one of which would individually be of category B
B3.2	a rifle combination, not of category C or D, made up of rifles at least one of which would individually be of category B

Category C firearms³²⁹

Sub category	Description
C1	a self-loading rim fire rifle with a magazine capacity no more than 10 rounds
C2	a self-loading shotgun with a magazine capacity no more than 5 rounds
C3	a pump action shotgun with a magazine capacity no more than 5 rounds
C4.1	a combination firearm, not of category D, made up of a shotgun and a rifle at least one of which would individually be of category C
C4.2	a rifle combination, not of category D, made up of rifles at least one of which would individually be of category C

323 As set out in *Firearms Regulations 1974* (WA), Schedule 3, Division 1, cl 1.

324 Meeting with Western Australia Police, 9 October 2014

325 *Hansard*, Legislative Council, 21 October 2014, 7520.

326 Submission from Mr Tony O'Brien, 11 August 2014, 1

327 *Firearms Regulations 1974* (WA), Schedule 3, Division 1, Item 1.

328 As set out in *Firearms Regulations 1974* (WA), Schedule 3, Division 2, cl 2.

329 As set out in *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 4.

Category D firearms³³⁰

Sub category	Description
D1	a self-loading centre fire rifle designed or adapted for military purposes or a firearm that substantially duplicates such a firearm in design, function, or appearance
D2	a self-loading centre fire rifle that is not of sub category D1
D3	a self-loading shotgun with a magazine capacity more than 5 rounds
D4	a pump action shotgun with a magazine capacity more than 5 rounds
D5	a self-loading rim fire rifle with a magazine capacity more than 10 rounds
D6.1	a combination firearm made up of a shotgun and a rifle at least one of which would individually be of category D
D6.2	a rifle combination made up of rifles at least one of which would individually be of category D

The acquisition, sale, possession or use of Category D firearms is prohibited in Western Australia, except where exemptions apply.³³¹

Category E firearms³³²

Sub category	Description
E1	a cannon
E2	a captive bolt
E3	a line thrower
E4	a tranquilliser
E5	a paintball gun
E6	any firearm that is not of sub category E1, E2, E3, E4, or E5, or category A, B, C, D, or H

As with Category A above, there is no 'genuine need' requirement in respect of Category E firearms. This category was not included in the 1996 National Firearms Agreement but has been adopted in Western Australia to capture items that do not sit within the other five categories.

The issue of captive bolts has been discussed elsewhere in this paper at paragraph 7.1.1 and the Commission has proposed that they be removed from the definition of 'firearm' in the *Firearms Act*.

Category H firearms³³³

Sub category	Description
H1	a handgun (including an air pistol)
H2	an underwater explosive device

Concerns have recently been expressed about the existing firearms categories derived from the 1996 National Firearms Agreement on the basis that the Agreement is now nearly twenty years old. Recommendations have also been made for the updating of the 1996 National Firearms Agreement.³³⁴

In addition, in the context of the present review, some stakeholders have suggested that in certain instances the existing firearm categories do not correspond with the capacity of firearms that sit within them. For instance, it has been posited that:

- 'sporting style and design' pump action shotguns should be transferred from Category C to Category A on the basis that they are manually operated;
- 'sporting style and design' semi-automatic shotguns with magazine capacities of five rounds and under should be transferred from Category C to Category B; and
- some self-loading centre fire rifles should be transferred from Category D to Category B.³³⁵

In response to these suggestions, Western Australia Police has advised that it does not support any changes, reiterating its preference that 'major changes to the firearm categories defined in the [1996 National Firearms Agreement] be considered and agreed at Ministerial Council level' as 'any change would have implications nationally'.³³⁶ Western Australia Police has also advised that the existing categories are not reviewed on a regular basis; this occurs only when an issue arises.³³⁷

³³⁰ As set out in *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl 7.

³³¹ *Firearms Regulations 1974* (WA), r 26(1).

³³² As set out in *Firearms Regulations 1974* (WA), Schedule 3, Division 5, cl 9.

³³³ As set out in *Firearms Regulations 1974* (WA), Schedule 3, Division 6, cl 10.

³³⁴ The recent Senate Committee report on the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, discussed elsewhere in this paper, recommends that the 1996 National Firearms Agreement be updated to implement nationally consistent regulation in the following areas: firearms, firearm parts and firearm accessories; ammunition; and the storage of firearms; see Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 3, 90 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/lllicit_firearms/report.pdf.

³³⁵ Documents provided by Mr Ross Allanson, 19 June 2014.

³³⁶ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 5.

³³⁷ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 5.

While proposals to change the existing firearms categorisations are complicated by the national approach taken to firearm regulation in Australia, the Commission considers that it is worth exploring any concerns people have with the current categories. Indeed, the Terms of Reference for the present review require the Commission to 'provide advice on and recommend appropriate legislative and/or procedural changes with regard to ... definitions and categorisation of firearms'. Accordingly, the Commission invites submissions on the existing firearm categories.

Proposal 7:

- that Western Australia Police review the existing firearm categories in conjunction with other Australian jurisdictions to ensure that the categories take into account changes in technology and are internally consistent.

Question 5:

- Do you have any comment on the categories in the *Firearms Regulations 1974* (WA)?

7.5 Prohibited firearms

There are also some other firearms which, subject to exceptions,³³⁸ cannot be licensed under the *Firearms Act*. Regulation 26 of the *Firearms Regulations* prohibits certain types of firearms and ammunition, subject to certain exemptions.³³⁹ These prohibited firearms and ammunition are as follows:

- A firearm of Category D
- A machine gun, or ammunition for it
- A hand grenade
- A mortar gun, or ammunition for it
- A bazooka gun, or ammunition for it
- A fully automatic firearm
- A firearm designed to discharge tear gas, or ammunition for it
- A 'forward venting' blank firing imitation firearm
- Ammunition the missile from which includes any high explosive, smoke, chemical, lachrymatory agent, or flechettes
- Tracer ammunition
- Incendiary ammunition
- Armour piercing (hard steel core) ammunition
- Imprint free (accelerator) ammunition

- Frangible ammunition
- Ammunition the missile from which has a calibre of 20 mm or more.³⁴⁰

7.5.1 Firearms' appearance

Two aspects of the Western Australian firearms regulation regime make the appearance of a firearm relevant to its treatment under the *Firearms Act*. Firstly, there is the definition of 'Category D' firearms in Schedule 3, Division 4 of the *Firearms Regulations*, which originates in the 1996 National Firearms Agreement. Secondly there is regulation 26B(2)(a) of the *Firearms Regulations*, which concerns firearms that 'closely resemble' prohibited firearms. These two aspects of the Regulations are discussed below.

7.5.2 Category D firearms

The definition of a Category D firearm (which is one of the firearms included in the definition of 'prohibited firearms' in Regulation 26) includes a reference to the appearance of the firearm – Category D firearms include 'a self-loading centre fire rifle designed or adapted for military purposes or a firearm that substantially duplicates such a firearm in design, function, or appearance'.³⁴¹

This aspect of the definition comes from the 1996 National Firearms Agreement, which provides that Category D firearms are prohibited except for official purposes and include 'self-loading centre fire rifles designed or adapted for military purposes or a firearm which *substantially duplicates those rifles in design, function or appearance*'.³⁴²

This aspect of the 1996 National Firearms Agreement is duplicated in other Australian jurisdictions, as follows:

- In Queensland the definition of Category D weapons includes 'a self-loading centre-fire rifle designed or adapted for military purposes or a firearm that substantially duplicates a rifle of that type in design, function or appearance'.³⁴³
- In Victoria the Chief Commissioner may declare that a firearm or type of firearm that would otherwise be a Category A, Category B or Category C longarm to be a Category D or Category E longarm if he or she is satisfied 'that the firearm or type of firearm subject to the declaration is designed or adapted for military purposes, or substantially duplicates a firearm of that type in design, function or appearance'.³⁴⁴

³³⁸ See *Firearms Regulations 1974* (WA), r 26(2), (2a), (2BA), (2BB) and (2BC).

³³⁹ *Firearms Regulations 1974* (WA), r 26(1). The exemptions are contained in subregulations 26(2), 26(2a), 26(2BA), 26(2BB) and 26(2BC).

³⁴⁰ *Firearms Regulations 1974* (WA), r 26(3).

³⁴¹ *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 7.

³⁴² Australasian Police Ministers' Council, Special Firearms Meeting, Canberra 10 May 1996, Resolutions, 7 accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>. Emphasis added.

³⁴³ *Weapons Categories Regulation 1997* (Qld), s 5(1)(a).

³⁴⁴ *Firearms Act 1996* (Vic), s 3B(1).

- Schedule 1 of the *Firearms Act 1996* (ACT), which lists prohibited firearms, explicitly includes 'a firearm that substantially duplicates in appearance (regardless of calibre or manner of operation)' a specified prohibited firearm, such as a machine gun, submachine gun or a self-loading shotgun of a kind designed or adapted for military purposes.³⁴⁵
- The *Firearms Act 1996* (NSW),³⁴⁶ the *Firearms Act* (NT),³⁴⁷ and the *Firearms Act 1996* (Tas)³⁴⁸ contain almost identical provisions to that in the Australian Capital Territory legislation above.

The definition of 'Class D firearms' in the *Firearms Act 1977* (SA) does not include firearms which duplicate other firearms in appearance.³⁴⁹ However, the definition of 'prescribed firearm' (analogous to 'prohibited firearm' in legislation from other jurisdictions) does take the appearance of a firearm into account in some respects. This definition includes 'firearms designed as, and having the appearance of, other objects'³⁵⁰ and regulated imitation firearms³⁵¹ which 'closely resemble' other firearms listed in the definition of 'prescribed firearm' or which do not 'closely resemble' either such a firearm, or a firearm of Class A, B, C, D or H.³⁵²

It seems that some jurisdictions may not apply the 'appearance' aspect of the definition of Category D firearms as a matter of practice. For instance:

- In the Northern Territory, as noted above, 'prohibited firearms' are defined to include 'a firearm that substantially duplicates in appearance (regardless of calibre or manner of operation) a machine gun, sub-machine gun or other firearm capable of propelling projectiles in rapid succession during one pressure of the trigger, a self-loading centre-fire rifle of a kind that is designed or adapted for military purposes, or a self-loading shotgun of a kind that is designed or adapted for military purposes'.³⁵³ However, the Commission is advised that as a matter of practice, this provision is not used to prohibit firearms on the basis of appearance as 'the appearance of a

firearm has no bearing on the functionality of the firearm'.³⁵⁴

- The Commission is advised that in Queensland the 'actual function of the weapon concerned is considered the principal method of defining the Category of a weapon'.³⁵⁵

However, the existence of these other provisions underlines that, broadly, the matter of a firearm's appearance in the context of prohibited firearms has been deemed relevant by other Australian jurisdictions. The bigger question, perhaps, is how this aspect of the definition of Category D firearms should operate, particularly given it does not appear to be used as a matter of practice in some other jurisdictions.

As discussed further below, what might assist firearms users would be some guidance as to the criteria used to determine *when* a firearm will be deemed to 'substantially duplicate' a self-loading centre fire rifle designed or adapted for military purposes 'in design, function or appearance'.³⁵⁶ As with similar guidance regarding regulation 26B(2)(a) (also discussed below), such guidance would provide some certainty and clarity.

7.5.3 Firearms which 'closely resemble' prohibited firearms

As well as setting out 'prohibited firearms',³⁵⁷ the *Firearms Regulations* further provide that a licence, permit or approval relating to a firearm cannot be issued, granted or given if:

- in the Police Commissioner's opinion, the firearm 'closely resembles a firearm that is prohibited under regulation 26';³⁵⁸
- in the Commissioner's opinion, the firearm is designed to be, or capable of being, readily adapted for use as a handgun;³⁵⁹
- the firearm is specified in a Table included in the Regulations;³⁶⁰ or

345 *Firearms Act 1996* (ACT), Schedule 1, item 8.

346 *Firearms Act 1996* (NSW), Schedule 1, item 7.

347 *Firearms Act* (NT), Schedule 1, item 7.

348 *Firearms Act 1996* (Tas) Schedule 1, item 6. The Commission understands that Tasmania regulates firearms whose appearance closely resembles 'any machine gun, submachine gun or other firearm capable of propelling projectiles in rapid succession by one press of the trigger'; Correspondence from Hon MT Hidding MP, Tasmanian Minister for Police, 16 June 2015, 3.

349 *Firearms Act 1977* (SA), s 5(1).

350 *Firearms Regulations 2008* (SA), r 4(1)(i).

351 'Regulated imitation firearms' are defined as an item that contains a mechanism that imitates the loading mechanism or firing mechanism of a firearm, or an item that is an imitation of the receiver of a firearm, other than an item that is a children's toy or a novelty item or an item determined by the Registrar not to be a regulated imitation firearm; see *Firearms Regulations 2008* (SA), r 5(2).

352 *Firearms Regulations 2008* (SA), r 4(1)(ja).

353 *Firearms Act* (NT), Schedule 1, item 7.

354 Correspondence from Mr Reece Kershaw, Acting Commissioner of Police, 18 February 2015; email correspondence from Mr Peter Ruzsicska, Sergeant Officer In Charge, Firearms Policy & Records Unit, Northern Territory Police, Fire and Emergency Services, 27 February 2015.

355 Email correspondence from Steve Steenstrup, Sergeant, Weapons Licensing, Queensland Police Service, 21 April 2015.

356 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 7.

357 *Firearms Regulations 1974* (WA), r 26.

358 *Firearms Regulations 1974* (WA), r 26B(2).

359 *Firearms Regulations 1974* (WA), r 26B(2)(b).

360 *Firearms Regulations 1974* (WA), r 26B(2)(c). The table, in r 26B(4), currently lists seven particular firearms.

- the firearm is a revolving rifle³⁶¹ (unless it is a single action revolving rifle which, in the Commissioner's opinion, has significant commemorative, historical, thematic or heirloom value).³⁶²

It is the first of these prohibitions, regulation 26B(2) (a), that has proved the most contentious due to the phrase 'closely resembles' and the reliance on 'the Commissioner's opinion'. The existence of regulation 26B(2)(a), together with the definition of Category D firearms, effectively means that there is a double layer of 'appearance' to be taken into account: firstly, a firearm that 'substantially duplicates' a self-loading centre fire rifle designed or adapted for military purposes in appearance will be classed as Category D and prohibited,³⁶³ and then a firearm which 'closely resembles' such a firearm, or any other prohibited firearm, will also be prohibited.³⁶⁴ These two layers are occasionally conflated.

The ability to prohibit a firearm on the basis of its appearance predates the 1996 National Agreement in Western Australia. Previously regulation 26B(3) of the *Firearms Regulations* provided that 'a licence, permit or approval relating to a firearm which ... is, in the opinion of the Commissioner, a firearm the appearance of which closely resembles a firearm the possession of which is prohibited under regulation 26 of these regulations ... being firearms of a kind in relation to which the Commissioner is of the opinion that the exercise of special precautions is required, shall not be issued, granted or given'.³⁶⁵

The phrase 'closely resembles' in the present regulation 26B(2)(a) has been the subject of some debate. It has, for instance, been argued that this phrase introduces an unacceptable degree of subjectivity into the Act's regulatory scheme, as it is asserted that individual Western Australia Police officers may disagree as to whether a particular firearm resembles a prohibited firearm. There is also disagreement about whether the appearance of a firearm, as distinct from its substantive qualities, is properly a relevant consideration. In 2013 a member of the Legislative Assembly raised a grievance in Parliament relating to the *Firearms Act*, during which he stated of regulation 26B(2)(a):

It is important to note that this regulation does not deal with the specifications of a firearm, but simply how it looks. My first concern with

this regulation is that it can be applied in a very subjective manner; it relies on no more than the opinion of the Commissioner of Police or, more correctly, his delegate. I believe that opinion is a poor basis for the application of law. Firearms technology has developed significantly over past decades. Manufacturers produce recreational firearms utilising military-style attributes such as vertical grips, rails for attaching accessories and fitted bipods. Such advances serve the purpose of making firearms more versatile, functional and accurate, yet by looking less traditional they fall foul of this regulation. Yet from a specification point of view, they are totally legal.³⁶⁶

Similar views have also been expressed in Parliament by other members, one of whom advised the Legislative Council in 2014 that some licensed firearms, which were Category B bolt action repeater rifles, had been taken from the licensees on the basis that '[s]omeone in the licensing department has suddenly thought they do not like the look of these firearms'.³⁶⁷

It is argued on behalf of firearms owners that the 'intention behind [regulation 26B(2)(a)] was to prevent aftermarket modification to change a firearm's category or increase its conceal-ability' but that the regulation has 'been applied in an arbitrary way' to effectively ban firearms 'because of their colour scheme or type of stock',³⁶⁸ noting that a stock may be altered purely for reasons of comfort.

It is also argued, however, that the rationale behind regulation 26B(2)(a) is to prevent the licensing of firearms which, by virtue of their resemblance to military-type weapons, could create fear or an escalated police response. In response to a parliamentary question as to the impact on public safety caused by a Category B firearm resembling a Category D firearm, the then Acting Police Minister advised in October 2014 that: 'A Category B2 class firearm³⁶⁹ that has the appearance of a Category D1 class firearm³⁷⁰ could impact on public safety by causing fear and panic if it is believed the firearm is a military-style firearm, similar to those used in the Port Arthur massacre'.³⁷¹

This rationale is countered by firearms owners, who argue that the appearance of a firearm is irrelevant, that the spectre of mass shootings is used to justify unnecessary constraints imposed on lawful firearm

361 *Firearms Regulations 1974* (WA), r 26B(2)(d). For the purposes of this regulation, 'revolving rifle' is defined as 'a rifle the ammunition for which is loaded into and fired from a revolving cylinder or revolving chamber'; r 26B(1).

362 *Firearms Regulations 1974* (WA), r 26B(3)(a) and (b).

363 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 7.

364 *Firearms Regulations 1974* (WA), r 26B(2)(a).

365 See *Firearms Regulations 1974* (WA) (Reprint 17 Nov 1995), r 26B(3)(a).

366 Extract from *Hansard*, Legislative Assembly, Thursday 28 November 2013, 1.

367 *Hansard*, Legislative Council, 21 October 2014, 7520. It should be noted that the Police Commissioner may revoke a firearm licence for reasons including that to do so is in the public interest, or that a particular firearm is unsafe or unfit for use; see *Firearms Act 1973* (WA), s 20(1)(ac) and (b).

368 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 4.

369 Category B2 firearms include single shot centre fire rifles, double barrel centre fire rifles, and repeating centre fire rifles; see *Firearms Regulations 1974* (WA), Schedule 3, Division 2, cl. 2.

370 A Category D1 firearm is 'a self-loading centre fire rifle designed or adapted for military purposes or a firearm that substantially duplicates such a firearm in design, function, or appearance'; see *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 7.

371 Cited by R. Mazza, *Hansard*, Legislative Council, 21 October 2014, 7521.

owners, and that even fairly standard features of modern firearms (such as camouflage-patterned stocks) are apt to be interpreted as conferring upon them a 'military appearance'.³⁷² It has been suggested to the Commission that, although a focus on the appearance of a firearm is subjective, the functionality of a firearm – which directly relates to its capacity to cause harm – is objective and would be a more sensible basis on which to refuse to licence a firearm.³⁷³ The relevance of a firearm's appearance is therefore a live issue, and there is a distinct difference of opinion as between firearm owners and Western Australia Police.

A question also arises as to which members of the public, in a practical sense, are likely to see a firearm that 'closely resembles' a prohibited firearm (in particular, outside of farming communities, approved shooting ranges or shooting clubs, museums or dealerships), and be intimidated by it. Under the scheme of the *Firearms Act*, shooting takes place at approved shooting clubs³⁷⁴ or organisations³⁷⁵ including approved ranges³⁷⁶ and shooting galleries,³⁷⁷ on private land by the owner's permission,³⁷⁸ in the course of someone's occupation³⁷⁹ including primary production,³⁸⁰ during a paintball game,³⁸¹ or for another approved purpose.³⁸² Firearms held under a collector's licence cannot be carried or used, and so will be stored away from members of the public; where a collector wishes to transport a firearm or firearms, they can apply for a temporary permit.³⁸³ It does not appear to be the case that firearms are regularly carried and used in areas frequented by members of the public who are unfamiliar with them.

Indeed, the *Criminal Code* provides for offences for appearing in public while armed, or appearing to be armed, with any 'dangerous or offensive weapon' in particular circumstances. The following are offences under the *Criminal Code*:

- being armed with any dangerous or offensive weapon in or near a place of public entertainment,³⁸⁴ or a place within 50 metres of a place of public entertainment, without a lawful excuse,³⁸⁵
- being armed with any dangerous or offensive weapon in a public place when in company with two or more persons;³⁸⁶ and
- being, or pretending to be, armed with any dangerous weapon or offensive weapon or instrument in circumstances that are likely to cause fear to any person.³⁸⁷

As one parliamentarian stated in November 2013, 'I believe that if a person were to walk around a shopping centre with a firearm, the average shopper would be scared irrespective of what colour it was or if it had railings on top. I cannot understand what is to be gained by this regulation. Firearms are stored in a safe at home, transported to either a firing range or taken to a private property for hunting, not paraded about in public'.³⁸⁸

It should also be noted that there is no equivalent to regulation 26B(2)(a) in respect of 'imitation firearms' (including firearms that have been rendered inoperable), which are classed as 'controlled weapons' under the *Weapons Regulations 1999* (WA).³⁸⁹ That is, there is nothing in the *Firearms Act*, the *Weapons Act 1999* (WA) or the *Weapons Regulations 1974* (WA) to prevent a person from owning an imitation firearm that closely resembles a prohibited firearm,³⁹⁰ although such an item would arguably also raise similar concerns about the potential to create fear or elicit an escalated police response.

Some other jurisdictions *do* provide that inoperable firearms which resemble prohibited firearms are also prohibited: for instance, in Queensland, the *Weapons Categories Regulation 1997* (Qld) provides that a replica of a machine gun or submachine gun that is not a toy is defined as a Category R weapon,³⁹¹

372 See, for instance, R. Mazza MLC, *Hansard*, Legislative Council, 21 October 2014, 7521.

373 Meeting with Hon Rick Mazza MLC, 2 December 2014.

374 *Firearms Act 1973* (WA), s 11A(2)(a).

375 *Firearms Act 1973* (WA), s 11A(2)(b).

376 *Firearms Act 1973* (WA), s 8(1)(m).

377 *Firearms Act 1973* (WA), s 8(1)(l).

378 Section 23(10) of the *Firearms Act 1973* (WA) provides that a person who, without reasonable excuse, uses a firearm on land belonging to another person without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence. The penalty for this offence is a \$2,000 fine. Similarly, section 23(10a) provides that a person who, without reasonable excuse, carries a firearm, other than on a road open to the public, onto or across land that is used for or in connection with primary production without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence. The penalty for this offence is also a \$2,000 fine.

379 *Firearms Act 1973* (WA), s 11A(2)(d).

380 *Firearms Act 1973* (WA), s 8(1)(i).

381 *Firearms Act 1973* (WA), s 11A(2)(da).

382 *Firearms Act 1973* (WA), s 11A(2)(f).

383 *Firearms Act 1973* (WA), s 17(1)(c).

384 In this section, 'place of public entertainment' means 'a place where the public is present and where entertainment of any kind is about to be, is being, or has just been provided to the public, whether on payment or not', or licensed premises as defined by the *Liquor Control Act 1988* (WA) s 3(1); see *Criminal Code* s 68B(1)(a).

385 *Criminal Code*, s 68B.

386 *Criminal Code*, s 68C.

387 *Criminal Code*, s 68.

388 Extract from *Hansard*, Legislative Assembly, Thursday 28 November 2013, 1.

389 Weapons Regulations Schedule 2 Item 10 provides that an 'imitation firearm' is a controlled weapon, and defines it as 'an article, not being an article that is clearly a toy, that has the appearance of being a firearm but is not capable of discharging a missile'.

390 Western Australia Police has noted that 'under current legislation, a person cannot possess a prohibited firearm, therefore it could not be possessed for the purpose of it being rendered innocuous'. Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 14. However, there is nothing in the Act or Regulations which would prevent a person owning a prohibited firearm which has already been rendered innocuous.

391 *Weapons Categories Regulation 1997* (Qld), s 8(1)(a).

and also that a Category D weapon will be classed as such even if it is inoperable.³⁹² In addition, in South Australia the definition of ‘prescribed firearm’, which is analogous to ‘prohibited firearm’ in legislation from other jurisdictions, includes regulated imitation firearms³⁹³ that ‘closely resemble’ other firearms listed in the definition of ‘prescribed firearm’ or which do not ‘closely resemble’ either such a firearm, or a firearm of class A, B, C, D or H.³⁹⁴ The issue of inoperable firearms is discussed elsewhere in this Discussion Paper at paragraph 7.7.

The question whether the appearance of a firearm is relevant was answered in the affirmative at the time of the 1996 National Firearms Agreement with respect to Category D (prohibited) firearms. In Western Australia, an extra layer exists in the form of regulation 26B(2)(a), which provides that a licence, permit or approval relating to a firearm cannot be issued, granted or given if in the Police Commissioner’s opinion, the firearm ‘closely resembles’ a firearm prohibited under regulation 26. Given the disagreements as to the purpose and effect of regulation 26B(2)(a), the Commission invites comment on this regulation.

Question 6:

- Is regulation 26B(2)(a) of the *Firearms Regulations 1974 (WA)* necessary?
- Should a similar limitation be introduced in relation to ‘imitation firearms’ (including firearms that have been rendered inoperable), which are classed as ‘controlled weapons’ under the *Weapons Regulations 1999 (WA)*, so as to prevent a person from owning an imitation firearm that closely resembles a prohibited firearm?

7.5.3.1 Administration of regulation 26B(2)(a)

Beyond broader questions about the purpose of regulation 26B(2)(a) is the matter of how it is administered. Firstly, there is the question of how many people this regulation affects. Western Australia Police has advised that for the period 1 June 2012 to 30 June 2015, a total of 87 firearm licence applications were refused and only one is recorded as being refused because of regulation 26B.³⁹⁵ Though there is no definition of ‘closely resembles’ in the Act or Regulations, the Western Australia Police has developed a ‘policy’, which is yet to be formally

endorsed and released, that provides a basis to assess firearms that ‘substantially duplicate’ prohibited firearms in design, function or appearance.³⁹⁶

In addition, the Commission is advised that in January 2015 Western Australia Police adopted the following process ‘to ensure decisions are recorded in the event of a request for review or an appeal’ when assessing whether a firearm meets the criteria under regulation 26 or 26B of the *Firearms Regulations*:

- A template check for the firearm within the National Firearms Identification Database to identify the firearm and comments that may be present in relation to its make, model, or suitability of use is carried out.
- A check on the manufacturer’s website for images of the firearm, together with firearm performance, i.e. ammunition range and suitability for types of vermin destruction is undertaken.
- A check on the Weapons Identification Database website to obtain a firearm description is carried out.
- Where no reference can be located, the applicant is contacted and a photograph of the firearm is requested so the firearm type can be identified.
- The assessor will make a recommendation, which will be progressed to the Licensing Services Tactical Meeting for determination.
- The Licensing Services Tactical Meeting (which is attended by the Divisional Inspector, Senior Sergeant, Sergeants and other staff as required) will make a final decision on the firearm.
- All Licensing Services Tactical Meeting decisions are formally recorded.³⁹⁷

From the perspective of applicants for licences, there remains a degree of uncertainty in the application process – they do not know ahead of time whether their application will be refused on the basis of the appearance of the relevant firearm. Further, there is no avenue provided in the *Firearms Act* or *Firearms Regulations* for an applicant to query or contest the exercise of power under regulation 26B(2)(a).

In addition, the SAT has found,³⁹⁸ and the Supreme Court has confirmed on appeal,³⁹⁹ that a refusal to licence a firearm on the basis of regulation 26B(2)(a) is not capable of review by the SAT. This is the result of section 6(1a) of the *Firearms Act*, which provides:

392 *Weapons Categories Regulation 1997* (Qld), s 5(2).

393 ‘Regulated imitation firearms’ are defined as an item that contains a mechanism that imitates the loading mechanism or firing mechanism of a firearm, or an item that is an imitation of the receiver of a firearm, other than an item that is a children’s toy or a novelty item or an item determined by the Registrar not to be a regulated imitation firearm; see *Firearms Regulations 2008* (SA), r 5(2).

394 *Firearms Regulations 2008* (SA), r 4(1)(ja).

395 Correspondence from GE Dreibergs, Deputy Commissioner of Western Australia Police (Specialist Services), 20 July 2015, 1.

396 Correspondence from Michelle Fyfe APM, Acting Deputy Commissioner (Specialist Services) of Western Australia Police, 4 September 2015, 2.

397 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 6–7.

398 *Killen and Commissioner of Police* [2013] WASAT 118

399 *Killen v Commissioner of Police* [2014] WASC 127.

Notwithstanding that any licence may have been issued, permit granted, or approval given under this Act in relation to any firearm or ammunition of that kind, the Governor, on the recommendation of the Commissioner, may, in relation to any firearm or ammunition which is, because of its nature or characteristics, of a kind requiring the exercise of special precautions and which is named, or falls within a description given in, or is otherwise identified by, those regulations, make regulations:

- (a) directing that no licence, permit or approval relating thereto shall be issued or given;
- (b) directing that no licence, permit or approval relating thereto shall be capable of being renewed after a date specified in the regulations; or
- (c) otherwise making such provision as may be expedient in relation thereto,

*and for the purposes of section 22 the exercise of any power pursuant to those regulations shall not be taken to have been a decision made by or on behalf of the Commissioner.*⁴⁰⁰

Section 22 of the *Firearms Act* provides that a 'decision' includes a restriction, limitation or condition imposed under the Act⁴⁰¹ and also provides that a person aggrieved by a decision made by or on behalf of the Police Commissioner may apply to the SAT for a review of the decision.⁴⁰² In *Killen v Commissioner of Police*,⁴⁰³ the Supreme Court held that the italicised words in section 6(1a) above 'clearly convey Parliament's intention that the SAT would not engage in any review (that is, any merits review) of a decision made in the exercise of a power under reg 26B(2) (a)'.⁴⁰⁴ In that case, the Supreme Court concluded that 'any challenge [the appellant] may have wished to make to the validity of the respondent's decision should have been pursued through an application for judicial review'.⁴⁰⁵ It should be noted that judicial review is narrower in scope than merits review of the kind undertaken by the SAT.

The Commission considers it desirable that more certainty be provided to applicants for firearms licences as to whether a firearm they seek to purchase will be determined to be a prohibited firearm. Such certainty would also assist firearms dealers.

It appears that some efforts are being made to provide more certainty in terms of the definition of Category D firearms and in terms of regulation 26B(2)

(a). On 19 February 2015, a Parliamentary Question from the Hon Rick Mazza MLC for the Minister for Police included the following questions, which relate to the definition of Category D firearms:

- Can the Minister advise what criteria are used to determine a 'military appearance'?
- Can the Minister advise who determines these characteristics?
- Can the Minister advise where this information can be accessed?

In response, the Attorney General advised: 'The Minister for Police has requested the Commissioner of Police to develop a policy document outlining the features that should be taken into consideration by Western Australia Police licensing enforcement division officers when assessing whether a firearm is a self-loading centre-fire rifle designed or adapted for military purposes or a firearm that substantially duplicates such a firearm in design, function or appearance. This policy document has not been finalised'.⁴⁰⁶

The Commission agrees that certainty about the way in which the appearance of firearms is assessed for the purposes of determining whether a firearm falls into Category D would be beneficial. It would also be of assistance if guidance were provided as to how it is determined whether a firearm 'closely resembles' a prohibited firearm for the purposes of regulation 26B(2)(a).

Possible options which might provide certainty to applicants for licences under the *Firearms Act* include a register of unacceptable firearms (whether provided to the public at large or simply to firearms dealers), or a pre-approval process by which an applicant could submit a question about a firearm he or she wished to purchase prior to making a formal application.

Western Australia Police has advised that the 'creation of a register ... has merit however once adopted by police, would mean the constant update and conflict with firearm-related businesses attempting to place new firearms on the market. Importers are constantly looking for new firearm types in overseas countries and new firearm concepts are a continuous problem'. Western Australia Police also noted that there 'would be a cost in developing any register, especially if access is allowed to dealers or the general public'.⁴⁰⁷

As to pre-approval, Western Australia Police has advised that this could only be applied to the firearm

400 *Firearms Act 1973* (WA), s 6(1a), emphasis added.

401 *Firearms Act 1973* (WA), s 22(1).

402 *Firearms Act 1973* (WA), s 22(2).

403 [2014] WASC 127

404 *Killen v Commissioner of Police* [2014] WASC 127 per Pritchard J at [42].

405 *Killen v Commissioner of Police* [2014] WASC 127 per Pritchard J at [45].

406 Extract from *Hansard*, Legislative Council, 19 February 2015, 404b.

407 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 8.

type, as when assessing an applicant's suitability there could be issues not known to police until probity checks are performed.⁴⁰⁸

Over the last three financial years there has only been one application refusal on the basis of regulation 26B⁴⁰⁹. The Commission nevertheless considers that a formal ability to seek pre-approval in respect of a particular firearm (to determine whether it would be assessed as falling under regulation 26 or regulation 26B) may be of use in addressing the uncertainty that concerns applicants for firearms licences. Such pre-approval could also address the question whether a particular firearm would be said to fall within the definition of a Category D1 firearm, which as noted above also refers to a firearm's 'design, function, or appearance'.⁴¹⁰ It would also be useful for reasons to be provided for the determination made at pre-approval stage.

Proposal 8:

- that Western Australia Police formally adopt and publically release a policy that provides certainty about the way in which the appearance of firearms is assessed to determine whether it 'closely resembles' prohibited firearms in design, function or appearance;
- provision be made for a formal pre-approval process for individual firearms to determine whether they fall under regulation 26, regulation 26B, or Category D1 of the *Firearms Regulations 1974* (WA), and that written reasons be given for such determinations; and
- any decision made under regulation 26B(2) (a) be included as a 'decision' for the purposes of section 22 in order for the applicant to seek a review of the decision in the SAT.

7.6 Antique mechanism firearms

Following amendments made in 2004,⁴¹¹ the *Firearms Act* provides that a person who is in possession of, or carries but does not use, an 'antique mechanism

firearm' does not require a licence.⁴¹² 'Antique mechanism firearm' is defined as 'a muzzle-loading firearm (including a percussion lock handgun that is muzzle-loading) manufactured before 1900 that uses black powder to propel a shot, bullet, or other missile except that it does not include a breech-loading firearm, a firearm with revolving chambers or barrels, or a cannon'.⁴¹³

It is thought that the reasoning behind this definition stems from the fact that 'firearms manufactured after 1900 used powder in a cartridge, which was the beginning of the modern-day firearm'.⁴¹⁴ In addition, Western Australia Police considers that 'the value of antique firearms generally excludes the actual use of such weapons for fear of damage, particularly as age can add to the fragility of parts and mechanisms'.⁴¹⁵

The 1996 National Firearms Agreement provides that 'all operating firearms' owned by collectors 'should be subject to the same level of regulation as any other operating firearm'.⁴¹⁶ This was subsequently qualified; it was agreed as between jurisdictions that each would consider whether the licensing and registration of collectors' firearms manufactured before 1900, for which ammunition was not commercially available, was necessary.⁴¹⁷ In Western Australia, antique mechanism firearms are neither licensed nor registered.

However, although 'antique mechanism firearms' are not subject to the licensing regime in the *Firearms Act*, they still fall within the Act's definition of 'firearm' and are therefore subject to the same storage requirements as other firearms.⁴¹⁸ These firearms, considered to be collectors' items, cannot therefore be stored over the fireplace or otherwise displayed. Some owners of 'antique mechanism firearms' posit that this is anomalous, and ask why a firearm not deemed harmful enough to require regulation must still be stored in the same manner as a licensed firearm.⁴¹⁹ By implication, these firearms do not present such a risk that they require licensing and therefore the oversight of Western Australia Police, but they are still dangerous enough that they must be locked up in secure storage. Some stakeholders see this position as internally contradictory. Western Australia Police considers that there is a need to secure such firearms as they can still fire a shot or

408 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 8.

409 Correspondence from GE Dreibergs, Deputy Commissioner of Western Australia Police (Specialist Services), 20 July 2015, 1.

410 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 7.

411 *Firearms Amendment Act 2004* (WA), s 11.

412 *Firearms Act 1973* (WA), s 8(1) (mc).

413 *Firearms Act 1973* (WA), s 8(2).

414 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 19.

415 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 20.

416 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 4, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

417 Davies M and Mouzos J, Australian Institute of Criminology Special Report, June 2007, 26, accessed at http://www.aic.gov.au/media_library/publications/special/003/firearms-legislative-review.pdf.

418 'Antique mechanism firearms' are not excluded from the definition of 'firearm' in section 4 of the *Firearms Act 1973* (WA); their exclusion from the licensing regime is done by way of an exemption in section 8(1)(mc) of the Act. The *Firearms Regulations 1974* (WA) regulation 11A(1) provides that 'a person entitled to possess firearms or ammunition of any kind is to ensure that the firearms or ammunition are stored in accordance with this regulation' [emphasis added].

419 Conversation with Dr Leo Laden, 16 December 2014.

missile, are therefore still regarded as dangerous and need to be secured.⁴²⁰

The only way to remove 'antique mechanism firearms' from the storage requirements of the *Firearms Regulations* would be to render them inoperable,⁴²¹ which is not an attractive proposition for collectors. Inoperable firearms are discussed at paragraph 7.7.

7.6.1 Antique firearms that are not 'antique mechanism firearms'

The definition of 'antique mechanism firearm' is specific; it does not include *all* firearms manufactured before 1900. Some firearms owners submit that some antique firearms which are *not* muzzle-loading (and therefore do not fit within the definition) are in effect harmless as there is no ability to load them with ammunition. It has for instance been suggested that 'most of the cartridge breech-loading firearms made before 1900 use ammunitions that are no longer available' and suggested that all breech-loading firearms made before 1900 that do not use commercially available ammunition should be exempt from licensing or registration.⁴²² Stakeholders contend that it is inconsistent that unserviceable pre-1900 firearms (that is, firearms in respect of which ammunition is not commercially available and which therefore cannot be used as firearms) require a licence whereas a (non-working) replica does not, given that '[b]oth items are equally useless as firearms'.⁴²³

In addition, collectors of antique firearms (which are not 'antique mechanism firearms') object to the need to apply for and maintain collectors' licences in respect of these items. Some of these stakeholders ask explicitly for evidence that such firearms are dangerous, querying the need to licence and lock away what are characterised as collectors' items and curios.⁴²⁴ The Commission has also been advised that there is 'absolutely no evidence to show that antique firearms and copies of antiques have ever been used in criminal activities'.⁴²⁵

If a person wishes to possess a firearm that does not fall into the definition of an 'antique mechanism firearm' but which is said to be unusable owing to the lack of available ammunition, and does not wish to obtain a collectors' licence, he or she has the option of rendering the firearm inoperable and

therefore removing it from the scope of the *Firearms Act* altogether. However, this course of action is not preferred by collectors, as rendering firearms inoperable makes them less aesthetically pleasing and diminishes their historical interest.⁴²⁶

It should be noted that, when originally passed, the *Firearms Act* made provision for 'curio licences'. The Act provided that the Police Commissioner 'may in his discretion classify and licence as a firearm curio' the following items:

- any firearm manufactured in or before the year 1900;⁴²⁷
- any firearm designed to use rimfire, pinfire or centre fire ammunition of a kind not obtainable commercially;⁴²⁸ or
- any other firearm, including any replica of a firearm of the kinds referred to above, which can be shown to be a collector's item or of especially sentimental value to the owner.⁴²⁹

These provisions were amended in 1996, and Collectors' Licences replaced Curio Licences.⁴³⁰ The definition of 'antique mechanism firearm' was subsequently included in the Act in 2004 to provide that not all antique firearms required licences; the words 'except that it does not include a breech-loading firearm, a firearm with revolving chambers or barrels, or a cannon' were added by parliament in order to 'tighten' the definition.⁴³¹

It would be possible for the *Firearms Act* to adopt a broader definition of 'antique firearms' that takes into account the lack of commercially available ammunition, as some other Australian jurisdictions do, and as the Act previously did in the definition of 'firearm curio'. The *Firearms Act 1977* (SA) defines 'antique firearm' to mean a firearm that was manufactured before 1900, is kept solely for curiosity, display or ornamental purposes, is not used to fire projectiles, and:

- in the case of a firearm other than a Class H firearm, is designed to fire breech-loading cartridges and is not a firearm for which live rounds of ammunition are commercially manufactured factory loaded; or is not designed to fire breech-loading cartridges; or

420 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 20.

421 Firearms which have been rendered inoperable are classed as 'controlled weapons' rather than firearms (see *Weapons Regulations 1999* (WA), Schedule 2, Item 10), and are not subject to any storage requirements.

422 Submission from Dr Leo Laden, 18 June 2014, 2.

423 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 6.

424 Conversation with Leo Laden, 16 December 2014.

425 Correspondence from Dr Leo Laden, 5 January 2015.

426 Conversation with Leo Laden, 16 December 2014. During debates on the Firearms Amendment Bill 2003, the then Police Minister, Ms Michelle Roberts, advised Parliament that the 'strong belief of collectors is that in disarming an antique firearm, essentially it is turned into a valueless, inert piece of metal and its value is completely destroyed'; Extract from *Hansard*, Legislative Assembly Thursday 4 March 2004, 18.

427 *Firearms Act 1973* (WA), s 15(1)(a) [repealed].

428 *Firearms Act 1973* (WA), s 15(1)(b) [repealed].

429 *Firearms Act 1973* (WA), s 15(1)(c) [repealed].

430 *Firearms Amendment Act 1996* (WA), s 15(2).

431 Extract from *Hansard* 11 November 2004, Legislative Council, (p7972b-7978a), 3.

- in the case of a Class H firearm, is a handgun designed or altered to fire by means of a flintlock, matchlock, wheel-lock or other system used prior to the use of percussion caps as a means of ignition,

and includes a receiver of such a firearm.⁴³² Items that fit within this definition are specifically excluded from the definition of ‘firearm’ in the *Firearms Act 1977 (SA)*⁴³³ and therefore do not require a licence.

The *Firearms Act 1996 (NSW)* also provides that a person is exempt from any requirement under the Act to hold a licence or permit in respect of the possession of an antique firearm,⁴³⁴ other than a revolver,⁴³⁵ and that an antique firearm is not required to be registered.⁴³⁶ The *Firearms Act 1996 (NSW)* defines ‘antique firearm’ as any firearm manufactured before 1900 that:

- in the case of a firearm other than a pistol, is not capable of discharging breech-loaded metallic cartridges, or is a firearm the ammunition for which is determined by the Commissioner to be ammunition that is not commercially available, or
- in the case of a pistol, is not capable of discharging breech-loaded metallic cartridges.⁴³⁷

In the Australian Capital Territory, firearms (other than percussion-fired pistols) that were manufactured before 1900 and for which ammunition is not readily commercially available are excluded from the definition of ‘firearm’.⁴³⁸

The *Firearms Act 1996 (Vic)* adopts a broader definition of ‘antique handgun’ as a handgun manufactured before 1 January 1900 that uses percussion as a means of ignition and that does not take commercially available cartridge ammunition,⁴³⁹ and provides that licences may be obtained in respect of such items.⁴⁴⁰ However, the *Firearms Act 1996 (Vic)* also provides that it does not apply to a firearm that was manufactured before 1900 if:

- (a) in the case of any such firearm that is a longarm—
 - (i) it does not take cartridge ammunition; or
 - (ii) if it does take cartridge ammunition, the cartridge ammunition that it takes is not commercially available; or

- (b) the firearm—
 - (i) is not a handgun of a type that uses percussion, or methods developed during or after the development of percussion, as a means of ignition; or
 - (ii) is a single shot antique handgun.⁴⁴¹

One possible objection to a definition that considers whether ammunition is commercially available is the possibility that people may manufacture their own ammunition.

The 2008 Police Review asked stakeholders whether all pre-1900 firearms that did not use ‘fixed ammunition’ should be exempt from licensing and/or registration. Of those who responded to the Western Australia Police Discussion and Submission Paper, 63.2% said yes, 27% said no, and 9.8% were undecided.⁴⁴² The review made no recommendations on this matter.

Western Australia Police advises that it is ‘not convinced there is such a thing as ammunition not commercially available’ but that in any event, ‘even if a particular type of ammunition was not commercially available it does not necessarily mean the ammunition is not available; it could simply be available through non-commercial means’.⁴⁴³ Western Australia Police has also noted that ‘it could be impractical to implement or adopt such a regime should non-commercial ammunition eventually become commercially available’.⁴⁴⁴ In addition, Western Australia Police notes that ‘some shooters prefer to reload their used casings and this is common practice for target shooters’. Western Australia Police suggests that the ‘process of reloading used casings is not a complicated process and persons in possession of used casings from so-called non-commercially available ammunition could be able to reload them’.⁴⁴⁵

Question 7:

- Should the definition of ‘antique mechanism firearm’ in the *Firearms Act 1973 (WA)* be amended so that it is not limited to breech-loading firearms but also includes firearms manufactured before 1900 for which ammunition is not commercially available?

432 *Firearms Act 1977 (SA)*, s 5(1).

433 *Firearms Act 1977 (SA)*, s 5(1).

434 *Firearms Act 1996 (NSW)*, s 6A(1). This section provides, however, that a licence or permit will still be required to use any such firearm.

435 The Act defines ‘antique revolver’ to mean ‘an antique firearm that is a percussion lock pistol equipped with a revolving cylinder’; see *Firearms Act 1996 (NSW)*, s 6A(7).

436 *Firearms Act 1996 (NSW)*, s 6A(2).

437 *Firearms Act 1996 (NSW)*, s 6A(7).

438 See *Firearms Regulation 2008 (ACT)*, r 6(1)(b), in conjunction with *Firearms Act 1996 (ACT)*, s 6(2)(a).

439 *Firearms Act 1996 (Vic)*, s 3(1).

440 *Firearms Act 1996 (Vic)*, s 21B(1) provides that the Chief Commissioner may license a person to possess or carry antique handguns (that are not single shot antique handguns) for the purpose of collecting any such handguns.

441 *Firearms Act 1996 (Vic)*, s 3(4).

442 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, Annexure A, 39.

443 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 20.

444 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 20.

445 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 20.

7.6.2 Working replicas of ‘antique mechanism firearms’

Another relevant issue is that of replicas. A *non-working* replica of any firearm will not be classed as a firearm;⁴⁴⁶ it will be an ‘imitation firearm’ and therefore a controlled weapon pursuant to the *Weapons Regulations 1999 (WA)*.⁴⁴⁷

However, *working replicas* of antique firearms are also commercially available. Working replicas of ‘antique mechanism firearms’ pose another particular issue. Although these replicas may be identical in every way to the original firearms, and may in fact be difficult to differentiate from the originals,⁴⁴⁸ they will be excluded from the *Firearms Act* definition of ‘antique mechanism firearm’ if they were made after 1900.

It has been submitted that it is anomalous that exact working replicas of antique muzzle-loading firearms, which are cheaper than the originals but in other respects identical, require licences. Stakeholders submit that this position is illogical, on the basis that ‘[i]f it is considered that original muzzle-loading [firearms] are of no threat to society and no practical use to criminals, it would also be sensible to exempt these excellent replicas as well’.⁴⁴⁹ This proposal makes intuitive sense; if one item is deemed not to require licensing, why should an exact replica of that item be subject to a regulatory regime?

However, in 2004 Parliament deliberately included in the definition of ‘antique mechanism firearm’ the words ‘manufactured before 1900’ in order to exclude replicas from the definition.⁴⁵⁰ As it is, the exemption is clearly a narrow one that provides some flexibility to collectors of genuine antique firearms, where those antique firearms meet particular criteria.

The Commission notes that extending the definition of ‘antique mechanism firearm’ to include replicas produced after 1900, and up to the present day and beyond, could substantially increase the number of working firearms that could be legally possessed without any licence. ‘Antique mechanism firearms’ manufactured prior to 1900 are self-evidently limited in number; the same cannot be said for working replicas. It is not possible to estimate how many extra firearms might ultimately fall beyond the scope of Western Australia’s regulatory scheme if working replicas were to be included in the definition of

‘antique mechanism firearm’, and this kind of proliferation is arguably contrary to the aims of the *Firearms Act*.

In addition, Western Australia Police has advised that the use of modern technologies and metals enhances the capabilities of replicas, notwithstanding that the replicas use antique mechanisms, and contends that on this basis they should be subject to a licensing regime. Further, replica antique firearms ‘do not have the same value or fragility as original antiques’ and are ‘designed to be used for competitions or other events’.⁴⁵¹ This distinguishes them from original antique mechanism firearms, which may be too fragile to be used and are possessed as collectors’ items.

As it stands, there are three ways in which the issue of ‘antique mechanism firearms’ and replica ‘antique mechanism firearms’ could be dealt with, as set out in the alternative proposals below:

Question 8:

- Should working replicas of ‘antique mechanism firearms’, like ‘antique mechanism firearms’ themselves, be exempt from the licensing requirements of the *Firearms Act 1973 (WA)*;
- the exemption in section 8(1)(mc) of the *Firearms Act 1973 (WA)* that applies to ‘antique mechanism firearms’ be removed so that these firearms also require licences under the *Firearms Act 1973 (WA)*, just as working replicas of these firearms require licences; or
- the status quo remain in place so that ‘antique mechanism firearms’ are exempt from the licensing requirements of the *Firearms Act 1973 (WA)* but working replicas of these firearms are not exempt.

7.7 Inoperable firearms

Inoperable firearms are not regulated by the *Firearms Act*, as the definition of ‘firearm’ requires that the items be functional.⁴⁵² Firearms which have been rendered inoperable are instead classed as ‘imitation firearms’ which are ‘controlled weapons’ under

446 A non-working replica cannot be classed as a firearm as the definition of ‘firearm’ in section 4 of the *Firearms Act 1973 (WA)* includes ‘any lethal firearm and any other weapon of any description from which any shot, bullet, or other missile can be discharged or propelled or which, by any alteration in the construction or fabric thereof, can be made capable of discharging or propelling any shot, bullet or other missile, but does not include anything that is prescribed in regulations under the *Weapons Act 1999* to be a prohibited weapon or a controlled weapon’ [emphasis added].

447 *Weapons Regulations 1999 (WA)*, Schedule 2, Item 10.

448 Correspondence from Dr Leo Laden, 5 January 2015.

449 Submission from Dr Leo Laden, 18 June 2014, 2. See also Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 6.

450 The Hon Nick Griffiths, then Minister for Housing and Works, advised Parliament that this amendment had been made in committee to ‘tighten this provision by not allowing such exemptions to occur unless the firearm was manufactured prior to 1900. That is, I am advised, to ensure that only so-called genuine antique firearms are exempted’; see Extract from *Hansard* 11 November 2004, Legislative Council, (p7972b-7978a), 3.

451 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 20.

452 *Firearms Act 1973 (WA)*, s 4 provides that ‘firearm’ includes ‘includes any lethal firearm and any other weapon of any description from which any shot, bullet, or other missile can be discharged or propelled or which, by any alteration in the construction or fabric thereof, can be made capable of discharging or propelling any shot, bullet or other missile ...’ [emphasis added].

the *Weapons Regulations 1999* (WA).⁴⁵³ There are no storage requirements applicable to inoperable firearms, however improper use of such items can result in criminal sanctions.⁴⁵⁴

The 2008 Police Review recommended that ‘the specifications for rendering firearms innocuous be included in legislation and that there is a requirement for certification of the work undertaken to ensure consistency of application’.⁴⁵⁵ The review noted that the ‘definition of a firearm in the *Firearms Act* is such that if a firearm is made no longer capable of discharging or propelling any shot, bullet or other missile then it is no longer a firearm and therefore no longer requires licensing’.⁴⁵⁶

The 2008 Police Review proposed that certain steps of this process be legislatively prescribed, for instance, that it should be mandatory that the repairer or manufacturer making the firearm innocuous be licensed; that following the procedure the firearm not be capable of being made operable again; and that the repairer or manufacturer stamp or engrave the firearm with the date and their licence number. It concluded that including such specifications in the Act would ensure that ‘consistency is maintained in the process of rendering a firearm innocuous’, which would prevent people rendering their firearms innocuous through a non-licensed repairer or manufacturer, and would inform police of who has rendered a firearm innocuous.⁴⁵⁷

No amendments were made to implement this recommendation. Western Australia Police has subsequently advised that firearms which have been rendered inoperable are said to have been ‘rendered innocuous’, and that for a firearm to be rendered innocuous the work must be carried out by a licensed firearm dealer, repairer or manufacturer, who must then provide a certificate to Western Australia Police.⁴⁵⁸ When the certificate is received, the firearm is removed from the licensing system. Western Australia Police note further that ‘once correctly modified, a firearm cannot be returned to the original condition without a full rebuild of the firearm, in effect a new firearm’.⁴⁵⁹

In the Northern Territory, as in Western Australia, references are made to firearms being rendered permanently inoperable, but no further guidance is provided.⁴⁶⁰ However, in South Australia the Registrar is empowered to stipulate how a firearm may be rendered unusable,⁴⁶¹ in the Australian Capital Territory, the Minister may make guidelines about making firearms inoperable,⁴⁶² and in Victoria, it is an offence for a person to render a firearm or firearm part inoperable unless he or she does so in a manner approved by the Chief Commissioner.⁴⁶³ In addition, New South Wales,⁴⁶⁴ Tasmania⁴⁶⁵ and Queensland⁴⁶⁶ prescribe the manner in which firearms must be rendered inoperable in subsidiary legislation, providing detailed and specific information. In Queensland, the *Weapons Act 1990* (Qld) also provides that a firearm will not be taken to be permanently inoperable unless a licensed armourer or person approved by the Commissioner certifies, in the approved form, that the firearm is incapable of being discharged.⁴⁶⁷

In Western Australia, no such official guidance is provided. Again, the significance of rendering a firearm inoperable is that it thereby ceases to be a ‘firearm’ as defined by the *Firearms Act*. Such firearms are not removed from regulatory oversight altogether, as they then fall under the *Weapons Act 1999* (WA). However, the Commission considers that there ought to be certainty as to what must be done to a firearm officially to render it inoperable. The need for certainty is particularly acute given the possibility of disagreement as between individuals and Western Australia Police as to whether a firearm is inoperable. Any difference of opinion as to whether a firearm has been adequately rendered permanently inoperable (for instance, whether it would be possible to render the firearm operable again)⁴⁶⁸ would in effect be a dispute as to whether an item constituted a firearm or not; this is a matter on which certainty is plainly desirable.

Relevantly, the recent report of the Senate Legal and Constitutional Affairs Reference Committee on the ability of Australian law enforcement authorities to

453 *Weapons Regulations 1999* (WA) Schedule 2 Item 10 provides that an ‘imitation firearm’ is a controlled weapon, and defines it as ‘an article, not being an article that is clearly a toy, that has the appearance of being a firearm but is not capable of discharging a missile’.

454 Subject to particular exceptions, a person who carries or possesses a controlled weapon without lawful excuse commits an offence punishable by two years’ imprisonment and a \$24,000 fine; see *Weapons Act 1999* (WA), s 7(1). Further, a person who has a lawful excuse to carry or possess a controlled weapon commits an offence with the same penalty if he or she does so in a manner that could reasonably be expected to cause someone to be injured or disabled, or to fear that someone will be injured or disabled; see *Weapons Act 1999* (WA), s 7(2).

455 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 21–22.

456 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 21.

457 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 21.

458 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 21.

459 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 21.

460 *Firearms Regulations* (NT), r 19(a).

461 *Firearms Act 1977* (SA), s 5 defines ‘firearm’ to include ‘any device which, if in working order, would be a firearm within the meaning of this definition (except such a device that has been rendered unusable in a manner stipulated in the regulations or by the Registrar)’.

462 *Firearms Act 1996* (ACT), s 37(4)(b).

463 *Firearms Act 1996* (Vic), s 134(4).

464 *Firearms Act 1996* (NSW), s 20(a), *Firearms Regulation 2006* (NSW), r 34(3)–(6).

465 *Firearms Regulations 2006* (Tas) r 10(1)–(7).

466 *Weapons Act 1990* (Qld), s 7(1), *Weapons Regulation 1996* (Qld), r 73 and Schedule 2A.

467 *Weapons Act 1990* (Qld), s 7(2). The Act further provides at s 7(3) that the Commissioner may approve a person for subsection (2) only if the Commissioner is satisfied the person has the necessary expertise or experience to certify that a firearm is incapable of being discharged.

468 The definition of ‘firearm’ in section 4 of the *Firearms Act 1973* (WA) includes ‘any lethal firearm and any other weapon of any description...which, by any alteration in the construction or fabric thereof, can be made capable of discharging or propelling any shot, bullet or other missile’. A firearm which has been inadequately rendered inoperable arguably would fit within this definition.

eliminate gun-related violence in the community, discussed at paragraph 16.2 in this Discussion Paper, considered this issue. The report noted that there was no uniform requirement as to the method used to deactivate a firearm. The report cited information from the Australian Federal Police that: 'What we are pursuing at the moment is the adoption of a national standard so that all jurisdictions actually deactivate the same way. The [Australian Federal Police] standard is being used as a model because it expresses very specifically how that would occur. That is being pursued through the firearms and weapons policy working group.'⁴⁶⁹

The Legal and Constitutional Affairs Reference Committee also noted with concern that some states, including Western Australia, do not include deactivated/inoperable firearms in their definition of 'firearm'⁴⁷⁰ and do not require that such items be registered. The Committee observed that once firearms are rendered inoperable, removed from the definition of 'firearm' and not required to be registered, such firearms 'no longer form part of the legal firearm market and may in some circumstances end up being diverted to the illicit market'. Of particular concern to the Committee was the possibility that deactivated firearms could be reactivated,⁴⁷¹ and the Committee also 'accept[ed] that inconsistencies in this area have led to cases where firearms have been diverted to the illicit market'.⁴⁷² Relevantly, Western Australia Police notes that in some jurisdictions 'innocuous firearms have been located by police "re-birthered", with little work carried out'.⁴⁷³

Ultimately, as discussed below at paragraph 16.2, the Committee recommended that the 1996 National Firearms Agreement be updated to implement nationally consistent regulation in the areas of firearms, firearm parts and firearm accessories; ammunition; and the storage of firearms.⁴⁷⁴ The alternative report, *Report by a Majority of Senators Attending the Inquiry*, opposed this recommendation on the basis that 'these matters should remain [the] responsibility for state and territory governments'.⁴⁷⁵

The issue raised by the Committee regarding registration of deactivated firearms merits consideration. Although they are incapable of being fired, inoperable firearms can still be used to cause harm to the community. The use of such an item to threaten a person, such as during the course of an armed robbery, is viewed seriously within our criminal system. For instance, in the case of *Gullello v R* [2005] WASCA 12, which concerned an unsuccessful appeal against a sentence imposed in respect of a number of charges (including charges of armed robbery), Murray J noted: 'It was said on the applicant's behalf that the firearm used had been modified so that it could not be fired, but clearly that could provide no mitigation of punishment. To say that that has been done attracts the obvious retort that those who were the victims of the commission of the offence, put in fear by being menaced with a firearm, were unaware that they would not be shot'.⁴⁷⁶ Wheeler J agreed, but observed that in her view 'the use of a firearm which was able to be fired would have been an aggravating circumstance, since that would demonstrate a still greater degree of criminality and of risk to the public'.⁴⁷⁷ She noted further that 'personal violence was employed in circumstances where, the complainant in each case being outnumbered and being faced with a firearm, each complainant would have been unable to make any effective self-defence. Those attacks must have been terrifying experiences for the victims of them'.⁴⁷⁸

It is clearly possible for inoperable firearms to be used in serious criminal offences even where they cannot be discharged. It should also be noted that in Western Australia there are no storage requirements imposed on firearms that have been rendered inoperable. It is worth asking, therefore, whether the present classification of inoperable firearms as 'imitation firearms' not falling within the purview of the *Firearms Act* should be reconsidered. In particular, it is worth exploring whether prohibited firearms that have been rendered inoperable should be included in the definition of 'firearm' due to their potential to cause fear, as discussed in the context of regulation 26B(2)(a) at paragraph 7.5.3 above.

469 Assistant Commissioner Slater, Australian Federal Police, Committee *Hansard*, 31 October 2014, 71, cited in Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 55, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

470 Some other jurisdictions have adopted definitions of 'firearm' that specifically include firearms that are no longer operational or are not in working order; see *Firearms Act 1996* (ACT), s 6; *Firearms Act* (Vic), s 3(1); *Firearms Act 1996* (Tas), s 3; *Firearms Act 1996* (NSW), s 4; and *Firearms Act* (NT), s 3(1). *Firearms Regulations 2008* (SA) r 5 also provides that certain imitation firearms are included within the definition of 'firearm' in the *Firearms Act 1977* (SA). This regulation defines a 'regulated imitation firearm' as an item that contains a mechanism that imitates the loading mechanism or firing mechanism of a firearm, or an item that is an imitation of the receiver of a firearm, other than an item that is a children's toy or a novelty item or an item determined by the Registrar not to be a regulated imitation firearm. In addition, r 5AA of the *Firearms Regulations 2008* (SA) provides that the definitions of class A, B, C, D and H firearms in section 5(1) of the *Firearms Act 1977* (SA) are amended so that, if a regulated imitation firearm closely resembles a firearm of a particular class, the class will be taken to encompass the regulated imitation firearm.

471 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 54, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

472 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 89, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

473 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 21.

474 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 3, 90, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

475 Senators the Hon Ian MacDonalid, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 148, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

476 *Gullello v R* [2005] WASCA 12 per Murray J at [25].

477 *Gullello v R* [2005] WASCA 12 per Wheeler J at [49].

478 *Gullello v R* [2005] WASCA 12 per Wheeler J at [50].

Western Australia Police recommends that 'all firearm types should be in the [*Firearms Act*], including imitation firearms (except something that is clearly a toy) and those which have been rendered innocuous, even though they are, by definition, not a firearm'.⁴⁷⁹ Western Australia Police observes that this change would involve removing 'Imitation Firearms' from the *Weapons Regulations 1999* (WA) and creating a permit scheme for imitation firearms within the *Firearms Act*. Western Australia Police suggests, further, that firearms which have been rendered innocuous 'could fit within the licensing regime similar to the category of a collectors licence', which would have the effect that 'everything firearms-related would be contained within a single piece of legislation'.⁴⁸⁰

The Commission considers that the treatment of inoperable firearms/imitation firearms in Western Australia is worth exploring, and has sought views about this issue below.

Proposal 9:

that Western Australia Police participate in adopting a national standard for the means of making firearms inoperable, and that ultimately this standard be prescribed in the *Firearms Regulations 1974* (WA).

Question 9(a):

How should inoperable firearms be treated? In particular:

- should all firearms that have been permanently rendered inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA);
- should prohibited firearms (as defined in Regulation 26) that have been permanently rendered inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA); or
- should the status quo remain, so that firearms that have been permanently rendered inoperable continue to be excluded from the definition of 'firearm' in the *Firearms Act 1973* (WA) and regulated under the *Weapons Act 1999* (WA)?

Question 9(b):

Should provision be made to allow firearms to be made temporarily inoperable and if so:

- what methods might be acceptable to temporarily render firearms inoperable;
- what role, if any, should Western Australia Police have in temporarily rendering a firearm inoperable;
- in what circumstances might it be acceptable to reverse a temporary rendering of a firearm inoperable and who should be authorised to do so;
- should all firearms that have been rendered temporarily inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA);
- should prohibited firearms (as defined in Regulation 26) that have been temporarily rendered inoperable be included in the definition of 'firearm' in the *Firearms Act 1973* (WA); or
- should the status quo remain, so that firearms that have been temporarily rendered inoperable continue to be excluded from the definition of 'firearm' in the *Firearms Act 1973* (WA) and regulated under the *Weapons Act 1999* (WA)?

Question 9(c):

- Should the *Firearms Act 1973* (WA) be amended to provide that it is an offence to render operable a firearm that has been rendered inoperable, unless with prior approval of the Police Commissioner?

479 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 14.

480 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 14.

8. APPLICATION OF THE *FIREARMS ACT 1973 (WA)* – ‘FIT AND PROPER PERSON’

Since 1996, the ‘fit and proper person’ test has been a standard feature of all firearms legislation in Australia. In Western Australia, the *Firearms Act 1973 (WA)* provides that the Police Commissioner cannot grant an approval or permit or issue a licence to a person if the Commissioner is of the opinion that the person is not a fit and proper person to hold the approval, permit, or licence.⁴⁸¹ The Commissioner is also unable to grant an approval or permit or issue a licence to a person if the Commissioner is of the opinion that it is not desirable in the interests of public safety to do so.⁴⁸²

Where the Police Commissioner is satisfied that the person has a history of, or a tendency towards, violent behaviour, the Commissioner may take it into account in deciding whether an applicant is a fit and proper person.⁴⁸³ The *Firearms Act* section 11(3) provides that it shall be sufficient grounds for forming an opinion that a person is *not* a fit and proper person if the Commissioner:

- is satisfied that at any time within the period of five years before the person applies for the approval, permit or licence, the person was convicted of an offence involving assault with a weapon,⁴⁸⁴ an offence involving violence,⁴⁸⁵ or any offence under the *Firearms Act*,⁴⁸⁶ or a violence restraining order was made against the person;⁴⁸⁷
- is satisfied that the person fails to meet standards of mental or physical fitness that the Commissioner considers necessary for the person to hold the approval, licence or permit;⁴⁸⁸ or
- suspects, on the basis of an intelligence report or other information held in relation to the person, that the person is a threat to public safety.⁴⁸⁹

The Act also specifies that the Police Commissioner may form an opinion that a person is a fit and proper person to hold an approval, permit or licence under the *Firearms Act* in a case in which the Commissioner has a sufficient ground under section 11(3) for forming the contrary opinion.⁴⁹⁰ The considerations in section 11(3) do not limit the Commissioner’s ability to take into account convictions or orders made outside the five-year period, or any other thing.⁴⁹¹

The *Firearms Act* also provides that before the Police Commissioner grants or issues a permit, licence or approval, he or she must ensure that, for the purpose of forming an opinion as to whether the person is a fit and proper person:

- reference has been made where practicable to relevant criminal records held by police in Western Australia and elsewhere in Australia;⁴⁹²
- if there is any apparently reliable indicator that the person may not meet required standards of mental or physical fitness,⁴⁹³ sufficient evidence has been provided to the Commissioner to satisfy him or her that the person does meet those standards;⁴⁹⁴ and
- if there is any apparently reliable indication that for any other reason the person may not be a fit and proper person to hold the licence, permit or approval, sufficient evidence has been provided to the Commissioner to satisfy him or her that the person is a fit and proper person to hold the licence, permit or approval.⁴⁹⁵

The Act provides that the evidence that the Police Commissioner may require in order to satisfy himself or herself that the person meets required standards of mental or physical fitness may include a certificate from a medical practitioner.⁴⁹⁶ On receiving such a

481 *Firearms Act 1973 (WA)*, s 11(1)(c).

482 *Firearms Act 1973 (WA)*, s 11(1)(b).

483 *Firearms Act 1973 (WA)*, s 11(2).

484 *Firearms Act 1973 (WA)*, s 11(3)(a)(i).

485 *Firearms Act 1973 (WA)*, s 11(3)(a)(ii).

486 *Firearms Act 1973 (WA)*, s 11(3)(a)(iii).

487 *Firearms Act 1973 (WA)*, s 11(3)(a)(iv).

488 *Firearms Act 1973 (WA)*, s 11(3)(b).

489 *Firearms Act 1973 (WA)*, s 11(3)(c). Subsection 11(4a) provides that the Commissioner is not required under the *Firearms Act 1973 (WA)* or any other Act or law to disclose information relied on under subsection (3)(c) unless the disclosure is required under the *State Administrative Tribunal Act 2004 (WA)*.

490 *Firearms Act 1973 (WA)*, s 11(5).

491 *Firearms Act 1973 (WA)*, s 11(6).

492 *Firearms Act 1973 (WA)*, s 18(4a)(a).

493 As set out in section 11(3)(b) of the *Firearms Act 1973 (WA)*.

494 *Firearms Act 1973 (WA)*, s 18(4a)(b).

495 *Firearms Act 1973 (WA)*, s 18(4a)(c).

496 *Firearms Act 1973 (WA)*, s 18(4b).

certificate, the Commissioner may request any further information from the medical practitioner that the Commissioner considers relevant, and nothing prevents the medical practitioner from providing the Commissioner with further information about the person, in good faith.⁴⁹⁷ The provision of information in good faith as requested under the Act does not give rise to a criminal or civil action or remedy.⁴⁹⁸

Section 11(3) emphasises the importance of certain offences by providing that it shall be sufficient grounds for forming an opinion that a person is *not* a fit and proper person if the Police Commissioner is satisfied that at any time within the period of five years before the person applies for the approval, permit or licence:

- the person was convicted of an offence involving assault with a weapon,⁴⁹⁹
- the person was convicted of an offence involving violence,⁵⁰⁰ or any offence under the *Firearms Act*,⁵⁰¹ or
- a violence restraining order was made against the person.⁵⁰²

Section 11(3) does not specifically mention sexual or drug-related offences, despite the fact that the former may be considered to be inherently violent in nature and the latter may provide grounds for a suspicion that a person is involved in a criminal enterprise (for instance, where a person is convicted of possession with intent to supply).

There may be concerns that both sexual offences and drug offences exist on a continuum, that some such offences are inherently less grave than others, and that therefore the inclusion of these kinds of offences in section 11(3) of the *Firearms Act* would be unduly harsh. However, offences involving violence may also vary greatly in nature, and room is left for the discretion of the Police Commissioner – the Act specifies that the Police Commissioner may form an opinion that a person is a fit and proper person even where he or she has a sufficient ground for forming the contrary opinion.⁵⁰³ In view of the Police Commissioner’s broad discretion and the flexibility provided by the Act, it is proposed to include sexual and drug offences in section 11(3) of the Act.

Proposal 10:

- that section 11(3) be amended to provide that it shall also be sufficient grounds for forming an opinion that a person is not a fit and proper person if the Police Commissioner is satisfied that at any time within the period of five years before the person applies for the approval, permit or licence the person was convicted of a serious sexual or a serious drug-related offence.

Practical application of the ‘fit and proper person’ test

The Commission sought information from Western Australia Police as to how the ‘fit and proper person’ requirement is implemented as a matter of practice.

The Commission understands that ‘a probity report is conducted on all applicants for new licences by staff within the Probity Unit and the probity report is attached to the application and placed in the work queue awaiting allocation to an assessor’. On average, ‘a probity check takes 10 minutes’.⁵⁰⁴

In regard to an applicant’s mental fitness, the Commission understands that this would only be identified as an issue if there was a warning on the police database that an applicant had mental health problems, or if a member of the public alerted Western Australia Police. There is some reliance on the applicant themselves declaring any relevant medical issues, and health professionals have some responsibility to inform police of potential risks.⁵⁰⁵ In some instances, a check may be made of publically available information, such as social media, in assessing whether a person is ‘fit and proper’.⁵⁰⁶

In the 12 months preceding 16 June 2015, 35 applications were refused on the ground that the applicant did not satisfy the ‘fit and proper person’ test.⁵⁰⁷

The 2008 Police Review observed that the 1996 National Firearms Agreement included agreement that each jurisdiction would introduce a 100-point check for firearm licence applicants, similar to the checking procedure adopted by banks. The review noted that this had not been implemented in Western Australia but that ‘as a matter of policy applicants

497 *Firearms Act 1973* (WA), s 18(4c).

498 *Firearms Act 1973* (WA), s 18(4d). This subsection also specifically provides that subsection 18(4c) has effect despite any duty of confidentiality.

499 *Firearms Act 1973* (WA), s 11(3)(a)(i).

500 *Firearms Act 1973* (WA), s 11(3)(a)(ii).

501 *Firearms Act 1973* (WA), s 11(3)(a)(iii).

502 *Firearms Act 1973* (WA), s 11(3)(a)(iv).

503 *Firearms Act 1973* (WA), s 11(5).

504 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 15.

505 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 15. See *Firearms Act 1973* (WA), s 23B.

506 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 16.

507 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 16.

do go through a rigorous “fit and proper” check, which includes identification verification as rigorous as the 100-point ID check, before they are granted a licence to possess or use a firearm.⁵⁰⁸ The review recommended that the Act be amended to include a requirement that a 100-point check is done as part of a process to establish the bona fides of an applicant for a licence.⁵⁰⁹ While no amendment has been made to the Act to implement this recommendation, under regulation 7 of the *Firearms Regulations* an applicant may be required to provide evidence of identity in a manner approved by the Police Commissioner. In practice it would appear that a 100-point check is required,⁵¹⁰ although it is not clear to the Commission whether this requirement has been specifically approved by the Police Commissioner in accordance with regulation 7.⁵¹¹

Proposal 11:

- that, if it has not already occurred, a requirement be formally approved by the Police Commissioner under regulation 7(3) (b) and 7B of the *Firearms Regulations 1974* (WA) that an applicant for a licence, permit, approval or authorisation under the *Firearms Act 1973* (WA) and *Firearms Regulations 1974* (WA) provide evidence of identity based on a 100-point check, similar to the checking procedure adopted by banks.

8.1 Application of ‘fit and proper person’ test – case law

There are a number of SAT and Supreme Court decisions that involve the review of decisions to refuse licence applications, or to revoke licences, on the basis of a person not being a ‘fit and proper person’ to hold the licence. These decisions provide guidance as to the content of the fit and proper person requirement.

It is clear that the ‘fit and proper person’ test is broad in scope, and the SAT and Court have rejected narrow interpretations of it. For instance, in *Minitti v*

Commissioner of Police,⁵¹² the Supreme Court rejected the appellant’s suggestion that the correct test was to ask whether a person was ‘going to harm themselves or another person through the possession of a licensed firearm or in the exercise of rights associated with holding a firearm licence, or would use it for illegal activity’.⁵¹³ Pullin JA, with whom Newnes JA and Mazza JA concurred, noted that the purpose of the expression ‘fit and proper purpose’ is ‘to give the widest scope for judgment and for rejection of an application for a licence’.⁵¹⁴ The SAT has also confirmed that someone may not be a fit and proper person to hold a firearms licence despite being technically ‘fit’ to handle a firearm responsibly and safely.⁵¹⁵

It has also been noted that in the context of the *Firearms Act*, the phrase ‘fit and proper’ goes beyond questions of the person’s character, and ‘takes into account the person’s knowledge, skill and diligence when operating and safeguarding a firearm’, which in turn ‘explains why the *Firearms Act* refers specifically to offences against the *Firearms Act* being a relevant factor’.⁵¹⁶ Successive decisions by the SAT also emphasise however that an applicant’s remorse is a relevant factor to be considered in the context of relevant prior convictions.⁵¹⁷

It is also sufficient grounds for forming an opinion that a person is not a fit and proper person if the Police Commissioner is satisfied that the person fails to meet standards of mental or physical fitness that the Commissioner considers necessary for the person to hold the approval, licence or permit.⁵¹⁸ In *Smith and Commissioner of Police*,⁵¹⁹ the SAT had regard to the applicant’s mental state and to three incidents specified by the Police Commissioner, and affirmed the Commissioner’s decision not to grant the applicant a licence on the basis that he was not a fit and proper person. The SAT noted that ‘all the medical records and evidence reflect that the applicant suffers from a psychotic illness, and in the opinion of the expert witness most involved in the applicant’s treatment ... there is a significant risk of future relapse’.⁵²⁰ In that matter the SAT concluded that a ‘person suffering from psychotic illness, and who is assessed by qualified medical practitioners to be a risk to others, is not a person fit to hold a firearm licence’.⁵²¹

508 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 31.

509 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 31.

510 See WA Police website <http://www.police.wa.gov.au/OurServices/PoliceLicensingServices/Firearms/Licenceapplications/tabid/1905/Default.aspx>

511 The 100-point check is applied by Australia Post under the Common User Agreement which is approved by the Police Commissioner: per Michelle Fyfe APM, Acting Deputy Commissioner (Specialist Services) of Western Australia Police, 4 September 2015, 2.

512 [2010] WASCA 198

513 *Minitti v Commissioner of Police* [2010] WASCA 198 at [10].

514 *Minitti v Commissioner of Police* [2010] WASCA 198 per Pullin JA at [11], citing *Hughes and Vale Pty Ltd v New South Wales* [No 2] (1955) 93 CLR 127, 156 and *Real Estate and Business Agents Supervisory Board v Carey* [2010] WASCA 109.

515 *Wignall and Commissioner of Police* [2006] WASAT 206 at [320].

516 *Walker and Commissioner of Police* [2012] WASAT 214 at [14–15]. Regarding the seriousness of breaches of storage requirements, see also *O’Dwyer and Commissioner of Police* [2008] WASAT 33 at [51–53]. Regarding the relevance of offences under the *Firearms Act 1973* (WA), see also *Knight and Commissioner of Police* [2010] WASAT 104 at [72] and [73].

517 *Ludgate and Commissioner of Police* [2013] WASAT 151 at [53] and [63]; *Wally and Commissioner of Police* [2014] WASAT 98 at [46].

518 *Firearms Act 1973* (WA), s 11(3)(b).

519 *Smith and Commissioner of Police* [2011] WASAT 31

520 *Smith and Commissioner of Police* [2011] WASAT 31 at [32].

521 *Smith and Commissioner of Police* [2011] WASAT 31 at [33].

8.2 Fit and proper person – additional firearms

It does not appear that there are concerns among firearms owners about the fit and proper person test in section 11(1)(c) of the *Firearms Act per se*; there appears to be broad agreement on the need to ensure that firearms are only possessed and used by suitable persons.

It is argued however that once a person has passed a 'fit and proper person' test and been granted a licence, they should not have to undergo this assessment again for each successive firearm they wish to purchase. For instance, one stakeholder observed that '[m]any enthusiasts licence multiple firearms each year' and suggests that 'a Police Clearance should not be required for any period of less than (say) one year since the previous Clearance'.⁵²² Stakeholders note that it is possible that a person might commit a relevant criminal offence in between applications, or be issued with a violence restraining order, but observe that in that case, Western Australia Police should be aware of these circumstances such that the need to apply the fit and proper person test does not arise: the person's licence should already have been revoked or suspended, as appropriate, following the conviction or the issue of the violence restraining order.⁵²³

Firearm owners contend that the application of the 'fit and proper person' test in respect of every licence application is resource intensive, time-consuming and also of little benefit when only minimal time has passed between applications.⁵²⁴ They advise that Western Australia Police provide no indicative timeframe and that it can take thirty working days, or longer, for a person who has previously been accepted as a 'fit and proper person' to obtain a firearm, and note that this affects not only the individual purchase, but also the dealer.⁵²⁵

However, as noted above, Western Australia Police advises that, on average, 'a probity check takes 10 minutes'.⁵²⁶ It does not appear, then, that this requirement is a substantial cause of delay.

In addition Western Australia Police has advised that an 'applicant for an additional firearm undergoes a modified probity check by the assessor as they have previously been deemed a fit and proper person. In

this situation the assessor only checks to see if there have been any criminal charges or criminal convictions since the original application'.⁵²⁷

8.2.1 'Noting' additional firearms

Section 18(10) of the *Firearms Act* provides that where a licence has been issued to a person and the person applies for an additional licence of the same kind in relation to a further firearm, the licence may (on presentation of an application for expedited approval accompanied by the prescribed noting fee) be noted on the original licence in any case where the Police Commissioner 'is satisfied that the public interest does not require that the applicant should proceed by way of an originating application'.⁵²⁸

There have been some differences of opinion as to the meaning of this section. The SAT has confirmed that applications for further firearms under section 18(10) of the *Firearms Act* are applications for additional licences which do not rely on or depend on any existing licence for their effect and the fact that the additional licence *may* be noted on the original licence does not make it part of the original licence.⁵²⁹

Further, concerns about the process firearm owners undergo to obtain additional firearms were aired in the Report 68 of the Joint Standing Committee on Delegated Legislation.⁵³⁰ Effectively, as the Chair of the Committee put it, 'every additional firearm is treated almost like a brand new application',⁵³¹ including 'fit and proper person' checks. A letter from the Minister for Police, which was cited in the Committee Report, stated that:

Western Australia Police is of the view that there would need to be a special set of circumstances to occur for section 18(10) of the Act to prevail over the requirements of sections 11A, 11B and 15 of the Act and Regulation 3BA and 3B of the Regulations.⁵³²

The Committee found this view 'puzzling' and suggested that the Act 'should be reviewed as a matter of urgency to eliminate double handling and inconsistencies and clarify legislative intent'.⁵³³ This is also an issue that has been raised by stakeholders.⁵³⁴ Western Australia Police has confirmed its view that 'section 18(10) provides for expedited approval but the requirements relating to section 11(1) must still be

522 Submission from Hon Rick Mazza MLC, 4 December 2014, 3.

523 Submission from Hon Rick Mazza MLC, 4 December 2014, 1.

524 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

525 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

526 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 15.

527 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 16.

528 *Firearms Act 1973* (WA), s 18(10).

529 *Jeffries and Commissioner of Police* [2011] WASAT 116 at [4].

530 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013.

531 Transcript of Evidence taken at Perth, Wednesday 11 September 2013, in Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 32.

532 Letter from Hon Liza Harvey MLA, Minister for Police, 25 October 2013, 203, cited in Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 16.

533 Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013, 16-17.

534 Submission from the Pastoralists & Graziers Association of Western Australia (Inc), 13 February 2015, 2.

considered'. Western Australia Police advises further that staff in Licensing Services (Firearms) 'are currently unaware of any applications being processed under section 18(10)'.⁵³⁵

Given the debate about its operation, the Commission considers that s 18(10) should be amended to ensure its operation is clear. Further, a question arises as to whether and, if so, in what circumstances, an expedited process should be able to be followed, and the extent to which other requirements of the Act should need to be satisfied before an additional licence is granted and noted on the original licence under the expedited procedure.

In certain circumstances, the risk of allowing expedition and not requiring that provisions such as s11(1) be satisfied again, might be thought to be negligible. For instance, the *Firearms Act* could provide that applications may be granted under an expedited procedure and 'noted' on an original licence in the case of sophisticated or experienced shooters, where the application relates to a firearm or firearms which are neither Category D (prohibited firearms) nor Category H (handguns). Although the *Firearms Act* makes particular provision for the needs of primary producers who use firearms in the course of their work, (as set out below at paragraph 9.2.3), some concerns have also been expressed within the firearms community that primary producers also do not have the benefit of an expedited process.⁵³⁶

Western Australia Police has advised that the 'process for additional applications has been streamlined by the modified probity check (discussed in 8.2 above) and to reduce it any further would require section 11(1) being amended'. Western Australia Police advises further that during the 2013/14 fiscal year, 6308 additional licences were processed, and concludes that it is 'not considered feasible to develop a streamlined approach for mature and experienced shooters'.⁵³⁷

Nevertheless, the Commission considers this suggestion is worth exploring, and invites submissions on it below.

Proposal 12:

- that section 18(10) of the *Firearms Act 1973* (WA) be amended to clarify its operation.

Question 10:

- Should the ability to grant an application for expedited approval under section 18(10) be subject to the satisfaction of other provisions of the Act, including, in particular, section 11(1)?
- Should the discretion to grant an application for expedited approval under section 18(10) be extended beyond circumstances that are in the public interest to include:
 - experienced/sophisticated shooters who seek a licence for a firearm or firearms which are in other than Category D or Category H;
 - persons, such as primary producers, who require firearms for their employment; and
 - any other categories of persons or circumstances?

8.2.2 'Licence the person, not the firearm'

The contention that the fit and proper person test should only be applied in respect of an original application (and not when a person applies for additional firearms) is often expressed in terms of a suggestion that Western Australia should 'license the person, not the firearm'.⁵³⁸ This phrase denotes the sense that once a person is deemed suitable to possess and use firearms, they should be able to readily purchase, possess or use additional firearms with minimal inconvenience. The concept of 'licensing the person' is also relevant to the 'genuine reason' and 'genuine need' requirements, which are considered at Chapter 9. It is also relevant to the inability of firearm owners to borrow or lend firearms in Western Australia, a matter which is considered at paragraph 10.2.

Western Australia, as previously stated, follows a system of 'dual licencing' whereby the person is licensed and a licence is also required for each firearm he or she possesses, unless the person is covered by an exemption in the *Firearms Act*.⁵³⁹ Among firearms owners, the dual licensing system is often singled out as a major cause of the problems they experience. The Commission has been advised on several occasions that the systems operating elsewhere in Australia, in which a person obtains a licence and then seeks

535 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 16.

536 Submission from Roy Alexander & Sons, provided 8 September 2014, 4.

537 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 16.

538 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 2; Submission from Hon Rick Mazza MLC, 4 December 2014, 1.

539 *Firearms Act 1973* (WA), s 8(1).

permits to acquire individual firearms, are preferable. In order to consider the benefits of a 'license the person' approach in terms of the fit and proper person test, it is helpful to consider the background to the system of permits to acquire firearms, and the requirements other Australian jurisdictions impose on applications for permits to acquire firearms (as distinct from the requirements imposed on the application for an initial licence).

The 1996 National Firearms Agreement specifically included agreement on permits to acquire. The Australasian Police Ministers' Council resolved that a separate permit be required for the acquisition of every firearm, and that 'the issue of a permit should be subject to a waiting period of at least 28 days to enable appropriate checks to be made on licensees in order to ascertain whether circumstances have occurred since the issuing of the original licence which would render the licensee unsuitable to possess the firearm or which would render the licensee ineligible for that type of firearm'.⁵⁴⁰ Accordingly:

- In New South Wales, a permit to acquire a firearm cannot be issued 'unless the Commissioner is satisfied that the applicant is a fit and proper person and can be trusted to have possession of firearms without danger to public safety or to the peace'.⁵⁴¹
- In Victoria the Chief Commissioner must not issue a permit to acquire unless the Commissioner is satisfied, among other things, that 'the applicant and all responsible persons in relation to the application are fit and proper persons'.⁵⁴²
- In Tasmania the Commissioner must not grant an application for a permit unless satisfied that the applicant is a fit and proper person.⁵⁴³

Thus, in these jurisdictions as in Western Australia, a licensed individual is effectively required to undergo a fit and proper person test in respect of each firearm he or she purchases. However, other jurisdictions take different approaches, as follows:

- In Queensland, the authorised officer deciding an application for a permit to acquire a weapon (including a firearm) *may* make an inquiry about the applicant or the application⁵⁴⁴ and *may* seek

further information from the applicant, including as to his or her physical or mental health.⁵⁴⁵ The Commission understands that once a person has obtained a licence and has already submitted one application for a permit to acquire, future applications for permits to acquire do not result in the applicant undergoing a fit and proper person test. The Commission understands further that applications for permits to acquire which are made after the initial application has been made are processed within five business days.⁵⁴⁶

- In the Australian Capital Territory, the *Firearms Act 1996* (ACT) simply provides that the registrar must refuse to issue a permit to acquire a firearm unless the acquirer holds an appropriate licence, and unless the registrar is satisfied on reasonable grounds that the acquirer has a good reason for acquiring the firearm.⁵⁴⁷
- In South Australia, the *Firearms Act 1977* (SA) provides that the registrar may refuse an application for a permit to acquire a firearm of any class⁵⁴⁸ if satisfied that the firearm is particularly dangerous; the firearm can easily be converted to an automatic firearm; the firearm is more readily concealed than other firearms of the same class and is for that or any other reason particularly suited to unlawful use; or the applicant has previously acquired a firearm that he or she has failed to register in accordance with the Act or has been guilty of other offences against the Act.⁵⁴⁹ These are all specific factors that largely focus on the individual firearm itself, rather than the person seeking to acquire it, and do not require the registrar to conduct an inquiry as to whether the applicant is a fit and proper person.
- In the Northern Territory, the Commissioner cannot grant a permit unless satisfied that the applicant is a fit and proper person,⁵⁵⁰ however the Commission understands that this requirement is more applicable to other kinds of permits granted under the *Firearms Act* (NT) (such as temporary permits) and that fit and proper person checks are not required for permits to acquire on the basis that these checks would already have been done at the time of the grant of the initial licence.⁵⁵¹

540 Australasian Police Ministers' Council, Special Firearms Meeting, Canberra 10 May 1996, Resolutions, 11 accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

541 *Firearms Act 1996* (NSW), s 29(1).

542 *Firearms Act 1996* (Vic), s 104(1)(b)(i).

543 *Firearms Act 1996* (Tas), s 60(1).

544 *Weapons Act 1990* (Qld), s 41(1)(a).

545 *Weapons Act 1990* (Qld), s 41(1)(b)(i) and (ii).

546 Conversation with Steve Steenstrup, Sergeant, Weapons Licensing, Queensland Police Service, 2 February 2015.

547 *Firearms Act 1996* (ACT), s 145(1)(a) and (b).

548 The *Firearms Act 1977* (SA) also requires that the registrar must or may refuse applications for permits to acquire firearms of particular categories in particular circumstances; see ss 15A(2), 15A(3), 15A(4), 15A(4a), 15A(4b), and 15A(4c).

549 *Firearms Act 1977* (SA), 15A(1)(a), (b), (c) and (d).

550 *Firearms Act* (NT), s 33(1)(b).

551 Correspondence from Peter Ruzsicska, Sergeant Officer In Charge, Firearms Policy & Records Unit, Northern Territory Police, Fire and Emergency Services, 19 May 2015.

Given that several other jurisdictions in Australia (although not all of them) also require that a person be a fit and proper person before each permit to acquire can be issued, it does not seem that Western Australia is radically out of step by imposing this requirement. The distinction between a 'dual licencing' system and a system of licences plus permits may therefore be seen as largely a matter of form rather than substance. Where the practical difference seems to lie is in the time taken to process applications. The issue of timeframes is considered elsewhere in this Discussion Paper at paragraph 6.3.

It is also important not to lose sight of the reason the 'fit and proper person' test is applied; this was a requirement of the 1996 Firearms Agreement⁵⁵² and reflects a desire to protect community safety. The National Agreement also noted, in its discussion of the inclusion of 'mental or physical fitness' as grounds for licence refusal or for cancellation and seizure of firearms, that 'a balance needs to be struck between the rights of the individual to privacy and fair treatment, and the responsibility of authorities, on behalf of the community, to prevent danger to the individual and the wider community'.⁵⁵³ The 2002 National Handguns Agreement supported 'the operation of the fit and proper person test throughout the life of the licence allowing for the licensing authorities' revocation of a person's licence and seizure of handguns on grounds of not being a fit and proper person at any time'.⁵⁵⁴

However, while it is appropriate to ask what is being gained by re-applying the test in respect of each application so that it may be determined whether this benefit (in terms of community safety) outweighs the time and cost of re-applying the test in each instance, the benefit need not be great since it only takes an average of ten minutes to apply the test.⁵⁵⁵ The Commission sought information from Western Australia Police as to how often the test will identify concerns about an applicant who hold an existing licence and has therefore previously 'passed' the test. Western Australia Police advised that:

Over the past 12 months, 35 applications were refused by applying the "fit and proper test". It is not known how many of these were original or additional applications. Information provided by the approving officers indicated approximately 10 per cent of applications were for additions, therefore approximately three to four additional applications were refused.⁵⁵⁶

It therefore seems that there is a modest benefit to re-applying the test in terms of identifying concerns about an applicant, although greater certainty on this point would be helpful.

Elsewhere in this Discussion Paper, at paragraph 10.3, consideration is given to the question whether licensees should be required to re-confirm their genuine reason and genuine need (where relevant) on a regular basis. Similarly, it might be considered preferable to require licensees to undergo the 'fit and proper person' test at regular intervals (such as every five years), rather than the test being triggered by a licensee's application for an additional firearm. Under such a scheme, licensees would be subject to regular checks that were not triggered by the relatively arbitrary criterion of an application to add a new firearm to an existing licence. Under the current system, a person could theoretically cease to be a fit and proper person without this change in status coming to the notice of Western Australia Police, provided that the person did not seek additional licences under the *Firearms Act*.

Question 11:

Should the 'fit and proper person' test be permitted and/or required to be applied:

- each time a person seeks to license an additional firearm and/or each time a person renews a licence;
- at regular intervals during the life of a licence; and/or
- only once, when an initial licence application is made?

552 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 7, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

553 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 10, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

554 Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 4.

555 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 15.

556 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 16.

9. APPLICATION OF THE *FIREARMS ACT 1973 (WA)* – ‘GENUINE REASON’ AND ‘GENUINE NEED’

The ‘genuine reason’ and ‘genuine need’ requirements in the *Firearms Act* derive from the 1996 National Firearms Agreement. In 1996, all jurisdictions agreed to:

- ‘immediately implement a uniform system of testing applicants for firearms licences such that each applicant must establish, to the satisfaction of the licensing authority in the relevant jurisdiction, that he or she has a “genuine reason” for owning, possessing or using a firearm’; and
- ‘immediately implement a uniform system of testing applicants for firearms licences of categories B, C, D and H such that each applicant must establish, to the satisfaction of the licensing authority in the relevant jurisdiction, that he or she has a “genuine need” for owning, possessing or using a firearm of the nominated type’.⁵⁵⁷

That is, all applicants for a firearm licence must demonstrate a genuine reason for the licence, whereas a genuine need must only be demonstrated by applications seeking particular firearms. There has occasionally been confusion between these two requirements, indeed some stakeholders have suggested that there is confusion in the Act itself between the intent and meaning of the ‘genuine reason’ and ‘genuine need’ requirements.⁵⁵⁸ Stakeholders have also consistently raised these requirements.

9.1 ‘Genuine reason’

Applicants for licences under the *Firearms Act* must demonstrate that they have a genuine reason for the licence.⁵⁵⁹ Particular ‘reasons’ are prescribed in section 11A(2) of the *Firearms Act*, which provides that a person has a genuine reason for acquiring or possessing a firearm or ammunition if and only if:

- (a) it is for use by the person as a member of an approved shooting club and the person is an active and financial member of the club;
- (b) it is for use by the person as a member of an organisation approved under this paragraph;

- (c) it is for use in hunting or shooting of a recreational nature on land the owner of which has given written permission for that hunting or shooting;
- (d) it is required by the person in the course of the person’s occupation;
 - (da) in the case of a prescribed paintball gun, it is required by the person to conduct or engage in paintball in accordance with this Act;
- (e) it is to form part of a genuine firearm collection or genuine ammunition collection; or
- (f) it is for another approved purpose.

The Act further specifies, at section 11A(3), that a person ‘does not have a genuine reason for acquiring or possessing a firearm or ammunition of a particular kind unless the Police Commissioner is satisfied not only as to the person’s reason for acquiring or possessing a firearm or ammunition but also that the particular kind of firearm or ammunition can be reasonably justified’.

It is therefore possible for an applicant to satisfy the ‘genuine reason’ requirement in section 11A(2) but to be found not to have satisfied the Police Commissioner or the SAT standing in the shoes of the Police Commissioner, that the particular *kind* of firearm sought to be licensed can be reasonably justified.⁵⁶⁰

Section 11A(3) is broad in nature, and permits the relevant decision-maker to ‘take into account any consideration which could rationally affect an assessment as to whether [a particular firearm] was reasonably justified’,⁵⁶¹ including the characteristics of other firearms an applicant is already licensed to possess.⁵⁶² In order to satisfy the genuine reason test in section 11A(1) and the reasonable justification requirement of this test in section 11A(3) it is not necessary for an applicant to ‘demonstrate a particular existing need for the firearm being sought’.⁵⁶³ Whether or not there is a particular existing need (for example, whether a particular property currently has a problem with vermin that need to be eradicated)

557 Australasian Police Ministers’ Council, Special Firearms Meeting, 10 May 1996, Resolutions, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>, 4–5.

558 Submission from the Pastoralists & Graziers Association of Western Australia (Inc), 13 February 2015, 2.

559 *Firearms Act 1973 (WA)*, s 11A(1).

560 See, for instance, *Bent and Commissioner of Police* [2011] WASAT 143 at [47]-[49] and [53]-[58].

561 *Kashani v Commissioner of Police* [2011] WASC 6 per Jenkins J at [45].

562 *Kashani v Commissioner of Police* [2011] WASC 6 per Jenkins J at [44].

563 *Kashani v Commissioner of Police* [2011] WASC 6 per Jenkins J at [64].

will be a relevant consideration, but is not a legislative requirement.⁵⁶⁴

With respect to the 'genuine reason' requirement more generally, the SAT has confirmed that it is not for an individual applicant to determine what firearms are required to fulfil his or her purposes; the 'reasonably justified' requirement is determined by the Police Commissioner or the SAT standing in the Police Commissioner's shoes, based on objective considerations, while having regard to an applicant's 'desires and requirements'.⁵⁶⁵ Detailed evidence may be provided to the SAT about the characteristics of firearms already possessed by an applicant, and the reasons why an additional firearm or firearms are said to be required.⁵⁶⁶

The SAT has also found that the 'genuine reason' requirement is not limited to Firearm Licences but also applies to applicants for Dealer's Licences.⁵⁶⁷

There has been some suggestion that the terminology of 'genuine reason' is problematic and that a formulation such as 'good reason' would be preferable.⁵⁶⁸ Beyond this concern, the 'genuine reason' provisions have raised a number of issues relating to the administration of the *Firearms Act*.

9.1.1 Section 11A(2)(c) – 'property letters' – concerns

Shooting on crown land is prohibited in Western Australia,⁵⁶⁹ and recreational shooting and hunting can therefore only be undertaken on leasehold or freehold title land. Subsection 11A(2)(c), set out in paragraph 9.1 above, has given rise to the use of 'property letters' – letters of permission from landowners. In some instances, a person may wish to hunt or shoot recreationally on his or her own property, and the Supreme Court has confirmed that where this is the case, such a landowner may give himself or herself permission.⁵⁷⁰ However, apart from this circumstance, a person wishing to engage in recreational hunting and shooting will need to supply a 'property letter'. Originally, section 11A(2)(c) did not include the word 'written'; this was inserted in 2004 by the *Firearms Amendment Act 2004 (WA)*.⁵⁷¹

The production of a 'property letter' will (if other elements of an application are satisfied) allow a person to possess and use a firearm. The use of 'property letters' has been the subject of some concern. There are apparently property owners who supply such letters in exchange for a fee.⁵⁷² The sale of property letters may circumvent the intention of the legislation,⁵⁷³ it effectively means that a 'genuine reason' can simply be purchased.

In addition the applicant using the 'property letter' may never even visit the property in question in order to hunt or shoot, and may instead use his or her firearm elsewhere (provided that he or she has the express or implied consent of the owner of that other land).⁵⁷⁴

In determining whether to approve an application which lists section 11A(2)(c) as the 'genuine reason', Western Australia Police will assess the size of the relevant property against the kind of firearm which is sought. Specifications to this effect are not prescribed in the *Firearms Regulations* as this assessment is made on the basis of internal Western Australia Police policy. A 'Licence Information' page on the Western Australia Police website provides the following answer to the question 'Is the firearm I am applying for suitable for my size property?':

There is no fixed property size requirement; however the application is considered and includes the calibre of the firearm being applied for. Other considerations are the size of the property and what the firearm is to be used for. For example, a high-powered firearm would not be granted for an applicant wishing to shoot foxes on a one acre property bounded by residential areas.⁵⁷⁵

Given the status of a property letter as demonstrating a person's 'genuine reason' for possessing and using a firearm, and its use in determining the appropriateness of the calibre of a firearm applied for, it is peculiar that the letters seem to possess no ongoing force and significance. It may well be argued that obtaining a property letter has become a simple box-ticking exercise rather than something that demonstrates a genuine reason for a firearms

564 *Kashani v Commissioner of Police* [2011] WASC 6 per Jenkins J at [67-68].

565 *Castaldini and Commissioner of Police* [2013] WASAT 150 at [26].

566 *Castaldini and Commissioner of Police* [2013] WASAT 150 at [21].

567 *Clema and Commissioner of Police* [2006] WASAT 24 at [21] and [24].

568 Submission from Roy Alexander & Sons, provided 8 September 2014, 2.

569 *Land Administration Act 1997 (WA)*, s 267(2)(h) provides that a person who, without either the permission of the Minister or reasonable excuse, discharges any firearm or other weapon on Crown land commits an offence and is liable to a penalty of \$10 000 and, in the case of an offence of a continuing nature, to a daily penalty of \$200.

570 *Kashani v Commissioner of Police* [2011] WASC 6 at [26].

571 The Explanatory Memorandum to this Act noted: 'The Ombudsman has criticised the Police Service for requiring the applicant to supply written permission from the landowner that the applicant is permitted to use the land for recreational shooting. The Ombudsman considered it was ultra vires of the Act and the policy should be discontinued. It is considered reasonable and prudent that written permission be provided to the Commissioner. In order that the Commissioner can lawfully require written permission to satisfy the genuine reason test, the word 'written' has been inserted'; see Explanatory Memorandum, *Firearms Amendment Act 2004 (WA)*, Clause 12, 3.

572 Auditor General Western Australia, 'Information Systems Audit Report', 14-15. See also, Submission from Animal Pest Management Services, 4.

573 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 31.

574 Section 23(10) of the *Firearms Act 1973 (WA)* provides that a person who, without reasonable excuse, uses a firearm on land belonging to another person without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence. The penalty for this offence is a \$2,000 fine. Similarly, section 23(10a) provides that a person who, without reasonable excuse, carries a firearm, other than on a road open to the public, onto or across land that is used for or in connection with primary production without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence. The penalty for this offence is also a \$2,000 fine.

575 'Licence Information – What You Need to Know', accessed at <http://www.police.wa.gov.au/OurServices/PoliceLicensingServices/Firearms/Licenceinformation/tabid/1902/Default.aspx>.

licence in any meaningful way. It also appears the system is open to abuse. The Commission is advised that in one case a firearm applicant had obtained a property letter by paying a dealer, and it was subsequently discovered that many property letters had been issued in respect of the property and that the property owner had not provided this permission; this had been done by the station manager. In this situation, the owner was unaware that multiple persons had been given permission to shoot on the property.⁵⁷⁶

It is not unknown within the scheme of the *Firearms Act* for the use of firearms to be constrained to a particular geographic area or a particular purpose; employees or agents of organisations which hold Corporate Licences may only possess, carry and use firearms and ammunition either on the premises of the organisation or in the course of carrying out a function approved by the Police Commissioner and authorised by that organisation.⁵⁷⁷ It appears that it would also be possible to restrict the use of firearms to particular properties. This is because the *Firearms Act* provides that a licence, permit or approval issued or granted under the Act may be made subject to restrictions, limitations or conditions.⁵⁷⁸

On the face of the Act, therefore, it appears possible to impose conditions on licences requiring that a firearm only be used on the property in respect of which a letter has been provided in accordance with section 11A(2)(c) of the Act. However, Western Australia Police has suggested that there is doubt as to whether such conditions can be imposed. Accordingly, Western Australia Police advises that it would support an amendment to the *Firearms Act* to provide that the use of a firearm can be restricted to the property in respect of which a letter of permission has been provided.⁵⁷⁹

The Commission understands that the imposition of such a condition would be a substantial departure from current practice. That is, such an approach would remove recreational hunters and shooters' present ability to use their firearms on land where they have the express or implied consent of the owner of the land,⁵⁸⁰ and it would likely meet with

considerable opposition on this basis. However, it should be noted that such an approach would not be unprecedented; the Commission understands that in Tasmania, an individual is restricted to shooting on the property in respect of which their property letter was provided.⁵⁸¹ Such an approach would also make logical sense in terms of anchoring a licence to the genuine reason in respect of which it was granted.

The Commission is aware of an instance in which the SAT overturned the Police Commissioner's decision to revoke a firearm licence, but also imposed an additional condition that the relevant firearm was to be stored at the pastoral lease in respect of which the applicant's 'property letter' had been issued.⁵⁸² In that case, the President stated that '[g]iven that the applicant desires to engage in recreational shooting at Pyramid Station and has consent from the owner to do so, the SAT thinks it appropriate that there be a condition on the grant of the licence that the firearm be stored, in accordance with the requirements of the Act and the Regulations, at the homestead or other appropriate building on Pyramid Station'.⁵⁸³ While it would be possible to include such conditions on licences generally so that licensees had to store their firearms on the property in respect of which they had obtained their letter, this would represent a significant change to current practice. Further, a number of considerations arise that may require consideration on a case-by-case basis, including how often the property will be vacant (if it will be vacant for substantial periods of time it may be undesirable for firearms to be stored there), who the property belongs to and whether that person is licensed, whether other firearms are stored at the property and whether the licence holder has received written approvals under more than one property letter and where the properties are located.

It should be noted that, beyond concerns about the sale of property letters, the Commission is not aware of any evidence of harm caused by the property letter requirement. Further, following the 1996 National Agreement, 'property letters' are a feature of firearms regimes in all Australian jurisdictions,⁵⁸⁴ and the Commission understands that law enforcement authorities in other Australian jurisdictions have not

576 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 15. 18.

577 *Firearms Act 1973* (WA), s 16(1)(c).

578 *Firearms Act 1973* (WA), s 21(1).

579 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 31.

580 Section 23(10) of the *Firearms Act 1973* (WA) provides that a person who, without reasonable excuse, uses a firearm on land belonging to another person without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence. The penalty for this offence is a \$2,000 fine. Similarly, section 23(10a) provides that a person who, without reasonable excuse, carries a firearm, other than on a road open to the public, onto or across land that is used for or in connection with primary production without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence. The penalty for this offence is also a \$2,000 fine.

581 Correspondence from Hon MT Hidding MP, Tasmanian Minister for Police, 16 June 2015, 3.

582 *Anderson v Commissioner of Police* [2008] WASAT 75 at [176].

583 *Anderson v Commissioner of Police* [2008] WASAT 75 per Barker P at [173]. Given the requirements of sections 19(1) and (2) of the *Firearms Act 1973* (WA), a person storing his or her firearms on a station in this way would have to do so in a separate cabinet, in respect of which only he or she possessed a key, in order to ensure that no other person was able to access the firearms.

584 The 1996 National Agreement included a resolution that particular 'classifications be used to define the "genuine reason" an applicant must show for owning, possessing or using a firearm', including 'recreational shooters/hunters who produce proof of permission from a landowner'; see Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 3, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

expressed any particular concerns about this aspect of the licensing process. However the Commission considers it unsatisfactory that a letter used as a means to obtain a licence appears to be a mere formality which carries no ongoing significance during the life of the licence. The Commission considers that it is worth exploring alternative ways that 'property letters' could be dealt with in Western Australia.

For instance, in Queensland the *Weapons Act 1990* (Qld) imposes requirements on landowners who provided property letters. A landowner who provides written permission to shoot on the landowner's rural land to a person or body for a fee or reward, or to more than fifty persons or bodies, must keep a register stating the name and address of the person or body to whom permission was given, the date permission was given, and (if the permission was limited by time), the day the permission ends.⁵⁸⁵ The Queensland Police Service has advised further that 'property letters ... are scrutinised to ensure the property concerned is suitable for the use applied for' and that '[n]o matters of concern have occurred in the use of this system of approval'.⁵⁸⁶

Western Australia Police has advised that it would support a proposal to outlaw the sale of property letters 'as the current situation weakens the Act and could result in a proliferation of firearm licence holders in the community who don't genuinely have a reason for owning a firearm'. In addition, Western Australia Police has advised that 'the concept of authorised persons only being allowed to provide property letters has merit but there would be administrative implications and costs'.⁵⁸⁷ Western Australia Police would also support a requirement for property owners who provide support letters to be registered, as this would 'assist in the prevention of "oversubscription" issues'. Western Australia Police has advised that consideration would need to be given to the maximum number of letters a property owner could feasibly provide, taking into account the size of the property and its location, and that the administration of a register of this kind may incur some costs.⁵⁸⁸

Proposal 13:

- that circumstances under which 'property letters' are issued be restricted to ensure that they are only issued to bona fide users;
- persons who provide 'property letters' be required to have their details entered on a register maintained by Western Australia Police;
- property size requirements (i.e. the size of property that is generally deemed appropriate for particular calibres of firearms) be included on the Western Australia Police website to provide clarity, noting that the location of a property is also a relevant factor to be considered; and
- to avoid uncertainty, the Act be amended to explicitly enable the Police Commissioner to impose conditions or restrictions in relation to the locations where a licence holder may use and store a licensed firearm.

Question 12:

- Should holders of a firearm licence who have nominated section 11A(2)(c) of the *Firearms Act 1973* (WA) as their 'genuine reason' be restricted to shooting on a property or properties in respect of which they have provided a property letter?
- Alternatively, should a requirement be imposed on a landowner who gives permission to a person to shoot on their property to maintain a register of the permission and person/s to whom it was granted and, if so, in what circumstances?
- Should a property letter be valid for a fixed period, such as two years, or until a specified event, such as a change in ownership of the property, occurs, after which a further letter is required to be obtained by a licence holder?
- Should a property owner who issues a property letter be required to provide adequate storage facilities, approved by the Police Commissioner, which must be used by a person who brings a firearm onto the property in accordance with a property letter, except while the person is in the course of engaging in hunting or shooting of a recreational nature?

585 *Weapons Act 1990* (Qld), s 168A(1) and (2). Subsection (4) provides that permission given to a body allowing its members, or members of another body affiliated with the body, to shoot on the landowner's rural land is taken to be a single permission.

586 Correspondence from Craig Rolls, Inspector, Weapons Licensing, Queensland Police Service, received 16 January 2015, 3, 4.

587 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 17.

588 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 18.

9.1.2 'Property letters' – content, distinction between first-time and other applications

The 2008 Western Australia Police Review considered the issue of property letters; its discussion paper asked whether the *Firearms Regulations* should 'prescribe the criteria and content needed in a written letter provided by a land owner which allows the applicant of a firearms licence to shoot on the property'.⁵⁸⁹ At least one stakeholder suggested that permission should be capable of being given orally.⁵⁹⁰

The 2008 Police Review noted that section 11A(2) (c) could be interpreted to mean that a fresh letter was required with each application to add a new firearm to a licence. Indeed, the fact that some police officers had adopted this interpretation was 'causing a considerable amount of consternation amongst shooters'.⁵⁹¹ The Review stated: 'It is believed ... that the original intent of the APMC resolution on this issue was that the written permission was for a first-time application, only. This is borne out by the fact that there are sanctions within the *Firearms Act* [Section 23(10)] to deal with licensed recreational shooters, who shoot on land "without the express or implied consent of the owner or occupier of the land"'.⁵⁹²

However, the 2008 Police Review noted that there may be circumstances where, for example, 'a first-time applicant may supply a letter from a property owner for use of an air rifle on a very small land holding (one hectare) and subsequently decide to licence a centre fire rifle that has a far greater capacity and would be unsuitable for use on such a small area of land. Notwithstanding that once a person has a licence they are not restricted to shooting on that land, the Police Commissioner still needs to be satisfied that the application is "reasonably justified" and he currently relies on Section 11A(3) to do this in the abovementioned circumstances'.⁵⁹³

Ultimately, the 2008 Review recommended that written permission from a landowner should primarily be required for first-time applications, unless the circumstances of a second or subsequent application differs significantly from the original application such

that it dictates the applicant produce further proof from a landowner to enable police to determine the suitability of a property for a particular category of firearm.⁵⁹⁴

Western Australia Police has advised that 'in many instances the additional landowner (property) letter will suffice, however additional firearm applications are typically for an alternative category or use which would require an updated landowner authority to shoot. For example, higher-powered firearms generally require larger property sizes'.⁵⁹⁵ Western Australia Police advises further that property letters 'are not stored on the licensing register, but attached to the original paper-based application'. As the 'recovery of these documents would delay the application process', 'each application requires a current landowner authority to shoot'. Western Australia Police notes that the new Licensing and Registration system will allow property letters to be uploaded and a copy stored electronically.⁵⁹⁶

9.1.3 Section 11A(2)(a) – Club membership and licence restrictions

If a person nominates their membership of an approved shooting club under section 11A(2)(a) of the *Firearms Act* as their 'genuine reason' for a licence, they are only permitted to use that firearm for that reason. They are not able to shoot recreationally, for instance on the property of a person who consents to their doing so.

Some stakeholders consider that a firearm that is licensed for approved club use should also be capable of being used for recreational hunting and shooting.⁵⁹⁷ More specifically, it has been submitted that while this restriction is appropriate for handguns,⁵⁹⁸ there is 'no reasonable justification for restrictions on field rifle or clay target members who have long rifle firearms or shotguns'.⁵⁹⁹ The argument is that a person who 'is fit and proper to hold a licence and are [sic] practised in use on a range then logically, if invited by a landholder to assist in pest control or hunting ... [is] just as proficient as someone with an open licence'.⁶⁰⁰ On this basis, it has therefore been submitted that there is no threat posed to public safety by allowing such a person to shoot on private property.⁶⁰¹

589 Western Australia Police, Review of the *Firearms Act 1973* (WA), Discussion and Submission Paper, October 2007, Item 13.

590 Documents provided by Mr Ross Allanson, 19 June 2014.

591 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 13.

592 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 13.

593 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 13.

594 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 13.

595 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 26.

596 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 27.

597 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 5.

598 Submission from Hon Rick Mazza MLC, 4 December 2014, 2. Mr Mazza states that 'apart from a limited number of pastoralists and security personnel being licensed, there is no legitimate use [for handguns] other than for competitions'.

599 Submission from Hon Rick Mazza MLC, 4 December 2014, 2.

600 Submission from Hon Rick Mazza MLC, 4 December 2014, 2-3.

601 Phone conversation with Hon Rick Mazza MLC, 11 December 2014.

There is some precedent elsewhere for flexibility in the use of firearms granted in respect of a particular genuine reason. For instance, in Victoria:

- if the holder of a Category A or B longarm has nominated hunting, sport or target shooting or primary production as his or her genuine reason, he or she may also hunt pest animals on Crown land;⁶⁰²
- if one of the reasons given for a Category A or B longarm licence is sport or target shooting, the holder is also authorised to hunt on privately owned land if, before entering that land for the purposes of hunting, the holder has obtained the permission of the owner or occupier of that land to do so;⁶⁰³ and
- the holder of a licence for Category C longarms which was granted for the purpose of clay target shooting may shoot on land not owned by the holder, where the owner of the land has given the holder permission to do so.⁶⁰⁴

Western Australia Police notes that the 'genuine reason' test was 'one of the primary requirements' of the 1996 National Firearms Agreement. It submits further that it would be 'inconsistent with the purpose of a genuine reason test if applicants with a genuine reason for one purpose are automatically given a licence for another purpose without having to satisfy the other genuine reason test'.⁶⁰⁵

Question 13:

- Should a person who has been granted a licence for the genuine reason set out in section 11A(2)(a) of the *Firearms Act 1973* (WA) also be able to use firearms held under that licence for recreational hunting and shooting, with the permission of the relevant property owner?

9.1.4 'Genuine reason' – multiple reasons

The application form for a firearms licence asks applicants 'what is the most relevant reason for applying for a licence for this firearm?'⁶⁰⁶ It then

sets out the reasons listed in section 11A(2) of the *Firearms Act*. Although the question above is framed in a manner which suggests that only one genuine reason may be nominated, it is possible to tick two boxes if, for instance, a person wishes to use a firearm to engage in recreational shooting⁶⁰⁷ and to shoot at an approved shooting club.⁶⁰⁸ However some genuine reasons can necessarily not be combined with others – given that a person cannot use firearms which are held under a Collector's Licence,⁶⁰⁹ it would not be possible to seek a firearm for the genuine reason both of adding it to a collection⁶¹⁰ and for recreational hunting and shooting.⁶¹¹

A person who nominates two genuine reasons will need to provide evidence in support of both reasons. Where a person has only nominated one genuine reason on their licence application and subsequently decides that they wish to use their firearm for another purpose, the person can apply for a 'change in conditions'.⁶¹² This is not a separate application and does not attract a fee. Some firearms owners submit that these processes are time-consuming and unnecessarily difficult.⁶¹³

Question 14:

- Does the licensing process adequately accommodate an application made for more than one genuine reason?

9.1.5 'Genuine reason' – multiple firearms – policy and practice

The intent and effect of the 'genuine reason' test is that a person cannot simply accumulate firearms on the basis of his or her desire to possess them. As one stakeholder has commented, the requirement 'reinforces the notion that possession of firearms is not a common law right' but is permitted only according to legislation.⁶¹⁴ The 'genuine reason' requirement was a key aspect of the 1996 National Firearms Agreement⁶¹⁵ and is a mechanism for ensuring that the only people who can be licensed to possess firearms are those who have a recognised and lawful use for those firearms.

602 *Firearms Act 1996* (Vic), Schedule 2, cl. 1(2). Such hunting must be done in accordance with any Act, regulations or other instrument regulating hunting on that land, and this authorisation does not apply to the holder of a licence who has obtained that licence for the purposes of sport or target shooting if the person is using a black powder ball firing cannon.

603 *Firearms Act 1996* (Vic), Schedule 2, cl. 1(4). Again, this authorisation does not apply to the holder of a licence who has obtained that licence for the purposes of sport or target shooting if the person is using a black powder ball-firing cannon.

604 *Firearms Act 1996* (Vic), Schedule 2, cl. 2(2)(c)(iii).

605 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 17.

606 *Firearms Regulations 1974* (WA) Schedule 1, Form 1, question 29.

607 *Firearms Act 1973* (WA), s 11A(2)(c).

608 *Firearms Act 1973* (WA), s 11A(2)(a).

609 *Firearms Act 1973* (WA), s 16(1)(b) provides that a Firearm Collector's Licence entitles the holder to possess, but not to carry or use, the firearm named and identified in that licence.

610 *Firearms Act 1973* (WA), s 11A(2)(e).

611 *Firearms Act 1973* (WA), s 11A(2)(c).

612 *Firearms Act 1973* (WA), s 20(2).

613 Phone conversation with Mr Ron Bryant, SSAA Junior Vice President, 27 November 2014.

614 Submission from the Pastoralists & Graziers Association of Western Australia (Inc), 13 February 2015, 2.

615 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 4, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

The aspect of the 'genuine reason' test that appears to cause the most frustration among firearms users is the fact that, like the 'fit and proper person' test, it is applied in respect of each additional application to add a firearm to an existing licence. That is, a person may have been granted a licence for a firearm on the basis of their membership of an approved shooting club (for example), but future firearms that the person seeks to acquire will not be assumed to be encompassed by this reason and each purchase must be individually justified. This is also a context in which the phrase 'license the person, not the firearm' is invoked – it is contended by some within the firearms community that once a person has been deemed fit to be granted a licence and has been found to have a genuine reason for possessing firearms, scrutiny of the exact reasons for each future firearm purchase is unnecessary and time-consuming.

More specifically, some firearms owners have suggested that Western Australia Police apply the 'genuine reason' test in an unnecessarily onerous fashion. Referring to what it terms the 'routine denial of permits to purchase multiple firearms of the same calibre class', one stakeholder submits that there is 'no evidence to suggest that the number of firearms held by licensed, law-abiding firearm owners has any bearing on the rate of firearm-related crime in the community or any negative effects on the community whatsoever'.⁶¹⁶

Firearms owners also submit that in the application of the genuine reason test there is inadequate acknowledgment that multiple firearms may be required, owing to the variety of purposes they serve. For instance, the Commission has been advised that different models within the same calibre or category of firearms are required for particular sporting and recreational activities⁶¹⁷ and that, in particular, the application of the 'genuine reason' test does not take into account that different calibres may be required depending on the type of animal being hunted. One stakeholder submits that:

Hunters set up firearms with different scopes and trigger settings for different hunting scenarios. A rifle set up for long range hunting will be less than optimal at close range, a close range rifle less than optimal at long range, and, a compromise between the two will be less than optimal overall. Shooters having already proved themselves to

be responsible and fit to own firearms should not unnecessarily be restrained from hunting effectively by regulation.⁶¹⁸

One analogy which is sometimes used within the firearms community is that of golf clubs: golfers need a variety of different clubs to play a full game, and shooters advise that the same applies to recreational hunting and shooting activities.⁶¹⁹ A 2012 article in the *Herald Sun*, responding to a call for additional restrictions on firearm ownership, stated: 'A golfer has a bag full of different clubs for different strokes. A gardener calls on everything from a spade to secateurs. Shooters are much the same: They use different firearms for different purposes'.⁶²⁰ This analogy has limitations given that the capacity of firearms to cause harm warrants regulation of their ownership but it is also clear that a firearm that is suitable for one purpose will not necessarily be suitable for other purposes.

It is also often argued on behalf of the firearms community that, in general, applications for additional firearms are determined according to internal Western Australia Police policy which is not externally transparent.⁶²¹ For instance, it is argued that '[c]urrent policy has seen a constant issue with rejection statements surrounding "too many of the same calibre" or "too small" or indeed "too large a calibre"' as well as 'a rejection of a muzzle-loading firearm for the purpose of hunting'.⁶²² It is argued that '[s]hooters with skill, set and use a calibre, firearm type and model appropriate to the game size being sought as well as location, time and travel mode (on foot or in vehicle)' and that 'any variation from this breaches animal welfare guidelines and is dealt with appropriately'.⁶²³

As previously noted, section 11A(3) of the *Firearms Act* permits 'the relevant decision-maker' to 'take into account any consideration which could rationally affect an assessment as to whether [a particular firearm] was reasonably justified',⁶²⁴ including the characteristics of other firearms an applicant is already licensed to possess.⁶²⁵ Similarly, with respect to the 'genuine reason' requirement more generally, detailed evidence may be provided to the SAT about the characteristics of firearms already possessed by an applicant, and the reasons why an additional firearm or firearms are said to be required.⁶²⁶

616 Submission from Mr Jeff Stuart, President, the Australian Deer Association, 31 January 2015, 2.

617 Submission from Roy Alexander & Sons, provided 8 September 2014, 2-3.

618 Submission from Mr Jeff Stuart, President, the Australian Deer Association, 31 January 2015, 2.

619 Submission from Roy Alexander & Sons, provided 8 September 2014, 2.

620 A. Rule, 'Anti-gun lobby shot down by dodgy logic', *Herald Sun*, 13 January 2012, accessed at <http://www.heraldsun.com.au/news/opinion/shot-down-by-dodgy-logic/story-fnbkrbz6-1226243052195>.

621 Submission from Roy Alexander & Sons, provided 8 September 2014, 2.

622 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 5.

623 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 5.

624 *Kashani v Commissioner of Police* [2011] WASC 6 per Jenkins J at [45].

625 *Kashani v Commissioner of Police* [2011] WASC 6 per Jenkins J at [44].

626 *Castaldini and Commissioner of Police* [2013] WASAT 150 at [21].

While the SAT may be guided by internal Western Australia Police policy on the ‘genuine reason’ requirement, it is not bound by it and, in an appropriate case will not apply the policy. For example, in *Bent and Commissioner of Police*,⁶²⁷ the SAT reviewed a decision by a delegate of the Commissioner of Police to refuse an application for a firearm (a .338 Lapua Magnum) for reasons including a policy that this type of firearm should not be licensed to any private person due to its ballistic capabilities and the potential risk to the public, as it was an ideal sniper rifle.⁶²⁸ After considering expert ballistics evidence, the SAT found that the applicant had not demonstrated that this particular firearm was reasonably justified, and accordingly it affirmed the Police Commissioner’s decision.⁶²⁹

However, the SAT did not accept the ‘contention ... that the .338 Lapua Magnum should not, as a matter of policy, be licensed to any private person due to its military capability’.⁶³⁰ In rejecting this contention the SAT relied on expert evidence as to the use of this firearm internationally for hunting and target shooting purposes, the fact that many other calibres of rifles that have military and hunting applications are in private use in Western Australia, and that there are several other .338 calibres that can be acquired for hunting and target shooting.⁶³¹ The SAT noted that if the Police Commissioner considered that private possession of the .338 Lapua Magnum ought to be completely prohibited, this could be effected by statutory instrument.⁶³² In terms of its own jurisdiction, the SAT determined that it was ‘clothed with the discretion to take into account all information before it’, concluding that it could not ‘dismiss an application for review as a matter of policy without applying its discretion to all the information before it’.⁶³³

9.1.5.1 ‘Genuine reason’ – multiple firearms – proposals for change and other jurisdictions

It has been suggested that the removal of the ‘genuine reason’ requirement in respect of Category A and B firearms would ‘resolve the many instances when competition and recreational hunters are required to explain to inexperienced personnel the minor but vital differences between firearms that, although of the same calibre, have significantly different

applications and advantages for competition and recreational hunting’.⁶³⁴

Such a change would represent a substantial departure from the 1996 National Firearms Agreement, which included agreement that all applications for firearms be subject to a genuine reason requirement.⁶³⁵

A ‘Frequently Asked Questions’ document on the Western Australia Police website demonstrates the way in which the requirements of the *Firearms Act* and *Firearms Regulations* are applied. This document advises that if a person already has a firearm with the same calibre as the firearm in respect of which they are applying for a licence, he or she ‘must be able to justify why [they] need a similar calibre of firearm if you already have one on your licence’.⁶³⁶ It is clear that there is considerable frustration among firearms owners about the application of the ‘genuine reason’ test, and in addition to this proposal above, several firearms owners have urged the Commission to consider regulatory schemes operating in other Australian jurisdictions on the basis that it is easier in other jurisdictions for a person who is already licensed to obtain additional firearms.

For instance, in the Northern Territory and in Queensland, once a person holds a licence he or she does not need to demonstrate a genuine reason in respect of each permit to acquire a firearm, although genuine need requirements apply where relevant.⁶³⁷ However, other Australian jurisdictions still require a reason in respect of each individual firearm, as follows:

- In New South Wales, a permit to acquire a firearm cannot be issued unless the Commissioner is satisfied that the applicant has ‘good reason for acquiring the firearm concerned’.⁶³⁸
- In the Australian Capital Territory, the Registrar must refuse to issue a permit to acquire a firearm unless, among other things, the Registrar is satisfied on reasonable grounds that the acquirer has a good reason for acquiring the firearm’.⁶³⁹
- In Tasmania, a permit to acquire a firearm cannot be granted unless the Commissioner is satisfied, among other things, that ‘there is sufficient reason and need for the applicant to acquire the firearm’.⁶⁴⁰

627 *Bent and Commissioner of Police* [2011] WASAT 143

628 *Bent and Commissioner of Police* [2011] WASAT 143 at [15].

629 *Bent and Commissioner of Police* [2011] WASAT 143 at [60].

630 *Bent and Commissioner of Police* [2011] WASAT 143 at [50].

631 *Bent and Commissioner of Police* [2011] WASAT 143 at [51].

632 *Bent and Commissioner of Police* [2011] WASAT 143 at [52].

633 *Bent and Commissioner of Police* [2011] WASAT 143 at [52].

634 Submission from Hon Rick Mazza MLC, 4 December 2014, 3. The submission referred to ‘genuine need’, but Mr Mazza confirmed that this suggestion was intended to refer to the ‘genuine reason’ requirement; Phone call with Hon Rick Mazza, 11 December 2014.

635 Australasian Police Ministers’ Council, Special Firearms Meeting, 10 May 1996, Resolutions, 4, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

636 ‘Frequently Asked Questions’, 3, accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=NhmlmbEisl8%3d&tabid=1802>.

637 *Weapons Act 1990* (Qld), s 39(2)(c); *Firearms Act* (NT), s 35(5)(a)(ii).

638 *Firearms Act 1996* (NSW), s 31(3)(c).

639 *Firearms Act 1996* (ACT), s 145(1)(b).

640 *Firearms Act 1996* (Tas), s 60(4)(b).

- In Victoria, the Chief Commissioner must not issue a permit to acquire a firearm unless, among other things, the applicant can demonstrate that the reason for which the licence was required continues to apply in respect of the category of firearm for which the application for the permit was made.⁶⁴¹
- In South Australia, a genuine reason or equivalent is required in respect of all permits to acquire a firearm, with the exception of firearms of Class A,⁶⁴² and the Registrar may also refuse an application for a permit to acquire a firearm of any class in particular circumstances.⁶⁴³

The fact that an applicant's 'genuine reason' is assessed with each application to add a new firearm to a licence in Western Australia therefore does not appear to diverge too sharply from other Australian jurisdictions.

The 'genuine reason' test is relevant to broader questions about how many firearms a licensee ought to be able to own. As part of the 2008 Police Review, Western Australia Police observed that, provided an applicant meets the genuine reason test (and, in the case of a Category B firearm, the genuine need test), there are no restrictions on the number of Category A, B or E firearms that a person is legally able to acquire.⁶⁴⁴ The Discussion and Submission Paper asked whether there should be a limit on the number of firearms that the holder of a firearms licence can have (specifically excluding holders of a corporate, collector's, dealer's, repairer's, manufacturer's or shooting gallery licence).⁶⁴⁵ This proposal met with clear opposition from stakeholders, 90% of whom responded in the negative. Of the remaining 10%, 7.8% agreed with the proposal and 2.2% were undecided.⁶⁴⁶ Ultimately, no recommendation was made on this issue.

Writing in *The West Australian* in 2012, Police Commissioner Dr Karl O'Callaghan stated that in Western Australia 'there are 2525 people with more than 10 licensed firearms'. Dr O'Callaghan stated further that there was 'no doubt that the possession of multiple firearms brings with it an attendant security risk' as some firearms owners are not 'careful

about their storage arrangements'.⁶⁴⁷ Dr O'Callaghan continued:

The community is right to ask how many firearms is it reasonable for one person to own. This issue was highlighted in a drug raid last week where 13 licensed firearms were found in a suburban home. Owners of multiple firearms will claim that, like golf clubs or fishing rods, each firearm has a specific purpose and to do their trade or sport properly many shooters need multiple firearms. This is true but should not preclude us from questioning whether there is a genuine need for someone to own 13 or even 10 firearms. Golf clubs and fishing rods rarely find their way on to the black market.

Police are required, in every instance where a firearms application is made, to assess whether the person has a genuine reason. There is case law in WA clearly articulating that one of the elements in the assessment of genuine need is the number of firearms already owned. In recent years, police decision-making has been centralised. Prior to this, an applicant could go to a local police station, where a police officer would make a decision.

Today the decisions are applied more consistently. This has upset a number of applicants who are now facing a stricter justification regime. There is a strong case for statutory limits to be imposed on the number of firearms one owner can possess. This, at least, removes the subjectiveness of an assessment for genuine need which can (and frequently is) appealed in the SAT. Western Australia Police receive about 150 firearms applications each week. It seems to me the community ought to have some say and comfort about what is a reasonable ownership limit.⁶⁴⁸

In response, the Shooters and Fishers Party posted a statement on its website which included: 'WA has some of the toughest gun laws in the nation and the police have the power to deny firearm owners a licence for a new firearm if there is even a small reason to reject an application, and they use this power with such enthusiasm that thousands of target shooters and hunters are forced to make do with firearms that are less than ideal for their requirements'.⁶⁴⁹

641 *Firearms Act 1996* (Vic), s 104(1)(d)(i).

642 *Firearms Act 1977* (SA), ss 15A(2), (3), (4), (4a), (4b) and (4c).

643 *Firearms Act 1977* (SA) s 15A(1) provides that the Registrar may refuse an application for a permit to acquire a firearm of any class if he or she is satisfied that (a) the firearm is particularly dangerous by reason of its design, construction or any other factor; or (b) the firearm can easily be converted to an automatic firearm; or (c) the firearm is, by reason of its size or any other factor, more readily concealed than other firearms of the same class and is for that, or any other reason, particularly suited to unlawful use; or (d) the applicant has in the past acquired a firearm that he or she has failed to produce to the Registrar for registration in accordance with this Act or has been guilty of any other offence against this Act.

644 Western Australia Police, Review of the *Firearms Act 1973* (WA), Discussion and Submission Paper, October 2007, Item 24.

645 Western Australia Police, Review of the *Firearms Act 1973* (WA), Discussion and Submission Paper, October 2007, Item 24.

646 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, Annexure A, 41.

647 K. O'Callaghan, 'Rise in gun theft shows need for tighter control', *The West Australian*, 11 March 2012, accessed at <https://au.news.yahoo.com/thewest/news/a/13152002/rise-in-gun-theft-shows-need-for-tighter-control/>.

648 K. O'Callaghan, 'Rise in gun theft shows need for tighter control', *The West Australian*, 11 March 2012, accessed at <https://au.news.yahoo.com/thewest/news/a/13152002/rise-in-gun-theft-shows-need-for-tighter-control/>.

649 'Police Commissioner's "care" hides an unwanted agenda', *Shooters and Fishers Party News*, 23 March 2012, accessed at <http://www.shootersandfishers.org.au/news/police-commissioner-s-care-hides-an-unwanted-agenda>.

Question 15:

- Should there be an upper limit on the number of firearms a single firearm licence holder (as distinct from the holder of a corporate, collector's, dealer's, repairer's, manufacturer's or shooting gallery licence) may possess?

It seems that a major aspect of the issue for firearms owners is not simply the existence of a genuine reason test per se, but confusion and dissatisfaction as to how the test is applied in practice. There also seems to be concern about the lack of an internal review process. That is, if Western Australia Police rejects an application on the basis of a failure to satisfy the genuine reason requirement, an applicant's only option is to seek a review of the decision by the SAT. The role of the SAT and the lack of an alternative review process are considered elsewhere in this Discussion Paper at paragraph 17.1.1.

The Commission considers that it might be helpful for some guidance to be provided about the kind of information that applicants must supply to substantiate a genuine reason. Currently, the instructions to applicants provided via the Western Australia Police website simply state: 'You will require evidence of your genuine reason to possess the firearm such as a firearms club support letter, a property letter or a letter evidencing your occupation that supports possession and use',⁶⁵⁰ but does not advise that information may be required about the reason for possessing the specific firearm, particularly in a context where the applicant already possesses a firearm or firearms.

Proposal 14:

- that the Western Australia Police website be updated to include a checklist of the kind of information that might be required by Western Australia Police to determine whether a genuine reason is made out, such as the kinds of animals proposed to be hunted, why existing firearms owned by the applicant would not be suitable, and so forth.

9.2 'Genuine need'

The 'genuine reason' requirement in section 11A of the Act applies to all licence applications and should not be confused with the 'genuine need' requirement. The 'genuine need' requirement is a more stringent criterion that must be satisfied by applicants for particular categories of firearms (there is no 'special need' requirement in respect of firearms of Category A or Category E).

Section 11B of the Act allows for regulations which may provide that, for prescribed categories of firearms or ammunition, an approval or permit cannot be granted, and a licence cannot be issued, unless the Police Commissioner is satisfied that the applicant has a genuine need to acquire or possess a firearm or ammunition of that category.⁶⁵¹ Section 11C of the Act further provides that the regulations 'may restrict the grant, issue, or renewal of licences, permits, or approvals' under the Act.⁶⁵² Accordingly, the *Firearms Regulations* provide that:

- For the purposes of the regulations a firearm is of the category indicated in Schedule 3.⁶⁵³
- If Schedule 3 specifies a genuine need test for a particular category of firearms:
 - an approval or permit cannot be granted and a licence cannot be issued to a person unless the Commissioner is satisfied that the person has a genuine need to acquire or possess a firearm of that category,⁶⁵⁴ and
 - a person cannot be considered to have a genuine need to acquire or possess a firearm of that category unless the test specified in Schedule 3 is satisfied.⁶⁵⁵
- If Schedule 3 specifies any restriction on the grant of an approval or permit or the issue of a licence in respect of a particular category of firearms, an approval or permit cannot be granted and a licence cannot be issued except in accordance with that restriction.⁶⁵⁶

Schedule 3 of the *Firearms Regulations* sets out genuine need tests and restrictions applicable to categories of firearms, as follows.

Category A

There is no genuine need test applicable to Category A firearms although, as with all firearms, an applicant for a licence, permit or approval must have a genuine reason.⁶⁵⁷

650 'Before you begin: instructions to applicant', accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=03tmMqtmY1A%3d&tabid=865>.

651 *Firearms Act 1973* (WA), s 11B(1).

652 *Firearms Act 1973* (WA), s 11C.

653 *Firearms Regulations 1974* (WA), r 6A(1).

654 *Firearms Regulations 1974* (WA), r 6A(2)(a).

655 *Firearms Regulations 1974* (WA), r 6A(2)(b).

656 *Firearms Regulations 1974* (WA), r 6A(4).

657 *Firearms Act 1973* (WA), s11A(1).

Category B

To satisfy the genuine need test for Category B, the applicant must satisfy the Police Commissioner that a firearm of Category A would be inadequate or unsuitable for the purpose for which the firearm is required.⁶⁵⁸

Category C

To satisfy the genuine need test for Category C, the applicant must satisfy the Police Commissioner that a firearm of Category A or B would be inadequate or unsuitable for the purpose for which the firearm is required.⁶⁵⁹ In addition, the *Firearms Regulations* provide that an approval or permit can be granted, and a licence can be issued, for a Category C firearm only if:

- it is for a shotgun and granted or issued to a member of an approved shooting club who requires it for the purpose of training for, and participating in, an approved national or international shooting discipline;⁶⁶⁰
- it is for a rifle or shotgun, and is granted or issued to a person who is a primary producer or an approved nominee of a primary producer and requires the rifle or shotgun for the purpose of destroying vermin or stock as described in section 8(1)(i)(i) of the *Firearms Act*;⁶⁶¹
- it is for a rifle or shotgun, and is granted or issued to a person who requires the rifle or shotgun for the purpose of destroying vermin or stock in the person's capacity as a professional shooter;⁶⁶²
- it is granted or issued for the purposes of a firearm of that category forming part of a genuine firearm collection;⁶⁶³ or
- it is granted or issued for Commonwealth or state government purposes.

Additional restrictions apply with respect to Category C firearms. An approval or permit can be granted, or a licence can be issued, for such firearms only if:

- it is for a shotgun and is granted or issued to a person who is an active and financial member of

an approved club who requires the firearm for use for the purpose of training for, and participating in, an approved national or international shooting discipline;⁶⁶⁴

- it is for a rifle or shotgun, and is granted or issued to a person who is a primary producer or an approved nominee of a primary producer and who requires the rifle or shotgun for the purpose of destroying vermin or stock on land used by the primary producer for the purposes of primary production;⁶⁶⁵
- it is for a rifle or shotgun, and is granted or issued to a person who requires the rifle or shotgun for the purpose of destroying vermin or stock in the person's capacity as a professional shooter;⁶⁶⁶
- it is granted or issued for the purposes of a firearm of that category forming part of a genuine firearm collection;⁶⁶⁷ or
- it is granted or issued for Commonwealth or state government purposes.⁶⁶⁸

The 1996 National Firearms Agreement provides that for Category C firearms 'application will be limited to primary producers'.⁶⁶⁹ However, at a subsequent meeting of the Australasian Police Ministers' Council on 15 November 1996, an exemption was made to allow the use of pump action shotguns in clay target shooting competitions in accordance with international rules of clay target shooting.⁶⁷⁰ Other jurisdictions also provide for access to Category C firearms for persons who are not primary producers,⁶⁷¹ and as noted above, restrictions apply.

Category D

To satisfy the genuine need test for Category D, the applicant must satisfy the Police Commissioner that the firearm is required for Commonwealth or state government purposes.⁶⁷²

In addition, Category D firearms are specified in regulation 26 as one of a number of prohibited firearms. The acquisition, sale, possession or use of such firearms is prohibited in Western Australia,

658 *Firearms Regulations 1974* (WA), Schedule 3, Division 2, cl 3.

659 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 5.

660 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(a).

661 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(b).

662 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(c).

663 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(d).

664 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(a)(i) and (ii).

665 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(b)(i) and (ii). Clause 6(2) further provides that an approval or permit can be granted or a licence can be issued in accordance with clause 6(1)(b) to a person who would, as a result, be authorised to use a Category C rifle or shotgun on land on which another person, as the holder of a licence, permit, or approval given in accordance with that paragraph, is already authorised to use a rifle or shotgun of that category only if the Commissioner considers it appropriate having regard to the size of the land and any other relevant factor.

666 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(c).

667 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(d).

668 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl 6(1)(e).

669 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 5, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

670 Australasian Police Ministers' Council Meeting November 1996, Agenda item 3d, cited in Davies M and Mouzos J, Australian Institute of Criminology Special Report, June 2007, 11, accessed at http://www.aic.gov.au/media_library/publications/special/003/firearms-legislative-review.pdf.

671 See, for instance, *Firearms Act 1996* (Vic), s 11(1)(a).

672 *Firearms Regulations 1974*, Schedule 3, Division 4, cl 8.

except where exemptions apply.⁶⁷³ This prohibition does not apply to:

- a member of the armed forces in the performance of his or her duties, or to any other member of a disciplined force approved by the Commissioner;⁶⁷⁴
- the acquisition and possession of such a firearm by the Western Australian Museum for purposes authorised by the *Museum Act 1969 (WA)*;⁶⁷⁵
- a firearm of Category D if the firearm is licensed under the *Firearms Act* and what is done is in accordance with the licence;⁶⁷⁶
- a firearm which is the subject of a licence or permission to import or export granted under the *Customs (Prohibited Imports) Regulations 1956 (Cth)* or *Customs (Prohibited Exports) Regulations 1958 (Cth)* respectively, and the firearm is named and identified in a Corporate Licence issued under the *Firearms Act* and what is done is in accordance with the licence;⁶⁷⁷ or
- the holder of a dealer's licence who is authorised by the Commissioner to acquire the firearm for the purpose of selling it to a member of the armed forces, the Western Australian Museum, or to the holder of a licence for the firearm.⁶⁷⁸

The genuine need test specified in Schedule 3 for Category D firearms prevents an approval or permit from being granted, or a licence from being issued, for the purposes of such a firearm forming part of a genuine firearm collection.⁶⁷⁹ This restriction does not apply to any other category of firearm.

Prohibited firearms are briefly discussed elsewhere in this Discussion Paper at paragraph 7.5.

Category E

The genuine need test does not apply to Category E firearms although, as with all firearms, an applicant for a licence, permit or approval must have a genuine reason.⁶⁸⁰

Category H

To satisfy the genuine need test for Category H, the applicant must satisfy the Police Commissioner:

- that a firearm of Category A, B or C would be inadequate or unsuitable for the purpose for which the firearm is required;⁶⁸¹ or
- if the firearm required is of Category H1 and is a revolver with a calibre of .38 or more and not more than .45 and has a barrel length of 100 mm or more,⁶⁸² that:
 - the applicant is an individual who either holds a pastoral lease, whether alone or with one or more other persons, on which cattle are grazed for commercial purposes, or is nominated by the person or persons who hold such a pastoral lease and is approved by the Commissioner, and is involved in mustering or yarding cattle that are grazed on the pastoral lease;⁶⁸³ and
 - the firearm is required when mustering or yarding the cattle to deal with any animals (whether cattle or not) that are dangerous to people.⁶⁸⁴

The *Firearms Regulations* further provide that a person does *not* have a genuine need to acquire or possess a Category H firearm because it is required for:

- hunting;⁶⁸⁵
- recreational shooting, unless the person is an active and financial member of an approved shooting club who requires the firearm for use as described in that provision for the purpose of training for, and participating in, a club, interclub, state, national, or international shooting discipline;⁶⁸⁶ or
- destroying stock or vermin in circumstances other than when mustering or yarding cattle to deal with any animals (whether cattle or not) that are dangerous to people.⁶⁸⁷

The *Firearms Regulations* also sets out additional restrictions on Category H firearms, providing that an approval or permit can be granted, or a licence can be issued, for such a firearm only in the following cases:

- if it is for a firearm of Category H1, and is granted or issued to a person who is an active and financial member of an approved shooting club who

673 *Firearms Regulations 1974 (WA)*, r 26(1).

674 *Firearms Regulations 1974 (WA)*, r 26(2).

675 *Firearms Regulations 1974 (WA)*, r 26(2).

676 *Firearms Regulations 1974 (WA)*, r 26(2a).

677 *Firearms Regulations 1974 (WA)*, r 26(2BA)(a)(i) and (ii) and (b).

678 *Firearms Regulations 1974 (WA)*, r 26(2BB)(a) and (b).

679 *Firearms Regulations 1974 (WA)*, r 6A(3).

680 *Firearms Act 1973 (WA)*, s11A(1).

681 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(1)(a).

682 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7A)(b).

683 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(1)(b)(i).

684 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(1)(b)(ii).

685 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(2)(a).

686 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(2)(b).

687 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(2)(c).

requires the firearm for the purpose of training for, and participating in, a club, interclub, state, national, or international shooting discipline.⁶⁸⁸ Specific additional requirements apply to licences, permits or approvals for Category H1 firearms for this purpose;⁶⁸⁹

- if it is for a firearm of Category H1 and is granted to an individual who either holds a pastoral lease on which cattle are grazed for commercial purposes, or is nominated by the person or persons who hold such a pastoral lease⁶⁹⁰ and is approved by the Police Commissioner, for the purpose of mustering or yarding the cattle to deal with any animals that are dangerous to people.⁶⁹¹ An individual cannot be granted an approval or permit or issued a licence for this purpose:
 - for more than one Category H1 firearm;⁶⁹² or
 - for a firearm of Category H1 other than one that is a revolver and has a calibre of .38 or more and not more than .45, and has a barrel length of 100 mm or more;⁶⁹³ or
 - unless the approval, licence or permit is subject to a condition that the firearm must not be used except on a pastoral lease;⁶⁹⁴
- if it is for a firearm of Category H2 and is granted or issued to a person who requires the firearm for the purposes of professional or recreational diving;⁶⁹⁵
- if it is granted or issued to a person who requires it in the course of the person's occupation;⁶⁹⁶
- if it is granted or issued for the purposes of including a firearm of Category H in a genuine firearm collection;⁶⁹⁷
- If it is granted or issued for Commonwealth or state government purposes.⁶⁹⁸

In summary, under the *Firearms Act* and *Firearms Regulations*:

- all applications for licences, permits or approvals in relation to firearms require a *genuine reason*;

- in respect of applications relating to specific categories of firearm (B, C, D and H) applicants must also demonstrate a *genuine need*; and
- additional *restrictions* are also imposed on specific categories of firearm (C and H).

Stakeholders have raised some concerns about the 'genuine need' requirements, both general and specific, which are discussed below. There is sometimes confusion as between 'genuine reason' and 'genuine need' requirements, and suggests that the similarity between the terminology used may contribute to this confusion. This terminology comes from the 1996 National Firearms Agreement, which provides that 'over and above satisfaction of the "genuine reason" test, an applicant for a licence for the categories B, C, D and H must demonstrate a genuine need for the particular type of firearm'.⁶⁹⁹ Some jurisdictions, such as New South Wales, use the phrase 'special need' to denote the 'need' requirement for certain categories of firearms.⁷⁰⁰ Such terminology may make the distinction clearer.

Proposal 15:

- that the terminology in the *Firearms Act 1973 (WA)* and *Firearms Regulations 1974 (WA)* be changed from 'genuine need' to 'special need' to reduce confusion between the 'genuine reason' and the 'genuine need' requirements.

9.2.1 Membership of approved shooting club as a 'genuine need'

There has been some suggestion that, in addition to being included as a 'genuine reason',⁷⁰¹ membership of an approved shooting club ought to be recognised as a genuine need⁷⁰² in respect of all categories of firearms which require a genuine need.⁷⁰³

688 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(a).

689 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(a) is subject to clauses 12(2)-(6).

690 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7B) provides that a person who holds 2 or more pastoral leases may nominate one individual for each lease and may nominate the same individual for more than one lease.

691 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(ba).

692 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7A)(a).

693 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7A)(b)(i), (ii) and (iii).

694 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7A)(c).

695 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(b).

696 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(c).

697 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(d).

698 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(e).

699 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 3, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

700 *Firearms Act 1996 (NSW)*, ss 13-16, 17.

701 *Firearms Act 1973 (WA)*, s 11A(2)(a).

702 Submission from Hon Rick Mazza, 4 December 2014, 3.

703 Phone conversation with Hon Rick Mazza MLC, 11 December 2014.

Role of approved clubs under the *Firearms Act 1973 (WA)*

In this context it should be noted that approved clubs already play a role within the regulatory scheme established by the *Firearms Act* and *Firearms Regulations*. Where a person applies for a firearm licence and nominates use within an approved club, as an active and financial member of the club,⁷⁰⁴ as the 'genuine reason', such applicant must provide a letter from the club or association with his or her application that confirms membership.⁷⁰⁵ In addition, officers of approved shooting clubs or other approved organisations, as well as licensed dealers, are empowered to conduct firearms safety tests.⁷⁰⁶ Applicants for licences under the *Firearms Act* must supply proof of having successfully passed such a test with their applications.⁷⁰⁷

Approved clubs and organisations are also required to provide particular information to the Police Commissioner to assist him or her in making decisions under the Act. The *Firearms Act* requires that if an officer of an approved shooting club or approved organisation⁷⁰⁸ is of the opinion that:

- a person who is a member of the club or organisation is not a fit and proper person to possess, carry or use a firearm,⁷⁰⁹ and
- the person has a licence under the Act, intends to apply for a licence under the Act, or possesses or intends to possess a firearm,⁷¹⁰

the officer is to communicate that opinion, and the grounds on which it was formed, to the Police Commissioner.⁷¹¹ Similarly, where an approved shooting club or approved organisation refuses a person's application for membership or for membership renewal, or cancels a person's membership, an officer is to notify the Commissioner and give the reasons for that decision.⁷¹²

The wording 'is to' in these sections appears to oblige the officer to notify the Police Commissioner. It may be an offence not to do so as section 23(11) of the *Firearms Act* provides that a person who by act or omission commits any breach of the provisions of the Act for which no penalty is specifically provided commits an offence punishable by a penalty of \$2,000.⁷¹³ By contrast, elsewhere in the Act, it provides that if an accredited society of collectors expels a member, the society 'is required to notify

the Commissioner in writing ... identifying the member and the reason for the expulsion', and a penalty of two years' imprisonment or an \$8,000 fine is provided.⁷¹⁴ It is difficult to see why the provisions relating to approved shooting clubs should differ from those relating to accredited societies of collectors. In view of the importance of the relevant notification requirements, the Commission proposes below that these sections be amended to more clearly state that providing the above information to the Police Commissioner is an obligation on the part of approved shooting clubs. It would also seem that a similar penalty provision should apply.

The Act further provides that if the Police Commissioner makes a decision in full or partial reliance on information provided in the above circumstances, the decision is not 'liable to be questioned or annulled' by reason only that it is subsequently shown that the information was factually incorrect. However, where this is the case, the Commissioner must reconsider the decision if the person adversely affected requests that he or she do so, and the extent to which the decision should or might be varied as a result of the correction of those factual errors.⁷¹⁵ Approved clubs can therefore not only conduct their own due diligence in approving or rejecting applications for membership, but also play a role in decision-making about whether a person is a fit and proper person to possess or use a firearm. The Act also provides protection for officers who provide information to the Police Commissioner; specifically, it provides that nothing done by an officer of an approved organisation or approved shooting club in good faith in accordance with the Act gives rise to a criminal or civil action or remedy.⁷¹⁶

Approved clubs also help to determine who has access to Category C and Category H firearms. Under the *Firearms Regulations* an approval or permit can be granted, or a licence can be issued, for a firearm of Category C only if, among other things, it is for a shotgun and is granted or issued to a person who is an active and financial member of an approved shooting club and requires the firearm for the purpose of training for, and participating in, an approved national or international shooting discipline.⁷¹⁷ In addition, in accordance with the 2002 National Handgun Agreement, approved clubs also help determine who has access to Category H firearms (handguns or pistols),⁷¹⁸ which are restricted.

704 *Firearms Act 1973 (WA)*, s 11A(2)(a).

705 *Firearms Regulations 1974 (WA)*, Schedule One, Form One, Question 29.

706 *Firearms Regulations 1974 (WA)*, r 7(3)(c).

707 *Firearms Regulations 1974 (WA)*, r 7(3)(c). See also Schedule 1, Form 2.

708 In this section, 'approved organisation' means an organisation approved under section 11A(2)(b); see *Firearms Act 1973 (WA)*, s 23BA(5).

709 *Firearms Act 1973 (WA)*, s 23BA(1)(a).

710 *Firearms Act 1973 (WA)*, s 23BA(1)(b).

711 *Firearms Act 1973 (WA)*, s 23BA(1).

712 *Firearms Act 1973 (WA)*, s 23BA(2).

713 *Firearms Act 1973 (WA)*, s 23(11).

714 *Firearms Act 1973 (WA)*, s 15B(1).

715 *Firearms Act 1973 (WA)*, s 23BA(3).

716 *Firearms Act 1973 (WA)*, s 23BA(4).

717 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 4, cl. 6(1)(a)(i) and (ii).

718 See *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(a), which is subject to clauses 12(2)–(6).

Some of the aspects of the 2002 National Handgun Agreement are not included in the Western Australian legislation. In particular:

- The 2002 National Handgun Agreement includes agreement that clubs be provided 'with the power to request a police check on a person prior to accepting them as a member of a club'.⁷¹⁹ This is not included in the Western Australian legislation, though Western Australia Police conduct checks of all licence applicants and it would be possible for approved clubs to set a requirement that prospective members provide a National Police Clearance.
- The 2002 National Handgun Agreement includes agreement that, to prevent 'club shopping', a person wishing to join a club must provide details to the club of any other shooting clubs to which they belong and any firearms they own, and that clubs be provided with the power to request information from the licensing authorities on a member's or applicant's ownership of handguns and membership of other clubs.⁷²⁰ This requirement and power is also not found in Western Australian legislation. Western Australia Police undertake checks on all licence applicants.
- The 2002 National Handgun Agreement includes agreement that a requirement be developed that a person applying to join a club must provide the club with two character references from people they have known for at least two years.⁷²¹ This requirement is not included in Western Australian legislation, although it may be a requirement imposed by individual clubs. Ultimately, Western Australia Police will determine whether a person is a fit and proper person to be licensed (subject to review by the SAT and the Supreme Court).

Overall though, it is clear that approved shooting clubs play a role in the operation of the *Firearms Act*.

Question 16:

Should any amendments be made to the *Firearms Act 1973 (WA)* or *Firearms Regulations 1974 (WA)* to:

- prevent 'club shopping', including clubs advising Western Australia Police of any applications that are refused; and
- otherwise regulate membership of shooting clubs?

'Genuine need'

The suggestion that club membership be viewed as a 'genuine need' should be viewed in the context of approved clubs' existing role in the scheme of the *Firearms Act* and *Firearms Regulations*. Including mere membership of an approved club as a 'genuine need' would substantially alter existing restrictions. First, it would remove the current requirement for applicants to satisfy the Police Commissioner of their need for firearms of categories B, C, D and H; for instance, an applicant for a Category C firearm who was a member of an approved club would not be required to satisfy the Commissioner that a firearm of Category A or B would be inadequate or unsuitable for the purpose for which the firearm is required.⁷²²

Secondly, to pass the 'genuine need' test for Category D firearms, which are prohibited firearms,⁷²³ a person must currently satisfy the Police Commissioner that the firearm is required for Commonwealth or state government purposes.⁷²⁴ It would be a matter of concern if members of approved clubs were exempted from this requirement, such that a person could obtain possession of a prohibited firearm simply by joining a club. The Commission is advised that there are currently 6,324 individuals who are members of one or more approved clubs;⁷²⁵ were such membership to be accepted as a genuine need in respect of all categories of firearms, this could greatly increase the numbers of people permitted to possess, among other things, prohibited firearms.

As a practical matter, even if limited to Categories B, C and H, this suggestion would have the result that approved clubs, rather than the Police Commissioner, would (by accepting membership applications) effectively determine whether an applicant has a genuine need for a particular firearm. This would represent a transfer of responsibility from the Police Commissioner to approved clubs.

Further, it is to be anticipated that if the Act were to be amended to provide that membership of an approved club constituted a 'genuine need', persons who held licences on the basis of other genuine reasons would also seek to be covered by similar exemptions, rendering the 'genuine need' requirements illusory.

The Commission therefore does not propose that membership of an approved club be recognised as a 'genuine need'.

719 Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 3, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

720 Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 3, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

721 Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 4, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

722 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 3, cl. 5.

723 *Firearms Regulations 1974 (WA)*, r 26(3).

724 *Firearms Regulations 1974 (WA)*, Schedule 3, Division 4, cl. 8.

725 Email correspondence from Carl Fisher, Project Officer, Licensing Services, Licensing Enforcement Division, Western Australia Police, 9 March 2015.

Proposal 16:

that section 23BA(1) and 23BA(2) of the *Firearms Act 1973* (WA) be amended to more clearly provide that an officer of an approved club or approved organisation must, within a specified period, notify the Police Commissioner of, respectively,

- his or her opinion that a person who is a member of the approved club or approved organisation is not a fit and proper person to possess, carry or use a firearm;
- his or her decision to refuse a person's application for membership or renewal of membership, and the reasons for that decision; and
- that a penalty be imposed for breach of these obligations consistent with the penalty specified in section 15B(1).

9.2.2 'Genuine need' – Category D firearms – pest control

Some firearms users have expressed particular concerns about the application of the 'genuine need' requirements in the context of Category D firearms. To satisfy the genuine need test for category D, an applicant must satisfy the Police Commissioner that the firearm is required for Commonwealth or state government purposes.⁷²⁶ Animal Pest Management Services (APMS), via its Managing Director, submitted that this requirement, and the way it is interpreted, impacts negatively on its businesses.

APMS submitted that, as the firearms regime in Western Australia only allows 'for state or federal government agencies to be licensed for firearms suitable for aerial culling operations, namely semi-automatic firearms of centre fire configuration, such as those commonly used for aerial culling operations', this has 'resulted in a situation whereby the state government in WA is the only contractor available for undertaking larger scale aerial culling operations', creating a 'closed shop' to the benefit of the Department of Agriculture and Food.⁷²⁷ APMS further submitted that 'all other states have private contractors who either undertake private contract work, or contract to the state governments [*sic*] authorities to undertake culling operations'.⁷²⁸

APMS provided a letter from the Minister for Police, in which the Minister advised that the company could apply to licence Category D firearms while under contract to a state or federal government body but that 'specific conditions would be placed on any licence issued to the effect that the firearm could only be used for that specific purpose'.⁷²⁹ Consequently, once the contract ceased 'the firearms would be required to be disposed of immediately as they would no longer be licensed for that purpose and would fall under Regulation 26 as "prohibited firearms"'.⁷³⁰ It was suggested that 'this means ... we would need to go through the whole licensing application process, find and purchase new firearms and acquire them each time we have a contract to undertake aerial shooting'; he added that Animal Pest Management Services had 'missed out on aerial shooting contracts because we don't have these firearms'.⁷³¹

APMS contended that the Department of Agriculture and Food would fall under the same licensing obligations and should also be required to dispose of Category D firearms where they do not have a current need or contract. However, it suggested that this is not the case and expressed a belief that the *Firearms Act* was 'not being applied evenly'.⁷³² APMS is apparently unable to conduct paid contract services for aerial culling as, unlike the Department of Agriculture and Food, it could not 'comply with Codes of Practice which require using a semi-auto firearm'.⁷³³

APMS also suggested that bolt action firearms (which are not included in Category D) 'are slower, are not able to rapidly shoot animals twice (a National Code of Practice requirement), and are not as safe as semi-auto firearms as the helicopter has to hover for longer periods to get the shots away'.⁷³⁴ A nationally recognised guiding Standard Operating Procedure for aerial shooting of camels observes that:

- self-loading rifles with large magazine capacity are suitable and should be fitted with a spot on/aim-point/red dot scope;
- to provide a backup in case of firearm/ammunition malfunction, at least two firearms should be carried by shooters at all times;
- when shooting feral camels, all animals must receive multiple shots to the vital areas to ensure a rapid death; and
- immediately after the initial shot to the head, the shooter must perform a second chest shot.⁷³⁵

726 *Firearms Regulations 1974*, Schedule 3, Division 4, cl 8.

727 Submission from Animal Pest Management Services, 2.

728 Submission from Animal Pest Management Services, 1.

729 Letter dated 20 January 2014 from Minister for Police to Mr Mike Butcher of Animal Pest Management Services.

730 Letter dated 20 January 2014 from Minister for Police to Mr Mike Butcher of Animal Pest Management Services.

731 Submission from Animal Pest Management Services, 2.

732 Submission from Animal Pest Management Services, 3.

733 Submission from Animal Pest Management Services, 3.

734 Submission from Animal Pest Management Services, 3.

735 Standard Operating Procedure CAM002: Aerial shooting of camels, prepared by Trudy Sharp, Invasive Animals CRC, 2012, 3 and 5, accessed at http://www.pestsmart.org.au/wp-content/uploads/2013/08/CAM002_aerial-shooting.pdf.

APMS noted that the *Animal Welfare Act 2002* (WA) provides that it is a defence to a charge of cruelty to animals under that Act for a person to prove that he or she was acting in accordance with a relevant code of practice,⁷³⁶ and submitted, therefore, that compliance with the Code was 'essential for us to undertake our work without the potential for prosecution for cruelty'.⁷³⁷ In its view, to 'compete' with '[the Department of Agriculture and Food] who do not use Category D firearms as part of their core government obligations, we believe we should be able to, like they do, keep Category D firearms between contracts'.⁷³⁸

It must be borne in mind that Category D firearms are no ordinary tool of trade; it is on the basis of their potential to cause harm that they are prohibited except for official purposes. However, given that it is accepted that these firearms can be used for State and Commonwealth purposes, including pest control, it is difficult to see why businesses seeking to use them for such purposes should be prevented from doing so by the need to make a separate application in respect of each contract.

This situation raises the issue of what happens when a genuine need ceases, or is intermittent in nature. Noting the issue raised in the Police Minister's letter cited above, it would seem possible to apply for a licence for a Category D firearm for the purpose, not of undertaking a specific pest control contract, but for pest control contracts generally, in circumstances where it is reasonably likely that a licensee will be awarded such contracts in the course of their work. Such a licence could theoretically be granted on condition that a person could possess the firearm or firearms, but that such firearms could only be *carried or used* when a contract was in place. It would also seem possible, if there are concerns about the security of those firearms, to require that they be stored off-site, either by Western Australia Police or by an approved warehouseman.

As noted previously, there is case law to the effect that the genuine reason test in section 11A(1), and the reasonable justification requirement of this test in section 11A(3), do not require an applicant to demonstrate a particular *existing need* for the firearm being sought, although such a need will be a relevant consideration.⁷³⁹ Similarly, the Commission

observes that the 'genuine need' test in respect of Category D firearms requires an applicant to 'satisfy the Commissioner that the firearm is required for Commonwealth or state government purposes',⁷⁴⁰ but does not specify that the purposes must be currently existing.

Proposal 17:

- that the *Firearms Regulations 1974* (WA) be amended to provide that persons who require a firearm for their occupation may be permitted to retain the right to possess, but not to use, such firearms in between contracts.

This issue also raises broader questions about the relevance of recognised guidelines on the humane shooting of various kinds of animals that operate within Australia generally and Western Australia more specifically. For instance, the Department of Parks and Wildlife provides information on kangaroo management in Western Australia, including a link to the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes (2008). This Code provides a list of suitable calibres of firearms for shooting particular sizes and types of kangaroos and wallabies.⁷⁴¹ The Department of Parks and Wildlife has also produced its own Standard Operating Procedure on humane killing of animals under field conditions in wildlife management which also lists firearms that are suitable for use in particular circumstances.⁷⁴²

It would appear to the Commission that such codes would be relevant considerations in determining whether a genuine reason or genuine need is made out in any particular instance. However, the *Firearms Act* and *Firearms Regulations* are silent on animal welfare issues. This is in contrast to other jurisdictions which specify 'animal welfare' as a genuine reason for the grant of a licence.⁷⁴³ Western Australia Police has advised that where relevant animal welfare guidelines exist, 'police attempt to follow them when licensing firearms'. However, the issue is not as simple as applying the guidelines; Western Australia Police also advises that consideration must be given to 'whether or not the particular vermin actually exist on the property the applicant intends to shoot on,

736 *Animal Welfare Act 2002* (WA), s 25 provides that it is a defence to a charge of cruelty to animals under section 19(1) for a person to prove that the person was acting in accordance with a relevant code of practice. The *Animal Welfare (General) Regulations 2003* set out a list of codes of practice in Schedule 1 and r 6 of the Regulations provides that these codes of practice are adopted, as they are amended from time to time, under section 94(2)(d) of the *Animal Welfare Act 2002* (WA) and that each is a 'relevant code of practice' that can be used as a defence under section 25 of the *Animal Welfare Act 2002* (WA). Among the codes of practice listed in Schedule 1 is Item 10, Feral Animals — Code of practice for the capture and marketing of feral animals in Western Australia. At page 8, this code of practice provides that 'After being shot the animal should be checked to ensure that it is dead. A second shot should always be directed to the heart/lung area'.

737 Submission from Animal Pest Management Services, 3.

738 Submission from Animal Pest Management Services, 3.

739 *Kashani v Commissioner of Police* [2011] WASC 6 per Jenkins J at [64] and [67–68].

740 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 8.

741 Kangaroo management in Western Australia, accessed at <http://www.dpaw.wa.gov.au/plants-and-animals/animals/kangaroo-management-in-western-australia>.

742 Department of Parks and Wildlife, Standard Operating Procedure 15.1, Humane killing of animals under field conditions in wildlife management, accessed at http://www.dpaw.wa.gov.au/images/documents/plants-animals/monitoring/sop/SOP15.1_HumaneKillingOfAnimals_VR1.0_20131206.pdf.

743 See *Firearms Act* (NT), s 11(2)(g), *Firearms Act 1996* (ACT), s 61, Table 61, Item 7, *Firearms Act 1996* (Tas), s 37(e) and 42, and *Firearms Act 1996* (NSW), s 12.

and whether the property is in fact suitable for the calibre of firearm sought'.⁷⁴⁴

Western Australia Police has advised that it takes into account the guidelines of the Department of Parks and Wildlife in respect of the calibre of firearm to be used for the destruction of wildlife, and that any animal welfare guidelines are a consideration for the licensing of firearms. It also notes that the relevant guidelines would not override legislation.⁷⁴⁵

Question 17:

- Do you have any comment on interactions between the *Firearms Act 1973* (WA) and Codes of Practice or Standard Operating Procedures regarding the humane killing of animals?

9.2.3 'Genuine need' and primary producers

The *Firearms Act* provides that a person will have a genuine reason for acquiring or possessing a firearm or ammunition if it is required by the person in the course of the person's occupation.⁷⁴⁶ Primary producers can apply for firearm licences under this limb of the genuine reason requirement.

In addition, the *Firearms Act* provides that no licence is required, in relation to an approved firearm or ammunition for that firearm, by a person who in the ordinary course of his or her practice, trade or business uses that firearm for the purpose of dealing a blow to any animal with intent to slaughter it or to render the animal insensible prior to slaughtering.⁷⁴⁷

Exemptions are also provided for:

- persons working for a primary producer, or who are family members of a primary producer; and
- who possess or use a firearm licensed to that primary producer for the purpose of destroying vermin or stock on land used by the primary producer for the purposes of primary production; or who are in possession of such firearm or ammunition while carrying it directly between two such pieces of land or directly between such land and any other place where it is authorised by law to be held;

if the use of the firearm and ammunition by that person is expressly authorised by the primary producer.⁷⁴⁸

In respect of the 'genuine need' requirement, the Pastoralists & Graziers Association of Western Australia (the Association) contends that 'all farmers of livestock have a genuine need to possess and use firearms in the course of carrying out the everyday duties associated with their occupation ... the ownership of livestock imposes a duty of care on the livestock producer that includes the welfare of those animals under a farmer's care, such that he or she is responsible for their humane destruction, should that animal be experiencing undue suffering'.⁷⁴⁹ In that regard, the Australian Animal Welfare Standards and Guidelines for Cattle of May 2014 provide that for humane killing, the use of a close range firearm to the brain is the preferred method.⁷⁵⁰

In the Association's view, 'even those farmers who do not farm livestock have a genuine need to possess and use firearms as, under the *Biosecurity and Agriculture Management Act 2007* (WA), they have a duty to control declared pests that exist outside of the farming activities they may engage ... even a grain grower has an obligation to conduct opportunistic shooting of wild dogs'.⁷⁵¹

The genuine need requirement however does not relate to the need for a firearm in general, but to the need for a particular firearm or firearms.

The *Firearms Regulations* provide that reasons for which an approval or permit can be granted, or a licence can be issued, for a firearm in Category C include that it is:

- for a rifle or shotgun;⁷⁵²
- issued to a person who is a primary producer or approved nominee of a primary producer;⁷⁵³ and
- the person requires the rifle or shotgun for the purpose of destroying vermin or stock as described in section 8(1)(i)(i) of the *Firearms Act*.⁷⁵⁴

An approval or permit can be granted or a licence can be issued in accordance with this clause only if:

[w]here such approval, permit or licence would enable a person to use a Category C rifle or

744 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 18.

745 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 18.

746 *Firearms Act 1973* (WA), s 11A(1)(d).

747 *Firearms Act 1973* (WA), s 8(1)(h).

748 *Firearms Act 1973* (WA), s 8(1)(i)(i) and (ii). The State Administrative Tribunal has found that section 8(1)(i) of the Act does not preclude a family member of a primary producer from applying for a licence in his or her own right, and has noted that section 8 is 'intended to be a relaxation of what is otherwise a very strict licensing regime, but is not intended to be restrictive in itself'; see *Cutbush and Commissioner of Police* [2010] WASAT 45 at [38], [36].

749 Submission from the Pastoralists & Graziers Association of Western Australia (Inc), 13 February 2015, 2.

750 Australian Animal Welfare Standards and Guidelines for Cattle, Edition One, Version One, Subject to Government Endorsement, May 2014, 28–30, accessed at <http://www.animalwelfarestandards.net.au/files/2011/02/Cattle-Standards-and-Guidelines-for-Endorsement-May-0807141.pdf>

751 Submission from the Pastoralists & Graziers Association of Western Australia (Inc), 13 February 2015, 3. Section 30(2) of the *Biosecurity and Agriculture Management Act 2007* (WA) provides that the owner or other person in control, in an area for which an organism is a declared pest, of an organism or thing infected or infested with the declared pest must take the prescribed control measures to control the declared pest. The *Biosecurity and Agriculture Management Regulations 2013* (WA) list control measures which are prescribed to control declared pests, including, at r 27(1)(s), shooting.

752 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 6(1)(b).

753 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 6(1)(b)(i).

754 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 6(1)(b)(ii).

shotgun on land which another person is already authorised to use a rifle or shotgun of that category, it can only be granted or issued if the Commissioner considers it appropriate having regard to the size of the land and any other relevant factor.⁷⁵⁵

These restrictions are in addition to the 'genuine need' test, which requires that the applicant satisfy the Police Commissioner that a firearm of Category A or B would be inadequate or unsuitable for the purpose for which the firearm is required.⁷⁵⁶

The regulations regarding the 'genuine need' requirements for, and restrictions on, Category H firearms have been the subject of some controversy. Prior to 2010, the *Firearms Regulations* provided that a person did not have a genuine need to acquire or possess a firearm of Category H if it was required for, among other things, destroying stock or vermin.⁷⁵⁷ However, the restrictions also provided that an approval or permit could be granted, or a licence could be issued, for a Category H firearm if it was granted or issued to a person who required it in the course of the person's occupation.⁷⁵⁸ Read together, these clauses caused some confusion as to whether persons with the occupation of primary producer could be licensed to possess and use Category H firearms. The SAT ultimately ruled that they could not: regardless of an applicant's occupation, a person could not be licensed to possess and use Category H firearms to destroy stock or vermin.⁷⁵⁹ The issue was then considered as part of the 2008 Police Review. The report stated:

The principal reason for the handgun restrictions introduced in 1996 was to limit the proliferation of concealable firearms in the community. There was recognition however, that handguns should be available for sporting purposes and this was ratified in 2002 as part of the national handgun reforms and associated buyback.

Some inconsistency has occurred where the Western Australia Police have issued licences to pastoralists for occupational purposes and have subsequently commenced revoking those licenses on the basis that they were issued contrary to the provisions of the *Firearms Act* and *Firearms Regulations* prohibiting access to handguns for the purpose of destroying stock or vermin.

It should be noted that the original purpose for stating that a person may possess a handgun for their occupation was solely intended for employees in the security industry. The position taken by Western Australia Police to revoke these licenses is supported by decisions of the SAT which has dismissed a number of appeals against the revocations by Western Australia Police.⁷⁶⁰

The report also noted that, during consultation with the WA Farmers Federation and the Pastoralists & Graziers Association, the following arguments were put forward to support the use of Category H firearms by pastoralists:

- They are needed to deter and destroy rogue animals and stock encountered when mustering.
- As the legislation has provision to issue firearm licenses for occupational purposes, Category H firearms should be available to pastoralists.
- The use of Category H firearms is desirable due to their ease of carriage on a motorbike, horse or in a helicopter.
- Longarms are cumbersome, dangerous to carry and have the potential to cause harm if a person was to fall from a motorbike or horse.
- Pastoralists have a duty of care to humanely destroy animals.⁷⁶¹

The Western Australia Police report emphasised nevertheless that it had been intended that Category H firearms only be available for occupational purposes in the case of people working in the security industry. The report acknowledged that 'situations will arise where pastoralists and their employees are confronted by dangerous animals however, there are a range of firearms other than Category H firearms that are suitable for these purposes'.⁷⁶²

Ultimately, the report proposed that 'the legislation be amended to further clarify that Category H firearms are not intended to be issued for purposes other than employment in the security industry and legitimate sporting shooters' and recommended: '[t]hat the *Firearms Regulations*, Schedule 3, Category H, should be amended to remove the current ambiguity that has enabled some pastoralists to licence handguns for occupational purposes'.⁷⁶³

755 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 6(2).

756 *Firearms Regulations 1974* (WA), Schedule 3, Division 3, cl. 5.

757 *Firearms Regulations 1974* (WA), Schedule 3, Category H, cl. (2)(c) (Reprinted under the *Reprints Act 1984* (WA) as at 7 February 2008).

758 *Firearms Regulations 1974* (WA), Schedule 3, Restrictions for Category H, cl. (1)(c) (Reprinted under the *Reprints Act 1984* (WA) as at 7 February 2008).

759 *Anick and Commissioner of Police* [2008] WASAT 173.

760 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 14.

761 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 14.

762 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 14.

763 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 15.

However, this position was subsequently reversed, and amendments were made to the *Firearms Regulations* in 2010 to permit pastoralists to access Category H firearms for the purpose of destroying vermin or stock, provided certain requirements are met. The *Firearms Regulations* now provide that to satisfy the genuine need test for Category H the applicant must satisfy the Police Commissioner:

- that a firearm of Category A, B or C would be inadequate or unsuitable for the purpose for which the firearm is required;⁷⁶⁴ or
- if the firearm required is of Category H1 and is a revolver described in regulation 12(7A)(b),⁷⁶⁵ that:
 - the applicant is an individual who either holds a pastoral lease, whether alone or with one or more other persons, on which cattle are grazed for commercial purposes, or is nominated by the person or persons who hold such a pastoral lease and is approved by the Commissioner, and is involved in mustering or yarding cattle that are grazed on the pastoral lease;⁷⁶⁶ and
 - that the firearm is required when mustering or yarding the cattle to deal with any animals (whether cattle or not) that are dangerous to people.⁷⁶⁷

Under the *Firearms Regulations* a person does not have a genuine need to acquire or possess a Category H firearm because it is required for:

- hunting;⁷⁶⁸
- recreational shooting, unless the person is an active and financial member of an approved shooting club who requires the firearm for use as described in that provision for the purpose of training for, and participating in, a club, interclub, state, national, or international shooting discipline;⁷⁶⁹ or
- destroying stock or vermin in circumstances other than when mustering or yarding cattle to deal with any animals (whether cattle or not) that are dangerous to people.⁷⁷⁰

An approval, permit or licence for a Category H firearm can be granted or issued where it is for a firearm of Category H1 and is granted or issued to an individual who either:

- holds a pastoral lease, whether alone or with one or more other persons, on which cattle are grazed for commercial purposes; or
- is nominated by the person or persons who hold such a pastoral lease and is approved by the Commissioner, but not to more than one such person, for the purpose of mustering or yarding the cattle to deal with any animals (whether cattle or not) that are dangerous to people.⁷⁷¹

Further, an individual cannot be granted an approval or permit or issued a licence for the purpose of mustering or yarding the cattle to deal with any animals that are dangerous to people:

- for more than one Category H1 firearm;⁷⁷²
- for a firearm of Category H1 other than one that is a revolver and has a calibre of .38 or more and not more than .45, and has a barrel length of 100 mm or more;⁷⁷³ or
- unless the firearm is subject to a condition that it must not be used except on a pastoral lease.⁷⁷⁴

Primary producers are therefore now able to use and possess Category H firearms within the parameters set out above.

Given the potential significance to primary producers of being able to possess and use appropriate firearms in connection with their work, it is desirable that the Act facilitate that occurring with as much flexibility as possible, without compromising broader objectives relating to public safety.

Question 18:

- Does the *Firearms Act 1973 (WA)* provide sufficient flexibility for, and adequately accommodate the needs of, primary producers?

⁷⁶⁴ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(1)(a).

⁷⁶⁵ The firearm described in clause 12(7A)(b) of Schedule 3, Division 6 of the *Firearms Regulations* is as follows: a revolver with a calibre of 0.38 or more (and not more than 0.45) and with a barrel length of 100 mm or more.

⁷⁶⁶ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(1)(b)(i).

⁷⁶⁷ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(1)(b)(ii).

⁷⁶⁸ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(2)(a).

⁷⁶⁹ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(2)(b).

⁷⁷⁰ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 11(2)(c).

⁷⁷¹ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(1)(ba).

⁷⁷² *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7A)(a).

⁷⁷³ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7A)(b)(i), (ii) and (iii).

⁷⁷⁴ *Firearms Regulations 1974 (WA)*, Schedule 3, Division 6, cl. 12(7A)(c).

10. APPLICATION OF THE *FIREARMS ACT 1973 (WA)* – OTHER CONCERNS

Several other concerns have been raised regarding suggested inconsistencies in the operation of the *Firearms Act*.

10.1 Persons under 18

The Act provides that no licence is required by a minor who is operating a firearm (other than a handgun) under the supervision of the licensed owner of that firearm.⁷⁷⁵ In contrast, except for certain exceptions such as in an approved range or approved shooting gallery or the use of a starting gun, an unlicensed adult cannot operate a firearm under the supervision of the licensed owner of the firearm. Some stakeholders consider that the existing exemption should be broadened so that adults *are* permitted to operate a firearm under the supervision of the licensed owner, while others consider that the exemption should be removed altogether so that minors *are not* permitted to do so.⁷⁷⁶ It should also be noted that there is no restriction on how young a minor may be.

Regarding the first proposition, – that adults ought to be able to operate a firearm under the supervision of the licensed owner, – it should be noted that the *Firearms Act* establishes a restrictive framework. This framework is designed to ensure that firearms can only be possessed or used by persons who are fit and proper persons and who have a genuine reason to do so, and in some instances a genuine need. The exemption for persons under 18 is a narrow one; Western Australia Police advises that it is considered that the exemption was simply included to allow parents and children to shoot together.⁷⁷⁷ Allowing adults who do not hold any licence, permit or approval to use firearms belonging to other persons may be regarded as inconsistent with this overall aim of the Act. In addition, adults who do not hold licences, permits or approvals under the *Firearms Act* are not prevented entirely from using firearms; as noted above, they may use firearms at an approved range or approved shooting gallery.⁷⁷⁸

Further, Western Australia Police considers that an adult does not have the same control over another adult as he or she would over a juvenile, and notes that the current exemption prevents a licensed person from inviting large groups of adults to their property to all use firearms held under one individual licence. Western Australia Police observes that if the exemption were extended to persons aged 18 and over, 'there would need to be clear guidelines to establish possession of a firearm when shooting, and only when the owner is present, close by and supervising'.⁷⁷⁹

The Commission appreciates the rationale behind the exemption for persons under 18 and the practical implications of extending this exemption to adults. In particular, the question of supervision is an important one. However, it considers the suggestion worth exploring, and poses a question on this matter below.

With respect to the use of firearms by minors, the 1996 National Firearms Agreement provides that 'a licence applicant should be required to be aged 18 years or over'.⁷⁸⁰ However, other Australian jurisdictions have elected to provide for licences or permits for persons under 18, as follows:

- In Victoria, the Chief Commissioner may license a natural person between the ages of 12 and 18 to carry or use Category A or B longarms, Category C longarms or general category handguns.⁷⁸¹
- In the Northern Territory, 'firearms club junior licences' may be issued. These authorise the holder to possess and use firearms of a category specified in the licence only when personally supervised by the holder of a relevant licence, and for the purpose of receiving instruction in the safe use of firearms at an approved shooting range or competing in an approved event.⁷⁸²
- In New South Wales, a person who is under 18 can, with the written consent of a parent or guardian,⁷⁸³ apply for either a 'minor's firearms

⁷⁷⁵ *Firearms Act 1973 (WA)*, s 8(1)(n).

⁷⁷⁶ The Public Health Association of Australia (WA Branch) considers that it is inappropriate for minors to use firearms, particularly given that they have not undergone the licensing application process. Meeting with the Public Health Association of Australia (WA Branch), 8 October 2014.

⁷⁷⁷ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 23.

⁷⁷⁸ *Firearms Act 1973 (WA)*, ss 8(1)(m) and (l).

⁷⁷⁹ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 23.

⁷⁸⁰ Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, 5, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

⁷⁸¹ *Firearms Act 1996 (Vic)*, s 18(1). Section 18(2) provides that the Chief Commissioner cannot issue a junior licence authorising the carriage or use of a Category C longarm, being a shotgun, unless the applicant can demonstrate that the licence is required for the reason of clay target shooting, and section 18(2A) provides that the Chief Commissioner cannot issue a junior licence authorising the carriage or use of a general category handgun unless the applicant can demonstrate that the licence is required for the reason of handgun target shooting.

⁷⁸² *Firearms Act (NT)* s 28(a) and (b).

⁷⁸³ *Firearms Act 1996 (NSW)*, s 32(3)

training permit' or a 'minor's target pistol permit'.⁷⁸⁴ Both permits require that the minor be personally supervised by a licensed person while possessing or using a firearm.⁷⁸⁵

- In Tasmania, persons between the ages of 12 and 18 can obtain a 'minor's permit'.⁷⁸⁶
- In Queensland, a minor's licence can be issued to a person who is between the ages of 11 and 18, and is granted only for restricted purposes.⁷⁸⁷ In addition, a minor who is at least 11 may have physical possession and use of a Category A or B firearm in a place where such possession and use is lawful (including an approved range) and where the minor is under the direct and immediate supervision of a parent, guardian, or person who is acting in the place of a parent or guardian.⁷⁸⁸
- In the Australian Capital Territory, a minor cannot own a firearm,⁷⁸⁹ but can be issued with a minor's licence.⁷⁹⁰
- In South Australia, a firearms permit may be applied for by a person between the ages of 15 and 18 who is the spouse, child, brother, sister or employee of a person who holds a firearms licence and who carries on the business of primary production.⁷⁹¹

This issue of minors using firearms was considered as part of the 2008 Police Review. The review noted that, although section 10 of the Act provides that a licence or permit can only be issued to persons who are 18 or older, section 8 exempts juveniles from the licensing requirements in particular circumstances. Section 8(1) (m) of the Act allows for a person (no age stipulated) to use a firearm belonging to another licensee on an approved range of an approved club or organisation, and section 8 (1)(n) permits a person under the age of 18 years to use a firearm, but not a handgun, under supervision of another licence holder.⁷⁹² The review outlined the rationale behind these exemptions as follows:

- the exemption in section 8(1)(m) is used to allow young children who aspire to become proficient in competitive target shooting – such as the Olympics and Commonwealth Games – to be given the opportunity to enter and practise,

their sport under supervision and in a controlled environment; and

- the exemption in section 8(1)(n) allows children to use their parents' firearms (other than handguns) on farms or other hunting expeditions.

The review considered the possibility of creating a licence to cater for children to use firearms to become proficient as national/international target shooters, and concluded that '[t]o insist that persons under the age of 18 years be issued with a permit/licence would be an imposition on a young aspirant wishing to pursue their sport', particularly given that there had been 'no reported incidents to indicate that children operating under the auspices of the provisions of sections 8(1)(m) or 8(1)(n) have given cause to tighten legislation'.⁷⁹³ The review recommended, therefore, that no amendment be made and that current provisions should remain in respect to the section 8 exemptions that apply to persons under the age of 18 years.⁷⁹⁴

Question 19:

Should the *Firearms Act 1973* (WA) be amended to provide:

- for junior licences and, if so, in what circumstances; and/or
- for the ability of an unlicensed adult to use a firearm under the supervision of the licensed owner, on his or her property; and
- that only one person may use a firearm under the owner's supervision at one time?

10.2 Lending firearms

As previously noted, the system created by the *Firearms Act* is one of dual licensing, in which both the person and the firearm are licensed. It is an offence for a person to:

- be in possession of any firearm or ammunition where he or she is not the holder of a licence or permit under the Act entitling him or her to do so, unless particular exemptions apply;⁷⁹⁵ and

784 *Firearms Act 1996* (NSW), s 32(4).

785 *Firearms Act 1996* (NSW), s 32(5), (5A) and (6).

786 *Firearms Act 1996* (Tas), s 68(2). The *Firearms (Miscellaneous Amendments) Act 2015* (Tas), which is yet to commence, amends section 70 of the *Firearms Act 1996* (Tas) to lower the age at which the holder of a minor's permit may engage in target shooting at an approved range, or use a firearm for the purpose of receiving instruction in the safe use of the firearm, from 16 to 15 years.

787 *Weapons Act 1990* (Qld), s 10(2)(a)(ii); *Weapons Regulation 1996* (Qld), r 23 and 23A.

788 *Weapons Act 1990* (Qld), ss 52(1) and (2).

789 *Firearms Act 1996* (ACT), s 84.

790 *Firearms Act 1996* (ACT), s 85.

791 *Firearms Act 1977* (SA), s 12(4). Subsection 12(4a) provides that such a firearms permit may only authorise the possession and use of class A or B firearms registered in the name of the spouse, parent, brother, sister or employer of the licence holder and may only authorise use of the firearm for the purposes of the business of primary production carried on by that person.

792 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 19.

793 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 19.

794 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 19.

795 *Firearms Act 1973* (WA), s 19(1). Exemptions to this offence are those set out in section 8 (which prescribes classes of persons who are exempt from the licensing requirements of the Act), and anyone who comes into possession of ammunition pursuant to section 30(2) of the Act, i.e. a person acting as an agent for another person.

- permit another person to be in possession of a firearm or ammunition if the other person is not the holder of a licence or permit under the Act entitling him or her to possession of it.⁷⁹⁶

'Possession' is defined to include the custody or control of a firearm or ammunition 'or having and exercising access to it in any place either alone or in common with others'.⁷⁹⁷

Effectively, the above provisions mean that it is not possible to lend firearms to another licensee, which is of concern to some firearms owners. Indeed, on the face of the Act it is not possible for two persons, shooting together, to 'try out' each other's' firearms—even if both are of the same make and model. There are multiple situations where one person might wish temporarily to provide access to their firearm to another licensed person for a shorter or longer period of time, such as:

- one person may want to borrow another person's firearm to try it out during a shoot, returning it directly afterwards;
- a farmer who needs a firearm in the course of his or her work may sustain damage to the firearm and wish to borrow a replacement firearm from a neighbour for a few days; or
- a person may be travelling overseas and wish to lend their firearm to a licensed friend for a few weeks.

Currently, the *Firearms Act* does not allow for any of these situations. Furthermore, it has been pointed out to the Commission that there are situations in which licensed firearm owners are *encouraged* to grant possession of their firearm to another person, albeit on a strictly temporary basis. A guide to Western Australian firearm laws and safe firearm practices for shooters that is available on the Western Australia Police website states:

A large proportion of accidents occur while a shooter is trying to climb over or through fences with a loaded firearm which accidentally discharges when it catches in the fence or the shooter overbalances. Ensure that your firearm is unloaded and the muzzle pointing in a safe direction. Carefully, ease the firearm with its action open under the bottom strand of a fence

and place it on the other side. *If in company with another person, one should climb the fence unimpeded while the other passes both firearms, one at a time, either over the top or under the bottom. Again the muzzle must always be pointed in a safe direction.*⁷⁹⁸

On the face of the *Firearms Act*, both persons in the above example would be breaching the Act, albeit very briefly.

In considering the question as to whether the *Firearms Act* should facilitate lending arrangements between licensees, and if so how such arrangements should be dealt with, it is useful to consider examples from other jurisdictions:

- In Victoria, any licensed person is able to borrow or hire a licence category firearm, provided that it is registered. The *Firearms Act 1996 (Vic)* provides that a licensed firearms dealer must not hire or lend a firearm to a person unless the person is the holder of a licence that authorises the person to possess, carry or use the type of firearm sought to be hired or borrowed; 28 days or more have expired since the issue of the licence; and the person possesses a registered firearm under the licence that has been acquired before the hiring or loan takes place.⁷⁹⁹
- The South Australian legislation provides for the transfer of possession of firearms from one person to another in particular circumstances, including the following:
 - where one person is selling, giving, lending or hiring the firearm to another person and transfers possession, this transfer being witnessed by a prescribed person⁸⁰⁰ who is provided with information required by the *Firearms Act 1977 (SA)*, or this transfer being effected through the agency of a licensed dealer;⁸⁰¹
 - where, subject to conditions,⁸⁰² the owner of a Class A, B or H firearm transfers possession of it to another person pursuant to a written or oral agreement between the owner and borrower that the borrower will only use the firearm for a purpose or purposes specified in the agreement;⁸⁰³ and
 - circumstances authorised by regulation.⁸⁰⁴

796 *Firearms Act 1973 (WA)*, s 19(2)(c). However this will not be an offence if it is a disposal of ammunition under section 30(2) or an exemption in section 8 applies. For instance, section 8(1)(m) allows for a person (no age stipulated) to use a firearm belonging to another licensee on an approved range of an approved club or organisation, and section 8 (1)(n) permits a person under the age of 18 years to use a firearm, but not a handgun, under supervision of another licence holder.

797 *Firearms Act 1973 (WA)*, s 4.

798 'Firearm Safety and Usage: A Basic Guide to Western Australia Firearm Laws and Safe Firearm Practices for Shooters', 5. Emphasis added.

799 *Firearms Act 1996 (Vic)*, s 100A.

800 In this section, 'prescribed person' is defined to mean a police officer, a licensed dealer in firearms, a responsible officer of a recognised firearms club authorised by the Registrar to witness the transfer of possession of a firearm under the relevant division of the Act, or a Public Service employee authorised by the Registrar to witness the transfer of possession of a firearm under the relevant division of the Act; see *Firearms Act 1977 (SA)*, s 15B(14)(a)-(d). The obligations of prescribed persons are set out in section 15C.

801 *Firearms Act 1977 (SA)*, ss 15B(1)(a) and 15(9)(a)(i) and (ii) and (b).

802 *Firearms Act 1977 (SA)*, s 15B(5a).

803 *Firearms Act 1977 (SA)*, s 15B(1)(b).

804 *Firearms Act 1977 (SA)*, s 15B(1)(g).

In South Australia it is possible to lend a Class A, B or H firearm for ten days on the basis of an oral agreement,⁸⁰⁵ and for 28 days on the basis of a written agreement,⁸⁰⁶ and these agreements are subject to additional conditions.⁸⁰⁷

- In Queensland, a person may acquire a weapon on a temporary basis for not more than three months without giving consideration for the acquisition or for the weapon.⁸⁰⁸
- In the Australian Capital Territory, a person can lend a firearm to another licensee during a shooting or paintball competition provided that the borrower is licensed to use a firearm of the same kind as the firearm lent, the lender is a licensee, and the lender is present while the person to whom the firearm is lent has possession of the firearm.⁸⁰⁹

Such arrangements are, on the terms of the *Firearms Act*, not possible in Western Australia, and firearms owners submit that it would be appropriate to amend the Act to allow for the temporary loan of firearms.⁸¹⁰

Western Australia Police considers that the present system is preferable as it maintains accountability – each individual licensee is held accountable for the specific firearm or firearms that he or she possesses. It advises that the basic principles of the *Firearms Act* are ‘accountability and responsibility’ and concludes that the ‘notion that licence holders should be able to use, possess or carry another person’s firearm without a supporting legislative authority is inconsistent with these principles’.⁸¹¹ It also advises that there are ‘safety issues for law enforcement and the community in not knowing who has firearms and what firearms they have in their possession’ and that this is ‘relevant in general policing, especially when responding to domestic violence’.⁸¹² Western Australia Police notes further that two persons can co-licence a firearm but that this is done formally under the *Firearms Act*, and emphasises that ‘this is about accountability, responsibility and community safety’.⁸¹³

A different view is taken within the broader firearms community. One stakeholder observed that the terms of the *Firearms Act* make it ‘extremely difficult for other licensed firearm owners to use each other’s firearms’ and concludes that there is ‘no sound basis for such restrictive regulation’, arguing that the existing system ‘denies firearms owners the ability

to trial different firearms before purchasing and, perhaps more critically, severely hinders the ability of organisations ... to deliver effective firearm safety training to people who are new to the shooting sports’.⁸¹⁴

The Commission appreciates the perspective of Western Australia Police that accountability must be maintained. However, given the views expressed by firearms owners, and the ability to lend firearms in other Australian jurisdictions, the Commission considers that the question of lending firearms merits exploration. Western Australia Police has suggested that to allow lending of firearms ‘could result in unsuitable (not fit and proper) persons having access to firearms and it would defeat the purpose of licensing’.⁸¹⁵ The Commission invites submissions on the proposal below, noting that it only relates to lending between persons who hold licences under the *Firearms Act* and have therefore been found to be fit and proper for the purposes of the Act. The proposal is also expressed to be limited to persons who are both licensed for the same category of firearm, so that, for instance, a person who possesses a licence for a Category B firearm only could not then borrow another person’s Category C firearm.

Proposal 18:

- that the *Firearms Act 1973 (WA)* be amended to facilitate lending arrangements between licensed firearms owners, provided that the borrower is licensed to possess a firearm of the same category as the firearm being lent.

Question 20:

If you agree with the above proposal, in what circumstances, and subject to what restrictions, should lending be permitted? In particular:

- how long should a person be able to borrow a firearm for; and
- should there be a requirement to have an approved person witness the loan agreement, and/or to inform Western Australia Police of the loan?

805 *Firearms Act 1977 (SA)*, s 15B(8).

806 *Firearms Regulations 2008 (SA)*, r 9A(1) and (2)(a) and (b).

807 A person must not transfer possession of a Class A, B or H firearm pursuant to an agreement unless immediately before doing so he or she has inspected the firearm licence held by the proposed borrower and is satisfied that the borrower is authorised to possess the firearm and use it for the agreed purpose or purposes, and unless he or she believes on reasonable grounds that the borrower will not use the firearm for any other purpose; see *Firearms Act 1977 (SA)*, s 15B(6)(a) and (b). In addition, a person to whom possession of a firearm is transferred and who is not the owner of the firearm commits an offence if he or she then gives up possession of the firearm to any other person except the owner of the firearm, unless authorised by the *Firearms Act 1977 (SA)* to do so; see *Firearms Act 1977 (SA)*, s 15B(12).

808 *Weapons Act 1990 (Qld)*, s 35(6).

809 *Firearms Act 1996 (ACT)*, s 14(1)(a)-(d).

810 Submission from the Hon Rick Mazza MLC, 4 December 2014, 2.

811 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 8.

812 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 9.

813 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 23.

814 Submission from Mr Jeff Stuart, President, the Australian Deer Association, 31 January 2015, 2.

815 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 23.

10.3 Licence terms and renewals

The 1996 National Firearms Agreement included agreement that, as a ‘basic licence requirement’, a licence be issued for a period of no more than five years.⁸¹⁶ In Western Australia:

- an Ammunition Collector’s Licence is valid for a period of five years from the day on which it was issued or last renewed;⁸¹⁷
- a Firearm Collector’s Licence is valid for a period of three years from the day on which it was issued or last renewed;⁸¹⁸ and

- all other licences under the *Firearms Act* are valid for a period of 12 months from the day on which they were issued or last renewed.⁸¹⁹

It has been suggested that the different duration periods for different categories of licences may cause confusion, particularly if a single individual holds more than one type of licence (someone may, for instance, collect firearms but also be a recreational shooter).⁸²⁰ Some stakeholders also submit that the licence terms themselves should be longer; a period of five years has been suggested.⁸²¹

Other Australian jurisdictions have considerably longer licence terms than Western Australia:

Jurisdiction	Licence terms for individual firearm licences
Queensland	A licence remains in force for up to ten years if the licence is for a Category A or B weapon, and up to five years for any other weapon. ⁸²²
Northern Territory	A shooter’s licence that authorises the possession or use of Category A or B firearms remains in force for five years. For Category C firearms this term is three years; for Category D firearms it is a year or a shorter period as determined by the Commissioner, and for Category H firearms the term is one year. ⁸²³
South Australia	Licences that authorise possession or use of Class A, B or C firearms remain in force for five years. Licences that authorise possession or use of prescribed firearms or Class D or H firearms remain in force for a term not exceeding one year. ⁸²⁴
Victoria	A licence remains in force for five years, with the exception of longarm licences for a Category C, D or E longarm or a junior licence, all of which remain in force for three years (or in the case of the junior licence, until the holder turns 18). ⁸²⁵
Tasmania	A Category A, B or H firearms licence, and a Category C firearms licence granted to a person who is a primary producer, remain in force for the period chosen by the licensee – either three or five years. A Category C firearm licence granted to a person employed or engaged in primary production remains in force for a period of 12 months from the date of its issue, as does a Category D firearms licence. ⁸²⁶
Australian Capital Territory	An adult firearms licence remains in force for five years. ⁸²⁷ However Category D licences last until the end date decided by the Registrar (which cannot be more than 12 months after the day the licence begins), ⁸²⁸ and any adult firearms licence (other than a Category D licence) where the genuine reason for possessing or using the firearm is vertebrate pest control, business or employment, occupational requirements relating to rural purposes, or animal welfare, may remain in force for two years. ⁸²⁹
New South Wales	The standard duration of a licence is five years. ⁸³⁰ There are exceptions: a Category D licence issued to a person for the genuine reason of vertebrate pest animal control continues in force for such period as is specified in the licence (which cannot be longer than 12 months); ⁸³¹ provisional pistol (business/employment) licences and probationary pistol licences remain in force for 12 months; ⁸³² and when making an application for a Category A, B, C, D or H licence (other than a Category D licence issued for the genuine reason of vertebrate pest animal control), a provisional pistol (business/employment) licence or a probationary pistol licence) or for a firearms collector licence that is part of a composite licence, ⁸³³ a person may apply for a licence that will be in force for a period of two years only. ⁸³⁴

816 Australasian Police Ministers’ Council, Special Firearms Meeting, 10 May 1996, Resolutions, 6, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

817 *Firearms Act 1973* (WA), s 9A(2).

818 *Firearms Act 1973* (WA), s 9A(2a). However, if the day when the Firearm Collector’s Licence was issued or last renewed was before the day on which the *Firearms Amendment Act 2004* section 12 came into operation, the licence is valid for a period of five years from the day on which it was issued or last renewed.

819 *Firearms Act 1973* (WA), s 9A(3).

820 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 2.

821 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 3.

822 *Weapons Act 1990* s 20(1)(a) and (b) (excludes replacement licences). The licence terms were extended by the *Weapons and Other Legislation Amendment Act 2012* (Qld).

823 *Firearms Act* (NT), s 14(1)(a)(i–iv).

824 *Firearms Act 1977* (SA), s 19(1)(b) and (a).

825 *Firearms Act 1996* (Vic), s 39(1), (2) and (3).

826 *Firearms Act 1996* (Tas) s 49; *Firearms Regulations 2006* (Tas) r 11(1–4).

827 *Firearms Act 1996* (ACT), s 78(1)(a).

828 *Firearms Act 1996* (ACT), s 78(1)(c) and (2).

829 *Firearms Regulation 2008* (ACT), r 19(1) and (2).

830 *Firearms Act 1996* (NSW), s 21(1).

831 *Firearms Act 1996* (NSW), s 21(2).

832 *Firearms Act 1996* (NSW), s 21(3)(a) and (b).

833 See *Firearms Act 1996* (NSW), s 99(3).

834 *Firearms Regulation 2006* (NSW), cl 8(1) and (2). Clause 8(3) provides that this clause does not apply in relation to an application for a subsequent licence to which clause 8A applies. Clause 8A applies to the term of subsequent licences that are renewals of Category A and B licences that expire in 2008.

It is clear that, at 12 months, licence terms in Western Australia are relatively short. Also, unlike other jurisdictions, Western Australia makes no distinction between different categories of firearms possessed under the licences.

The issue of licence duration raises the question of what is achieved by the need to renew licences. There is an inherent risk in very lengthy licence terms: a licensee may, for example, change addresses or move away during the term of a licence, thus making it difficult for police to locate the licensee or his or her firearms. In addition, the 'genuine reason' a person had to own the firearm or firearms initially may change during this period; for instance, the licensee may cease to require a firearm for his or her occupation, yet retain a firearm or firearms. However, it is not clear that the current system adequately addresses the risk presented by lengthy licence terms. The Commission understands that in the majority of cases, a renewal simply involves paying a fee, although the *Firearms Regulations* provides that licences are not renewable as of right⁸³⁵ and that the Police Commissioner may treat an application for renewal as an application for the grant of a licence and, in particular, may require the applicant to produce a current firearm serviceability certificate for the firearm.⁸³⁶

Given that renewing a licence generally involves the simple payment of a fee, it does not appear that renewal involves a re-examination of such matters as the licence holder's genuine reason for possessing and/or using a firearm or firearms, or the licence holder's credentials as a fit and proper person. Indeed, as discussed at paragraph 8.2, whether a person remains fit and proper is only assessed when a person seeks a licence in respect of an additional firearm, rather than being checked at regular intervals, and the Discussion Paper asks whether this is appropriate. It is unclear, in short, what the advantage is of having relatively short licence periods from the point of view of enforcing the requirements of the *Firearms Act*.

Relevantly, the 2008 Police Review recommended that firearm licence holders 'requalify' every five years to confirm their genuine reason and genuine need for using a firearm.⁸³⁷ The review stated:

[i]n practical terms, once a person obtains a firearm licence they can continue to hold that licence even though their reasons for obtaining a licence in the first instance may no longer

apply. In order to ensure that the holder of a firearm licence continues to have a genuine reason it is proposed that every five years the licence holder should be asked to requalify. In addition to ensuring continuation of the reason for owning a firearm this provision will also result in firearms being surrendered by those persons who no longer have a reason to continue holding a licence; and, more importantly, it will help to create an audit of the firearms held by a person every five years, thus ensuring the integrity and accuracy of the firearms register. It is anticipated that re-qualification will take the form of a questionnaire or declaration. Implementation will need to occur over a number of years to spread the workload and ensure a smooth transition. Licences will continue to be valid for 12 months, however, every five years the licensee should be requested to revalidate their genuine reason and, where applicable, their genuine need for using a firearm.⁸³⁸

This proposal met with opposition from stakeholders; 88% of those who responded to the discussion paper disagreed with this suggestion.⁸³⁹ This recommendation has not been implemented.

The Commission appreciates that a requirement to 're-confirm' a licensee's genuine reason imposes an administrative burden on individual licensees. However, it may be that this burden is alleviated if licensees are freed from the current necessity of renewing licences every twelve months. Equally, if there are concerns about increasing the term of a firearms licence, these could be addressed by also requiring that a licence holder must re-supply information as to his or her genuine reason and genuine need (where relevant) on a regular basis.

A related issue that has been raised by the firearms community concerns the inconvenience to licence holders who hold multiple licences of having to pay renewal notices at multiple different times. The Commission considers that it would be highly desirable if the Act and supporting systems were amended to facilitate the alignment of periods of licences where one person holds multiple licences.

835 *Firearms Regulations 1974* (WA), r 3B(3). Similarly, section 9A(4) of the *Firearms Act 1973* (WA) provides that 'The Commissioner may, on payment of the prescribed fee, renew a licence from time to time for further periods on application made within one month before, or within 12 months after, its expiry' (emphasis added).

836 *Firearms Regulations 1974* (WA), r 3B(4).

837 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 23.

838 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 23.

839 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 40.

Proposal 19:

that the *Firearms Act 1973* (WA) be amended to provide that:

- the term of licences which are currently valid for only one year be increased to five years;
- holders of licences must re-confirm their genuine reason and genuine need (where relevant) at least upon renewal of a licence; and
- the terms of licences may be aligned where a licence holder applies for an additional licence and pays any adjusted licensing fee.

Concern has also been expressed that there is no obligation on Western Australia Police to send a reminder notice to a person whose licence is about to expire. The *Firearms Act* provides that where a person has been the holder of a Firearm Licence, Firearm Collector's Licence, or Ammunition Collector's Licence and has failed to renew the licence after a period of three months following the expiry of his or her licence, the Police Commissioner 'may by notice in the prescribed form' notify the person that an allegation can be made that he or she has contravened section 19(1) of the Act and that he or she may, if he or she does not wish to be prosecuted for the alleged offence in a court, pay a prescribed amount by way of a penalty and obtain the renewal of the licence.⁸⁴⁰ It has been suggested that the Act should stipulate that the Police Commissioner must send out a licence renewal notice.⁸⁴¹

In addition, the Act does not currently provide that a renewal payment that is subsequently dishonoured by the bank results in a failure to renew and is therefore an expired licence. The Commission understands that, currently, in these situations the licence remains on foot but Western Australia Police then have to seek payment from the licensee. It appears logical that, if the payment has not in fact been made, the licence should not be renewed.

Proposal 20:

- that Western Australia Police be required to send reminder notices regarding licence renewal; and
- the *Firearms Regulations 1974* (WA) be amended to provide that a renewal payment which is dishonoured by the relevant bank results in a licence being deemed expired.

10.4 Serviceability certificates

The *Firearms Regulations* provides that licence applications must be accompanied by firearm serviceability certificates.⁸⁴² Further, the Police Commissioner may treat an application for the renewal of a licence as an application for the grant of a licence and may require the applicant to produce a current firearm serviceability certificate for the firearm.⁸⁴³ Certificates can be provided by prescribed persons and remain current for three months after issue.⁸⁴⁴

There have been some concerns raised over requirements surrounding serviceability certificates. For instance, the Commission understands that a serviceability certificate is currently required for each firearm licensed by a collector, despite that fact that as a condition of all collectors' licences, such firearms cannot be used.⁸⁴⁵ It seems anomalous to require that a firearm that cannot be used must be serviceable. Conversely, it has been queried why a serviceability certificate is also required in respect of brand new firearms;⁸⁴⁶ it may be to ensure that new firearms are not faulty or defective.

It has also been suggested that the need to obtain serviceability certificates 'adds an unnecessary layer of compliance cost for both the community and the government',⁸⁴⁷ and it has been noted that a certificate records the manufacturing details of the firearm (such as make, serial number and calibre) and its licensing details,⁸⁴⁸ which are all details that must be provided by the applicant when applying to licence the firearm in any event. The application form in respect of a Firearm Licence requires applicants to provide the firearm identification number, firearm category, firearm type, action type, loading method, manufacturer and model, serial numbers, calibre, ammunition type, barrel configuration, magazine capacity and barrel length.⁸⁴⁹

840 *Firearms Act 1973* (WA), s 19A(2).

841 Submission from Roy Alexander & Sons, provided 8 September 2014, 2.

842 *Firearms Regulations 1974* (WA), r 7(3)(a).

843 *Firearms Regulations 1974* (WA), r 3B(4).

844 *Firearms Regulations 1974* (WA), r 25A(1) and (3).

845 Submission from Hon Rick Mazza MLC, 4 December 2014, 3.

846 Submission from Hon Rick Mazza MLC, 4 December 2014, 3.

847 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 4.

848 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 5.

849 *Firearms Regulations 1974* (WA), Schedule 1, Form 9.

Western Australia Police has advised that, prior to the transition of the application system to Australia Post, all firearms for licensing were presented at a police station for examination and testing prior to licensing and that, subsequently, arrangements were made for dealers or club committee members to provide a serviceability certificate 'to ensure the firearm is in good working order prior to licensing'. Western Australia Police concludes that it is important that the certificates be maintained in the interest of firearm safety.⁸⁵⁰

Question 21:

- Is the serviceability certificate requirement necessary?

10.5 Extracts of Licence

As with serviceability certificates, questions have been raised about the purpose of the 'Extract of Licence' documents provided for in the *Firearms Act*. The Act provides that the Police Commissioner may cause an Extract of Licence to be issued to identify a person who is either:

- exempted by section 8 from the Act's licensing requirements;
- the holder of a licence, permit or approval under the Act; or
- an employee authorised (by an organisation that holds a Corporate Licence) to possess, carry or use a firearm or ammunition.⁸⁵¹

Where a person who has been issued with an Extract of Licence has physical possession of a firearm or ammunition (other than by way of storage), he or she is required to keep the Extract of Licence in his or her actual possession at all times unless it is impractical to do so and must immediately produce it for inspection by a police officer.⁸⁵² Extracts of licence must bear a photograph of the licensee.⁸⁵³

There has been some suggestion that the Extract of Licence is of limited use as it only lists the individual who is licensed, and does not list the firearms in respect of which that individual is licensed.⁸⁵⁴ Firearm owners advised that this means, for instance, that the Extract of Licence cannot be used when purchasing ammunition. Instead, the paper copy of the licence

is required.⁸⁵⁵ Some stakeholders have expressed doubts as to whether Extracts of Licence are ever used in practice, and have accordingly queried their purpose.⁸⁵⁶

A preference has been expressed among firearm owners to simplify the documents that evidence their possession of a licence so that they simply have to carry one conveniently sized laminated card.⁸⁵⁷ It has been suggested that '[g]iven that a firearm licence number is the same as for a Western Australian driver's licence number, the opportunity should be taken to combine the two but at the very least to make the paper licence redundant'.⁸⁵⁸ In the view of some firearm owners, Western Australia should ideally move to a system of licensing the person only rather than also licensing each individual firearm; in that case, the laminated card carried by a licensee should simply list the category or categories of firearms in respect of which he or she is licensed.⁸⁵⁹ This would represent a substantial change to the existing licensing system and, in the absence of such a change, licences would still need to list all firearms on them – which could prove impossible in the case of small cards the size of a driver's licence where licensees are licensed for multiple firearms.

Western Australia Police has advised that current firearm licences are issued on security paper and cannot be copied without being marked to that effect, and that the paper form of licences has been retained due to the existence of some licence holders who have multiple firearms which cannot all be endorsed on a card. Western Australia Police has indicated that it would 'welcome the opportunity to move to a smart-card format' whereby, as with many new debit and credit cards, a 'chip' built into the card would contain all firearm licence data which a dealer could run through a card reader. However, as not all firearm dealers possess computers suitable to operate this kind of system, it has not been pursued.⁸⁶⁰

Western Australia Police also advised that it would support the introduction of legislation requiring licensed dealers, manufacturers and repairers to operate via computer as this would allow the progression to a 'smart card' as well as allowing dealers access to the new Licensing and Registration system. Such access would allow dealers to upload their returns into the system each month (or daily if preferred), thereby assisting their own clients with the application process.⁸⁶¹

850 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 29.

851 *Firearms Act 1973* (WA), s 22A(1).

852 *Firearms Act 1973* (WA), s 22A(2).

853 *Firearms Regulations 1974* (WA), r 7A(1).

854 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

855 Submission from Animal Pest Management Services, 4.

856 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

857 Meeting with the Hon Rick Mazza MLC, 2 December 2014.

858 Submission from Hon Rick Mazza MLC, 4 December 2014, 3.

859 Meeting with Hon Rick Mazza MLC, 2 December 2014.

860 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 28.

861 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 28.

The requirement proposed by Western Australia Police would appear to be beneficial as it would improve the efficiency of the existing system and enable the transition to a smaller, more manageable licence in the form of a 'smart card'. However, such a requirement may disadvantage dealers who do not use computers in the course of their business and would therefore face financial outlay to acquire one. The Commission invites submissions on this requirement.

It has also been noted that persons who operate under a Corporate Licence instead of holding an individual licence are *not* issued with Extracts of Licence but instead have to carry a piece of paper, which is more cumbersome and which is apparently not accepted as proof of authority to possess a firearm (for instance, when travelling by aircraft).⁸⁶² It has been proposed that it would be more convenient to issue all licensees (and employees operating under a Corporate Licence) with an authority the size of a business card, capable of being laminated, which states that it is a Western Australia Police requirement and bears a Western Australia Police logo.⁸⁶³ Issues regarding Corporate Licences are discussed at paragraph 12.4.

Proposal 21:

- that a 'smart card' licence system be developed by Western Australia Police;
- a requirement be introduced that licensed dealers, manufacturers and repairers provide and maintain suitable computer systems to accommodate the introduction of a 'smart card' licence;
- that the current paper licence and extract of licence be replaced by a single 'smart card' licence; and
- persons who may possess, carry and use firearms under a Corporate Licence be issued with a 'smart card' (or, failing the introduction of a smart card system, with a card similar to an Extract of Licence), which sets out the basis of their authority to possess, carry and use firearms.

10.6 Training

As part of the 1996 National Firearms Agreement, all jurisdictions resolved to require the completion of an accredited course in safety training for firearms for all first-time licence applicants. It was further resolved that the course should be:

- comprehensive and standardised across Australia for all licence categories;
- subject to accreditation of the course syllabus by an appropriate authority and a system of accredited instructors to bring prospective licensees to the required standard with a focus on firearms law, firearms safety and firearms competency;
- outlined in a Firearms Safety Code that emphasises both safety and storage issues and is distributed to all new licence applicants prior to attending the course of instruction; and
- monitored as to content of courses and the skills of instructors by firearms regulatory authorities.

It was also resolved that a specialised course should be established for training of persons employed in the security industry.⁸⁶⁴

The *Firearms Act* provides that the Regulations may require that, before a licence is issued, the applicant must have successfully completed a course of training.⁸⁶⁵ The *Firearms Regulations* provides, accordingly, for the issue of Firearms Awareness Certificates.⁸⁶⁶ The Commission understands that the current training requirements do not involve any practical instruction. Instead, applicants must pass a written test. In addition, an approval, permit or licence for a Category H firearm may only be granted to a person who requires the firearm for use in training for and participating in a club, interclub, state, national, or international shooting discipline if the person has satisfactorily completed an approved firearm safety training course while being a member of the shooting club.⁸⁶⁷

The Public Health Association of Australia (WA Branch) has expressed concern that '[t]here are no training prerequisites currently in place in Western Australia other than first-time applicants needing to obtain a Firearms Awareness Certificate (which is issued after successful completion of an assessment obtained from authorised persons at approved Clubs/Associations/Dealers)' and has suggested that there is a need for 'tighter regulation in this area'.⁸⁶⁸

862 Submission from Animal Pest Management Services, 4.

863 Submission from Animal Pest Management Services, 4.

864 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 9, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

865 *Firearms Act 1973* (WA), s 10A.

866 *Firearms Regulations 1974* (WA), Schedule One, Form Two.

867 *Firearms Regulations 1974* (WA), r 12(2)(c).

868 Submission from the Public Health Association of Australia (WA Branch), 8 October 2014, 2-3.

Other stakeholders have suggested that some of the existing shooting clubs run comprehensive training programs, and that it would be appropriate and useful to require first-time applicants for firearms licences to undertake practical training via such programs.⁸⁶⁹

It would be possible to set more intensive training than is currently required in Western Australia. Notably, in South Australia, the regulations provide that an applicant for a firearms licence or a dealer's licence, or for the addition of classes of firearms to which a licence relates or endorsement of a further purpose or purposes on the licence, may be required to complete one or more of:

- a specified course in the safe handling, carriage and use of firearms;⁸⁷⁰
- a written examination in the safe handling, carriage and use of firearms;⁸⁷¹ and
- a practical examination in the safe handling, carriage and use of firearms.⁸⁷²

The regulations further provide that these requirements cannot be applied to applications for the renewal of a licence unless a period of one year or more has elapsed since the expiry of the licence; or the renewed licence will authorise the possession and use of additional classes of firearm or will authorise the possession and use of firearms for additional purposes; or the licence is endorsed for use in the course of carrying on the business of guarding property or use in guarding property in the course of employment by a person who carries on that business.⁸⁷³

The Commission is not aware of any evidence that the existing training requirement is deficient, but considers that it is worth exploring the possibility of a change to incorporate practical instruction.

Proposal 22:

- that the training requirements in the *Firearms Regulations 1974* (WA) be amended to include practical instruction in handling and shooting firearms for first-time applications.

10.7 Recognition of interstate licences

Where a person relocates to Western Australia permanently, and is in possession of firearms licensed in another Australian jurisdiction, they must apply for a Western Australian licence in respect of those firearms. An application for such a licence is treated exactly the same as an application for an original licence. Western Australia Police has advised that if such a person presented at a police station with their firearms, these would be seized; however the person could be issued with a permit to convey the firearms to a dealer for safekeeping pending the assessment of their licence application.⁸⁷⁴

The *Firearms Act* does however provide for temporary permits for purposes including transport of firearms, allowing for persons from interstate to bring firearms into Western Australia to participate in shooting events, or for any other cases where the Police Commissioner considers that it is not in the public interest to require a person to apply for a licence.⁸⁷⁵ Section 17A of the *Firearms Act* provides that the Commissioner may grant interstate group permits to a bona fide shooting club or similar body or sporting organisation conducting occasional shooting contests or activities following the making of a written application.⁸⁷⁶ Interstate group permits cannot be granted for any longer than 28 days.⁸⁷⁷

The process differs in other jurisdictions. For instance, the *Firearms Act 1996* (Vic) provides that a person who is the holder of a licence issued in another state or territory (in which he or she ordinarily resides) which authorises the possession, carriage or use of a Category A or B longarm or a handgun for the purposes of sport or target shooting is deemed to be the holder of a corresponding licence under the Victorian Act for the purposes of taking part in a shooting competition conducted by an approved club or organisation.⁸⁷⁸

The 2008 Police Review noted that Western Australia is currently the only state that does not recognise interstate licences.⁸⁷⁹ However, the review concluded that the existing legislation was adequate and provided appropriate controls.⁸⁸⁰

Some firearms owners have expressed strong disagreement with this conclusion, largely on the basis that the need to apply for a temporary permit is an inconvenience to shooters from other Australian

869 Meeting with Hon Rick Mazza MLC, 18 June 2015.

870 *Firearms Regulations 2008* (SA), r 19(1)(a).

871 *Firearms Regulations 2008* (SA), r 19(1)(b).

872 *Firearms Regulations 2008* (SA), r 19(1)(c).

873 *Firearms Regulations 2008* (SA), r 19(2)(a), (b) and (c).

874 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 21.

875 See *Firearms Act 1973* (WA), sections 17 and 17A.

876 *Firearms Act 1973* (WA), s 17A(1). The Commissioner must be satisfied that the members of the club, body or organisation seek to participate in a shooting contest or sporting activity in Western Australia and that the members of the club, body or organisation are of good repute.

877 *Firearms Act 1973* (WA), s 17A(3).

878 *Firearms Act 1996* (Vic), s 185(1).

879 See *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 18 and *Firearms Act 1973* (WA), ss 17 and 17A.

880 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 18.

jurisdictions. For instance, the Sporting Shooters Association (WA) advises that inconsistency of laws between jurisdictions 'is often a headline issue when reform is discussed by our members' and notes that 'there are significant waiting periods for experienced sporting shooters and other firearms owners coming to WA from interstate who are subjected to new licence application processes and unnecessary bureaucratic delays'.⁸⁸¹ It has also been suggested that this state of affairs provides a disincentive to hold shooting competition events in Western Australia, thereby denying the state tourism.⁸⁸²

Some stakeholders emphasise the economic contribution of recreational shooting more generally, and contend that the *Firearms Act* 'cannot be considered without giving careful consideration to the impact that any proposed changes might have on Western Australia economically' as 'it is clear that firearms ownership and use has a significant and positive impact on the Western Australian economy'.⁸⁸³ One stakeholder cited a 2014 paper published by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) that analysed 7,202 survey responses from recreational hunters and concluded that the respondents spent, on average, \$1,835 directly on hunting per person per annum, and \$2,168 indirectly on hunting per person per annum.⁸⁸⁴ The paper concluded that '[c]onsistent with many OECD countries, the Australian recreational hunting community is large, active and willing to spend large amounts of money associated with hunting'.⁸⁸⁵

It should also be noted that the 1996 National Firearms Agreement included agreement that:

- within a regime of uniform firearms legislation, all states and territories recognise, for visiting gun owners, licences issued in other Australian jurisdictions in order to facilitate the lawful pursuit of sporting and other purposes; and
- jurisdictions recognise, for a period of no longer than three months, a Category A or B firearm licence issued in another jurisdiction to an individual who moves permanently to a new jurisdiction and, for such an individual with a licence of Categories C, D and H, a period of recognition will not exceed 7 days.⁸⁸⁶

However, it is also relevant that section 17A of the *Firearms Act* precedes the 1996 National

Agreement,⁸⁸⁷ and that the latter may be regarded as setting a minimum standard, rather than the maximum.

Proposal 23:

- that the *Firearms Act 1973* (WA) be amended to include recognition of interstate licences where licensees visit or reside in Western Australia on a temporary basis.

Question 22:

In relation to the proposed recognition of interstate licences:

- in respect of which categories of licence and firearms;
- subject to what, if any, conditions; and
- for what period of time should recognition occur?

10.8 International permits

In the 2008 Police Review, Western Australia Police observed that currently Western Australia does not recognise international licences for any purpose. The report of the review noted that the licences of international shooters coming into Australia for purely professional sporting purposes (such as the Olympic or Commonwealth Games) will be recognised by the Commonwealth via a permit, but the shooters will have to apply for an additional, temporary permit in order to visit Western Australia.⁸⁸⁸

The report noted further that temporary permits were granted on strict conditions and for only three months.⁸⁸⁹ The report noted that at an inter-jurisdictional level it had been suggested that a nationally consistent framework for issuing international permits be developed, so that international shooters could 'obtain a permit in one jurisdiction that would then be valid and recognised by the other States and Territories, instead of having to apply for additional permits for each individual State or Territory they may subsequently visit' and that the international permit 'would apply strictly for shooters who are competing in professional events' and would not be granted for recreational and

881 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 3.

882 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014, Submission from Hon Rick Mazza MLC, 4 December 2014, 1. See also R. Mazza MLC, Hansard, Legislative Council, 21 October 2014, 7522.

883 Submission from Mr Jeff Stuart, President, the Australian Deer Association, 31 January 2015, 1, 2.

884 Finch N, Murray P, Hoy J and Baxter G, 'Expenditure and motivation of Australian recreational hunters' 41 (2014) *Wildlife Research*, 76, cited in Submission from Mr Jeff Stuart, President, the Australian Deer Association, 31 January 2015, 1.

885 Finch N, Murray P, Hoy J and Baxter G, 'Expenditure and motivation of Australian recreational hunters' 41 (2014) *Wildlife Research*, 82.

886 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 6, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

887 Section 17A was inserted into the *Firearms Act 1973* (WA) by section 2 of the *Firearms Act Amendment Act 1976* (WA).

888 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 17.

889 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 17-18.

hunting purposes.⁸⁹⁰ The report recommended that Western Australia adopt the principle of a nationally recognised temporary permit to enable international visitors to participate in firearm competitions, subject to a determination on this matter by the Firearms Policy Working Group.⁸⁹¹

Proposal 24:

- that Western Australia contributes to the development of a nationally recognised permit for international participants in firearm competitions.

10.9 Sports shooting

Sports shooters face other difficulties, both in Western Australia and when travelling overseas.

.45 calibre handguns

The *Firearms Regulations* provide that .45 calibre handguns can only be licensed for Single Action or Metallic Silhouette competitions.⁸⁹² It is only in these two types of competitions that a handgun with a calibre of between .38 and .45 may be used (unless the firearm is a muzzle-loading handgun or a cap and ball percussion-fired handgun).⁸⁹³ Some stakeholders submit that this restriction is overly limiting, putting Australian shooters at a disadvantage in an international context, and that .45 calibre handguns should also be licensed for use in other competitions.⁸⁹⁴

This restriction is imposed by all states and territories within Australia following the 2002 National Handgun Agreement.⁸⁹⁵ Western Australia Police notes that in 2002 'the Council of Australian Governments agreed on a national approach to restrict the availability and use of handguns' and agreed that these would be 'limited to a maximum of .38 calibre except for specially accredited sporting events where handguns up to .45 calibre would be permitted'. The accredited events recognised at a national level were the Metallic Silhouette and Single-Action competitions.⁸⁹⁶

The South Australian Minister for Police has observed that the rationale behind the exemption granted for Single Action or Metallic Silhouette competitions was that these disciplines 'would cease to exist if they were

restricted to .38 calibre handguns'. The Minister noted further that at the time of this decision the view was taken that other disciplines (including International Practical Shooting Confederation matches) could continue with the restrictions in place, and that to approve any other disciplines would undermine the Council of Australian Governments' intention to restrict sporting shooters to handguns of .38 calibre and thus to remove high-powered handguns from the community.⁸⁹⁷

The Queensland Police Service has also advised that it 'does not support any changes to the *Weapons Act 1990* that would expand the use of handguns in calibres above .38 for uses other than Metallic Silhouette shooting and Single Action shooting as already approved'.⁸⁹⁸

However, the Northern Territory Police Force considers that the 'restriction on the use of handgun calibres is limiting and places Australian shooters at a disadvantage from a competitive standpoint'. The Police Force noted further that the restriction on calibre 'does not consider the performance of a myriad of proprietary calibres below .45 which have superior ballistic performance to those that are prohibited from use'.⁸⁹⁹ In addition, recent amendments to the Tasmanian legislation will allow the use of .46 calibre ammunition for prescribed events.⁹⁰⁰ The Commission is advised that in most cases, the ammunition sought to be used was only .01 - .02 above the .45 calibre limit.⁹⁰¹

Western Australia Police has advised that it 'would have no objection to other forms of competition (not an increase in firearm calibre) being adopted should this be a matter for further consideration. Members would already have the firearm and therefore there is no increase in firearm numbers'. However, Western Australia Police noted that 'because this is a matter subject to national agreement, any changes to expand shooting competitions should be ratified at Ministerial Council level following consultation with all jurisdictions' and that 'whether WA would sponsor such a proposal will be a matter for Government'.⁹⁰²

The Commission does not propose to make any recommendations regarding restrictions on .45 calibre handguns.

890 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 18.

891 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 18.

892 *Firearms Regulations 1974* (WA) Schedule 3, Division 6, cl. 12(4).

893 *Firearms Regulations 1974* (WA) Schedule 3, Division 6, cl. 12(4).

894 Submission from the Sporting Shooters Association of Western Australia Inc (SSAWA), provided 8 September 2014, 5.

895 See Davies M and Mouzos J, *Firearms Legislative Review*, Australian Institute of Criminology Special Report, June 2007, 11-12, accessed at http://www.aic.gov.au/media_library/publications/special/003/firearms-legislative-review.pdf.

896 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 19.

897 Correspondence from the Hon Tony Piccolo MP, Minister for Police, South Australia, 5 March 2015, 3.

898 Correspondence from Craig Rolls, Inspector, Weapons Licensing, Queensland Police Service, received 16 January 2015, 4.

899 Correspondence from R. Kershaw, Acting Commissioner of Police, Northern Territory Police, 18 February 2015, 6.

900 *Firearms (Miscellaneous Amendments) Act 2015* (Tas), s 11.

901 Correspondence from Hon MT Hidding MP, Tasmanian Minister for Police, 16 June 2015, 4.

902 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 19.

Number of firearms

The *Firearms Regulations* provides that a recreational shooter may be granted an approval, permit or licence for a Category H firearm (a handgun) only if he or she has been a member of an approved shooting club for six months and has satisfactorily completed an approved firearm safety training course while being a member.⁹⁰³ Further, if the person has been a member of the approved shooting club for less than twelve months, the approval, permit or licence cannot apply to more than two handguns. It must only apply to:

- one .177 air pistol and one .22 calibre handgun;⁹⁰⁴ or
- one .177 air pistol and one centre fire handgun.⁹⁰⁵

After twelve months have elapsed, applications relating to additional Category H firearms are assessed on the basis of the applicant's genuine reason and genuine need, and according to the restrictions set out in the *Firearms Regulations*. Restrictions on Category H firearms are discussed elsewhere in this paper at paragraph 7.4.

The above requirements originate from the 2002 National Handgun Agreement,⁹⁰⁶ and some stakeholders suggest that they are overly restrictive. In particular, the Commission understands that competitors in the Single Action shooting discipline use two Single Action revolvers for their competition and that persons who have been members of an approved club for less than twelve months are therefore hampered in their ability to shoot in this discipline. It has therefore been suggested that, at the completion of a person's first six months as a member of an approved shooting club, it should be possible for the person to be granted a licence, permit or approval for two such handguns.⁹⁰⁷

Question 23:

- At the completion of a person's first six months as a member of an approved shooting club, where the person wishes to compete in the Single Action shooting discipline, should it be possible for the person to be granted a licence, permit or approval for two Single Action revolvers?

10.10 Replacement firearms

The *Firearms Act* provides that where a person loses a firearm or any ammunition, whether or not by theft, or becomes aware that the firearm has been destroyed, he or she 'is required', as soon as practicable, to report the loss or destruction to the Police Commissioner.⁹⁰⁸ Similarly, where a person disposes of his or her firearm outside of Western Australia, he or she 'is required', as soon as practicable, to provide the Commissioner with information including the details of the firearm, the manner and date of its disposal, the birth date of any person taking possession of the firearm, and the number, expiry date and nature of any licence, permit or other authorisation to possess a firearm held by that person.⁹⁰⁹ The penalty for failure to comply with these requirements is a \$2,000 fine.

No penalty is provided with respect to the first requirement, although the Act elsewhere provides that a person who commits any breach of the Act for which no penalty is specifically provided also commits an offence, for which the penalty is a \$2,000 fine.⁹¹⁰ The language used in these sections—'is required to'—is not particularly clear, and the Commission proposes below that this section be amended.

Some stakeholders have noted that the *Firearms Act* does not include any provisions relating to the replacement of stolen firearms and states that when firearms are stolen, the owner must make a fresh application for a new licence before he or she may purchase a replacement firearm.⁹¹¹ It has been contended that this requirement, which imposes costs and takes some time, further disadvantages the owner who has already been robbed of his or her firearm, and that the owner should simply be able to purchase a replacement.⁹¹²

Similar situations could also arise where a firearm in respect of which a licence has been granted, and which has duly been purchased, is revealed to be faulty. A 'Frequently Asked Questions' document on the Western Australia Police website includes a question about purchasing a firearm which is faulty and needs to be replaced; the response provided is: 'Where a firearm is found to be faulty it can be replaced but another "Additional" application will need to be submitted, which may incur further fees. It is advisable to make a notation on the application regarding the circumstances of the faulty firearm and the applicant is advised to seek civil remedy from the

903 *Firearms Regulations 1974* (WA), Schedule 3, Division 6, cl. 12(2)(a) and (c).

904 *Firearms Regulations 1974* (WA), Schedule 3, Division 6, cl. 12(2)(b)(i).

905 *Firearms Regulations 1974* (WA), Schedule 3, Division 6, cl. 12(2)(b)(ii).

906 Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 3, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

907 WA Firearms Licensing Discussion Points 22 October 2012, document provided to the Commission by the Sporting Shooters Association of Australia (WA Branch), 2.

908 *Firearms Act 1973* (WA), s 30B(1)(a) and (b).

909 *Firearms Act 1973* (WA), s 30B(1)(2)(a) and (b).

910 *Firearms Act 1973* (WA) s 23(11).

911 Submission from Roy Alexander & Sons, provided 8 September 2014, 4.

912 Submission from Roy Alexander & Sons, provided 8 September 2014, 4.

Dealer or Seller in respect to the additional noting fee or any other costs incurred'.⁹¹³

Given that in this situation the applicant has already been approved to possess the firearm and no circumstances will have changed, it seems unnecessary to require the applicant to make a fresh application.

The Commission is advised that Western Australia Police has adopted a warranty replacement policy. If a firearm is returned to a dealer for replacement within six months of purchase due to a fault, the dealer or owner can simply submit a one page form with new firearm details to Western Australia Police.⁹¹⁴ Western Australia Police advises that this policy only applies to like firearms; it would not apply if a person sought to replace a faulty firearm with a firearm of a different calibre, model or so forth. This is an administrative process rather than one that takes place under the Act or the Regulations, and there is currently no fee. Western Australia Police advises that where a firearm is sought to be replaced outside of this six-month period the formal application process is applied, with associated costs, given the system is effectively a 'user-pays' system.⁹¹⁵

It should also be noted that other Australian jurisdictions make provision for replacement firearms. The Queensland Police Service advises that where a firearm is found to be faulty during the warranty period the dealer can swap any firearm for one of the same category, action and named calibre/cartridge at any time without the owner needing to apply for a fresh permit to acquire. The change can then be reported by a Form 10 Dealer Return.⁹¹⁶ A 'Frequently Asked Questions' sheet on the website for Victoria Police advises that a new permit to acquire is not required if a firearm is being replaced under warranty, provided that the warranty claim takes place within 12 months of the original purchase, and that the firearm is exactly the same in terms of make, model, type, action and so forth.⁹¹⁷

There are also situations in which a person may wish to exchange an old firearm, which may be in need of repair, for a new firearm of the same make and model. Such situations may arise where a person is in possession of a firearm which is unsafe or unserviceable, or where he or she simply wishes to upgrade to a new firearm (albeit of the same category, calibre and so forth). For instance, a person who possesses an older firearm with a wooden stock may wish to trade the firearm for a newer model with a more durable polymer stock. Currently, a

person who wishes to do so will be required to make a fresh application, and it may be some time before a new firearm is obtained. This will cause practical difficulties where a person needs the firearm in the course of his or her employment, such as where the person is a primary producer. It has been suggested to the Commission that in such instances a person should be able to take their firearm to a dealer and make an exchange without having to make a fresh application. Such a person could then notify Western Australia Police to have this exchange reflected on police records.

The Commission considers that, given the public interest in ensuring that firearms being used are in good repair and condition, it is worth exploring the above suggestion, bearing in mind the distinction between replacement of a firearm with an identical (but newer) firearm and trading up to a firearm of a higher calibre or different class (which should properly require a new application). If replacements are to be possible, it is also worth considering what ought to be required to be done with the old firearm. Such firearms, no longer wanted for use by the licensed owner, could become part of the dealer's stock, be required to be destroyed to remove them from the market altogether, or could be rendered inoperable. The Commission seeks stakeholders' views on its proposals regarding firearm replacement below, and if there is support for these proposals, the Commission would welcome stakeholders' views on what ought to be done with old firearms that are exchanged for new.

Proposal 25:

- that a licence for a firearm should also authorise the possession of a replacement firearm that has previously been approved as being in the same category as the original firearm, if exchanged at a licenced dealer; and
- sections 30B(1) and (2) of the *Firearms Act 1973 (WA)* be amended to replace 'is required to' with 'must'.

Unserviceable firearms

The *Firearms Act* provides that with limited exceptions,⁹¹⁸ a licence or permit cannot be issued to a person in respect of any firearm which, in the Police Commissioner's opinion, is unsafe or unserviceable.⁹¹⁹

913 Frequently Asked Questions, 7, accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=NhmlmbEisI8%3d&tabid=1802>.

914 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 24.

915 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 24.

916 Correspondence from Craig Rolls, Inspector, Weapons Licensing, Queensland Police Service, received 16 January 2015, 4.

917 'Frequently Asked Questions', accessed at http://www.police.vic.gov.au/content.asp?Document_ID=34446#acquire.

918 *Firearms Act 1973 (WA)*, s 12(2), (3) and (4).

919 *Firearms Act 1973 (WA)*, s 12(1)(a) and (b).

In addition, a police officer may seize and take possession of any firearm which he or she considers to be unsafe or unserviceable, unless possession of the firearm is authorised under a Firearm Collector's Licence.⁹²⁰ A licence may also be revoked if the Commissioner is satisfied that a particular firearm is unsafe or unfit for use.⁹²¹ The Act does not make possession of an unsafe or unserviceable firearm an offence.

It has been suggested that the absence of such an offence represents a flaw in the Act. For instance, a person may attend a firearms dealer to sell a firearm or to obtain a serviceability certificate for it, and the dealer may examine the firearm and advise that it is unsafe and cannot be used. However, the licensee in possession of the relevant firearm may disregard this advice and leave with the firearm, which they intend to continue using despite it being unsafe. In such a situation, the dealer has no authority to confiscate the firearm, and is under no obligation to advise Western Australia Police that they know of an individual in possession of an unsafe or unserviceable firearm.

Proposal 26:

that the *Firearms Act 1973* (WA) be amended to:

- make it an offence to possess an unsafe or unserviceable firearm; and
- provide that a dealer or manufacturer who becomes aware that a person is in possession of an unsafe or unserviceable firearm must advise Western Australia Police within a specified period.

⁹²⁰ *Firearms Act 1973* (WA), s 24(3).

⁹²¹ *Firearms Act 1973* (WA), s 20(1)(b).

11. STORAGE OF FIREARMS AND AMMUNITION

The imposition of storage requirements relates to two major concerns – safety, including threats to safety posed by young children accessing firearms belonging to family members, and the possibility of theft.

The second concern is highly contested. Advocates of greater firearm regulation tend to emphasise the risk of theft and the resulting movement of firearms into the black market. Supporters of more relaxed regulations contend that actual rates of theft are low, that the spectre of firearm theft is used to impose further restrictions on licensed firearms owners, and that a focus on storage distracts attention and resources away from persons who may be importing or manufacturing firearms illegally. There are also some international studies that cast doubt on the effectiveness of strict storage requirements.⁹²² The recent report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, which is discussed at paragraph 16.2, observed:

The extent to which theft and illegal importation contribute to the pool of illicit firearms in Australia proved to be one of the most contentious points of this inquiry, with witnesses divided over whether the issue was one of theft from licensed individuals and firearms dealers or porous borders.⁹²³

This debate extends beyond the scope of the present review. The issue of firearm theft is discussed further in this paper in the context of Operation Unification at Chapter 15.

The 1996 National Firearms Agreement included resolutions relating to storage, including specific resolutions that:

- it should be a precondition to the issuing of a new firearms licence (and on each renewal of licence in respect of existing licence holders) that the licensing authority be satisfied as to the proposed storage and security arrangements;

- legislation should have the effect of making failure to store firearms in the manner required an offence as well as a matter that will lead to the cancellation of the licence and the confiscation of all firearms;
- measures should be indicated in legislation for the storage of firearms which are specific and clear so that firearm owners and possessors know their obligations and the following minimum basic standards should apply:
 - Licence Category A and B: storage in a locked receptacle constructed of either hard wood or steel with a thickness to ensure it is not easily penetrable. If the weight is less than 150 kilograms the receptacle shall be fixed to the floor or wall so as to prevent easy removal. The locks fitted to these receptacles shall be of sturdy construction;
 - Licence Category C, D and H: storage in a locked, steel safe with a thickness to ensure it is not easily penetrable, bolted to the structure of a building; and
 - All ammunition must be stored in locked containers separate from firearms.⁹²⁴

The 2002 National Handguns Agreement also included several resolutions relating to storage, including that jurisdictions should cancel a licence where it can be shown that the loss or theft of a firearm was due to negligence or fraud on the part of the licensee.⁹²⁵ The 2002 National Handguns Agreement also required jurisdictions to review the adequacy of their compliance audit arrangements for safe storage of firearms and consider the adequacy of their educational literature on storage to ensure that it emphasises the risk of firearms theft, the legislated requirements for safe storage, and highlights compliance monitoring activities and the jurisdictions' rigorous prosecution policy for non-compliance.⁹²⁶

The *Firearms Act*, by its strict provisions regarding access to firearms, has created particular issues around firearm storage, which are set out below.

922 Lakomaa E, 'Safe storage and thefts of firearms in Sweden: An empirical study' (2015) 12(1) *European Journal of Criminology*, 3–16.

923 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 14, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf. See also pages 14–18.

924 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 2-14, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

925 Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 4.

926 Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 4.

11.1 Storage requirements – Firearms Regulations

In Western Australia, storage requirements are set out in Schedule 4 of the *Firearms Regulations*, which sets out precise specifications for storage cabinets and containers, which must be kept locked. These requirements include, for instance, that the cabinet or container be:

- constructed of mild steel that is two millimetres thick;
- fitted with a protective structure to guard against the forcible removal of any lock; and
- securely anchored from the inside at two points on each of two separate surfaces to two immovable structural surfaces by means of two millimetres by 75 millimetres masonry fixing bolts or coach screws, as is appropriate.⁹²⁷

Failure to provide and use adequate storage facilities, or to comply with prescribed requirements, or otherwise to safeguard a firearm or ammunition from loss or improper use, is an offence which carries a penalty of \$2,000 for a first offence and, for a subsequent offence, imprisonment for 12 months or a fine of \$4,000.⁹²⁸

As noted above at paragraph 10.10, the *Firearms Act* requires people to report any loss of firearms or ammunition, whether or not by theft.⁹²⁹ Specific provision is also made regarding firearm storage in commercial settings; it is an offence for the holder of a Dealer's Licence, a Repairer's Licence, or a Manufacturer's Licence to fail to keep all firearms and ammunition in a strongroom or otherwise in safe keeping, securely fastened during any period when the premises are not open for trade.⁹³⁰ The penalty for a first offence is a fine of \$4,000; for a subsequent offence it is imprisonment for two years or a fine of \$8,000.⁹³¹

Compliance with storage requirements is an aspect of the license application process; the Police Commissioner may refuse an application if satisfied that the applicant has failed to give the Police Commissioner, following a request in writing from a member of the Western Australia Police, a statement in the prescribed form as to what the applicant has done, or intends to do, to ensure that any firearms

or ammunition in the applicant's possession are stored in accordance with the *Firearms Act*.⁹³² The Police Commissioner may also refuse an application if satisfied that the applicant has refused to permit a member of the Western Australia Police to inspect the storage facilities for any firearms or ammunition that the applicant would be entitled to possess, when requested in writing by a member of the Western Australia Police to do so.⁹³³

If a licence is ultimately granted, Western Australia Police may at any stage (including where the licensee seeks to renew the licence) again request a statement as to what the licensee has done to ensure that any firearms or ammunition in her or her possession are stored in accordance with the *Firearms Act*, and may refuse a renewal application or revoke the licence if this request is not complied with.⁹³⁴ The same powers exist in respect of requests to inspect storage facilities.⁹³⁵

The Public Health Association of Australia (WA Branch) has raised concerns about the extent to which compliance with storage requirements is monitored once a licence is granted.⁹³⁶

Western Australia Police employs both sworn and unsworn compliance officers who inspect and report on compliance to all requirements of the *Firearms Act* and *Firearms Regulations*, which include storage of firearms and ammunition.⁹³⁷ In August 2014, it was reported that during a two-week operation, Western Australia Police had seized 150 illegally stored firearms within the Great Southern region.⁹³⁸ It was further reported that the catalyst for this operation was the theft of over 70 guns from rural properties during the previous 14 months. A police officer was quoted explaining that farms were a target for thieves as 'firearms are a tool of trade so if someone's looking for a firearm, then it's an obvious place to come to'.⁹³⁹

11.2 Storage requirements – category and number of firearms

The storage requirements in the *Firearms Regulations* apply to all categories of firearms provided for in the *Firearms Act*; there is no lesser standard for Categories A and B as contemplated by the 1996 National Firearms Agreement. Some other jurisdictions have not followed the approach taken

927 *Firearms Regulations 1974*, Schedule 4, cl 1(1), 4(7) and 5(1).

928 *Firearms Act 1973* (WA), s 23(9)(d).

929 *Firearms Act 1973* (WA), s 30B(1).

930 *Firearms Act 1973* (WA), s 32.

931 *Firearms Act 1973* (WA), s 32.

932 *Firearms Act 1973* (WA), s 11(7)(b). Regulation 11C of the *Firearms Regulations* provides that such a statement must be a statutory declaration in the form of prescribed Form 22.

933 *Firearms Act 1973* (WA), s 11(7)(c).

934 *Firearms Act 1973* (WA), s 20(1)(ad)(ii).

935 *Firearms Act 1973* (WA), s 20(1)(ad)(iii).

936 Meeting with the Public Health Association of Australia (WA Branch), 8 October 2014.

937 Michelle Fyfe APM, Acting Deputy Commissioner (Specialist Services) of Western Australia Police, 4 September 2015, 3.

938 Bennet Mt, 'Police seize illegally stored guns in blitz after spike in thefts', ABC News website, accessed at <http://www.abc.net.au/news/2014-08-10/police-seize-illegally-stored-guns-in-blitz/5661380>.

939 Quoted in Bennet Mt, 'Police seize illegally stored guns in blitz after spike in thefts', ABC News website, accessed at <http://www.abc.net.au/news/2014-08-10/police-seize-illegally-stored-guns-in-blitz/5661380>.

in Western Australia and provide for different storage requirements depending on the category of firearm.⁹⁴⁰ The Australian Capital Territory also imposes harsher penalties for breaches of the storage requirements depending on the type of firearms.⁹⁴¹ The recent Senate Committee report on the ability of Australian law enforcement authorities to eliminate gun-related violence in the community, observed that:

[d]ifferent storage requirements in different states and territories have led to unsafe practices, such as the sale of gun safes that do not comply with the relevant legislation, and confusion as to how and where firearms should be stored. Some submitters and witnesses advocated for uniform storage requirements in all jurisdictions. Reforming storage requirements so that they are consistent across the nation would ensure that all states and territories have implemented adequate storage arrangements and would prevent confusion or inadvertent breaches of the law where firearm owners travel or relocate interstate.⁹⁴²

Within a Western Australian context, it has also been suggested that once a license holder owns a certain number of firearms, he or she should be required to meet stricter storage standards, given that the more firearms are stored in one place, the worse the potential consequences in case of a burglary. The Discussion Paper in respect of the 2008 Police Review asked stakeholders whether storage requirements should be affected by the number of firearms held. Most stakeholders (76.9%) disagreed with this proposal⁹⁴³ and the review made no recommendation.

Western Australia Police has advised that it supports 'some form of graduated storage requirements relating to the number of firearms a person has in their possession' and notes that reducing firearm theft 'is a community priority'.⁹⁴⁴

An amending Act⁹⁴⁵, which is yet to commence, has been passed to amend the *Firearms Act 1996* (Tas). In terms of the amendments, additional prescribed storage requirements may apply in respect of persons who own handguns (Category H firearms) and in respect of persons who possess 10 or more firearms

of other categories.⁹⁴⁶ In the second reading speech, the Tasmanian Police Minister advised that these changes were imposed on the basis that, firstly, 'hand guns are a more valuable commodity than other firearms in the criminal community' given they are easily carried and concealed, and secondly that 'the more firearms stored at one address the greater the attraction for thieves' and the 'potential harm to the community'.⁹⁴⁷ The Police Minister advised that it was intended that the prescribed storage requirements for both handguns and ten or more firearms would include 'electronic or audible security'.⁹⁴⁸

It has also been argued at a national level that storage requirements should also extend to alarm systems. For instance, a submission from Gun Control Australia (Inc) to the Senate Inquiry on the ability of Australian law enforcement authorities to eliminate gun-related violence in the community posited that we 'have reached the point where alarm systems ought to be compulsory for firearms stored in the home (if firearms do need to be stored in the home)'.⁹⁴⁹ There has also been opposition to such suggestions, however. The Pastoralists & Graziers Association of Western Australia (Inc) observes that, firstly, current storage requirements in Western Australia are already strict and, secondly, in 'rural and remote areas, electronic alarm systems would be almost ineffective, as there are simply not enough police officers in close proximity to respond to them in a timely way'. It notes further that 'in many remote areas power supplies and telecommunications are inadequate to support electronic alarm systems'.⁹⁵⁰

Western Australia Police submits that an 'elevated security level should be considered for remote locations or hobby farms, where the licensee does not reside on the property where firearms are stored'.⁹⁵¹

There is a tension here between the possible elevated risks presented by firearms that are stored in remote locations (particularly where owners are absent), and practical questions as to the utility of alarm systems in such circumstances.

The Commission seeks submissions on the feasibility and desirability of requiring the installation of burglar alarms, noting the particular circumstances of remote and regional areas.

940 See, for instance, *Firearms Act 1996* (NSW) ss 40 and 41, *Firearms Act 1996* (Tas), ss 85 and 86 and *Firearms Act 1996* (ACT), ss 181(1)(a) and 182(1)(a).

941 In the Australian Capital Territory, the penalty for failing to comply with storage requirements for Category A and B firearms is a year's imprisonment, while the penalty for failing to comply with storage requirements for Category C, D and H licences is two years' imprisonment; see *Firearms Act 1996* (ACT), s 181(1) and 182(1).

942 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 89, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

943 17.5% of stakeholders agreed with this proposal, 76.9% disagreed and 5.6% were undecided. See *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 41.

944 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 3.

945 *Firearms (Miscellaneous Amendments) Act 2015* (Tas).

946 *Firearms (Miscellaneous Amendments) Act 2015* (Tas), s 35.

947 Hon M. T. Hidding MP, Second Reading Speech, *Firearms (Miscellaneous Amendments) Bill 2015* (Tas), 6, 7, accessed at http://www.parliament.tas.gov.au/bills/Bills2015/pdf/notes/3_of_2015-SRS.pdf.

948 Hon M. T. Hidding MP, Second Reading Speech, *Firearms (Miscellaneous Amendments) Bill 2015* (Tas), 6, 7, accessed at http://www.parliament.tas.gov.au/bills/Bills2015/pdf/notes/3_of_2015-SRS.pdf.

949 Browne R, Spokesperson, Submission on the *ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 20 August 2014, 8.

950 Submission from the Pastoralists & Graziers Association of Western Australia (Inc), 13 February 2015, 3.

951 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 3.

In particular, there may be merit in requiring persons who possess particularly large quantities of firearms and ammunition (for instance, dealers and persons who own multiple firearms) to have alarms installed at their premises. In Queensland, premises used by dealers, armourers and theatrical ordnance suppliers are required to have burglar alarms installed.⁹⁵² The alarms must be capable of detecting any entry into the premises by any means and the breakage of any glass door or window and instantly activate a loud siren outside the premises and a remote alarm at the place where the alarm is required to be monitored or connected.⁹⁵³

Proposal 27:

- that firearms dealers, and persons who own ten or more firearms, be required to install and maintain a burglar alarm at the place where the firearms are stored.

Question 24:

- Should storage requirements differ according to the type of firearm or firearms being stored?
- Should 24-hour remotely monitored burglar alarms also be required in remote and regional areas?

11.3 Storage of firearms – possession and allowing access

Concerns have been expressed about the inability of a licence holder to store firearms belonging to another licence holder; if a person possesses a firearm in respect of which he or she does not hold a licence, or allows another person to access his or her firearms, it is an offence under the *Firearms Act*.

As previously noted with respect to the issue of lending firearms at paragraph 10.2, section 19(1) of the Act provides that a person who is in possession of any firearm or ammunition and is not the holder of a licence or permit under the Act entitling him or her to do so commits a crime, unless particular exemptions apply.⁹⁵⁴ Further, section 19(2) of the *Firearms Act* provides that a person who permits another person to be in possession of a firearm or ammunition commits an offence if the other person is not the holder of a licence or permit under the Act entitling him or her to

possession of it unless it is a disposal of ammunition under section 30(2) or an exemption to which section 8 applies.⁹⁵⁵

'Possession' is defined to include, 'in addition to actual physical possession of a firearm or ammunition ... the custody or control of it, or having and exercising access to it in any place either alone or in common with others'.⁹⁵⁶

The same provisions that currently make it impossible to lend a firearm to another licensee also have the result that a married couple (for instance) who both own firearms that are not co-licensed must purchase two separate safes.⁹⁵⁷ Further, if in addition to owning separate firearms individually, a couple also owns firearms that are co-licensed, they must on the face of the *Firearms Act* own three separate safes in order to ensure that no person is able to access firearms in respect of which he or she is not licensed. The topic of co-licensing firearms more generally raises an additional issue. It has been suggested that applications by a licensee to add another family member (such as a son or daughter) to a licence are often refused on the basis that the licensee ought instead to relinquish the license in favour of the proposed licensee.⁹⁵⁸

Western Australia Police states simply that a licensed firearm owner cannot store his or her firearm in a safe belonging to another person unless that person is a co- licensee, and that the fact of being a married couple does not alter the legislation. Western Australia Police advises, further, that it 'does not support partnered couples having access to each other's firearms when one of them is not a licensed firearm owner ... due to the risk it could pose to police officers who attend incidents', including incidents relating to domestic violence.⁹⁵⁹ The Commission clarifies that in this context the issue relates to two persons, both of whom are licensed, who are cohabiting partners and must obtain separate safes. There may be some practical difficulties, e.g. in the event of a restraining order against a partner, but the Commission invites submissions on this issue.

In addition, if a person who owns firearms visits another person who owns firearms, including for the purposes of attending a competition or for recreational hunting purposes, the latter may not store the former's firearms in his or her safe for the duration of the visit.⁹⁶⁰ It has been put to the Commission that as it is not possible for a licensee to store his or her firearms in another person's safe, as

952 *Weapons Regulation 1996* (Qld), r 36(1).

953 *Weapons Regulation 1996* (Qld), r 36(1)(a) and (b).

954 *Firearms Act 1973* (WA), s 19(1). Exemptions to this offence are those set out in section 8 (which prescribes classes of persons who are exempt from the licensing requirements of the Act), and anyone who comes into possession of ammunition pursuant to section 30(2) of the Act, i.e. a person acting as an agent for another person.

955 *Firearms Act 1973* (WA), s 19(2)(c).

956 *Firearms Act 1973* (WA), s 4.

957 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

958 Submission from Roy Alexander & Sons, provided 8 September 2014, 4.

959 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 10.

960 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

a matter of practice in the situation described above the person visiting is likely to keep his or her firearms in a locked vehicle, which is 'unsatisfactory from a theft and safety perspective'.⁹⁶¹

The only provision the *Firearms Act* currently makes to store another person's firearms is section 33(3), which provides that the Police Commissioner may, at the request of the owner and in his or her absolute discretion, accept any firearm for safe custody.⁹⁶² A fee for this service, and the relevant forms, are provided in the *Firearms Regulations*.⁹⁶³ However, a 'Frequently Asked Questions' sheet on the Western Australia Police website advises that firearms may be stored at a police station in 'extreme circumstance only'⁹⁶⁴ [sic] and that 'this will not be for any extended period'. The Frequently Asked Questions sheet suggests that if a person wishes to store firearms for an extended period, they 'may make arrangements to store them at an approved warehouse'.⁹⁶⁵

It would be theoretically possible to amend the *Firearms Act* to create an exemption to the offences in sections 19(1) and 19(2) where a person is, by agreement, temporarily storing firearms belonging to another person. The question is what impact this would have on the Act's scheme of ensuring that every licence holder is accountable at all times for his or her firearms. There is also a question of the possible danger inherent in providing a person temporary access to firearms other than the firearms in respect of which he or she is already licensed. For instance:

- Person A may wish to temporarily store his or her firearms in person B's safe.
- However, person A may be licensed to possess a Category D or Category H firearm, whereas person B may only be licensed to possess Category A or B firearms.
- If person B were able to store person A's firearms, this would give person B access to prohibited or restricted firearms in circumstances where he or she has not been approved to have such access.

Western Australia Police observes that a licensed firearm owner can only store his or her firearms in another person's firearm cabinet where the persons are co-licensees. In the view of Western Australia Police, the holder of a licence under the *Firearms Act* must 'be a responsible person and therefore be prepared to take the necessary action to secure and care for a firearm'.⁹⁶⁶ The care and storage of a firearm is therefore regarded as a non-delegable duty.

The Commission appreciates the importance of maintaining accountability, but considers that it is

worth exploring whether the current rules could be modified to provide some flexibility.

Proposal 28:

- that the *Firearms Act 1973* (WA) be amended to provide that a licensed firearms owner can store a firearm or firearms belonging to another licensed firearms owner on a temporary basis, in specified circumstances, provided that the person storing the firearm holds a licence for a firearm or firearms of that category.

Question 25:

In respect of Proposal 28:

- how long should a person be able to store a firearm or firearms belonging to another person?
- in what circumstances should this be specified as being permitted, including in relation to what categories and number of firearms; and
- should the possession be subject to any conditions, including a requirement to notify Western Australia Police of the temporary storage arrangements?

Question 26:

- Should co-habiting persons who are both licensed in respect of different firearms be able to store them in the same safe?
- Do you have any comment on the process for adding a co-licensee to an existing licence?

11.4 Storage and safekeeping – obligations of licensees

The *Firearms Act* places particular obligations on licensees to keep firearms safe and secured, with different obligations applying depending on the circumstances of the particular firearm at any one time:

- Section 23(9)(a) provides that a person 'who, whilst carrying, or in actual physical possession of, or having the custody or control otherwise than by way of storage of, any firearm or ammunition,

961 Submission from Hon Rick Mazza MLC, 4 December 2014, 2.

962 *Firearms Act 1973* (WA), s 33(3).

963 *Firearms Regulations 1974* (WA), r 11.

964 'Frequently Asked Questions', 7, accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=NhmlmbEisI8%3d&tabid=1802>. Emphasis in original.

965 'Frequently Asked Questions', 7, accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=NhmlmbEisI8%3d&tabid=1802>.

966 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 10.

fails or omits to take all reasonable precautions to ensure its safe keeping', commits an offence.

- Section 23(9)(d) provides that it is an offence for a person who is responsible for the storage of any firearm or ammunition to fail to provide and use adequate storage facilities to ensure its safety, to ensure that prescribed requirements as to security are observed, or to safeguard it from loss or improper use.

Section 23(9) also contains other, more specific offences relating to safekeeping, such as permitting a young person under the age of 18 to have unlawful possession of a firearm, having failed or omitted to take all reasonable precautions to prevent this occurring;⁹⁶⁷ and refusing to permit a member of the Western Australia Police to inspect storage facilities at a reasonable time after such an inspection is requested in writing by the member of the Western Australia Police.⁹⁶⁸

However, there appears to have been confusion as to the practical application of sections 23(9)(a) and (d).

11.4.1 'Storage' and 'transit' – *McGee v Chitty* and section 23(9)(d)

In *McGee v Chitty*⁹⁶⁹ consideration was given to when firearms could be said to be 'in transit' in a particular situation. In this case, the respondent was charged with seven counts of failing to provide and use adequate storage facilities for firearms or ammunition, contrary to section 23(9)(d)(i) of the *Firearms Act*. He was acquitted of the firearms charges by the Magistrates Court;⁹⁷⁰ an appeal to a single judge of the Supreme Court was dismissed,⁹⁷¹ and that decision was appealed. The Court of Appeal allowed the appeal, set aside the verdicts of acquittal, ordered that a verdict of guilty be recorded on each of the four firearms charges, and remitted the matter to the Magistrates Court for sentencing.⁹⁷² An application for special leave to appeal was subsequently refused.⁹⁷³

The agreed facts of the case were as follows:

- The respondent, who had at the relevant time been the holder of a firearms licence for 14 years, had been in the process of moving house and had transported his four licensed firearms to his new house, together with a firearms cabinet in which they had been stored in the previous house.

- He arrived at the new house with the firearms and cabinet at approximately 5:30 pm, put the cabinet in the shed, and placed the firearms in the master bedroom. The respondent apparently intended to bolt the cabinet to his bedroom wall in the new house that day, but a power failure at around 7:30 pm prevented him from using his electric drill to do so.
- By the time the power was restored, the respondent had gone to bed; he slept in his bedroom with the firearms approximately 1.5 metres away from him. The respondent's house was fitted with security screens, and the doors, screens and roller shutters at the front of the house were all locked. The respondent did not dispute that while the firearms were in the room, he had possession of them.
- The following morning, the police searched the respondent's house in regard to an unrelated matter and found the firearms in the bedroom.⁹⁷⁴
- Under cross-examination, the respondent said that he did not put the cabinet into his room because it was heavy, and that he put the firearms into his room where they were 'under my possession as safe keeping'.⁹⁷⁵

At first instance, the learned Magistrate found that the firearms in the respondent's bedroom were 'in an unstored or inadequately stored' condition but acquitted the accused on the basis that the firearms were 'in transit from one house to the other'.⁹⁷⁶

On appeal in the Supreme Court, the appellant argued that the Magistrate had erred in law by finding that the firearms were 'in transit' and therefore erroneously applying section 23(9)(a) of the *Firearms Act*. The Court dismissed this argument and concluded that 'possession in transit is capable, at least in some circumstances, as [*sic*] being seen as "possession otherwise than by way of storage' and that the evidence 'sufficiently raised the matter of such possession to justify the learned Magistrate's conclusion that the prosecution to secure a conviction had to negative, but had not, that the respondent's possession was otherwise than by way of storage'.⁹⁷⁷

On appeal to the Court of Appeal, the Court observed that 'sections 23(9)(a) and 23(9)(d) contemplate that a firearm may be in a state of storage or in a state otherwise than by way of storage, and provide for different offences according to the state the firearm is in' and that the different states in which a firearm

967 *Firearms Act 1973* (WA), s 23(9)(b).

968 *Firearms Act 1973* (WA), s 23(9)(e).

969 *McGee v Chitty* [2011] WASCA 125

970 The Magistrates Court had dismissed the charges relating to storage of ammunition on the basis that there was no case to answer.

971 *McGee v Chitty* [2010] WASC 67.

972 *McGee v Chitty* [2011] WASCA 125

973 *Chitty v McGee* [2012] HCASL 134. See http://www.hcourt.gov.au/assets/registry/special-leave-results/2012/15_08_2012PRPOResultsP1.pdf

974 *McGee v Chitty* [2011] WASCA 125 at [6]-[12] per Mazza J.

975 Cited in *McGee v Chitty* [2011] WASCA 125 at [13] per Mazza J.

976 Cited in *McGee v Chitty* [2011] WASCA 125 at [18] per Mazza J.

977 Cited in *McGee v Chitty* [2011] WASCA 125 at [22] per Mazza J.

can be 'give rise to different duties, albeit that the duties are directed, in a general sense, to ensure that at all times a firearm is kept safe'.⁹⁷⁸

The Court of Appeal concluded that, logically, 'a firearm cannot be stored if it is in any of the states which come within the wide ambit of the words "otherwise than by way of storage"' and that, therefore, if the firearm is in one of those states the licensee is not required to use storage facilities and cannot be found guilty of an offence contrary to section 23(9)(d)(i).⁹⁷⁹

The Court of Appeal observed that 'transit' was not defined in the *Firearms Act* and that the question of whether something is in transit 'is a matter to be decided on the particular facts of a given case, bearing in mind the very stringent requirements of the Act'.⁹⁸⁰ In this case, the Court found that once the firearms had reached the respondent's bedroom in his new house 'on any reasonable view of the circumstances, the firearms were no longer in transit' as they had 'reached their intended destination'.⁹⁸¹ The Court of Appeal therefore upheld the appeal on the basis that the firearms were clearly being stored and the respondent, as the licensee, had failed to use the adequate storage facilities he had provided.⁹⁸²

This case provides some clarity on the question when a firearm may be said to be in transit; it appears that once a person reaches his or her final destination, the obligation to store firearms in accordance with the *Firearms Regulations* is enlivened. It is worth asking whether the term 'transit' could usefully be defined in the *Firearms Act* to provide greater clarity as to when a person must simply take 'reasonable precautions', rather than being under an obligation to store firearms securely. However, this term would be very difficult to define with any precision. In particular, given the sheer size of the Western Australian land mass, there will be occasions when a person's journey takes days or weeks; he or she will clearly have to stop at intervals before reaching the final destination, rendering any definition of 'transit' problematic. It may be simpler to provide guidelines in the *Firearms Regulations* as to what precautions must be taken when a person is away from his or her secure storage facilities (including when he or she is on a long road trip) and the Commission has proposed some guidelines below.

11.4.2 Storage and safekeeping – *Gough v Rankin* [2014] WASC and section 23(9)(a)

The more recent case of *Gough v Rankin*⁹⁸³ concerned events that took place on 25 December 2012, when the appellant was driving north on Great Northern Highway. At about 9.00 pm his vehicle broke down, approximately 65 kilometres south of Mount Magnet. He had three licensed firearms and ammunition in the vehicle. The appellant waited for several hours for someone to drive by, and at about 12:30 am or 1.00 am a truck driver came past. The truck driver gave the appellant a lift to Mount Magnet but did not allow the appellant to take the firearms with him. In the early hours of the morning another truck driver, Mr Napier, stopped at the broken down car, observed the firearms in it, and took them to police.⁹⁸⁴

The appellant was charged with failing to take all reasonable safeguards to ensure the safekeeping of his firearms and ammunition contrary to section 23(9)(a) of the *Firearms Act* and was convicted in the Magistrates Court.

On appeal, the Supreme Court found that the Magistrate had failed to identify the reasonable precautions to ensure the safety of the firearms and ammunition that the appellant had failed to take. The Hon Justice Le Miere noted that, although in some circumstances it might be sufficient to find that the firearms were left in an unsecured car, this was an inadequate finding in the circumstances of this case:

First, the car could not be secured. It could not be locked and there is no evidence, or even any suggestion, of how the car may otherwise have been secured. Secondly, there is no evidence that the appellant could have put the firearms somewhere other than leaving them in the car. The car broke down at a remote place. The appellant waited by the vehicle before a truck driver came by about three hours later. The truck driver would not allow the appellant to take the firearms in the truck with him when the truck driver gave the appellant a lift to Mount Magnet.

Counsel for the respondent submitted that the appellant should have done more to conceal the firearms within the car. However, there is no evidence that the appellant could have taken more effective steps to conceal the firearms. He covered them up with some shirts thrown

978 *McGee v Chitty* [2011] WASC 125 at [42] and [45] per Mazza J.

979 *McGee v Chitty* [2011] WASC 125 at [51] per Mazza J.

980 *McGee v Chitty* [2011] WASC 125 at [55] and [58] per Mazza J.

981 *McGee v Chitty* [2011] WASC 125 at [59] per Mazza J.

982 *McGee v Chitty* [2011] WASC 125 at [63] per Mazza J.

983 *Gough v Rankin* [2014] WASC 148

984 *Gough v Rankin* [2014] WASC 148 per Le Miere J at [1].

over them in the front seat. Counsel for the respondent suggested that the appellant could have put the firearms under the seat. There is no evidence that they would have fitted under the seat. In any event, the firearms were covered up and were only visible to someone who entered the vehicle and removed the shirts thrown over them. There is no evidence that if the firearms had been placed under the seat they would not have been readily discovered by someone who entered the vehicle and rummaged around in it.⁹⁸⁵

Justice Le Miere observed that the thrust of the respondent's case was that the appellant should have taken the precaution of contacting the police and arranging for them to take possession of the firearms and ammunition.⁹⁸⁶ His Honour found however that there was 'no evidence that the appellant could have made any phone call from the location where his car broke down' and there was 'no evidence that he had a mobile phone or that there was network coverage at that place'.⁹⁸⁷

The Supreme Court upheld the appeal on the basis that a miscarriage of justice had occurred; the evidence 'did not enable the Magistrate to make a finding that the appellant failed or omitted to take any reasonable precaution to ensure the safekeeping of the firearms and ammunition'.⁹⁸⁸ The appellant's conviction was set aside and a verdict of acquittal substituted.

11.4.3 Storage and safekeeping – ongoing questions

It is clear the practical obligations of firearms owners under section 23(9)(a) and (d) of the *Firearms Act* will vary according to the facts of a particular situation and it is important to consider the varied circumstances in which these sections might be applied, noting the different reasons for which firearms may be possessed or used. Although the decision of Magistrate Gluestein at first instance was overruled in *McGee v Chitty*, the Commission considers that it is relevant to note His Honour's statement that the

'proposition put to the court is that there must necessarily be times when a person with a firearms licence has those items and in a situation where they are not stored in the appropriate facility. For example, in transit when the person holding the licence might be heading off to a farm for shooting purposes or to a club, for sporting pursuits in relation to those firearms ...'⁹⁸⁹

Indeed, there will be occasions when a firearm is not in storage for a variety of reasons, and where the status of the firearm, and the obligations of the licensee, may be disputed.

It also seems anomalous that the *Firearms Act* imposes strict conditions on the manner in which firearms should be stored when they are in storage, but provides no details as to how firearms ought to be dealt with once they are removed from storage, other than to provide that 'all reasonable precautions' must be taken.⁹⁹⁰ The Act and Regulations provide no further guidance as to what will be 'reasonable' in any given set of circumstances. This silence may be seen as undesirable given the importance placed on storage requirements by the *Firearms Act* and the significance of breaches. In the Commission's view, there remains considerable uncertainty about the precise content of obligations under sections 23(9)(a) and 23(9)(d) of the *Firearms Act* at any one time and it is not difficult to envisage situations in which it might be unclear what a licensee needs to do in order to comply with the *Firearms Act*. For instance, where a licensee takes his or her firearm from Perth to the Pilbara to engage in recreational shooting, he or she will need to stop multiple times to eat, rest and sleep. During these travel breaks, what reasonable precautions should he be taking to ensure the safe keeping of his or her firearm?

In response to questions about the clarity of section 23(9)(a) more generally, Western Australia Police has advised as follows:

When firearms are in transit, for instance conveyed in a car boot or back seat, the owner being present would be sufficient security. If a vehicle is left unattended for a short period (e.g. parked outside a shop to purchase goods), WA Police would expect the firearm to be removed from common view, the bolt and/or magazine separated from the firearm and the vehicle to be locked. The issue arises when firearms are left for extended periods or overnight in a vehicle. If firearms are to be stored overnight in a vehicle, it would be expected that appropriate security such as a metal cabinet fitted to the vehicle with appropriate locking devices would be used.⁹⁹¹

Western Australia Police conclude that it expects all firearm owners to 'comply with the legislation' and observes that offences relating to the safekeeping of firearms would be considered on a case-by-case basis.⁹⁹²

985 *Gough v Rankin* [2014] WASC 148 per Le Miere J at [9–10].

986 *Gough v Rankin* [2014] WASC 148 per Le Miere J at [11].

987 *Gough v Rankin* [2014] WASC 148 per Le Miere J at [12].

988 *Gough v Rankin* [2014] WASC 148 per Le Miere J at [15].

989 Cited in *McGee v Chitty* [2011] WASC 125 at [17] per Mazza J.

990 *Firearms Act 1973* (WA), s 23(9)(a).

991 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 11.

992 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 11.

The Commission appreciates that it would not be possible to provide for exhaustive guidelines to cover every possible eventuality faced by firearms owners who are temporarily in possession of firearms otherwise than by way of storage. However, it is relevant that the above expectations are not contained in the *Firearms Act* or *Firearms Regulations*, which introduces an element of uncertainty into how firearms owners must comply with the legislation.

This lack of formal guidance has arguably led to possible inconsistencies and anomalies. For example:

- In *Walker and Commissioner of Police*,⁹⁹³ in affirming the decision of the Commissioner of Police to revoke an applicant's licence in respect of offences that took place in a vehicle, the SAT noted that neither of the firearms in question were safely stored or secured and that the applicant had travelled some distance 'without any protective bag or case in which the rifles or the ammunition were stored'.⁹⁹⁴ A protective bag or case would arguably come within 'all reasonable precautions' in section 23(9)(a) of the Act, but it should be noted that neither the *Firearms Act* nor the *Firearms Regulations* (1974) specifically require the use of such a container.
- An information brochure on the Western Australia Police website states: 'NEVER leave a firearm unattended in a car. It is an offence to do so'.⁹⁹⁵ It is not clear that this is the case given the result in *Gough v Rankin*,⁹⁹⁶ discussed above.
- The *Firearms Act* is generally silent on whether firearms can be transported on a bicycle or motorcycle. However, it provides that a person who is an approved commercial carrier or approved warehouseman does not require a licence to store a firearm or ammunition, or to carry a firearm or ammunition for another person 'not by means of a bicycle or motor cycle, unless otherwise approved'.⁹⁹⁷

It should be noted that the 1996 National Firearms Agreement stated: 'in order to govern safekeeping when firearms are temporarily away from their usual place of storage, *legislation could provide a statement indicating reasonable precautions to take to ensure the safekeeping taking into consideration situations most likely to be encountered.* A basic standard that

should be included in the statement is that the holder of the licence "must take reasonable care to ensure that the firearm is not lost or stolen and must take reasonable care to ensure that the firearm does not fall into the hands of an unauthorised person".⁹⁹⁸

Firearms legislation in some other Australian jurisdictions provides more guidance on this point than the *Firearms Act*. For instance, in the Australian Capital Territory the Minister is empowered to make guidelines about the safe storage of firearms in premises (with 'premises' defined to include vehicles).⁹⁹⁹ Some jurisdictions go further. The *Firearms Regulations* (NT) provide that where a prohibited firearm or a Category A, B, C, D or H firearm is being conveyed in a motor vehicle, and the motor vehicle is left unattended at a place away from where the firearm is normally stored or secured, the following precautions must be taken:

- the firearm is to be placed in the boot, the cargo carrying area or some other lockable compartment of the vehicle or is to be secured by means of a firearm securing device;¹⁰⁰⁰
- the firearm is to be completely hidden from open view;¹⁰⁰¹
- ammunition for the firearm is to be placed in a lockable compartment of the vehicle (other than the compartment in which the firearm is placed) or in a locked container secured in or on the vehicle;¹⁰⁰² and
- the person in charge of the vehicle must take all reasonable steps to ensure that, while the vehicle remains unattended, the firearm is kept safely in the vehicle;¹⁰⁰³ is not stolen or removed from the vehicle;¹⁰⁰⁴ and does not come into the possession of a person who is not licensed to be in possession of the firearm.¹⁰⁰⁵

Similarly, the *Weapons Regulation 1996* (Qld) specifically provides for the precautions that must be taken when a licensee is away from his or her secure storage facilities, and when weapons are or in or on motor vehicles. These requirements are separate and distinct.¹⁰⁰⁶

In the first scenario, the *Weapons Regulation 1996* (Qld) provides that where a person in possession of a weapon is visiting Queensland,¹⁰⁰⁷ or is otherwise

993 *Walker and Commissioner of Police* [2012] WASAT 214

994 *Walker and Commissioner of Police* [2012] WASAT 214 at [17].

995 'Firearm Storage Requirements', 1, emphasis in original. Accessed at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=becRbVrRCSE%3d&tabid=1802>.

996 [2014] WASC 148

997 *Firearms Act 1973* (WA), s 8(1)(g)(i).

998 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 12, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>. Emphasis added.

999 *Firearms Act 1996* (ACT), s 37(4)(a).

1000 *Firearms Regulations* (NT), r 32(2)(c).

1001 *Firearms Regulations* (NT), r 32(2)(d).

1002 *Firearms Regulations* (NT), r 32(2)(e).

1003 *Firearms Regulations* (NT), r 32(2)(f)(i).

1004 *Firearms Regulations* (NT), r 32(2)(f)(ii).

1005 *Firearms Regulations* (NT), r 32(2)(f)(iii).

1006 *Weapons Regulation 1996* (Qld), r 61(4) provides that this section does not apply to a weapon to which section 60A applies.

1007 *Weapons Regulation 1996* (Qld), r 60A(1)(a) or (b).

away from his or her secure storage facilities and it is unreasonable for the person to have to go to those facilities to store the weapon,¹⁰⁰⁸ the following precautions must be taken:

- the person must, when the weapon is not in the person's physical possession, store it unloaded in a securely closed container with the bolt removed or with a trigger lock fitted,¹⁰⁰⁹ or in a locked container;¹⁰¹⁰ and
- the container must be out of sight in a locked room of a permanent building;¹⁰¹¹ or locked in the boot of a vehicle;¹⁰¹² or out of sight, locked in a vehicle that does not have a boot.¹⁰¹³

The Regulation also provides an example, noting that if a person is culling animals and moving, with a rifle, between paddocks while doing so, he or she is not required to comply with the above requirements while the rifle is in his or her physical possession during the culling.

Alternatively, in terms of safety precautions for weapons in or on vehicles, the *Weapons Regulation 1996* (Qld) provides that a person in control of a weapon, whether or not he or she has custody of it, must ensure that the weapon is not placed in or on a vehicle unless the weapon is locked in the boot, if the vehicle has a lockable boot.¹⁰¹⁴ If the vehicle does not have a lockable boot, the weapon must be locked in a metal container fixed to the vehicle,¹⁰¹⁵ or be in a securely closed container that is out of sight in a vehicle.¹⁰¹⁶ The metal container, and anything on it or attached to it, must not suggest that a weapon is inside.¹⁰¹⁷ A person in control of a weapon, whether or not he or she has custody of it, must also ensure the weapon is not left in an unlocked vehicle if the vehicle is not being attended by someone licensed to possess the weapon.¹⁰¹⁸

In Victoria, by contrast, the *Firearms Act 1996* (Vic) simply provides that firearms and ammunition must be carried in a way that is secure and not dangerous, and must take reasonable precautions to ensure that the firearm is not lost or stolen.¹⁰¹⁹ However, Victoria Police, in conjunction with the Victorian Firearm Safety Foundation, has developed guidelines on the appropriate manner to transport firearms (including by car and by public transport), which are available online.¹⁰²⁰

Given that more specific requirements exist in other Australian jurisdictions, and that there remains uncertainty about licensees' safekeeping obligations in Western Australia, the Commission considers it would be beneficial to provide more detail in the Act and the Regulations.

Proposal 29:

- that the *Firearms Act 1973* (WA) and, in particular, sections 23(9)(a) and 23(9)(d) be amended to:
 - more clearly specify when a licensee is under an obligation in relation to the storage or safeguarding of a firearm and what steps the licensee is required to take to comply with the licensee's obligations; and
 - provide that the Regulations may make provision as to the kinds of precautions that will be considered to constitute 'reasonable precautions';
- the *Firearms Regulations 1974* (WA) be amended to specify precautions that are reasonable precautions including, (based on the *Weapons Regulations 1996* (Qld)) that:
 - the person must, when the firearm is not in the person's physical possession, store it unloaded in a locked case or safe, of a type approved by the Police Commissioner, with the bolt removed or with a trigger lock fitted; and
 - the case or safe must be out of sight in a locked room of a permanent building; or locked in the boot of a vehicle; or out of sight, locked in a vehicle that does not have a boot.
 - where a person is culling animals and moving between areas of land while doing so, he or she is not required to comply with the above requirements while the firearm or firearms are in his or her physical possession during the culling.

1008 *Weapons Regulation 1996* (Qld), r 60A(1)(c)(i) and (ii).

1009 *Weapons Regulation 1996* (Qld), r 60A(2)(a).

1010 *Weapons Regulation 1996* (Qld), r 60A(2)(b).

1011 *Weapons Regulation 1996* (Qld), r 60A(3)(a).

1012 *Weapons Regulation 1996* (Qld), r 60A(3)(b).

1013 *Weapons Regulation 1996* (Qld), r 60A(3)(c).

1014 *Weapons Regulation 1996* (Qld), r 61(1)(a).

1015 *Weapons Regulation 1996* (Qld), r 61(1)(b)(i).

1016 *Weapons Regulation 1996* (Qld), r 61(1)(b)(ii).

1017 *Weapons Regulation 1996* (Qld), r 61(2). Underneath r 62, the Regulation provides two examples of how a container or something on or attached to it may indicate a weapon is inside, being (1) The container's shape or other features is like a weapon, or (2) A mark or label on the container mentions weapons, ammunition or X's Gun Shop, (other than as part of an address).

1018 *Weapons Regulation 1996* (Qld), r 61(3).

1019 *Firearms Act 1996* (Vic), ss 126(1)(a) and (b); 126(2)(a) and (b); 126(3)(a) and (b) and 126(4)(a) and (b).

1020 See 'Transporting firearms and ammunition', accessed at <http://www.firearmsafety.org.au/legal/page.php/1/6/25>.

11.5 Storage of ammunition

Concerns have also been raised about the storage of ammunition. The *Firearms Regulations* provides that, like firearms, ammunition is to be stored in a locked cabinet or container that at least meets the specifications in Schedule 4 or in such other way as is approved.¹⁰²¹ The *Firearms Regulations* provides, further, that:

- a magazine is not to contain any ammunition when stored,¹⁰²²
- ammunition is not to be stored in a cabinet or container in which a firearm is stored unless the ammunition is in another locked metal container in which no firearm is stored and which is securely affixed so as to prevent its removal from the cabinet or container,¹⁰²³ and
- that despite the previous requirement, propellant not incorporated in a cartridge must not be stored (whether or not it is in another container) in a container or cabinet that contains any ammunition, firearm, or primer.¹⁰²⁴

These last two requirements have the effect that a person may need to purchase three separate safes for firearms, for ammunition and primers, and for propellant.¹⁰²⁵

The storage requirements in the *Firearms Regulations* are expressed to be 'in addition to, not instead of, any requirements under the *Dangerous Safety Goods Act 2004 (WA)*'.¹⁰²⁶

The requirement that ammunition be stored in a steel cabinet or container has raised concerns among some firearms owners, who contend that storing propellant powder in metal containers creates a serious risk.¹⁰²⁷ Firearms owners have therefore suggested that provisions relating to powders ought to be harmonised with the requirements applying under the *Dangerous Goods Safety (Explosives) Regulations 2007 (WA)*.¹⁰²⁸

The *Firearms Regulations* were amended on 21 July 2015¹⁰²⁹ by the addition of regulation 11A(3A) which provides that subregulation (2) does not apply to propellant unless it is incorporated in a cartridge. In addition regulation 11A(9) was deleted. This has the

effect that storage requirements for propellants are now only reflected in the *Dangerous Goods Safety (Explosives) Regulations 2007 (WA)*.

11.5.1 Definition of 'ammunition'

The ambit of the definition of 'ammunition' in the *Firearms Act* has also been questioned. The *Firearms Act* provides that this term 'includes anything manufactured specifically as a component of ammunition designed for discharge from a firearm and also includes any primer or propellant manufactured specifically for use in making ammunition designed for discharge from a firearm but does not include ammunition rendered inoperative for the purpose of a collector's item'.¹⁰³⁰

Firearms owners have suggested that this definition is overly broad as it appears to include empty cases, with the result that a person possessing empty cases for a firearm in respect of which they are not licensed,¹⁰³¹ or who is in possession of spent or empty cases not stored in accordance with the *Firearms Regulations*,¹⁰³² could be charged with an offence. Firearm owners have advised the Commission that after shooting on a range, for instance, all efforts are made to gather up spent cases and it would be possible for a person unknowingly to pick up and transport home with them spent cases from another person's firearm, which may be in a category in respect of which the person collecting is not licensed. Such a person would, on the face of the Act, be committing an offence.¹⁰³³ In addition, the definition currently includes primers. While propellant may be dangerous even when not used in a firearm, due to its explosive properties, it has been suggested to the Commission that spent primers in and of themselves are not harmful.¹⁰³⁴

Other Australian jurisdictions have adopted narrower and more specific definitions of 'ammunition', and there is some variation between the States and Territories as to what is considered 'ammunition', as follows:

- In the *Firearms Act 1977 (SA)*, 'ammunition' is defined as 'ammunition suitable for use in a firearm and includes primers and propellant'.¹⁰³⁵

1021 *Firearms Regulations 1974*, r 11A(2).

1022 *Firearms Regulations 1974*, r 11A(7).

1023 *Firearms Regulations 1974*, r 11A(8).

1024 *Firearms Regulations 1974*, r 11A(9).

1025 Submission from Animal Pest Management Services, 5.

1026 *Firearms Regulations 1974*, r 11A(10).

1027 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 5, Submission from Hon Rick Mazza MLC, 4 December 2014, 2.

1028 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014; Submission from Hon Rick Mazza MLC, 4 December 2014, 2.

1029 *Firearms Amendment Regulations 2015*.

1030 *Firearms Act 1973 (WA)*, s 4.

1031 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 6; submission from Animal Pest Management Services, 5.

1032 Submission from Hon Rick Mazza MLC, 4 December 2014, 2.

1033 Section 19(1)(c) of the *Firearms Act 1973 (WA)* provides it is an offence to possess any firearm or ammunition without a licence or permit which permits such possession.

1034 Discussion with Ron Bryant, 15 December 2014.

1035 *Firearms Act 1977 (SA)*, s 5(1).

- The *Weapons Act 1990* (Qld) adopts the definition of ammunition used in the *Explosives Act 1999* (Qld), which ‘includes bomb, grenades, rockets, mines, projectiles and other similar devices and all types of cartridges (including blanks) used in firearms’.¹⁰³⁶
- The *Firearms Act 1996* (NSW), defines ‘ammunition’ to include any article consisting of a cartridge case fitted with a primer and a projectile, any article consisting of a cartridge case fitted with a primer and containing a propelling charge and a projectile, blank cartridges, airgun pellets, training cartridges or gas cartridges, or any other article prescribed by the regulations.¹⁰³⁷
- In the *Firearms Act* (NT), ‘ammunition’ is defined as an article consisting of a cartridge case fitted with a primer and a projectile other than an inert round, an article consisting of a cartridge case fitted with a primer and containing a propelling charge and a projectile, a blank cartridge, air gun pellet, training cartridge or gas cartridge, a paintball pellet, or an article prescribed by regulation.¹⁰³⁸
- The *Firearms Act 1996* (ACT) provides that ‘ammunition’ includes a cartridge case fitted with a primer and projectile; a cartridge case fitted with a primer that contains a propelling charge and projectile; blank cartridges, airgun pellets, training cartridges or gas cartridges; and anything else prescribed by regulation, but does not include a paintball or something prescribed by regulation not to be ammunition.¹⁰³⁹
- The *Firearms Act 1996* (Vic) defines ‘cartridge ammunition’ as ammunition having a bullet or other projectile and a priming device fixed to or enclosed in a cartridge case which is composed wholly or partly of material other than paper.¹⁰⁴⁰

The Commission understands that it is not uncommon for firearms owners to reuse empty cases (where this is possible) to make new ammunition, but notes that in any event while a case is empty, it is not capable of causing any harm. The Commission notes that other jurisdictions have addressed this in their definitions of ammunition by specifying that it is only cartridge cases which are fitted with a primer and a projectile that are defined as ‘ammunition’.

Proposal 30:

that the definition of ‘ammunition’ in the *Firearms Act 1973* (WA) be amended so as to specifically exclude:

- empty cases that are not able to be reused; and/or
- spent primers when they are not fitted into a case.

¹⁰³⁶ *Weapons Act 1990* (Qld), Schedule 2, citing the *Explosives Act 1999* (Qld), Schedule 2.

¹⁰³⁷ *Firearms Act 1996* (NSW), s 4(1).

¹⁰³⁸ *Firearms Act* (NT), 3(1).

¹⁰³⁹ *Firearms Act 1996* (ACT), Schedule 4.

¹⁰⁴⁰ *Firearms Act 1996* (Vic), s 3(1).

12. CATEGORIES OF LICENCE; PROPOSALS FOR NEW CATEGORIES

12.1 Heirloom firearms

Some firearms owners have proposed an additional licence category for inheritance or heirloom firearms¹⁰⁴¹ to allow people to possess firearms inherited from a family member, which may not be 'antique mechanism firearms'. This is one of the situations in respect of which the *Firearms Act* contains no appropriate licence category, and the inheritance of a firearm is not included as a genuine reason in section 11A(2) of the Act. It has been submitted that the inability of a person to possess a firearm which they have inherited from a loved one causes distress and hurt.¹⁰⁴²

Under the Act an unlicensed person who inherits a firearm may render the firearm inoperable, and then possess it legally. Alternatively, it would in theory be possible to obtain a Collector's Licence and to possess such firearms in accordance with that licence. The *Firearms Act* provides that a firearm can form part of a genuine firearm collection only if, in the Police Commissioner's opinion, it has significant commemorative, historical, thematic, or heirloom value.¹⁰⁴³ Relevantly, it also specifically provides that the fact that there is only one firearm in a collection does not prevent it from being a genuine firearm collection.¹⁰⁴⁴ In considering whether a firearm has significant heirloom value to a particular person, the Commissioner must take into account any special significance that the firearm has because it was owned or possessed by a direct or indirect member of that person's family.¹⁰⁴⁵ In addition, in considering whether it would be appropriate for a person to obtain, or continue to hold, a Firearm Collector's Licence, the Commissioner may take into account any information provided about that person by a person or body designated under the Act as an accredited society of collectors.¹⁰⁴⁶

However, there are some restrictions on the kinds of firearms that may form part of a collection; the Act provides that a handgun manufactured after 1946

can only form part of a genuine firearm collection if it is owned by a person who is, in the Police Commissioner's opinion, a student of arms,¹⁰⁴⁷ and if the handgun is within the scope of that person's interest as a student of arms.¹⁰⁴⁸ This requirement would pose difficulties for a person who wishes to possess a post-1946 handgun that belonged to a deceased relative, if that person does not have an interest in the study, preservation, and collection of firearms more broadly.

Western Australia and South Australia are the only two jurisdictions which do not make special provision for heirloom firearms. It has been suggested that the lack of an 'heirloom' or 'inheritance' category has negative consequences; in particular it is posited by some stakeholders that a 'significant number of unlicensed firearms are due to the demise of the owner and a failure by beneficiaries who wish to retain the firearm for sentimental reasons but may not meet the onerous conditions for a club or open licence'.¹⁰⁴⁹

Specific provision for 'heirloom' firearms is made in the Australian Capital Territory, the Northern Territory, New South Wales, Queensland, Victoria and Tasmania. However, each of these jurisdictions requires that firearms possessed as an heirloom must be rendered permanently inoperable.¹⁰⁵⁰ It is difficult to see any advantage to Western Australia of adopting this system, given that in Western Australia a person who inherits an heirloom firearm could have a firearm rendered inoperable in any event and then possess it without any need for a licence under the *Firearms Act*.

Issues relating to inoperable firearms, including the questions whether it is appropriate to continue to exclude them from the definition of 'firearm' in the *Firearms Act*, are discussed at paragraph 7.7 of this Discussion Paper.

1041 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 3, Submission from Roy Alexander & Sons, provided 8 September 2014, 4.

1042 Submission from Roy Alexander & Sons, provided 8 September 2014, 4.

1043 *Firearms Act 1973* (WA), s 15(1).

1044 *Firearms Act 1973* (WA), s 15(2).

1045 *Firearms Act 1973* (WA), s 15(8).

1046 *Firearms Act 1973* (WA), s 15(9).

1047 'Student of arms' is defined in section 15(4) of the *Firearms Act 1973* (WA) as 'a person who can be shown to have a prolonged and genuine interest in the study, preservation, or collection of firearms'.

1048 *Firearms Act 1973* (WA), s 15(3).

1049 Submission by Hon Rick Mazza MLC, 4 December 2014, 3.

1050 See *Firearms Act 1996* (ACT), s 68(b)(i) and (ii); *Firearms Regulations* (NT), r 20; *Firearms Regulations 2006* (NSW), r 50(5); *Weapons Act 1990* (Qld), s 76; *Firearms Act 1996* (Vic), s 26(b) and Schedule 2, Item 6; and *Firearms Act 1996* (Tas), s 47(2).

Proposal 31:

- that heirloom licences not be adopted in Western Australia.

12.2 Warehousemen

Currently, the *Firearms Act* does not contain a specific licence category for warehousemen. Instead, it excludes from the Act's licensing requirements 'a person who is an approved commercial carrier or approved warehouseman, or by the servant of any such person, who in the ordinary course of his trade or business as an approved commercial carrier or approved warehouseman, carries (not by means of a bicycle or motor cycle, unless otherwise approved) or stores a firearm or ammunition for another person.¹⁰⁵¹ Such approvals are in the grant of the Police Commissioner, either in addition to or instead of any other licence granted under the Act.

The 2008 Police Review recommended that the Act be amended to create two new licences for 'Commercial Carrier' and 'Warehouseman' and that the *Firearms Regulations* also be amended to prescribe the manner in which these firearms are to be carried, stored and secured.¹⁰⁵² The report of the review noted that a 'Commercial Carrier' is a person who in the normal course of his or her business transports/carries firearms to and fro, on behalf of other people and a 'Warehouseman' is a person who stores firearms on behalf of other people, and that section 8(1)(g) of the *Firearms Act* exempts these persons from the licensing requirements of the Act provided that they have been 'approved' by the Police Commissioner.

The 2008 Police Review concluded that it was 'considered necessary for persons who perform these functions to be licensed' and that it was 'felt that by creating a licensing regime for these persons that they could be better managed', such as by mandating standards on the carriage and storage of firearms and requiring these businesses to submit returns, as is the case with firearms dealers, repairers and manufacturers.¹⁰⁵³ However, no amendments were made to the Act to implement this change. Western Australia Police has recently reiterated its support for this proposal.¹⁰⁵⁴

In addition, firearms owners have also proposed a licence category for dealers and club armourers, with automatic endorsement to warehouse firearms attaching to these licence categories, as currently an application must be made in addition to the application for the dealer's licence.¹⁰⁵⁵ The addition of a new category of licence for club dealers and club armourers, on the basis proposed, would enable dealers and shooting clubs to hold firearms on behalf of other licensees, without having to seek an additional approval. Firearms owners have advised that if they are going away on holiday and don't wish to leave their firearms at home, it is often difficult to find places to store them, and have proposed that it would be safer to be able to store them at shooting clubs.¹⁰⁵⁶

As noted previously, although provision is made for storage by Western Australia Police in practice this will only happen in extreme circumstances.

Given that warehousemen may hold many firearms, it would seem appropriate that they possess a licence and be required to meet the strict requirements of the *Firearms Act* which must be met by others who possess firearms. Further, warehousemen are not required to provide monthly returns, as are holders of Dealer's Licences. In addition, it appears logical to allow firearm dealers and approved clubs to store firearms.

The Commission also understands that some dealers may have multiple firearms in storage in situations where they are unable to contact the owner. They are unable to sell these firearms in the absence of a contractual entitlement to do so, and are also not authorised to surrender them to Western Australia Police.

In addition, regarding approved commercial carriers, the Commission has been advised of recent administrative changes to the ways in which such carriers must operate. The Commission understands that approved commercial carriers are now expected to carry proof of approval and must provide particular information to Western Australia Police by way of written submissions. The Commission understands that the introduction of these requirements (which are not included in the *Firearms Act* or *Firearms Regulations*) has caused concern among some commercial carriers,¹⁰⁵⁷ and invites comment on this below.

1051 *Firearms Act 1973* (WA), s 8(1)(g).

1052 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 24.

1053 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 23-24.

1054 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 32.

1055 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 3.

1056 Phone conversation with Mr Ron Bryant, 3 October 2014.

1057 Meeting with Hon Rick Mazza MLC, 18 June 2015.

Proposal 32:

that the *Firearms Act 1973 (WA)* be amended to provide:

- for new licence categories for commercial carriers and warehousemen; and
- that Firearm Dealer’s licences automatically include the ability to warehouse firearms.

Question 27:

- Should Approved Clubs be automatically approved to warehouse firearms?
- Do you have any comment on the requirements under which approved commercial carriers operate in Western Australia?
- Should a party that is entitled to store firearms on behalf of third parties be permitted to deliver an uncollected firearm to Western Australia Police after a set period, with Western Australia Police being able to destroy it after certain required steps are taken to notify the firearm owner?

12.3 Collector’s Licences

The *Firearms Act* provides that a firearm can form part of a genuine firearm collection if, in the Police Commissioner’s opinion, it ‘has significant commemorative, historical, thematic, or heirloom value’.¹⁰⁵⁸ A genuine firearm collection need not include multiple firearms; it can be limited to one firearm provided the firearm in question meets these criteria.¹⁰⁵⁹

As part of the 2002 National Handgun Agreement, the Council of Australian Governments agreed that in order to be licensed as a genuine collector a person must:

- belong to an accredited historical collectors’ society;
- have his or her licence application endorsed by that society;

- comply with strict storage requirements;
- display a commitment as a ‘student of arms’ to collect or retain post-1946 handguns; and
- deactivate handguns which are prohibited for sports shooting purposes.¹⁰⁶⁰

The sections of the *Firearms Act* relating to collections were amended in 2004.

As regards handguns manufactured after 1946, the *Firearms Act* now provides that these can only form part of a genuine collection if they are owned by a person who is, in the Police Commissioner’s opinion, a student of arms and if the firearm is within the scope of the person’s interest as a student of arms.¹⁰⁶¹ The Act defines a ‘student of arms’ as a person ‘who can be shown to have a prolonged and genuine interest in the study, preservation, or collection of firearms’.¹⁰⁶²

It should be noted that the 1996 National Firearms Agreement went further than this, resolving that ‘firearms in a collection which have been manufactured after 1 January 1946 must be rendered inoperable’,¹⁰⁶³ although whether the firearms were to be temporarily or permanently inoperable was not specified. In any event, this approach is not followed in Western Australia. Of the jurisdictions that do require some kinds of firearms in collections to be rendered inoperable (either temporarily or permanently), approaches vary:

- In Tasmania¹⁰⁶⁴ and in New South Wales,¹⁰⁶⁵ firearms in a collection which have been manufactured after 1 January 1900 must be temporarily rendered inoperable, with the exception of Category D firearms which must be rendered permanently inoperable.
- In Victoria, all firearms in a collection must be rendered temporarily inoperable (by removal of the bolt or firing pin or the application of an appropriate trigger lock or barrel lock), other than firearms of Category D and E, which must be rendered permanently inoperable.¹⁰⁶⁶
- In the Australian Capital Territory, all firearms in a collection which are manufactured on or after 1 January 1900, or which are prohibited pistols, must be rendered temporarily incapable of being fired and any Category C or Category D firearms must be rendered permanently inoperable.¹⁰⁶⁷

¹⁰⁵⁸ *Firearms Act 1973 (WA)*, s 15(1).

¹⁰⁵⁹ *Firearms Act 1973 (WA)*, s 15(2).

¹⁰⁶⁰ Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated 1051 Resolutions, 3, accessed at <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/2002%20National%20Handgun%20Agreement.pdf>.

¹⁰⁶¹ *Firearms Act 1973 (WA)*, s 15(3).

¹⁰⁶² *Firearms Act 1973 (WA)*, s 15(4).

¹⁰⁶³ Australasian Police Ministers’ Council, Special Firearms Meeting, 10 May 1996, Resolutions, 5, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

¹⁰⁶⁴ *Firearms Act 1996 (Tas)*, ss 47(1)(a) and (b).

¹⁰⁶⁵ *Firearms Act 1996 (NSW)*, s 20(a) and (b). In addition, in New South Wales, a ‘prohibited pistol’ (as defined in section 4C of the Act) which is kept in a collection must also be rendered temporarily inoperable.

¹⁰⁶⁶ *Firearms Act 1996 (Vic)*, Schedule 2, cl 5(7), 5(5) and 5(6).

¹⁰⁶⁷ *Firearms Act 1996 (ACT)*, ss 76(a) and (d). See also *Firearms Regulation 2008 (ACT)*, r 27.

- In Queensland, collectors may possess Category D, M or R firearms only if they are rendered permanently inoperable; firearms of Categories A, B or C which were manufactured on or after 1 January 1901 must be rendered temporarily inoperable and Category H firearms must be rendered temporarily inoperable.¹⁰⁶⁸

In Western Australia, by contrast, firearms in a collection are not required to be rendered inoperable; indeed firearms that have been rendered inoperable are no longer classed as ‘firearms’ under the *Firearms Act*. Firearms in a collection must be stored in accordance with the standard requirements that apply to all firearms,¹⁰⁶⁹ and Category D firearms cannot be possessed as part of a collection under a Collector’s Licence.¹⁰⁷⁰

As noted above, a Collector’s Licence allows the holder to possess the firearm named in the licence, but not to carry or use it.¹⁰⁷¹ Some firearms owners suggest that collectors ought to be able to shoot their firearms on limited occasions,¹⁰⁷² or, more generally, that collectors should be able to ‘try out’ their firearms (particularly those that use black powder only), or to hunt with older, muzzle-loading firearms.¹⁰⁷³ Some collectors also query why licences are required to possess collectible firearms in any event.

Some jurisdictions make provision for the limited use of collectors’ firearms. In Victoria, it is possible for holders of collector’s licences to be granted permits to carry or use any category A, B or C longarm or general category handgun firearms held under the licence at a commemorative or historical event which is approved by the Chief Commissioner, sponsored by an approved organisation of firearms collectors, and held at an approved range.¹⁰⁷⁴ Equivalent permits can also be issued to approved firearms collectors clubs.¹⁰⁷⁵

The Western Australian legislation does not contain such specific provisions. While section 21 of the *Firearms Act* allows for the addition of restrictions, limitations and conditions on existing licences,¹⁰⁷⁶ there appears to be some confusion as to the ability of a licence holder to seek, and be granted, a temporary amendment to the terms of his or her Collector’s Licence to allow a firearm’s use for commemorative or historical events.

Question 28:

Should the *Firearms Act 1973* (WA) be amended to provide that:

- firearms held under a Collector’s Licence may also be carried and used, and if so, under what circumstances; and
- firearms in a collection which have been manufactured after 1 January 1946 must be rendered (temporarily or permanently) inoperable in accordance with such specifications as may be approved by the Police Commissioner?

12.4 Corporate Licences

Section 16(1)(c) of the *Firearms Act* provides that the Police Commissioner may grant a firearm licence to a Corporate Licensee, which permits the Licensee to hold the firearm and to permit any employee to carry and use the firearm.¹⁰⁷⁷ Corporate Licences may be issued to banks, financial institutions, government departments, state instrumentalities, or other organisations approved by the Commissioner.¹⁰⁷⁸ Employees of an entity which holds a Corporate Licence may carry and use the firearm either on the premises of the Licensee or in the course of carrying out a function approved by the Commissioner and authorised by the Licensee.¹⁰⁷⁹ Such employees may therefore carry and use a firearm without holding any individual licence and are not required to undergo the Act’s application process.

Particular restrictions and requirements attach to Corporate Licence holders and to their employees, as follows:

- The use and carriage of a firearm by an employee of the holder of a Corporate Licence is subject to terms, restrictions, limitation and conditions applicable to that licence.¹⁰⁸⁰
- The *Firearms Act* provides that the holder of a Corporate Licence must compile, maintain and furnish records in such manner as is prescribed and must produce such records for inspection by any member of the Western Australia Police on his or her request.¹⁰⁸¹

¹⁰⁶⁸ *Weapons Act 1990* (Qld), ss 77(1)(a)(i), 77(1)(b) and 77(1)(c)(i) and (ii).

¹⁰⁶⁹ *Firearms Regulations 1974* (WA), Schedule 4.

¹⁰⁷⁰ *Firearms Regulations 1974* (WA), r 6A(3).

¹⁰⁷¹ *Firearms Act 1973* (WA), s 16(1)(b).

¹⁰⁷² Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 3.

¹⁰⁷³ Conversation with Dr Leo Laden, 16 December 2014.

¹⁰⁷⁴ *Firearms Act 1996* (Vic), s 58.

¹⁰⁷⁵ *Firearms Act 1996* (Vic), s 58AAA.

¹⁰⁷⁶ *Firearms Act 1973* (WA), s 21(1).

¹⁰⁷⁷ *Firearms Act 1973* (WA) s 16(2).

¹⁰⁷⁸ *Firearms Act 1973* (WA) s 16(1)(c).

¹⁰⁷⁹ *Firearms Act 1973* (WA) s 16(1)(c)(i)-(ii).

¹⁰⁸⁰ *Firearms Act 1973* (WA) s 16(1)(c)(i)-(ii).

¹⁰⁸¹ *Firearms Act 1973* (WA) s 31(2). This subsection also applies to holders of a Dealer’s Licence, Repairer’s Licence, Manufacturer’s Licence or Ammunition Collector’s Licence.

- The *Firearms Regulations* specify that the holder of a Corporate Licence must, in a permanent and legible manner, maintain a record in a form approved by the Commissioner showing particulars of the firearms and ammunition in the possession of each employee at any time, the name and place of residence of the employees in such possession, and, where the firearm is carried elsewhere than on the premises of the organisation, the purposes and places where the employee is authorised by the organisation to carry the firearm.¹⁰⁸²

Nevertheless, specific concerns have been expressed about the operation of Corporate Licences; these are discussed below.

At a national level, the matter of access to firearms on the part of security guards in particular has been of some concern in the wake of the Sydney Siege. As discussed in Annexure 1, the joint Commonwealth–New South Wales review of the siege notes that the gunman had never been issued with a firearms licence but had previously held a security licence under the *Security (Protection) Industry Act 1985* (NSW). Under the terms of that Act, licensed security guards could, provided they completed weapons training, carry a pistol in the course of their duties under their employer’s licence without obtaining an individual firearms licence,¹⁰⁸³ although any pistol carried for work purposes would have ‘been required to be returned for safekeeping at the completion of each shift’.¹⁰⁸⁴ Subsequently however, on 1 July 1997 the *Firearms (General) Regulation 1997* (NSW) commenced under the new *Firearms Act 1996* (NSW) and from that date licensed security guards in New South Wales could no longer carry firearms under their employer’s licence.¹⁰⁸⁵ From July 1998, new legislation applicable to the security industry also came into effect: the *Security (Protection) Industry Act 1985* (NSW) was repealed and replaced by the *Security Industry Act 1997* (NSW), which requires security guards to hold their own firearms licences.¹⁰⁸⁶

Within Western Australia, the *Firearms Act* provides that a Corporate Licence authorises an organisation for which a security agent’s licence is held under the *Security and Related Activities (Control) Act 1996* (WA) to permit an employee to possess a firearm or ammunition to the extent only that the employee is authorised to do so by a security officer’s licence endorsed under section 24,¹⁰⁸⁷ or a permit issued under section 25,¹⁰⁸⁸ of the *Security and Related Activities (Control) Act 1996* (WA).¹⁰⁸⁹ These endorsements may be cancelled,¹⁰⁹⁰ and decisions to refuse to grant an endorsement,¹⁰⁹¹ or to cancel an endorsement,¹⁰⁹² are reviewable by the SAT. A security officer’s licence is not to be issued unless the licensing officer is satisfied that, among other things, ‘the applicant is of good character and is a fit and proper person to hold a licence’.¹⁰⁹³ There is, then, an extra layer of oversight in relation to security officers, who do not have automatic access to firearms simply because their employer holds a Corporate Licence.

However, some queries have been raised as to the operation of Corporate Licences more generally. The 2013 Annual Report of the SAT reiterated a matter aired in the 2011–12 Annual Report,¹⁰⁹⁴ noting that ‘concern ... has been expressed in the SAT as to the level of control in provisions relating to the issue of a firearm to a corporate entity. There appears to be a lack of capacity for the licensing authority to monitor persons to whom possession of a firearm licensed to a corporate entity might be given. There has been no further development in addressing this concern.’¹⁰⁹⁵

Upon further enquiry, the SAT has advised that it appears the Police Commissioner has put in place an informal arrangement whereby a Corporate Licensee would submit names of employees who might be given access to a firearm to the Commissioner for consideration. This is referred to as a Nominated Persons Authorisation. The SAT advises further that a person who is aggrieved by a decision of the Police Commissioner pursuant to this arrangement can purportedly seek a review of the decision from the SAT.

1082 *Firearms Regulations 1974* (WA) r 18(1)(a).

1083 Department of the Prime Minister and Cabinet and Department of the Premier and Cabinet New South Wales, *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, 45, accessed at <https://www.dpmc.gov.au/pmc/publication/martin-place-siege-joint-commonwealth-new-south-wales-review>.

1084 Department of the Prime Minister and Cabinet and Department of the Premier and Cabinet New South Wales, *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, 45–46, accessed at <https://www.dpmc.gov.au/pmc/publication/martin-place-siege-joint-commonwealth-new-south-wales-review>.

1085 Department of the Prime Minister and Cabinet and Department of the Premier and Cabinet New South Wales, *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, 46, accessed at <https://www.dpmc.gov.au/pmc/publication/martin-place-siege-joint-commonwealth-new-south-wales-review>.

1086 *Security Industry Act 1997* (NSW), s 11(1)(f) provides that a class 1F licence under that Act authorises the licensee to patrol, protect or guard approved classes of property while armed (but only under the authority of a licence or permit to use or possess firearms under the *Firearms Act 1996* (NSW)). Section 23AA(1) of the *Security Industry Act 1997* (NSW) provides further that it is a condition of every class 1F licence that the licensee must not carry on the security activity authorised by the licence unless the licensee is authorised by a licence or permit under the *Firearms Act 1996* (NSW) to possess or use a firearm.

1087 *Security and Related Activities (Control) Act 1996* (WA), s 24(1) provides that a security officer’s licence may be endorsed by a licensing officer to authorise the security officer to be in possession of a firearm while engaged in one or more of the escort of money or articles of value; or any other prescribed activity, but not otherwise.

1088 *Security and Related Activities (Control) Act 1996* (WA), s 25(1) provides that a licensing officer may on application issue a permit to a security officer authorising that officer to be in possession of a firearm for a specified period at a specified place while guarding or protecting money or articles of value otherwise than during an escort. Section 25(1a) provides that a permit under this section may be issued only to a security officer whose licence is endorsed under section 24.

1089 *Firearms Act 1973* (WA) s 16A.

1090 *Security and Related Activities (Control) Act 1996* (WA), s 68.

1091 *Security and Related Activities (Control) Act 1996* (WA), s 72(2)(a).

1092 *Security and Related Activities (Control) Act 1996* (WA), s 72(2)(e).

1093 *Security and Related Activities (Control) Act 1996* (WA), s 52(1)(c).

1094 State Administrative Tribunal Annual Report 2011–2012, 20.

1095 State Administrative Tribunal Annual Report 2012–2013, 19.

The SAT provided this list of questions arising from the above arrangement:

1. What independent oversight or control is in place to oversee the grant of access by employees to a Corporate Licence?
2. What are the terms and conditions upon which an employee is granted access to a Corporate Licence and should those terms be informal (as seems to be the case with the informal arrangement), or should the terms be contained in a statute or regulation?
3. Are decisions made by the Police Commissioner pursuant to the informal arrangement, subject to the appeal-rights pursuant to section 22 of the *Firearms Act* and, if not, what recourse is available to an aggrieved person or Corporate Licensee?
4. Can a person who is aggrieved by the decision of the Police Commissioner pursuant to the informal arrangement seek a review of the decision from the SAT? In other words, is the decision pursuant to the Arrangement a 'decision' for purposes of section 22 of the *Firearms Act* and is the person a 'person aggrieved' for the purposes of section 22 of the *Firearms Act*?

The SAT emphasised that it had not been called upon to determine a dispute pursuant to this arrangement; nor had it sighted the arrangement or the instrument that contains the detail of the informal arrangement.¹⁰⁹⁶ The role of the SAT is discussed at paragraph 17.1.1.

The administration of Corporate Licences also poses other problems. As the Auditor General's office noted in 2013, 'details of nominated persons who have access to firearms under a corporate licence but do not require an individual firearms licence are maintained in a spread sheet completely separate to the firearms register. There is a risk to the integrity of the information due to the possibility of unauthorised access, and there are no audit trails or history of changes. Data could also be lost due to human error'.¹⁰⁹⁷

It also appears to the Commission that there is a risk that a person who has access to a firearm held under a Corporate Licence may not have easily available proof of entitlement so as to avoid arrest by an arresting officer who may not be aware that the person is an employee of a Corporate Licensee.

Western Australia Police advises that although there is no legislation requiring companies to provide a list of personnel who use firearms held under a Corporate Licence, most companies agree to this procedure. Since late 2012, Licensing Services has been collating employee details when provided by employers and completing a security/probity check. Once probity has been completed, where appropriate, a letter of approval is provided to the employer and employee.¹⁰⁹⁸

There are currently 597 active Corporate Licences in Western Australia.¹⁰⁹⁹ These can be classified as follows:

- Corporate Licences (such as security firms): 356 licences
- Firearm Dealers 197 licences
- Firearm Manufacturers 29 licences
- Firearm Repairers 15 licences

There are now 3,400 'Nominated Persons' in Western Australia, who are registered with Licensing Services to carry firearms in the course of their work. It is estimated that 1,500 to 2,000 other persons carry firearms in the course of their work but are not registered, as this is a voluntary process. The database is updated manually by Licensing Services staff.¹¹⁰⁰

Western Australia Police advises that records are not currently available to operational police outside of office hours and that the current firearm registry cannot record and collate these records. However, Western Australia Police advises that, with the implementation of the new Licensing and Registration system, records of approval will be available through warnings placed on IMS enabling all police officers to have access.¹¹⁰¹

Western Australia Police has advised that it would support:

- an amendment to section 16(1)(c) of the *Firearms Act* to include the registration of nominated persons during the course of employment as a requirement;
- a provision that would enable the Police Commissioner to prohibit a person from having access to firearms held on a Corporate Licence (whether as a specific provision in relation to Corporate Licences or as part of a broader scheme of firearms prohibitions orders);
- the inclusion of the Nominated Persons application and authorisation form in Schedule 1 of the *Firearms Regulations*.¹¹⁰²

1096 State Administrative Tribunal, Comments to Law Reform Commission of Western Australia, 14 October 2014.

1097 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 16.

1098 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 11.

1099 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 12.

1100 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 12.

1101 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 12.

1102 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 11 and 12.

In contrast to Western Australia, some jurisdictions do not provide for Corporate Licences. For instance, in Tasmania there is no such licence category.¹¹⁰³ Instead, where a person's workplace requires him or her to have access to firearms for a work-related purpose, that purpose is assessed as a 'genuine reason' and supporting evidence is required.¹¹⁰⁴

It is of concern that there is currently no formal mechanism to regulate the possession and use of firearms by employees of corporations that hold a Corporate Licence, and that the details of these people are not included on the register with persons who hold individual licences.

Proposal 33:

that the *Firearms Act 1973* (WA) be amended to provide that:

- a new category of licence/approval be established for individuals wishing to use firearms under a Corporate Licence;
- the requirements that must be satisfied before such a licence/approval is obtained include that the Police Commissioner is satisfied that the person is a fit and proper person;
- the licence/approval relate to particular firearms or categories of firearms that are the subject of one or more specified Corporate Licences;
- an individual may not access firearms held under a Corporate Licence unless the individual has obtained a licence/approval within that new category;
- prescribed details of an individual holding such a licence/approval be included on the firearms register together with the details of the relevant Corporate Licence holder;
- the Police Commissioner's decisions made regarding the new proposed category of individual licence/approval constitute a 'decision' for the purposes of section 22 of the *Firearms Act 1973* (WA) and therefore be subject to review by the State Administrative Tribunal; and
- terms and conditions on the use of firearms under Corporate Licences be included in the *Firearms Regulations 1974* (WA).

In addition, the Commission has been advised that the informal Nominated Persons Authorisation requirement used in respect of Corporate Licences has been extended to the holders of Dealer's Licences.¹¹⁰⁵ It should be noted that persons holding a Dealer's Licence are already subject to additional oversight, as discussed at paragraph 14.11 below.

Question 29:

- Do you have any comment on the use of the Nominated Persons Authorisation with respect to Dealer's Licences?

12.5 Repairer's Licences

The *Firearms Act* also provides for Repairer's Licences.¹¹⁰⁶ The 2008 Western Australia Police Review of the Act noted that the relevant provisions cause some problems. This is because the Act 'implies that any employee who is employed by a firm that runs a firearm repairer's business must be licensed, as they cannot work under the auspices of the employer's licence'.¹¹⁰⁷ The implication lies in the fact that the Act provides that a Repairer's Licence: 'entitles the holder to:

- (i) repair firearms belonging to persons who are authorised by this Act or any other law to possess them; and
- (ii) possess ammunition for those firearms,

on the premises named and identified in that licence, and authorises the holder or an employee or partner of the holder to have in his possession, and to carry in the ordinary course of the business of that repairer, any such firearm or ammunition and to use any such firearm or ammunition for the purpose of testing it'.¹¹⁰⁸

That is, while employees of the holder of a Repairer's Licence may carry or use a firearm or ammunition in the course of the holder's business, the Act does not specifically authorise these employees to repair firearms. Similar provision is made for employees of the holder of a Dealer's Licence¹¹⁰⁹ or Manufacturer's Licence:¹¹¹⁰ they may carry firearms or ammunition in the course of the holder's business, and may use a firearm for the purpose of testing it, but they are not specifically empowered to deal in or manufacture firearms.

1103 Correspondence from Hon MT Hidding MP, Tasmanian Minister for Police, 16 June 2015, 4.

1104 Email from Ms Kathy Bennet, Inspector, Firearms and State Community Policing Services, Tasmania, 28 July 2015.

1105 Meeting with Hon Rick Mazza MLC, 18 June 2015.

1106 *Firearms Act 1973* (WA), s 16(1)(e).

1107 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 24.

1108 *Firearms Act 1973* (WA), s 16(1)(e).

1109 *Firearms Act 1973* (WA), s 16(1)(d).

1110 *Firearms Act 1973* (WA), s 16(1)(f).

An apprentice also faces difficulties seeking to become licensed, given that a person under the age of 18 cannot be granted a licence or permit under the *Firearms Act*.¹¹¹¹ The 2008 Police Review noted that 'an apprentice cannot obviously pass a proficiency test to be granted a Repairer's Licence until they learn the trade; and they cannot learn the trade because legislation will not allow them to work in the trade until they obtain a licence'.¹¹¹² The review recommended that the *Firearms Act* be amended to allow apprentices/trainees to be exempted from having to obtain a licence and be allowed to do their apprenticeship under the business licence of the manufacturer or repairer.¹¹¹³ Western Australia Police has recently reiterated its support for such an amendment.¹¹¹⁴

The 2008 Police Review also recommended that section 31(2) of the *Firearms Act* be amended to allow licensed repairers working for one business/company to have their records submitted on one form under the business name in order to clarify that these returns need not be submitted separately by each individual repairer.¹¹¹⁵ No amendments have been made to implement these recommendations. Again, Western Australia Police has recently expressed its support for such an amendment.¹¹¹⁶

The Commission considers that it is appropriate to broadly align the requirements of the Act in relation to employees who seek to access firearms as part of their duties that are subject to not only Corporate Licences but also Repairer's, Dealer's and Manufacturer's Licences. In its view it is appropriate for a formal licence/approval to be required for any individual in this category before the person may access a firearm in the course of their employment, that he or she should, as a minimum, be required to satisfy a 'fit and proper person' test and that the details of that person be maintained on the firearms register.

Proposal 34:

that the *Firearms Act 1973* (WA) be amended to provide that:

- a new category of licence/approval be established for individuals wishing to use firearms under a Repairer's Licence, Dealer's Licence or a Manufacturer's Licence;
- the requirements that must be satisfied before such a licence/approval is obtained include that the Police Commissioner is satisfied that the person is a fit and proper person;
- the licence/approval relate to one or more specified Repairer's Licence, Dealer's Licence or Manufacturer's Licence;
- an apprentice over a prescribed age, such as 16 years, is eligible to apply for an individual licence/approval in connection with a Repairer's Licence or Manufacturer's Licence;
- an individual may not access firearms held under a Repairer's Licence, Dealer's Licence or Manufacturer's Licence unless the individual has obtained a licence/approval within that new category;
- prescribed details of an individual holding such a licence/approval be included on the firearms register together with the details of the relevant Repairer's Licence, Dealer's Licence or Manufacturer's Licence holder;
- the Police Commissioner's decisions made regarding the new proposed category of individual licence/approval constitute a 'decision' for the purposes of section 22 of the *Firearms Act 1973* (WA) and therefore be subject to review by the State Administrative Tribunal; and
- licensed repairers working for one business/company may have their records submitted on one form under the business name in order to clarify that these returns need not be submitted separately by each individual repairer.

1111 *Firearms Act 1973* (WA), s 10.

1112 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 24.

1113 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 24.

1114 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 25.

1115 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 25.

1116 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 25.

12.6 Theatrical licences

The 2008 Police Review recommended that the Act should be amended to create a licence known as a 'theatrical licence'.¹¹¹⁷ This recommendation was made on the basis that there was 'a need for WA to have a specific licence that allows a company/business to operate in the area of film, TV and stage productions'.¹¹¹⁸

This would be consistent with the 1996 National Firearms Agreement; in the section of the Agreement that discusses the 'genuine reason' requirement, one of the reasons included was 'persons having other limited purposes authorised by legislation or Ministerial approval in writing (for example, firearms used in film production)'.¹¹¹⁹ Western Australia has not legislated to create such a licence, and the 2008 Police Review noted that, to overcome the lack of a theatrical licence, 'WA has been issuing a Corporate Licence to the company/business operating in this field, with strict conditions (note: this is not a big industry in WA and as such, WA has been able to make do by issuing a Corporate Licence for these type of businesses to operate)'.¹¹²⁰ In recommending that a theatrical licence be included in the *Firearms Act*, the 2008 Police Review stated:

It must be noted that WA legislation **absolutely** prohibits the possession and use of military-type weapons by any person. Therefore, if a 'theatrical licence' is to be implemented, this aspect of the legislation would have to be taken into account when considering the specifics of a 'theatrical licence'. The *Firearms Act* also contains an offence provision whereby a person commits an offence if they point a firearm at another person without lawful excuse; this would need to be addressed if functional firearms were to be used for theatrical purposes.¹¹²¹

The review noted that 47.9 per cent of the stakeholders who had responded to the Western Australia Police discussion and issues paper had answered 'yes' to the question whether firearm licences should be required for theatrical and film purposes, 38.1 per cent had answered 'no', and 14 per cent were undecided.¹¹²²

New South Wales,¹¹²³ the Australian Capital Territory,¹¹²⁴ the Northern Territory,¹¹²⁵ Queensland¹¹²⁶ and Victoria¹¹²⁷ all make some provision for the use of firearms in theatrical performances.

Proposal 35:

- that the *Firearms Act 1973* (WA) be amended to provide for a new category of 'theatrical licence'.

12.7 Shooting Gallery Licences and the lack of Shooting Range Licences

The *Firearms Act* exempts customers of shooting galleries¹¹²⁸ and approved shooting ranges¹¹²⁹ from its licensing requirements. That is, a person may attend at either a shooting gallery or an approved range and may handle and use a firearm or ammunition without holding a licence under the Act.

While the *Firearms Act* does provide for the grant of Shooting Gallery Licences,¹¹³⁰ it does not require that licences be obtained by persons seeking to run a shooting range. Instead, the Act refers to such ranges as being 'approved'.¹¹³¹ Approvals are granted by the Police Commissioner, whose discretion to do so is set out in section 11 of the Act and conditioned by requirements including the 'fit and proper person' requirement.¹¹³²

12.7.1 Shooting Gallery Licences

A shooting gallery is a facility, usually present at fairgrounds or agricultural shows, which allows for participants to shoot restricted types of firearms. In addition to customers, the *Firearms Act* provides that no licence is required by a person who, as an employee or partner of the holder of a licence to conduct a shooting gallery, handles or uses a firearm or ammunition at the shooting gallery in accordance with the conditions, restrictions and limitations, if any, specified in the licence relating to that shooting gallery.¹¹³³ The restrictions attached to shooting galleries are set out in the *Firearms Regulations*,

1117 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 25.

1118 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 25.

1119 Australasian Police Ministers' Council, Special Firearms Meeting, 10 May 1996, Resolutions, 3, 4, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

1120 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 25.

1121 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 25. Emphasis in original.

1122 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 39.

1123 *Firearms Regulation 2006* (NSW), r 52(1).

1124 *Firearms Act 1996* (ACT), s 141(a).

1125 *Firearms Act* (NT), s 31(1)(d). This section provides that a permit may be granted 'to authorise the possession or use of firearms for film, theatrical productions or other artistic purposes'.

1126 See *Weapons Act 1990* (Qld), ss 12(j) and 118(1), and *Weapons Regulations 1996* (Qld), r 4(c).

1127 *Firearms Act 1996* (Vic), s 92A.

1128 *Firearms Act 1973* (WA), s 8(1)(l) provides that no licence is required by a person who, as an employee or partner of the holder of a licence to conduct a shooting gallery, or as a customer of a shooting gallery being conducted pursuant to this Act, handles or uses a firearm or ammunition at that shooting gallery in accordance with the conditions, restrictions and limitations, if any, specified in the licence relating to that shooting gallery.

1129 *Firearms Act 1973* (WA), s 8(1)(m) provides that no licence is required by a person who, with the permission of the owner of the firearm on an approved range that is properly constructed and maintained, has in his possession, handles or uses a firearm or ammunition for a firearm that is the property of, or is the property of a member of, an approved club or other approved organisation and is held by that owner under a licence or permit granted under the *Firearms Act 1973* (WA).

1130 *Firearms Act 1973* (WA), s 16(1)(g).

1131 *Firearms Act 1973* (WA), s 8(1)(m).

1132 *Firearms Act 1973* (WA), s 11.

1133 *Firearms Act 1973* (WA), s 8(1)(l).

which provide that a firearm can be used at a shooting gallery only:

- if it is of not more than a .22 calibre; and
- it is either an air rifle or a rim fire firearm chambered for ammunition that is no more highly powered than standard long rifle ammunition.¹¹³⁴

The Regulations also:

- provide standards for the construction of shooting galleries;¹¹³⁵
- require supervision by responsible persons¹¹³⁶ and the taking of all reasonable and proper care so as to prevent danger from the use of firearms in the shooting gallery;¹¹³⁷
- provide additional safety guidelines, including that the proprietor and any other person having the management or control of a shooting gallery must not at any time cause or allow any charge to be used in a firearm that is a greater charge than is consistent with safety, and shall cause every firearm, loaded or unloaded, to be pointed to the target in the shooting gallery, and must not allow any loaded firearm to be taken out of the shooting gallery;¹¹³⁸
- provide that no person hiring or using any firearm in a shooting gallery shall, while the firearm is loaded or being loaded, allow the firearm to be pointed otherwise than towards the target in the shooting gallery;¹¹³⁹
- provide that no person shall take any loaded firearm out of a shooting gallery;¹¹⁴⁰
- provide that no person shall wilfully, improperly, carelessly or negligently interfere with any person or any firearm let to any person in a shooting gallery or with any shield, fastening or fitting which secured or contributes to the safe use of firearms in the gallery;¹¹⁴¹ and
- provide that any contravention of the Regulations¹¹⁴² is an offence punishable by a penalty not exceeding \$1,000.¹¹⁴³

Question 30:

- Are the restrictions imposed on shooting galleries in the *Firearms Regulations 1974* (WA) appropriate?

12.7.2 Approved shooting ranges

A shooting range is a private facility where members of the public pay a fee to enter and use firearms. Some of these are club ranges, which are run by approved shooting clubs. The range itself must be approved by the Police Commissioner, and a Corporate Licence is used by the operator to hold the firearms that are endorsed for use by fee-paying attendees at the range. In contrast to shooting galleries, shooting ranges are not presently specifically regulated under the *Firearms Regulations*. Western Australia Police can provide an approval or can withhold approval but on the face of the Act and Regulations there is little ability to regulate approved ranges once this has taken place, short of revoking an approval or an operator's Corporate Licence.¹¹⁴⁴

In addition to the lack of a shooting range licence, the Act and Regulations do not make any specifications as to the construction and safety standards of shooting ranges, as the Regulations do in respect of shooting galleries. Further, attendees at shooting ranges may access and use firearms, and are not subject to the restrictions on calibre that are imposed on participants at shooting galleries. Attendees at shooting ranges cannot shoot Category D firearms, as such firearms can only be possessed for Commonwealth or state government purposes.¹¹⁴⁵ However, Category H firearms (which include handguns) can be used.

The 2008 Police Review recommended that the *Firearms Regulations* be amended to include shooting range specifications.¹¹⁴⁶ The review explained as follows:

Shooting ranges used by firearm clubs for competitive target shooting have to be approved by the Commissioner [Section 8 (1)(m) of the *Firearms Act*]. To carry out this function, Western Australia Police have trained range inspectors, who inspect shooting ranges for their safety against certain specifications. These range specifications are derived from the Army and other law enforcement agencies that use shooting ranges for their practice in the use of firearms. At the current time, Western Australia Police uses the range specifications compiled by Victoria Police, which is considered the foremost national authority in the determination of range constructions for their safety of use.

1134 *Firearms Regulation 1974* (WA), r 15(4)(a) and (b).

1135 *Firearms Regulation 1974* (WA), r 15(1)(a)-(c).

1136 *Firearms Regulation 1974* (WA), r 15(1)(d) and (e).

1137 *Firearms Regulation 1974* (WA), r 15(1)(f).

1138 *Firearms Regulation 1974* (WA), r 15(1)(g).

1139 *Firearms Regulation 1974* (WA), r 15(2).

1140 *Firearms Regulation 1974* (WA), r 15(2).

1141 *Firearms Regulation 1974* (WA), r 15(3).

1142 Other than regulation 26; see *Firearms Regulations 1974* (WA), r 23(2).

1143 *Firearms Regulations 1974* (WA), r 23(1).

1144 See *Firearms Act 1973* (WA), s 20.

1145 *Firearms Regulations 1974* (WA), Schedule 3, Division 4, cl. 8.

1146 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 30.

The issue that confronts Western Australia Police in the use of these particular specifications is: whether Western Australia Police have a legal case to argue that their specifications are superior, if challenged in an appellant tribunal hearing, to those being put forward by the appellant. In other words, whose opinion will the [State Administrative Tribunal] take notice of: the Western Australia Police or the other expert witness produced by the appellant?

In order to nullify any argument that might arise, it is suggested that specifications of shooting ranges for the various disciplines be included and detailed in the *Firearms Regulations*.¹¹⁴⁷

No amendments were made to implement this recommendation.

It should also be noted that there have been suicides, and reported suicides, at shooting ranges. In August 2014 a man reportedly turned a gun on himself in a Perth shooting complex, with fatal consequences,¹¹⁴⁸ and in October that year it was reported that a man received a self-inflicted gunshot wound to the head at the same range,¹¹⁴⁹ and subsequently died.¹¹⁵⁰ The Coroner is yet to report on these tragic incidents, and it would therefore be premature for the Commission to make recommendations in relation to them.

Proposal 36:

- that the *Firearms Act 1973* be amended to require that persons conducting, or wishing to conduct, a shooting range be licensed under the Act for this specific purpose; and
- the *Firearms Regulations 1974* (WA) prescribe specifications for approved shooting ranges, as they do in respect of approved shooting galleries.

12.8 Possible exemption – court employees

The 2008 Police Review noted that the Act does not exempt court employees from the licensing requirements of the Act. The review noted that court employees ‘might in the course of their employment need to receive and hold on to firearms that might be produced in a court-trial as an exhibit’ and

recommended that section 8(1) of the *Firearms Act* be amended ‘to include certain employees of the court’.¹¹⁵¹ Others may also come into possession of firearms in the course of their official duties in connection with criminal investigations or court proceedings, such as forensic officers. It may already be that under other legislation protections exist for some such officers. A question also arises concerning the safe handling of such firearms and whether a court should be explicitly empowered to require or permit that steps be taken to temporarily disable a firearm where it considers it to be appropriate in the interests of safety.

Question 31:

- Should section 8(1) of the *Firearms Act 1973* (WA) be amended to include employees and officers of a court, or any other persons, who may have occasion to possess firearms in the course of their official duties; and
- should a court conducting proceedings in respect of which a firearm is a potential exhibit be explicitly empowered to require or permit that steps be taken to temporarily disable the firearm where it considers it to be appropriate in the interests of safety?

1147 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 30.

1148 ‘Western Australia Police investigate shooting death at Belmont’s Lone Ranges Shooting Complex’, 9 August 2014, *Perth Now*, accessed at <http://www.perthnow.com.au/news/western-australia/wa-police-investigate-shooting-death-at-belmonts-lone-ranges-shooting-complex/story-fnhocxo3-1227019021664>.

1149 C. Wahlquist, ‘Man critical after shooting incident at Lone Ranges Shooting Complex in Belmont’, 16 October 2014, *Perth Now*, accessed at <http://www.perthnow.com.au/news/western-australia/man-critical-after-shooting-incident-at-lone-ranges-shooting-complex-in-belmont/story-fnhocxo3-1227093055401>.

1150 ‘Another fatality at shooting complex’, 21 October 2014, *Western Suburbs Weekly*, accessed at <http://westernsuburbs.inmycommunity.com.au/news-and-views/local-news/Another-fatality-at-shooting-complex/7666258/>.

1151 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 31.

13. CHANGES IN FIREARM TECHNOLOGY

Concerns about developments in firearm technology have been expressed at international, national, and state levels in recent years. In particular, it has been observed that the 1996 National Firearms Agreement, which classified firearms according to particular categories, is now nearly twenty years old.

13.1 Developments in firearm technology and the 1996 National Firearms Agreement

The Commission understands that law enforcement agencies in some jurisdictions have specific concerns about certain firearms which are captured under a lower category (for example, Category A) that have been identified as carrying a higher risk than firearms captured under a higher category (for example, Category C). Further, there are concerns that the manufacturing of firearms, firearm parts and accessories has developed in ways that would not have been foreseen at the time of the 1996 National Firearms Agreement. For instance, the intervening years have seen the development of external stocks which may convert general category handguns into 'tactical looking' firearms and the development of straight pull forward assist bolt action systems.¹¹⁵² It has been commented that there is variation between jurisdictions as to the categories in which particular firearms are classified, and also that the current categories do not consider all emerging technologies.¹¹⁵³ However, there is a diversity of views on this point; it has also been suggested that the categories that the 1996 National Firearms Agreement establishes remain 'robust' despite emerging technologies.¹¹⁵⁴

The joint New South Wales-Commonwealth review of the Sydney Siege, which is discussed in Annexure 1 to this Discussion Paper, observed that, since the 1996 National Firearms Agreement, significant technological advancements and local factors have resulted in some variations in how jurisdictions apply aspects of the 1996 National Firearms Agreement, including different periods for licences and different requirements that need to be met to own and possess Category D firearms. The review observed that

there were areas where national consistency could be improved to further restrict the movement of firearms to the illicit market, such as the accountability of deactivation standards and agreed firearm descriptors. The review then concluded that these changes could be worked through at an appropriate Ministerial forum.¹¹⁵⁵

The joint New South Wales-Commonwealth review recommended, among other things, that the 'Commonwealth, states and territories should simplify the regulation of the legal firearms market through an update of the technical elements of the National Firearms Agreement'.¹¹⁵⁶ Similarly, a submission from the Commonwealth Attorney General's Department to the recent Senate Committee Inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community (which is discussed at paragraph 16.2) proposed that the technical elements of the 1996 National Firearms Agreement be updated, including the classification of new technology with regard to ballistic performance, rate of fire and appearance.¹¹⁵⁷

13.2 Developments in 3D printing technology

Particular concerns have been expressed in recent years about the use of 3D printing technology, originally developed for use in industrial design and architecture, to produce firearms. On 3 May 2013, *Forbes* magazine reported that a high-tech gunsmithing group, Defense Distributed, had produced the world's first fully 3D-printed gun, named 'Liberator'. *Forbes* reported that 15 of the gun's 16 functional parts were made of plastic and that it was quick to make – its body could be printed overnight and a new barrel printed in a few hours.¹¹⁵⁸

Later that month, the New South Wales Police Commissioner, Mr Andrew Scipione, appeared at a media conference and showed a video to reporters of the 'Liberator' being fired. The *Australian Financial Review* reported that 'the printed gun fired bullets with sufficient power to kill, but it also exploded in a fashion that would have caused serious injury to the

1152 Correspondence from the Hon Wade Noonan MP, Victorian Minister for Police, 20 May 2015, 4.

1153 Correspondence from Mr Reece Kershaw, Acting Commissioner of Police, 18 February 2015, 5.

1154 Correspondence from the Hon Tony Piccolo MP, Minister for Police, South Australia, 5 March 2015, 4.

1155 Department of the Prime Minister and Cabinet and Department of the Premier and Cabinet New South Wales, *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, 50, accessed at <https://www.dpmc.gov.au/pmc/publication/martin-place-siege-joint-commonwealth-new-south-wales-review>.

1156 Department of the Prime Minister and Cabinet and Department of the Premier and Cabinet New South Wales, *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, 50, accessed at <https://www.dpmc.gov.au/pmc/publication/martin-place-siege-joint-commonwealth-new-south-wales-review>.

1157 Attorney-General's Department, Submission, August 2014, cited in Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 47, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1158 'The world's first 3D printed gun', *Forbes*, <http://www.forbes.com/pictures/mhl45ediih/a-lethal-blueprint/>

person firing it'.¹¹⁵⁹ Mr Scipione advised that the printer used to make the gun in the demonstration video cost \$1,700, and the raw materials required to print the gun cost \$35. He further stated that the 'weapon known as The Liberator has been downloaded 100,000 times before it was removed from circulation at the request and direction of the US government'. Mr Scipione also referred to fears that printed guns made from thermoplastic or synthetic materials were undetectable in airport X-ray machines, saying 'not only are these things undetectable, untraceable, cheap and easy to make, but they will kill'.¹¹⁶⁰

In America, it was recently reported that delivery companies FedEx and UPS would not ship a computer-controlled mill known as the 'Ghost Gunner', which is also sold by Defense Distributed and has been marketed as 'an affordable, private way to make an AR-15 rifle body without a serial number'.¹¹⁶¹ It has also been reported that, in Japan in 2014, a man was sentenced to two years' imprisonment for using a 3D printer to produce firearms at his home and publishing a video showing how he made the firearms.¹¹⁶²

In Queensland, a private member's Bill was introduced in 2014 which proposed, among other things, to create a licensing scheme applicable to 'digital 3D firearms' and to create offences for persons who unlawfully make, acquire, possess or distribute these items.¹¹⁶³ The Bill was the subject of a Committee report which recommended that it not be passed¹¹⁶⁴ and it has since lapsed.

13.3 United Nations

Australia is a signatory to the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, which came into force on 3 July 2005.¹¹⁶⁵ There are also other United Nations instruments that relate to firearms. In 2001, the United Nations agreed to a Programme of Action to Prevent, Combat, and

Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, which in turn ultimately led to the General Assembly's adoption of the *International Instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons* on 12 December 2005.¹¹⁶⁶

In June 2014, the United Nations Secretary-General released a report that surveyed recent developments in small arms and light weapons manufacturing, technology and design.¹¹⁶⁷ The Secretary-General's report noted that until the third quarter of the twentieth century, small arms were generally made of steel, wood and Bakelite, but that since then aluminium, titanium and other metals have been incorporated into firearm manufacturing and that in recent years metal has been increasingly replaced by plastics and polymers.¹¹⁶⁸ The report noted further that '[m]odularity has quickly become a feature of military-style weapons'. That is, a rifle 'can now consist of a core section, primarily the upper receiver, onto which can be attached an array of other parts to obtain different configurations', such that it is possible to change the calibre of a firearm.¹¹⁶⁹

The Secretary-General noted, further, that although the use of 3D printing to produce firearms was currently out of reach of most individuals due to the costs involved in accessing a printer, 3D printing was nevertheless, 'a significant innovation in small arms manufacturing, potentially opening the market to new sectors and actors'.¹¹⁷⁰ The availability of such technology for criminal and terrorist activities was a matter of particular concern.¹¹⁷¹

The report also noted the development of biometric technologies such as the recognition of an individual's fingerprint, palm print, voice, face, or 'dynamic grip on a weapon', such that unless a match is found between the person handling a firearm and one of these data points, a firearm 'remains locked'.¹¹⁷²

1159 '3D printing turns deadly as untraceable guns hit the street', *Australian Financial Review*, 24 May 2013, accessed at http://www.afr.com/p/technology/printing_turns_deadly_as_untraceable_gRYYSWtzN8Gs1vT6jW8VUP

1160 '3D printing turns deadly as untraceable guns hit the street', *Australian Financial Review*, 24 May 2013, accessed at http://www.afr.com/p/technology/printing_turns_deadly_as_untraceable_gRYYSWtzN8Gs1vT6jW8VUP

1161 'FedEx and UPS refuse to ship a digital mill that can make untraceable guns', *Wired*, 24 February 2015, accessed at <http://www.wired.com/2015/02/fedex-mill-untraceable-firearms/>.

1162 J. Nassivera, '3D printing guns lands Japanese man in prison for two years', 22 October 2014, *Headlines & Global News* <http://www.hngn.com/articles/46764/20141022/3d-printing-guns-lands-japanese-man-in-prison-for-two-years.htm>.

1163 Weapons (Digital 3D and Printed Firearm) Amendment Bill 2014 (Qld), Explanatory Notes, accessed at https://www.legislation.qld.gov.au/Bills/54PDF/2014/Weapons3DPrintAB14_PE.pdf.

1164 Weapons (Digital 3D and Printed Firearm) Amendment Bill 2014, Report No. 80 Legal Affairs and Community Safety Committee, November 2014, accessed at <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2014/5414T6438.pdf>.

1165 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, New York, 31 May 2001, accessed at https://treaties.un.org/pages/viewdetails.aspx?src=ind&rmtmsg_no=xviii-12-c&chapter=18&lang=en

1166 Programme of Action, Regional Organizations, accessed at <http://www.poa-iss.org/RegionalOrganizations/17.aspx>

1167 *Recent developments in small arms and light weapons manufacturing, technology and design and implications for the implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons: Report of the Secretary-General*, 16 June 2014, 4.

1168 *Recent developments in small arms and light weapons manufacturing, technology and design and implications for the implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons: Report of the Secretary-General*, 16 June 2014, 3.

1169 *Recent developments in small arms and light weapons manufacturing, technology and design and implications for the implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons: Report of the Secretary-General*, 16 June 2014, 4.

1170 *Recent developments in small arms and light weapons manufacturing, technology and design and implications for the implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons: Report of the Secretary-General*, 16 June 2014, 4, 5.

1171 *Recent developments in small arms and light weapons manufacturing, technology and design and implications for the implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons: Report of the Secretary-General*, 16 June 2014, 5.

1172 *Recent developments in small arms and light weapons manufacturing, technology and design and implications for the implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons: Report of the Secretary-General*, 16 June 2014, 7.

13.4 Australia – 2015 Senate Inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community

A Senate Committee, the Legal and Constitutional Affairs References Committee, recently reported on the ability of Australian law enforcement authorities to eliminate gun-related violence in the community. This inquiry is discussed more fully in this Discussion Paper at paragraph 16.2. The terms of reference for the inquiry required the Committee, among other things, to consider ‘the adequacy of current laws and resourcing to enable law enforcement authorities to respond to technological advances in gun technology, including firearms made from parts which have been imported separately or covertly to avoid detection, and firearms made with the use of 3D printers’.¹¹⁷³

The Australian Federal Police provided a submission to the Senate Inquiry, in which it observed that, since its implementation, the 1996 National Firearms Agreement ‘has not evolved at the same pace as advancements in technologies and changes to the developments of new firearms in recent years’.¹¹⁷⁴ The submission further advised that ‘[c]onsultation among the National Justice Policing Senior Officers Group (NJPSOG), which provides support to the Law, Crime and Community Safety Council (LCCSC), has highlighted the potential to update the Agreement’.¹¹⁷⁵ The submission also advised that the Australian Federal Police ‘remains abreast of advances in the firearms industry including new technologies to manufacture firearms/parts. The AFP is able to advise on the relevant law enforcement implications of the use of 3D printers. For example, the AFP can provide advice on previous analysis regarding the feasibility of the discharge of 3D printed parts/firearms and whether thermoplastic firearms could evade x-ray detection’.¹¹⁷⁶

Assistant Commissioner Julian Slater of the Australian Federal Police (National Manager, Forensics) also appeared before the Inquiry. Regarding the former point, Mr Slater confirmed the view of the Australian Federal Police that the 1996 National Agreement was ‘out of date in as much as it is an agreement that was established in 1996’, that there had been ‘quite significant advancements in firearms technologies’ and that the Agreement ‘needs to be brought up to date with current firearms practice and firearms construction’.¹¹⁷⁷

On the matter of 3D technologies and their implications, Mr Slater advised that the Australian Federal Police was aware of ‘the potential risks that some of these 3D printed firearms may pose’. He stated that ‘the technology at present is not producing firearms that are reliable, and really they present a much greater risk to the person who wants to fire them than to others’ but also that ‘the technology is advancing quite quickly’, and that in addition to thermoplastics ‘there are other computerised milling systems and laser sintering systems so the technology is emerging that will allow the production of metal objects similar to the way that plastic ones are currently produced’. Mr Slater concluded: ‘I think that really does require a close watch’.¹¹⁷⁸

The Australian Federal Police also provided the following supplementary information on 3D printers.

The first commercial 3D printer was created in 1984, utilising a process known as stereolithography in which layers are added by curing photopolymers with UV lasers. In the following years 3D printing has expanded to include processes including:

- extrusion – predominately thermoplastics;
- wire – metal alloys;
- granular – metals and thermoplastics;
- powder – plaster; and
- laminated – paper, metal and plastic films.

In summary, 3D printing involves additive manufacturing, in lieu of traditional metalworking processes, that involve casting, fabrication, stamping, and removal of material such as via machining. While employing differing technologies, both 3D printing and modern metalworking processes employing Computer Numerical Control (CNC) can manufacture three-dimensional parts and components drawing upon Computer Assisted Design (CAD) files.

Due to the increased availability of advanced manufacturing capabilities such as 3D printers and CNC milling machines, combined with global access to electronic CAD files via the internet, parts and assemblies can now be economically created by individuals possessing relatively inexpensive (approx. \$500) 3D printing machines. This technology has the potential for criminal applications through the production of illicit items such as illegal copies of objects or production of firearms and/or components.

1173 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 1, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1174 Australian Federal Police, Submission 182, Legal and Constitutional Affairs References Committee, Inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community, 3.

1175 Australian Federal Police, Submission 182, Legal and Constitutional Affairs References Committee, Inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community, 3.

1176 Australian Federal Police, Submission 182, Legal and Constitutional Affairs References Committee, Inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community, 12.

1177 Proof Committee *Hansard*, Proof Copy, Transcript, Senate, Legal and Constitutional Affairs References Committee, Inquiry into the *ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 31 October 2014, 71.

1178 Proof Committee *Hansard*, Proof Copy, Transcript, Senate, Legal and Constitutional Affairs References Committee, Inquiry into the *ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 31 October 2014, 74.

To date the most widely available form of 3D printing comprises that employing the extrusion method, which utilises various forms of thermoplastics. The mechanical properties of thermoplastics place practical limitations on the components that can be manufactured. In relation to firearms, as firing of thermoplastic 3D printed firearms usually results in 'catastrophic' failure. This is due to the plastic used being unable to cope with the pressures created by the propellant gases.

3D printing processes such as granular-based laser sintering systems have the capacity to produce high quality metal objects with material characteristics approaching that of traditional metalworking processes. In November 2013, 'Solid Concepts' in California reported 3D printing of the first metal gun. This was made of over 30 printed components using a high-end laser sintering system. It was reported that testing of this firearm was successful.

To date sintering systems have only been employed for industrial applications such as aerospace due to their significant cost. Technology however, continues to evolve with metal based granular processes expected to become more widely available in the future. This increased accessibility, combined with ready availability of illicit firearm CAD files on the internet, has the potential to present future challenges to law enforcement surrounding illicit manufacturing of firearms and potential employment of thermoplastic 3D printed firearms that could evade x-ray detection (although some metal parts are still required).

The AFP Forensics Imaging and Geomatics (I&G) Team currently own one 3D printer. The AFP has tested one printed 3D firearm, printed by the I&G team. When fired, the firearm failed. It is conceivable that with modification to the firearm or ammunition the firearm may be able to function. These modifications have not been tested.¹¹⁷⁹

This is an area, then, that is currently being monitored by law enforcement agencies.

The Legal and Constitutional Affairs References Committee noted that the Australian Crime Commission had stated in its submission that it had 'not identified or been informed of law enforcement discoveries of 3D fabricated firearms being used or

made by criminal entities in Australia'.¹¹⁸⁰ However, the Committee noted that, although 'the use of 3D manufactured firearms in criminal activities appears at present to be negligible, some witnesses identified possible challenges for law enforcement with regard to firearms produced in this way'.¹¹⁸¹ For instance, Victoria Police advised that '[a]s technology is refined, and with 3D printers and other machines like a computer numerical control machine becoming more readily available and affordable, it is likely that 3D printing of firearms will increase, posing a significant risk to community safety and law enforcement agencies'.¹¹⁸² The Australian Federal Police observed that the technology was improving relatively rapidly and that ultimately 'the production of metal objects similar to the way that plastic ones are currently produced' would be possible.¹¹⁸³ Queensland Police had also provided evidence that detailed a recent property search leading to the discovery of 3D printed weapons parts which were capable of being fired.¹¹⁸⁴

The Committee observed that, although the stakeholders who provided evidence 'were generally of the view that 3D printed firearms did not pose a high risk to the community', there had 'already been cases where law enforcement authorities have uncovered individuals using this technology to manufacture firearm parts'. The Committee also noted the 'challenges that 3D printed firearms pose for law enforcement, due to their disposable nature and the difficulty associated with detection using traditional methods'.¹¹⁸⁵

However, the Legal and Constitutional Affairs References Committee does not appear to have canvassed the issue regarding the potential use of 3D printed firearms to create fear, irrespective of whether the firearms were capable of being discharged reliably. As discussed elsewhere in this Discussion Paper at paragraph 7.7, a firearm that is not capable of being discharged may still be used to create terror, for instance in armed robberies.

The Committee also noted that, although it appeared that current laws pertaining to firearms would apply equally to 3D printed firearms and firearm parts, it had been argued before the Committee that uniform regulations should be considered due to the inconsistencies between jurisdictions on firearm regulation and the rapid changes in 3D

1179 'Further information regarding 3D printers – Attachment B', Information provided by the Australian Federal Police and received 10 October 2014, accessed via http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Illicit_firearms/Additional_Documents.

1180 Australian Crime Commission, Submission 75, 6, cited in Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 76, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1181 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 76, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1182 Victoria Police, Submission 389, 3, cited in Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 76, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1183 Assistant Commissioner Julian Slater, National Manager, Forensics, Australian Federal Police (AFP), Committee *Hansard*, 31 October 2014, 74, cited in Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 131, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1184 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 132, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1185 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 93, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

manufacturing.¹¹⁸⁶ The Committee supported this view and recommended that ‘Australian governments investigate the requirement for uniform regulations in all jurisdictions covering the manufacture of 3D printed firearms and firearm parts’.¹¹⁸⁷ The alternative report, *Report by a Majority of Senators Attending the Inquiry* (discussed at paragraph 16.2), which stated that ‘new regulations do not need to be introduced to cover the manufacture of 3D printed firearms and firearm parts at this point in time’, did not support this recommendation.¹¹⁸⁸

More generally, the Legal and Constitutional Affairs References Committee:

- recognised that ‘rapid developments in 3D manufacturing technology are likely to enable production of metal firearms’;
- noted that it was important that governments ‘ensure that the law keeps pace with technological advances, without stifling innovation’; and
- considered that it would not be necessary or practical to ban the individual use of 3D printers, or to introduce a character test for ownership.¹¹⁸⁹

The Committee ultimately recommended that ‘Australian governments continue to monitor the risk posed by 3D manufacturing in relation to the manufacture of firearms and consider further regulatory measures if the need arises’,¹¹⁹⁰ which the alternative report, *Report by a Majority of Senators Attending the Inquiry* (discussed at paragraph 16.2), also supported, stating that ‘it is important to continue monitoring the risks posed by 3D manufacturing of firearms’.¹¹⁹¹

13.5 Western Australia: 3D printed firearms and air rifles

The Commission understands that within Western Australia new firearms, models and types regularly enter the market, and that Western Australia Police considers that it would be ‘problematic for legislation to keep pace’.¹¹⁹² Western Australia Police has expressed particular concern regarding the ‘new generation’ of air rifles, which are ‘as capable as some low- or high-powered firearms’.¹¹⁹³ Western Australia Police observes that currently all air rifles ‘regardless

of calibre or power are simply licensed as “air rifle” under Category A ... even though modern air rifles have various calibres and power ratings equivalent to high-powered firearms’.¹¹⁹⁴

Western Australia Police advises that air rifles may now be chambered in .177, .22, .25, .357, .45 and .50 calibre pellet/projectiles, and propelled by pre-charged pneumatic or by CO2 cylinder storage, capable of propelling projectiles at 1,200 feet-per-second and delivering significant impact energy. The amount of gas discharged from the storage cylinder is adjustable and a pre-selected pressure is set by the shooter in order to drive the projectiles at a required velocity. Western Australia Police advises further that in many cases the smaller calibre (.177, .22 and .25) projectiles are out-performing the ballistics of the standard .22 long rifle calibre powder-charged cartridges, and the larger calibre (.357, .45 and .50) projectiles are being promoted as capable of taking down wild boars and similar game. Finally, Western Australia Police advises that many new-generation air rifles are available in semi-automatic or fully automatic models. Western Australia Police notes that, although fully automatic models are controlled and prohibited, and can no longer be imported into Australia, semi-automatic models are still available.¹¹⁹⁵ In addition, Western Australia Police provides the following example:

New-generation air rifles are capable of using a standard 12- and 16-round circular magazine (when chambered in .177 or .22 pellet projectiles) and can outshoot a Ruger semi-automatic 10/22 model semi-automatic model rifle chambered in .22 long rifle calibre. The Ruger 10/22 rifle is a Category C firearm that is restricted to primary producers and registered professional vermin shooters and can only have a magazine capacity of 10 rounds.

Allowing the licensing of these air rifles contradicts the reasoning for restricting self-loading rimfire rifles similar to the Ruger 10/22. Consequently, shooters can now licence a firearm of equal capabilities to a restricted category rimfire firearm under the classification of Category A without any restriction or conditions associated to the licence.¹¹⁹⁶

1186 Law Institute of Victoria, Submission 124, 7, 11, cited in Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 80, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1187 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 7, 93, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1188 Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 149, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1189 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 93, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1190 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 8, 93, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1191 Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 149, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1192 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 3.

1193 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 3.

1194 Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015, 3.

1195 Appendix B to Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015.

1196 Appendix B to Correspondence from Dr Karl O’Callaghan, Commissioner of Western Australia Police, 16 June 2015.

Accordingly, Western Australia Police proposes that amendments be made to the *Firearms Regulations* to reflect the following 'category grading' of air rifles:

Category A1: An air rifle of calibres .177, .22 or .25 of break, pump lever or bolt action single shot or repeater, pre-charge pneumatic or CO2 canisters

Category B1.2 An air rifle of calibre greater than .25

Category C5: An air rifle of any calibre that is self-loading with a magazine capacity of no more than 10 rounds

Category D7: An air rifle of any calibre that is self-loading with a magazine capacity of more than 10 rounds.¹¹⁹⁷

The Commission proposes that these amendments be made, and invites submissions about 'new generation' air rifles below. The Commission also considers that technological changes should be regularly reviewed at a state and inter-jurisdictional level to ensure that Western Australian legislation and the technical elements of the 1996 National Firearms Agreement are updated as appropriate to reflect those changes.

With respect to concerns about 3D printed firearms, it should be noted that manufacturing firearms without a licence is already illegal in Western Australia,¹¹⁹⁸ and possessing a firearm without a licence is also an offence.¹¹⁹⁹ Further, notwithstanding the concerns of the Legal and Constitutional Affairs References Committee above, the definition of 'firearm' in the *Firearms Act* appears broad enough to encompass a 3D printed firearm.¹²⁰⁰ Western Australia Police has noted that the concern with such items is that they can be 'undetected' where not made of metal.¹²⁰¹

While the issue of 3D printed firearms is one that merits close and ongoing attention from law enforcement authorities, it does not appear that any amendment to the *Firearms Act* is required to address this issue, at this stage.

Proposal 37:

- that Western Australia Police continues to monitor developments in firearm technology, including the manufacture of 3D printed firearms, raise related issues at an inter-jurisdictional level where appropriate and ensures that state legislation is updated as appropriate;
- should it be determined at an inter-jurisdictional level that the technical elements of the 1996 National Firearms Agreement require updating, or that definitions of 'firearm' require finessing across jurisdictions, Western Australia Police participates fully in this process;
- technological advancements in air rifles be addressed by amending the *Firearms Regulations 1974* (WA) to include the following classifications:

Category A1: An air rifle of calibres .177, .22 or .25 of break, pump lever or bolt action single shot or repeater, pre-charge pneumatic or CO2 canisters

Category B1.2 An air rifle of calibre greater than .25

Category C5: An air rifle of any calibre that is self-loading with a magazine capacity of no more than 10 rounds

Category D7: An air rifle of any calibre that is self-loading with a magazine capacity of more than 10 rounds.

1197 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 4.

1198 *Firearms Act 1973* (WA), s 19(4)(c).

1199 *Firearms Act 1973* (WA), s 19(1).

1200 Section 4 of the *Firearms Act 1973* (WA) defines a 'firearm' to include 'any lethal firearm and any other weapon of any description from which any shot, bullet, or other missile can be discharged or propelled or which, by any alteration in the construction or fabric thereof, can be made capable of discharging or propelling any shot, bullet or other missile'.

1201 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 4.

14. OFFENCES AND PENALTIES IN THE FIREARMS ACT 1973 (WA)

The offences in the *Firearms Act* are set out and briefly discussed at **Annexure 3**. **Annexures 4 and 5** set out inter-jurisdictional comparisons of offences and penalties.

This chapter deals with specific issues relating to some of these offences, discusses penalty levels and deals with the enforcement of the *Firearms Act*.

14.1 Offences of possession – concerns, deceased estates, and proposals regarding amnesties

Under section 19(1) of the *Firearms Act*, a person who sells, delivers or disposes of; purchases or otherwise comes into possession of; or is in possession of any firearm or ammunition and is not the holder of a licence or permit under the Act entitling him or her to do so commits a crime unless particular exemptions apply.¹²⁰²

The standard penalty for this offence is imprisonment for five years, or, if a person is convicted summarily under any of the subsections to this section, imprisonment for three years or a fine of \$12,000. However, in particular situations the penalty increases, as follows:

- If a person who was selling, delivering or disposing of firearms was selling three or more firearms without a relevant licence or permit, that person is liable on conviction to imprisonment for 14 years.¹²⁰³
- If a crime under section 19(1) was committed in circumstances where the person was carrying a firearm and either a prohibited drug or prohibited plant (as defined in the *Misuse of Drugs Act 1981* (WA)) without authorisation or an amount of money greater than or equal to a prescribed amount, that person is liable on conviction to imprisonment for 14 years.¹²⁰⁴
- If a crime under section 19(1) (which did not involve selling, delivering or disposing of firearms) was committed in circumstances where the person was in possession of three or more firearms without a relevant licence or permit, that person

is liable, on conviction, to imprisonment for 10 years.¹²⁰⁵

- Unless other subsections apply,¹²⁰⁶ a person convicted of a crime under section 19(1) is liable to imprisonment for seven years if at the time of the offence the offender had been refused, or was disqualified from holding, a licence which would permit the sale or possession of firearms; or had the licence or permit revoked; or the firearm was a handgun or prescribed firearm; or any number or identification mark which was on the firearm had been defaced or removed; or the firearm, had been altered from the design or characteristics of its original manufacture.¹²⁰⁷

Similarly, section 19(2) of the *Firearms Act* provides that a person who:

- sells, delivers, or disposes of a firearm or ammunition to another person, or otherwise permits another person to take possession of a firearm or ammunition; or
- purchases, or otherwise comes into, possession of a firearm or ammunition from another person; or
- permits another person to be in possession of a firearm or ammunition,

commits an offence if *the other person* is not the holder of a licence or permit under this Act entitling him to possession, unless exemptions apply.¹²⁰⁸ If the firearm concerned was a handgun or prescribed firearm, the person is liable to imprisonment for five years; in any other case, he or she is liable to imprisonment for three years or a fine of \$12,000.

In addition to the above offences, section 23(3) provides it is an offence to *carry* or *use* a firearm without possessing a licence or permit or being covered by an exemption under section 8 of the Act also commits an offence. If the firearm is a handgun or prescribed firearm, the penalty is seven years' imprisonment; otherwise, it is four years' imprisonment or a fine of \$16,000.¹²⁰⁹ The summary penalties provided are three years' imprisonment or a fine of \$12,000 where the firearm is a handgun or prescribed firearm, and two years' imprisonment or a fine of \$8,000 if it is not.

1202 *Firearms Act 1973* (WA), s 19(1). Exemptions to this offence are those set out in section 8 (which prescribes classes of persons who are exempt from the licensing requirements of the Act), and anyone who comes into possession of ammunition pursuant to section 30(2) of the Act, i.e. a person acting as an agent for another person.

1203 *Firearms Act 1973* (WA), s 19(1aa).

1204 *Firearms Act 1973* (WA), s 19(1ab)(a).

1205 *Firearms Act 1973* (WA), s 19(1ab)(b).

1206 *Firearms Act 1973* (WA), ss 19(1aa) or (1ab).

1207 *Firearms Act 1973* (WA), s 19(1ac).

1208 *Firearms Act 1973* (WA), s 19(2). Again, these exemptions are those set out in sections 8 and 30(2) of the *Firearms Act 1973* (WA).

1209 *Firearms Act 1973* (WA), s 23(3).

The high penalties that attach to the unauthorised possession, carrying or use of a firearm demonstrate the importance with which Parliament has viewed the licensing regime established by the *Firearms Act*. The regime aims to ensure that only persons who are fit and proper persons and who have a genuine reason to possess a firearm (and, in some instances, a genuine need to do so), can possess and/or use firearms. As such, contraventions of this regime are taken very seriously. However, the Commission observes that there may be differing degrees of culpability among people who come into possession of a firearm without a licence, permit or approval. At one end of the scale may be someone who simply finds a firearm, whether in a public place or in the house of a deceased relative. At the other extreme, a person may deliberately obtain an unlicensed firearm for the purpose of committing criminal offences with it. Both such persons risk severe penalties.

There are also other situations in which a person might, for innocent reasons, wish to hand a firearm that does not belong to him or her to Western Australia Police. For instance, a person might be concerned about the mental health of a family member who owns a firearm, or become fearful that the family member will use the firearm to harm him or herself or other people, and therefore wish to hand the firearm in to authorities. A person may also inherit a firearm as part of a deceased estate and may not immediately provide it to Western Australia Police; he or she may understandably be preoccupied with grief for the deceased and practical necessities such as arranging for a funeral. In all of these situations, while a person is in possession of or carrying the firearm, even if they ultimately intend to provide it to Western Australia Police, they are in contravention of the *Firearms Act*, as no exemptions are in place to accommodate these circumstances.

Other jurisdictions have specifically provided for exemptions to the offence of unauthorised possession: in Tasmania, if a person who has possession of a firearm that he or she is not authorised to possess under the Act voluntarily brings the firearm to a police station and surrenders it to the Commissioner, no action can be taken against that person in respect of the unauthorised possession of the firearm by that person.¹²¹⁰

Western Australia makes no such provision in the *Firearms Act*. With respect to deceased estates specifically, the Western Australia Police website states that where 'a deceased firearm licence holder

is the sole or primary holder of licensed firearm/s, the Executor or Administrator of the Estate must hand the firearm/s into a local police station or to the co-licencee for safe-keeping pending the finalisation of the Estate' and also notes that the 'executor of an estate must not retain possession of the firearm/s unless he/she is co-licensed to possess the firearm/s'.¹²¹¹ However, the website does not provide any further information as to, for instance, the timeframes in which this must be done, or any statement of policy that a person who complies with this instruction will not be prosecuted. Relevantly, it should be noted that the Auditor General's 2013 report recommended among other things that Western Australia Police must 'retrieve firearms from deceased estates promptly and ensure that the information is entered correctly into firearms management systems'.¹²¹² The Commission considers that it would be helpful for more complete information to be provided regarding the treatment of firearms that form part of deceased estates and for the obligations on persons such as executors to be legislatively clarified.

With respect to possession of firearms more generally, it may be regarded as anomalous that the *Firearms Act* does not provide exemptions for persons who intend to surrender firearms to Western Australia Police. This is because other relevant pieces of Western Australian legislation do provide that it is not an offence under that legislation to possess firearms for the purposes of delivering them to police. The relevant provisions are summarised briefly below:

- Under the *Restraining Orders Act 1997 (WA)*, 'a person who is bound by a violence restraining order must give up possession, to the prescribed person and in the prescribed manner, of all firearms and firearms licences held by the person'.¹²¹³ If a person bound by a violence restraining order was lawfully in possession of a firearm or firearms licence before the order was made, and gives up possession in accordance with the Act, the person does not breach the order by reason only of being in possession of the firearm or firearms licence for the period necessary to give up possession in the prescribed manner.¹²¹⁴ This period is limited: subject to exceptions,¹²¹⁵ the restrained person must give the firearm or firearms licence to the police officer in charge of the nearest police station as soon as is reasonably practicable and in any event within 24 hours of the service of the order.¹²¹⁶ The *Restraining Orders Act 1997 (WA)* also provides that when

1210 *Firearms Act 1996 (Tas)*, s 129. This section was recently amended to remove the words 'any offence relating to'; see *Firearms (Miscellaneous Amendments) Act 2015*, s 53.

1211 'Licence Information: what you need to know', accessed at <http://www.police.wa.gov.au/OurServices/PoliceLicensingServices/Firearms/Licenceinformation/tabid/1902/Default.aspx>

1212 Auditor General Western Australia, *Information Systems Audit Report*, Report 11, June 2013, accessed at https://audit.wa.gov.au/wp-content/uploads/2013/06/report2013_11.pdf, 17.

1213 *Restraining Orders Act 1997 (WA)*, s 14(2). The manner in which firearms must be delivered to police is prescribed in the *Restraining Orders Regulations 1997 (WA)*; see r 4.

1214 *Restraining Orders Act 1997 (WA)*, s 14(4)(a) and (b).

1215 Exceptions are provided for in cases where the firearm is co-licensed and is possessed by the co-licencee, and where it is not practicable for the person to provide the firearm or firearms licence at the time he or she is served with the order; see *Restraining Orders Regulations 1997 (WA)*, r 4(5) and r 4(2) and (3).

1216 *Restraining Orders Regulations 1997 (WA)*, r 4(4).

making a violence restraining order, a court may shorten the prescribed period within which the respondent must give up possession of firearms and firearms licences.¹²¹⁷

- Under the *Prohibited Behaviour Orders Act 2010* (WA), if a court makes a prohibited behaviour order prohibiting the constrained person from being in possession of a firearm, or holding or obtaining a firearm licence, the constrained person must give up possession of all firearms and firearm licences they hold to a prescribed person, in a prescribed manner, and within a prescribed period after the making of the prohibited behaviour order.¹²¹⁸

If the constrained person was lawfully in possession of a firearm or firearms licence before the prohibited behaviour order was made, and gives up possession of it in accordance with the Act, the constrained person does not breach the order only because he or she is in possession of the firearm or firearm licence for the period necessary to do so.¹²¹⁹ The *Prohibited Behaviour Orders Act 2010* (WA) provides that when making a prohibited behaviour order the court may shorten the prescribed period within which the constrained person must give up possession of firearms and firearm licences.¹²²⁰ In the absence of any order shortening the prescribed period, this period is 24 hours.¹²²¹

- Under the *Court Security and Custodial Services Act 1999* (WA), an authorised person who comes into possession of a firearm, ammunition or a silencer as a result of exercising particular powers under the Act¹²²² does not commit an offence under the *Firearms Act* in relation to possession of a firearm, ammunition or a silencer or contrivance of a similar nature, if the authorised person possesses the property only so as to deliver it into the custody of a member of the Western Australia Police or an employee of the Western Australia Police.¹²²³
- Under the *Weapons Act 1999* (WA), a person does not commit an offence under section 6(1)(b) if the person is carrying or possessing a prohibited weapon only so as to deliver it into the custody of a member of the Western Australia Police or an employee of the Western Australia Police.¹²²⁴

These Acts provide clear guidelines in relation to the circumstances in which relevant persons are to provide firearms to Western Australia Police and the timeframes within which they are able to do so without being in breach of those Acts. No such certainty is provided in the *Firearms Act* or *Firearms Regulations*. There are clear differences between the *Restraining Orders Act 1997* (WA) and *Prohibited Behaviour Orders Act 2010* (WA) on the one hand and the *Firearms Act* on the other – the former concern specific orders and the obligations of persons subject to those orders, while the *Firearms Act* does not. However, in view of the fact that provisions exist in other Western Australian legislation to make it clear that possession of firearms for the purpose of delivering them to Western Australia Police is not an offence, it seems appropriate that similar provision be made in the *Firearms Act* itself.

Indeed, there has been some suggestion that the *Firearms Act* should provide for a permanent amnesty to allow persons to surrender firearms without fear of prosecution. It has been proposed that such an amnesty should operate through the holders of Dealer's Licences, on the basis of apparent cases in which 'individuals have come into possession of unlicensed firearms in innocent circumstances, but who are suspicious of an amnesty operated by Western Australia Police'.¹²²⁵ The Commission has been advised that, 'even when returning a firearm during amnesty, it is not uncommon to be formally interviewed about the circumstances of its acquisition', and that this discourages people from surrendering firearms and is therefore 'counterproductive to the policy intent of removing unlicensed firearms from circulation'.¹²²⁶

Relevantly, an amnesty took place in Queensland over a three-month period in 2013, before amendments to the *Weapons Act 1990* (Qld), which provided for mandatory sentences in respect of particular offences.¹²²⁷ During this amnesty, unregistered firearms could be surrendered to a person's local firearms dealer, as well as to his or her local police station, without prosecution for their possession.¹²²⁸ It was reported that the amnesty resulted in the surrender of 8,500 firearms, over 240 of which were handguns.¹²²⁹

As noted above, precedent exists elsewhere in Australia for a permanent general amnesty. In Tasmania, the *Firearms Act 1996* (Tas) provides that

1217 *Restraining Orders Act 1997* (WA), s 14(7).

1218 *Prohibited Behaviour Orders Act 2010* (WA), s 30(1).

1219 *Prohibited Behaviour Orders Act 2010* (WA), s 30(3)(a) and (b).

1220 *Prohibited Behaviour Orders Act 2010* (WA), s 30(4).

1221 *Prohibited Behaviour Orders Regulations 2011*, r 5(1)(a).

1222 The relevant powers are the power to require property to be deposited at court premises, to seize property which is believed on reasonable grounds to be relevant to the commission of an offence under the Act from persons visiting court premises, to seize property from persons in custody; or to require visitors to lock ups and court custody centres to deposit property; see *Court Security and Custodial Services Act 1999* (WA) Schedule 1, cl. 5; Schedule 1, cl 7; Schedule 2, cl 9; and Schedule 2, cl 21.

1223 *Court Security and Custodial Services Act 1999* (WA), s 95.

1224 *Weapons Act 1999* (WA), s 6(2)(a) and (b).

1225 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 7.

1226 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 7.

1227 *Weapons and Other Legislation Amendment Act 2012* (Qld).

1228 'Firearms Amnesty, Queensland', myPolice QPS News, accessed at <http://mypolice.qld.gov.au/blog/2013/02/01/firearms-amnesty-queensland/>.

1229 Emma Sykes and Neroli Roocke, 'Amnesty unearths over 8,500 firearms', 612 ABC Brisbane, 1 May 2013, accessed at <http://www.abc.net.au/local/stories/2013/05/01/3749029.htm>.

if a person who has possession of a firearm that he or she is not authorised to possess under the Act voluntarily brings the firearm to a police station and surrenders it, no action can be taken against that person in respect of any offence relating to the unauthorised possession of the firearm by that person.¹²³⁰ Other jurisdictions provide that a general amnesty may from time to time be declared.¹²³¹ An amending Act,¹²³² which is yet to commence, has been passed to amend the *Firearms Act 1996* (Tas). In terms of the amendments, the *Firearms Act 1996* (Tas) will provide that an unauthorised person who comes into possession of a firearm (and who is required immediately to surrender that firearm) may surrender it to a police officer or a licensed dealer.¹²³³ A licensed firearms dealer to whom a firearm is surrendered must deal with the firearm in the manner prescribed by the regulations.¹²³⁴ In the second reading speech, the Police Minister explained that 'Regulations will be drafted to detail how that surrendered firearm is to be dealt with, but this will allow for a person who may inherit a firearm to surrender it to a firearms dealer who may seek to purchase the firearm from the person, or who can hold the firearm whilst the person applies for a licence'.¹²³⁵

The recent Senate Committee report on the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community* considered the issue of amnesties. The report observed that amnesties were 'an effective way of reducing the pool of illicit firearms in the community' but also noted that police forces would need to be resourced to process 'potentially large volumes of forfeited firearms'. The report also noted:

The issue of identifying individuals and pursuing investigative leads where a firearm used in the commission of a serious crime is forfeited is more problematic. On the one hand, the purpose of an amnesty is to allow people to forfeit illicit firearms without penalty; on the other, serious crimes, particularly those where a firearm is used, should not go unpunished. The committee is not equipped to offer a solution to this particular problem but consideration should be given to it in the implementation of an ongoing gun amnesty.¹²³⁶

Ultimately, the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community* report recommended that 'an ongoing, Australia-wide gun amnesty is implemented, with consideration given to ways in which this can be done without limiting the ability of police to pursue investigative leads for serious firearm-related crimes'.¹²³⁷ The alternative report, *Report by a Majority of Senators Attending the Inquiry* (discussed at paragraph 16.2 below), also supported this recommendation, stating: 'an ongoing Australia-wide gun amnesty could potentially reduce the number of illicit firearms in the community, especially those firearms that were not given up as part of the 1996 buyback. It is, however, noted that criminals are unlikely [to] give up any firearms'.¹²³⁸

The concept of an amnesty merits exploration in a Western Australian context, particularly in view of the high penalties provided for unauthorised possession of a firearm and the different degrees of culpability that may exist in relation to this offence. A major objective of the *Firearms Act* is to ensure that firearms are only possessed within the strict licensing regime established by the Act. The Commission considers that providing a clear avenue for a person to surrender firearms without the risk of being charged with an offence in relation to their possession of the firearms may further this objective. For example, a person may own an unlicensed firearm; if the person wishes to surrender the firearm to Western Australia Police, he or she risks being charged with an offence and serving a prison sentence: this is a clear disincentive to surrender an unlicensed firearm.

Western Australia Police has advised that it has 'a non-publicised permanent amnesty to cater for persons who come into possession of a firearm in innocent circumstances' and that police officers 'also have discretionary powers of prosecution based on what a reasonable person would consider appropriate'. Thus any decision to charge a person 'would be based on a number of factors and each case is determined on its individual circumstances'.¹²³⁹ Western Australia Police does not support an exemption in section 8 or section 19(1) to cater for persons who come into possession of firearms in innocent circumstances

1230 *Firearms Act 1996* (Tas), s 129.

1231 *Firearms Act 1977* (SA), s 37; *Weapons Act 1990* (Qld), s 168B.

1232 *Firearms (Miscellaneous Amendments) Act 2015* (Tas).

1233 Firearms were previously handed in to licensed dealers in Tasmania on the basis of an exemption to the *Firearms Act 1996* (Tas) issued by the Commissioner of Police in 1997. However, on 12 February 2014, Tasmania Police advised that legal advice had been received that the Commissioner did not have the authority under the Act to exempt firearms dealers from acquiring or purchasing firearms. Assistant Commissioner Phil Wilkinson advised: 'Anyone with an unwanted or unregistered firearm can hand it to a Police station and no action will be taken for the unauthorised possession of the firearm. Police are also available to assist with collection of firearms from individuals or dealers'; see 'Changes to administration of Firearms Amnesty', Media Release, 12 February 2014, accessed at <http://www.police.tas.gov.au/news-events/media-releases/changes-to-administration-of-firearms-amnesty/>. Amendments have now been made to provide that a firearm can be handed in to a police officer or a licensed dealer; see *Firearms (Miscellaneous Amendments) Act 2015* (Tas), s 46(a).

1234 *Firearms (Miscellaneous Amendments) Act 2015* (Tas), s 46(b).

1235 Hon M. T. Hidding MP, Second Reading Speech, *Firearms (Miscellaneous Amendments) Bill 2015* (Tas), 9, accessed at http://www.parliament.tas.gov.au/bills/Bills2015/pdf/notes/3_of_2015-SRS.pdf.

1236 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 91, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1237 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 5, 91, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1238 Senators the Hon Ian MacDonal, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 149, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1239 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 9.

'as it is not believed necessary and it could create a loophole for persons not intended to be covered by the exemption'.¹²⁴⁰

With respect to the proposals that have been made for an amnesty that allows dealers to receive firearms, Western Australia Police considers that 'it would be inappropriate for a dealer to be handling unlicensed firearms'. Western Australia Police advises that when an unlicensed firearm is handed into police, 'simple questions about how the person came into possession of the firearm and if it was knowingly involved in any criminal activity are asked' and checks are carried out to identify the firearm via both CrimTrac and Customs. Western Australia Police notes that firearm dealers 'do not have access to the checking mechanisms available to police'.¹²⁴¹ Western Australia Police states further that:

- if a firearm is surrendered to a dealer, this would create double-handling for police as dealers cannot destroy unlicensed firearms and must hand them into police for this purpose;
- if a firearm is surrendered to a dealer, this could interfere with evidence trails should firearms need to be forensically examined; and
- an unlicensed firearm may not have any recorded history and therefore the dealer could be in a position to deal with the firearm unlawfully.¹²⁴²

The Commission notes the concerns expressed by Western Australia Police, and appreciates that there is a need to hold people accountable for breaches of the *Firearms Act* and other laws. The current approach taken in the Act provides Western Australia Police with discretion and flexibility. However, it seems that this approach is also seen as a disincentive to surrender unlicensed firearms to police, even where such firearms are acquired in innocent circumstances. The Commission suggests that the need to hold people accountable for breaches of the *Firearms Act* must be balanced against the broader community safety imperative, which may make it reasonable to prioritise the removal of unlicensed firearms from circulation over the pursuit of individuals who possess those firearms. In addition, as discussed above, there appears to be a degree of uncertainty and confusion as to how the recovery of firearms from deceased estates is effected. Accordingly, the Commission invites submissions on the following proposal.

Proposal 38:

- that an exemption be included in sections 8, 19(1) and 23(3) of the *Firearms Act 1973* (WA) for people who are temporarily in possession of, or carrying, a firearm for the legitimate purpose of handing it in to Western Australia Police;
- the *Firearms Act 1973* (WA) be amended to in effect provide a statutory amnesty under which a person who voluntarily surrenders an unlicensed firearm to Western Australia Police, or to a licensed dealer, will not face criminal charges connected with the possession of that firearm; and
- the Western Australia Police website be updated to include detailed, specific information on the course of action to be followed in the case of firearms that form part of deceased estates, including information as to timeframes for providing firearms to Western Australia Police.

14.1.1 Offences of possession – definitions

The 2008 Police Review noted that, as part of the 2002 Australasian Police Ministers' Council and Council of Australian Governments resolutions on national handgun reforms (the National Firearms Trafficking Policy Agreement), it was proposed that each jurisdiction's legislation should enable a charge of illegal possession of a firearm in circumstances where an illegal firearm is found in premises, or a place, with a person or persons, but there is no actual physical possession of the gun by any person.¹²⁴³

The 2008 Western Australia Police review noted that the definition of 'possession' in the *Firearms Act* appeared broad enough to provide for this – the Act defines possession as meaning 'in addition to actual physical possession of a firearm or ammunition ... the custody or control of it, or having and exercising access to it in any place either alone or in common with others'.¹²⁴⁴

However, the Review concluded that 'there is a perceived notion that because of an inability to show the person or persons had knowledge that the firearm to which they had access was in that place, the person could not be charged with possession'. The Review

1240 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 9.

1241 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 13.

1242 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 13.

1243 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 27.

1244 *Firearms Act 1973* (WA), s 4.

provided an example of a group of three or four people who had earlier been in a violent altercation at a restaurant and who were stopped in a motor vehicle by police. The review advised that a search of the car revealed a handgun in the vicinity of the driver's seat and that all persons, when questioned, denied any knowledge of the handgun being in the car. As the handgun was not licensed it could not be traced to any of them and consequently, none of the persons was charged.¹²⁴⁵

Accordingly, the Review recommended that the definition of 'possession' in the *Firearms Act* be amended to reflect more clearly the requirements of the National Firearms Trafficking Policy Agreement.¹²⁴⁶ However, no amendments have been made to the Act as a result of this recommendation.

The proposed amendment may raise concerns, as it may expose individuals to the risk of criminal charges in respect of firearms the existence and presence of which they may not have been aware. For instance, in theory a person could be charged with possession of a firearm which was, unbeknown to them, owned by their partner and kept hidden.

Question 32:

- Is the current definition of 'possession' in the *Firearms Act 1973* (WA) appropriate?

14.2 Renewals and issue of infringement notices

The *Firearms Act* specifically provides for offences that are of a lesser severity, making allowances for technical offences that are committed as a result of a licence holder's oversight.

Thus it provides that, if a person who has been the holder of a Firearm Licence, Firearm Collector's Licence, or Ammunition Collector's Licence (and the licence has expired but is still capable of being renewed under section 9A) does anything that is an offence under the *Firearms Act* but would not have been an offence if the licence had been renewed immediately after its expiry, the offence is not a crime. Instead, the offence is triable summarily and is punishable by a fine of \$2,000 instead of the penalty that would otherwise apply for the offence.¹²⁴⁷

In addition, if a person fails to renew a Firearm Licence, Firearm Collector's Licence, or Ammunition Collector's Licence within three months of the expiry date (but not more than twelve months after it), an infringement notice may be issued.¹²⁴⁸ If a person pays the amount prescribed by the notice by way of a penalty, he or she will avoid prosecution and obtain the renewal of the licence. Western Australia Police issued 1,053 infringements in 2014.¹²⁴⁹

The 2008 Police Review noted that no equivalent provision to the above existed in respect of Dealer's Licences, Repairer's Licences, Manufacturer's Licences and Corporate Licences.¹²⁵⁰ Further, the Review noted that prosecutors sometimes have difficulty proving that a licensee was in possession of firearms during the period his or her licence was expired (and thereby contravened section 19(1)), particularly in situations where a person is co-licensed to use a firearm with the licensed owner of the firearm.¹²⁵¹

The 2008 Police Review recommended that the penalty of the infringement notice should be based solely upon the fact of the licence expiring, rather than on the licensee's 'possession' of the firearm or firearms. It recommended further that the infringement provisions be extended to apply to the non-renewal of a Dealer's Licence, Repairer's Licence, Manufacturer's Licence and Corporate Licence.¹²⁵² Western Australia Police has recently reiterated its support for this recommendation.¹²⁵³

Renewal period

Section 9A provides that, where a person applies to renew their licence within one month before or within three months after its expiry, the licence is deemed to have been renewed immediately after its expiry and the renewal is deemed a continuation of the licence.¹²⁵⁴ Where a person applies to renew their licence more than three months, but not more than 12 months, after its expiry, the renewal takes effect on the day when the licence is renewed but, for the purposes of determining the day when the renewed licence expires, it is deemed to have been renewed immediately after it previously expired.¹²⁵⁵ Section 9A of the Act also provides that the holder of a licence under the Act cannot renew their licence under this section more than 12 months after its expiry, but he or she is not prevented from making a fresh application for a licence.¹²⁵⁶

1245 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 27–28.

1246 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 28.

1247 *Firearms Act 1973* (WA), s 19AA(1).

1248 *Firearms Act 1973* (WA), s 19A(2).

1249 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 30.

1250 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 34.

1251 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 34.

1252 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 34–35.

1253 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 25.

1254 *Firearms Act 1973* (WA), s 9A(5).

1255 *Firearms Act 1973* (WA), s 9A(6).

1256 *Firearms Act 1973* (WA), s 9A(7).

There is therefore effectively a 12-month grace period. The Supreme Court previously had occasion to consider these provisions, and noted that the 'rationale for these renewal arrangements is not clear from the Act' and had not been made clear in the matter before the court, although it had been suggested in submissions presented to the court that the purpose of the arrangements was 'to provide a grace period for farmers who may not remember to renew their firearms licence before they expire'.¹²⁵⁷

Western Australia Police considers that the creation of an offence for non-renewal of a licence should be done in concert with amendments to section 9A of the *Firearms Act* to reduce the 'grace period' from 12 months to three months.¹²⁵⁸

Infringement notices for other offences

Infringement notices cannot be issued in relation to any other offences in the *Firearms Act*, and it is worth exploring whether the Act ought to be amended to provide for more flexibility and additional provisions of the Act should be prescribed so as to enable them to be the subject of infringement notices.

The *Criminal Procedure Act 2004* (WA) provides that an offence cannot be prescribed as an offence for which an infringement notice may be issued if the penalty for the offence includes imprisonment.¹²⁵⁹ The majority of the offences in the Act include imprisonment as a penalty and are therefore not capable of being so prescribed.

However, there are over a dozen offences in the *Firearms Act* that do not include imprisonment as a penalty and instead impose a fine.¹²⁶⁰ For instance, the Act provides that a person who sends a firearm by post to a destination outside Western Australia is required to address the firearm to premises at which the business of a dealer may lawfully be carried on,¹²⁶¹ and is not to send ammunition in the package containing the firearm.¹²⁶² The penalty for failing to comply with these requirements is a \$2,000 fine. Presently, such offences need to be prosecuted in the courts to enforce these sections of the Act, and it would obviously be simpler if infringement notices could be issued. In that case, Western Australia Police could simply issue a person with an infringement

notice in respect of an offence in the *Firearms Act* and would only need to prosecute the person if the person failed to pay the penalty or elected to contest the notice.¹²⁶³

If the offences in the *Firearms Act* that do not include imprisonment as a penalty were prescribed as offences for which infringement notices could be issued, the requirements of the *Criminal Procedure Act 2004* (WA) would apply. Thus, in relation to each offence, either a modified penalty applicable in any circumstances in which the offence is committed,¹²⁶⁴ or a modified penalty that is applicable if the offence is committed in specific circumstances,¹²⁶⁵ would need to be prescribed. Any modified penalty must be an amount of money,¹²⁶⁶ and must not exceed 20 per cent of the statutory penalty for the offence.¹²⁶⁷ The *Criminal Procedure Act 2004* (WA) provides, further, that payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings.¹²⁶⁸

Western Australia Police has suggested that it would be appropriate to amend the Act to provide that infringement notices may also be issued in respect of the following offences:

- section 22A(2) – failure to keep or produce an Extract of Licence on request
- section 22A(3) – failure to produce an Extract of Licence when purchasing ammunition
- section 22B – failure to return an Extract of Licence
- section 22C – other offences relating to Extracts of Licence
- section 23 – general offences (most of these include imprisonment as a penalty, but sections 23(10), 23(10a), 23(11) and 23(12) do not)
- section 30 – offences relating to ammunition sales
- section 30A – offences relating to the sale and disposal of firearms
- section 30B – failure to report the loss, theft or destruction of a firearm, or its disposal out of the state
- section 31 – offences relating to records
- section 32 – safe keeping by traders.¹²⁶⁹

1257 *Middlecoat v Commissioner of Police* [2012] WASC 309 per Hall J at [21].

1258 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 26.

1259 *Criminal Procedure Act 2004*, s 5(2).

1260 The offences in sections 19(5), 19AA(1), 22A(2), 22A(3), 22B, 22C(1), 23(10), 23(10a), 23(11), 23(12), 24(6), 30(4), 30A(1), 30A(3), 30B(2) and 31(4) of the *Firearms Act 1973* (WA) do not include imprisonment as a penalty. In addition, section 23(11) provides that a person who by act or omission commits any breach of the provisions of the Act for which no penalty is specifically provided commits an offence punishable by a penalty of \$2,000.

1261 *Firearms Act 1973* (WA), s 30A(3)(a).

1262 *Firearms Act 1973* (WA), s 30A(3)(b).

1263 *Criminal Procedure Act 2004*, s 9(f).

1264 *Criminal Procedure Act 2004*, s 5(3)(a).

1265 *Criminal Procedure Act 2004*, s 5(3)(b).

1266 *Criminal Procedure Act 2004*, s 5(4)(a).

1267 *Criminal Procedure Act 2004*, s 5(4)(b).

1268 *Criminal Procedure Act 2004*, s 16(2).

1269 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 32.

The Commission proposes that additional offences be prescribed as offences in respect of which infringement notices may be issued.

Proposal 39:

- that the *Firearms Act 1973* (WA) be amended to provide that infringement notices may be issued in respect of a failure to renew a Firearm Licence, Firearm Collector's Licence, Ammunition Collector's Licence, Dealer's Licence, Repairer's Licence, Manufacturer's Licence and Corporate Licence where three months have passed since the expiry date unless Western Australia Police has been notified within that period that the previous licence holder does not intend to renew the licence;
- the *Firearms Act 1973* (WA) be amended to provide that infringement notices may be issued in respect of the holders of Dealer's Licences who fail to submit monthly reports as required by r 18(1)(b) of the Firearms Regulations (1974); and
- those offences in sections 22A(2), 22A(3), 22B, 22C, 23, 30, 30A, 30B, 31 and 32 of the *Firearms Act 1973* (WA) that do not include imprisonment as a penalty be prescribed as offences in respect of which infringement notices may be issued.

Question 33:

- Should sections 9A(6) and (7) of the *Firearms Act 1973* (WA) be amended to reduce the 12-month 'grace period' to three months?

14.3 General offences – location

There are a number of general offences (as distinct from licensing offences) in the *Firearms Act*, some of which carry substantial penalties. The Discussion Paper in respect of the 2008 Police Review asked whether indictable offences relating to firearms ought to be transferred to the *Criminal Code*. The Discussion Paper stated:

Offences that are of a serious nature (commonly referred to as 'indictable' offences) are normally legislated in the *Criminal Code* (WA), whereas offences of a lesser severity reside within the

Firearms Act 1973. Currently, only one offence relating to firearms appears within the *Criminal Code*, leaving all other indictable offences within the *Firearms Act 1973*. The importance of codifying indictable offences is for the purpose of stating the criminal responsibility and implications of an offence. Effectively, as offences stated in the *Criminal Code* are seen in principle to be taken more serious [sic] compared to those displayed within the *Firearms Act 1973*, the issue of firearms offences being underplayed arises.¹²⁷⁰

Responses from stakeholders were ambivalent: 37.2 per cent of those who responded to this question answered in the affirmative, 35.1 per cent in the negative, and 27.6 per cent were undecided.¹²⁷¹ Ultimately, the 2008 review made no recommendation on this issue.

If the *Firearms Act* is viewed principally as an Act which regulates and provides for the licensing of firearms, there is a question whether it needs to contain serious offence provisions, or whether such provisions would best be located elsewhere.

Alternatively, it might be thought helpful to have most, if not all, provisions regarding firearms in the same Act, and that the penalties for indictable offences in the *Firearms Act* already make their seriousness sufficiently clear. The *Firearms Act* also makes specific reference to the offences contained in the Act in defining who is a fit and proper person to hold a licence, permit or approval. That is, the Act provides that the Police Commissioner will have sufficient grounds for finding that a person is not a fit and proper person where, among other things, the person has been convicted of any offence against the *Firearms Act*.¹²⁷²

Question 34:

- Should indictable offences in the *Firearms Act 1973* (WA) be retained in that Act or moved to the *Criminal Code*?

14.4 General offences – other

The use of a silencer is an offence punishable by seven years' imprisonment,¹²⁷³ and the possession of a silencer, or any contrivance of a similar nature, is an offence punishable by three years' imprisonment or a \$12,000 fine.¹²⁷⁴ These offences do not apply to a member of the Western Australia Police or an employee of the department acting in the

1270 Western Australia Police, *Review of the Firearms Act 1973* (WA), Discussion and Submission Paper, October 2007, Item 2.

1271 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 40.

1272 *Firearms Act 1973* (WA), s 11(3)(a)(iii).

1273 *Firearms Act 1973* (WA), s 23(6).

1274 *Firearms Act 1973* (WA), s 23(7).

performance of his or her duties or the holder of an authority under section 17B¹²⁷⁵ of the Act.¹²⁷⁶

Some stakeholders have submitted that the provisions relating to silencers should be re-examined, noting that silencers are used to avoid startling animals that are being hunted, and to avoid disturbing people nearby.¹²⁷⁷ Indeed, the diminution of noise through the use of silencers has been cited as a health and safety issue.¹²⁷⁸ It has been queried, therefore, whether it is appropriate and necessary to ban the use of silencers, notwithstanding that, as stakeholders observe, there is a stigma attached to their use.¹²⁷⁹

The Sporting Shooters Association of Australia submits that items which reduce the noise of firearms ('suppressors') 'play a functional occupational health and safety role for both the shooter and bystanders', as they 'reduce recoil by dispersing gas and reducing noise and the potential for hearing damage'. The Sporting Shooters Association of Australia also notes that sometimes there are complaints about the noise caused by shooting clubs, which could be alleviated by the use of suppressors.¹²⁸⁰ It observes that gun blasts can cause permanent damage to ear tissue, and suggests that this issue is not only relevant to hunters and bystanders, but also to pets, farm animals and gundogs.¹²⁸¹ The Association further submits that sound suppressors 'increase the efficiency of culling activities by masking the location of gun noise and improving accuracy', noting that, although 'suppressors have only been proven to reduce gunfire noise minimally at great distances, they have been proven [to] make it more difficult to locate the sound of the gunfire ... making pest animals uncertain of which direction to flee'.¹²⁸²

The Discussion and Submission Paper for the 2008 Police Review stated:

Section 17B of the Act provides authorisation for the Minister of Police to approve the possession, carrying and use of silencers to officers and employees of the Agriculture Protection Board. This is the only provision in the *Firearms Act 1973* that requires the Minister for Police to provide approval. All other approvals are dependent on

the Commissioner for Police. Furthermore, to obtain a silencer for a firearm needs to be released through the Western Australia Police. Thus, to make the procedure of obtaining approval for a silencer less confusing, it would appear more fitting to delegate the approval through the Western Australia Police.¹²⁸³

The Paper asked whether the approval of silencers by the Minister for Police should be changed to approval by the Police Commissioner or an approved officer.¹²⁸⁴ 77.2 per cent of stakeholders responded in the affirmative, 13.3 per cent in the negative and 9.6 per cent were undecided.¹²⁸⁵ Ultimately, no recommendations were made on this issue.

As to the broader issue of the restrictions placed on the use of silencers, it is relevant that all other jurisdictions in Australia ban or restrict silencers, as follows:

- The *Firearms Act 1996* (Tas) provides that it is an offence for a person to use, keep, possess, sell or manufacture any implement designed to suppress the sound caused by the discharge of a firearm.¹²⁸⁶
- The *Firearms Act 1996* (SA) provides that a person who acquires, owns or has possession of a silencer is guilty of an offence.¹²⁸⁷
- In Queensland, a silencer is classed as a Category R weapon,¹²⁸⁸ and civilian use of them is not permitted.¹²⁸⁹
- In the Australian Capital Territory, a firearm with a silencer attached to it is classed as a prohibited firearm.¹²⁹⁰
- The *Firearms Act 1996* (Vic) provides that it is an offence to possess, carry or use a silencer,¹²⁹¹ but that the Chief Commissioner may grant a permit to a person over the age of 18 years to possess, carry or use a silencer.¹²⁹²
- In the Northern Territory, it is an offence to possess or use a silencer,¹²⁹³ unless a person holds a firearms museum licence in which case he or she may possess a silencer for the purpose of exhibiting and showing it.¹²⁹⁴

1275 Section 17B of the *Firearms Act 1973* provides that the Minister may grant authority in writing to an approved agriculture inspector to possess and carry a silencer and to use it in conjunction with a .22 calibre rifle during the period specified in that authority. The section also sets out the manner in which a silencer can be used.

1276 *Firearms Act 1973* (WA), s 23(7a).

1277 Documents provided by Mr Ross Allanson, 19 June 2014.

1278 Email correspondence from Mr Ron Bryant, 19 February 2015.

1279 Email correspondence from Mr Ron Bryant, 19 February 2015.

1280 'The SSAA's Stance on Suppressors', document provided by email from Mr Ron Bryant, 23 February 2015.

1281 'The SSAA's Stance on Suppressors', document provided by email from Mr Ron Bryant, 23 February 2015.

1282 'The SSAA's Stance on Suppressors', document provided by email from Mr Ron Bryant, 23 February 2015.

1283 Western Australia Police, Review of the *Firearms Act 1973* (WA), Discussion and Submission Paper, October 2007, Item 17.

1284 Western Australia Police, Review of the *Firearms Act 1973* (WA), Discussion and Submission Paper, October 2007, Item 17.

1285 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, Annexure A, 40.

1286 *Firearms Act 1996* (Tas), s 118(1).

1287 *Firearms Act 1996* (SA), s 29A(1).

1288 *Weapons Categories Regulation 1997* (Qld), s 8(1)(h).

1289 Email correspondence from Steve Steenstrup, Sergeant, Weapons Licensing, Queensland Police Service, 21 April 2015.

1290 *Firearms Act 1996* (ACT) Schedule 1, Item 11 provides that 'a firearm to which there is attached any article or device capable of muffling, reducing or stopping the noise created by firing the firearm' is a prohibited firearm.

1291 *Firearms Act 1996* (Vic), s 57(1)(a).

1292 *Firearms Act 1996* (Vic), s 57(2)(a).

1293 *Firearms Act* (NT), s 77(1).

1294 *Firearms Act* (NT), s 77(3).

- In New South Wales, a silencer is classed as a prohibited weapon,¹²⁹⁵ so that a permit is required to possess or use one. If a silencer is then attached to a firearm, the firearm becomes classified as a prohibited firearm,¹²⁹⁶ so a person must seek another permit to authorise possession and use of the prohibited firearm.

The Commission considers that it is worth exploring whether a different approach should be taken in Western Australia.

Question 35:

- Are the current restrictions on the use of silencers in the *Firearms Act 1973* (WA) appropriate; and
- should the ability to approve possession and use of a silencer lie with the Police Commissioner rather than the Minister for Police?

14.5 Additional offences

There has been some suggestion that the criminal law system does not adequately address situations in which a person steals or attempts to steal a firearm. It has therefore been submitted that where an offender breaks into a property and attempts to steal a firearm (by trying to destroy a firearms cabinet) the offender should face an additional charge, rather than simply being charged with breaking and entering or criminal damage, and that if the offender succeeds in stealing the firearm, he or she should face a specific offence other than that of possessing an unlicensed firearm.¹²⁹⁷ It has accordingly been suggested that a new offence be created; an offence of stealing or attempting to steal a firearm.

It should be noted that the penalty for being in possession of any firearm or ammunition without holding a relevant licence or permit under the *Firearms Act* is five years' imprisonment.¹²⁹⁸ In addition, the maximum penalty for stealing under the *Criminal Code* is seven years' imprisonment,¹²⁹⁹ with longer penalties available for 'special cases', and the court is able to consider all relevant factors in determining what penalty to impose. The question of what an offender steals, or attempts to steal, will be given due consideration by the court.

The *Sentencing Act 1995* (WA) also sets out additional options for courts when sentencing an offender for a 'firearms offence', an offence involving assault with a weapon, or an offence involving violence.¹³⁰⁰ The *Sentencing Act 1995* (WA) defines 'firearms offence' as:

- stealing, attempting to steal, or conspiring to steal a firearm or ammunition;
- receiving or attempting to receive or conspiring to receive a firearm or ammunition;
- an offence where a party to the offence (whether that party is charged or not) uses or is in possession of a firearm or ammunition during the commission of the offence;
- an offence where a firearm or ammunition is used after the commission of the offence (whether by the offender or by another party to the offence) to assist the offender to avoid, or to attempt to avoid, apprehension; or
- an offence under the *Firearms Act*.¹³⁰¹

For the purposes of this definition, 'ammunition' includes replica ammunition, ammunition rendered inoperative, and blank ammunition, and 'firearm' has the same definition as in the *Firearms Act* and includes a replica firearm and a firearm which has been rendered inoperative.¹³⁰²

Where a court is sentencing an offender in respect of a firearms offence, the court may order that, for a term set by the court, the offender be disqualified from holding or obtaining a licence, permit or approval (or any particular licence, permit or approval) under the *Firearms Act*.¹³⁰³ When the court make such an order, any relevant licence, permit or approval held by the offender under the *Firearms Act* is suspended and has no effect for so long as the disqualification order is in place, or, if the order so specifies, it is cancelled.¹³⁰⁴ The court must also ensure that details of the offence and the order are made known to the Police Commissioner.¹³⁰⁵

In view of the sentencing options presently available to the courts, the Commission does not consider that an additional offence of stealing, or attempting to steal, a firearm is required.

¹²⁹⁵ *Weapons Prohibition Act 1998* (NSW), Schedule 1, cl 4(3).

¹²⁹⁶ *Firearms Act 1996* (NSW), Schedule 1, cl 10 provides that a 'firearm to which there is attached any article or device capable of muffling, reducing or stopping the noise created by firing the firearm' is a prohibited firearm.

¹²⁹⁷ Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 7.

¹²⁹⁸ *Firearms Act 1973* (WA), s 19(1). Exemptions to this offence are those set out in section 8 (which prescribes classes of persons who are exempt from the licensing requirements of the Act), and anyone who comes into possession of ammunition pursuant to section 30(2) of the Act, ie a person acting as an agent for another person.

¹²⁹⁹ *Criminal Code* (WA), s 378.

¹³⁰⁰ *Sentencing Act 1995* (WA), s 106(4a).

¹³⁰¹ *Sentencing Act 1995* (WA), s 106(5).

¹³⁰² *Sentencing Act 1995* (WA), s 106(5).

¹³⁰³ *Sentencing Act 1995* (WA), s 106(1).

¹³⁰⁴ *Sentencing Act 1995* (WA), s 106(3)(a) and (b).

¹³⁰⁵ *Sentencing Act 1995* (WA), s 106(4). ¹³⁰⁶ *Firearms Regulations 1974*, r 2B.

14.6 Similar elements in offences

In some instances, there appear to be disparities between the penalties for offences in the *Firearms Act* and offences in the *Criminal Code* where the offences involve very similar elements.

For instance, section 19(1ab) of the *Firearms Act* provides that a person who sells, delivers or disposes of, purchases, or otherwise comes into possession of, or is in possession of any firearm or ammunition, where this offence is committed in circumstances where the person is also carrying:

- a prohibited drug or prohibited plant, as defined in the *Misuse of Drugs Act 1981* (WA), when not authorised to be in possession of that drug or plant under that Act; or
- an amount of money equal to or greater than the prescribed amount,

is liable, on conviction, to imprisonment for 14 years.

Very similar elements are included in *Criminal Code* offences, but with lower penalties:

- Section 68D(2) of the *Criminal Code* provides that a person who, without lawful excuse, has ready access to both a dangerous or offensive weapon or instrument and cash equal to or greater than the prescribed amount is guilty of a crime and liable to imprisonment for five years.
- Section 68E(2) of the *Criminal Code* provides that a person who, without lawful excuse, has ready access to both a dangerous or offensive weapon or instrument and a prohibited drug or a prohibited plant, as those terms are defined by the *Misuse of Drugs Act 1981* that, under section 6 or 7 of that Act, the person is not authorised to possess, is guilty of a crime and is liable to imprisonment for five years.

The 'prescribed amount' referred to in section 19(1ab) of the *Firearms Act*¹³⁰⁶ and section 68D(2) of the *Criminal Code*¹³⁰⁷ is the same: \$3,000.

In addition, the offence in section 68 of the *Criminal Code* is somewhat similar to the offence in section 23(9a) of the *Firearms Act* in that both offences address the situation of a person who causes fear with a firearm:

- Section 23(9a) of the *Firearms Act* provides that a 'person who from any place, discharges any firearm, or any shot, bullet, or other missile from a

firearm, to the danger or, or in a manner to cause fear to, the public or any person, commits an offence'. The penalty provided is imprisonment for three years or a \$12,000 fine.¹³⁰⁸

- Section 68(1) of the *Criminal Code* provides that a 'person who is or pretends to be armed with any dangerous or offensive weapon or instrument in circumstances that are likely to cause fear to any person is guilty of a crime and is liable to imprisonment for seven years'. The summary conviction penalty provided is three years' imprisonment and a \$36,000 fine.¹³⁰⁹ It is a defence to prove that the accused person had lawful authority to be so armed in such circumstances.¹³¹⁰

It seems anomalous that a person who is actually armed, and discharges a firearm, is liable to a lesser penalty for the offence under the *Firearms Act* than a person who is or pretends to be armed contrary to section 68(1) of the *Criminal Code*.

While it may be contended that the existence of offence provisions with substantially similar elements provides the police and the courts with flexibility, it is not immediately apparent why there should be two similar sets of offence provisions in this case and why it should not be consolidated.

Question 36:

- Should the offences in sections 19(1ab) of the *Firearms Act 1973* (WA) and sections 68D(2) and 68E(2) of the *Criminal Code*; and sections 23(9a) of the *Firearms Act 1973* (WA) and section 68(1) of the *Criminal Code* be consolidated respectively?
- If not, should the penalties be amended to provide for greater parity between the penalties for the above respective categories of offences?

14.7 Parties to offences

Section 23C of the *Firearms Act* also makes provision for parties to offences. It provides that, without limiting section 7 of the *Criminal Code*¹³¹¹ or section 21A of the *Firearms Act*,¹³¹² a person who 'by act or omission is in any way directly or indirectly knowingly concerned in the commission of any offence against this Act is deemed to have committed that offence and is punishable accordingly'.¹³¹³

¹³⁰⁷ *Criminal Code* (WA), s 68D(1).

¹³⁰⁸ *Firearms Act 1973* (WA), s 23(9a).

¹³⁰⁹ *Criminal Code* (WA), s 68(1).

¹³¹⁰ *Criminal Code* (WA), s 68(2).

¹³¹¹ Section 7 of the *Criminal Code* concerns principal offenders of offences, and provides in part that when an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it: (a) Every person who actually does the act or makes the omission which constitutes the offence; (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence; (c) Every person who aids another person in committing the offence; and (d) Any person who counsels or procures any other person to commit the offence.

¹³¹² Section 21A of the *Firearms Act 1973* (WA) concerns the responsibility for business conducted under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence, including responsibility for contraventions.

¹³¹³ *Firearms Act 1973* (WA), s 23C.

The 2008 Police Review observed that the 2002 National Firearms Trafficking Policy Agreement resolved that all jurisdictions would make it an offence to conspire to commit an interstate firearm offence and that, in particular, all jurisdictions agreed to establish an offence of:

- a) conspiring to commit an offence in any place outside the home jurisdiction, being an offence punishable under the provisions of a law in force in the foreign jurisdiction that corresponds to a provision of the home jurisdiction's law; or
- b) aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence in any place outside the home jurisdiction, being an offence punishable under the provisions of a law in force in the foreign jurisdiction that corresponds to a provision of the home jurisdiction's law.

The Western Australia Police review also noted that it had been agreed that the maximum penalty would be the same punishment to which the person would be subject had the offence been committed in the home jurisdiction. The review noted that there is no provision in the *Firearms Act* that specifically implements this resolution, but that section 23C does provide for the conviction of people who have been directly or indirectly knowingly concerned in the commission of an offence. The review recommended that section 23C of the *Firearms Act* be reviewed to determine the extent to which this provision would apply where an offence is committed in another jurisdiction.¹³¹⁴

Question 37:

- Should any amendment be made to the *Firearms Act 1973* (WA) to give full effect to the above resolution recorded in the 2002 National Firearms Trafficking Policy Agreement?

14.8 Penalties – consistency with other jurisdictions

The Terms of Reference require the Commission to provide advice on and recommend appropriate legislative changes regarding penalties for firearm offences and, in so doing, consider consistency with penalties in other Australian states and territories.

The *Firearms Act* contains a number of offences with a range of penalties. The *Firearms Amendment*

Act 2004 (WA) increased the penalties for many of these offences, in some cases quite substantially. For instance, the penalty for the offence in section 19(1ab)(a)¹³¹⁵ was increased from a maximum penalty of eighteen months' imprisonment or a \$6,000 fine to fourteen years' imprisonment.¹³¹⁶

A 2008 report from the Australian Institute of Criminology considered court outcomes and sentencing practices across all Australian jurisdictions for offences that involved firearms – the authors noted that that sentencing procedures differ between jurisdictions, as do characterisations of sentences. Suspended sentences are, for instance, classed as non-custodial in New South Wales but as custodial in Western Australia.¹³¹⁷ The authors also noted that there was 'little uniformity in firearm offences and prescribed penalties among jurisdictions' and that, for instance, 'the maximum penalty for illegal possession of a firearm varies widely between jurisdictions, ranging from 2 to 14 years imprisonment'.¹³¹⁸

Annexure 4 provides an inter-jurisdictional comparison of the offences and related penalties in Australia in respect of offences of unlawful sale, purchase, possession and use of firearms. Annexure 5 is a comprehensive inter-jurisdictional comparison of all the offences and related penalties in Australia.

The 2012 Research Brief issued by the Queensland Parliamentary Library¹³¹⁹ noted that:

[i]t is difficult to provide a true comparison of the penalties for firearms offences across all Australian jurisdictions due to lack of uniformity in state and territory legislation (e.g. in what amounts to 'possession', variation in penalty according to the category of firearm in question, types of exceptions and defences).

Adding to the difficulty of comparison is the fact that some jurisdictions also provide for summary convictions.

The *Weapons and Other Legislation Amendment Act 2012* (Qld) amended the *Weapons Act 1990* (Qld) in 2012, which, among other things, provided for mandatory sentences for some offences, including:

- unlawful trafficking in weapons in certain circumstances;¹³²⁰
- the unlawful supply of firearms without reasonable excuse where at least one of the weapons is a short firearm;¹³²¹

1314 *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 35.

1315 This is the offence of selling, delivering, disposing of, purchasing or possessing a firearm or ammunition without a licence, where a person is also in possession of either a prohibited drug or plant or particular amount of cash.

1316 *Firearms Amendment Act 2004* (WA), s 18(2).

1317 Davies M and Mouzos J, 'Court outcomes for firearm offences in Australia', Technical and Background Paper 31, Australian Institute of Criminology, 2, 3.

1318 Davies M and Mouzos J, 'Court outcomes for firearm offences in Australia', Technical and Background Paper 31, Australian Institute of Criminology, 4.

1319 Dixon N, 'Proposed Changes to Offence Provisions in the Weapons Act 1990 (Qld)', Research Brief 2012/No.08

1320 *Weapons Act 1990* (Qld), s 65(1)(c) and (d).

1321 *Weapons Act 1990* (Qld), s 50B(1)(d) and (e).

- unlawful possession of a firearm which is used,¹³²² or intended to be used,¹³²³ for the purpose of committing or facilitating an indictable offence; and
- unlawful possession of a firearm in a public place without reasonable excuse.¹³²⁴

A parliamentary committee, which considered this Bill, concluded that it would 'give Queenslanders the toughest gun laws in Australia'.¹³²⁵

The *Firearms Act 1996* (Tas) has also recently been amended, although the amendments are yet to commence, to include a mandatory sentence for the new offence of possession of a stolen firearm.¹³²⁶ At Commonwealth level, a Bill was introduced which would, among other things, introduce a mandatory sentence of five years' imprisonment for trafficking in firearms and firearm parts.¹³²⁷ The schedule in the Bill relating to mandatory sentencing was removed by the Senate on 19 August 2015.

A comparison of penalty levels for some of the more serious offences

A comparison of the maximum imprisonment penalties for some of the more serious offences reveals the following:

The offence of 'trafficking' is dealt with differently by different Australian jurisdictions. Some, like Western Australia, have an increased penalty for selling or buying over a certain number of firearms without specifically describing the offence as 'trafficking'. The Western Australia penalty is 14 years imprisonment in respect of selling three or more firearms.¹³²⁸ It is contained within section 19 of the Act, which is titled 'Licensing offences'. Western Australia Police has recommended that it would be more appropriate for there to be a specific section that deals with trafficking.¹³²⁹

On 5 March 2015, the Commonwealth *Criminal Code Act 1995* (Cth) was amended by the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015* (Cth) to create new international firearms offences of trafficking prohibited firearms and firearm parts into and out of Australia (new Division 361 of the Code); and extend the existing

offences of cross-border disposal or acquisition of a firearm and taking or sending a firearm across borders within Australia in Division 360 of the Code to include firearm parts as well as firearms.¹³³⁰

Tasmania imposes the strongest maximum penalty of up to 21 years' imprisonment for trafficking, which is dealt with through its *Criminal Code*.¹³³¹ South Australia regards all offences of buying and selling as trafficking and such an offence involving more than one firearm has a 20-year maximum imprisonment.¹³³² ACT can impose a maximum penalty of 20 years' imprisonment for the acquisition or disposal of four or more firearms on the same occasion.¹³³³

The penalty for unauthorised sale or purchase of one firearm (not prohibited, prescribed or a handgun) ranges from two years' to seven years' imprisonment with Western Australia's maximum set at five years.¹³³⁴ For a similar offence in respect of a prohibited/prescribed firearm or a handgun, the penalty ranges from two years to fifteen years imprisonment with Western Australia set at seven years.¹³³⁵

The penalties for unauthorised carrying or use of a firearms in general (not prohibited, prescribed or a handgun) range from two years to five years maximum imprisonment with the maximum imprisonment for Western Australia being four years.¹³³⁶

It is evident from the few examples provided above that any attempt at obtaining uniformity in penalties across Australia would need to be coordinated at a Commonwealth and interstate level. Notwithstanding the large differences between penalty amounts and maximum imprisonment terms across jurisdictions, the Commission's view is that the current penalty levels in Western Australia are generally consistent with the range of the penalties that can be imposed in other Australian states and territories.

While significant penalties may be appropriate to reflect the seriousness with which the community views particular offences, the Commission considers that care should be taken to avoid imposing penalties that may be disproportionate to the gravity of the offence and penalties imposed for other serious crimes.

¹³²² *Weapons Act 1990* (Qld), s 50(1)(d)(i).

¹³²³ *Weapons Act 1990* (Qld), s 50(1)(d)(ii).

¹³²⁴ *Weapons Act 1990* (Qld), s 50(1)(d)(iii).

¹³²⁵ Legal Affairs and Community Safety Committee, 'Weapons and Other Legislation Amendment Bill 2012', Report No. 17, November 2012, 9.

¹³²⁶ *Firearms (Miscellaneous Amendments) Act 2015* (Tas), s 45 introduces a new section 107A which provides that a court sentencing a person for this offence must, if there are no exceptional circumstances, order the person to serve a term of imprisonment of not less than three months. If there are exceptional circumstances, the court must order the person to pay a fine of 60 penalty units.

¹³²⁷ Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 (Cth), Schedule 6, cl. 1 and 2.

¹³²⁸ *Firearms Act 1973* (WA), s 19(1aa).

¹³²⁹ Correspondence from GE Dreibergs, Deputy Commissioner of Western Australia Police, 20 July 2015.

¹³³⁰ The introduction of a mandatory minimum five-year term of imprisonment for the new offences in Division 361 and existing offences in Division 360 of the Code was proposed in the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 (Cth) but did not pass the Senate.

¹³³¹ *Firearms Act 1996* (Tas), s 110A.

¹³³² *Firearms Act 1977* (SA), s 14.

¹³³³ *Firearms Act 1996* (ACT), s 220(5).

¹³³⁴ *Firearms Act 1973* (WA), s 19(1).

¹³³⁵ *Firearms Act 1973* (WA), s 19(1ac).

¹³³⁶ *Firearms Act 1973* (WA), s 23(3).

Question 38:

- Should the offence of trafficking in firearms be dealt with separately in the *Firearms Act 1973* (WA)?

14.9 Enforcement of the *Firearms Act 1973* (WA) – police powers

The *Firearms Act* gives wide enforcement powers to Western Australia Police. In particular, under:

- section 24(1), a member of the Western Australia Police may demand from any person in possession of a firearm or ammunition: the licence or permit authorising such possession; evidence that he or she is authorised to have such possession otherwise than a licence or permit or is exempt from the requirement to hold a licence; or, if relevant, the Extract of Licence.¹³³⁷ Where the person does not produce the item requested, or the officer is not satisfied that the person's possession of the firearm or ammunition is otherwise authorised, he or she may seize and take possession of that firearm or ammunition.
- section 24(2), a member of the Western Australia Police may seize and take possession of any firearm or ammunition that is in a person's possession, whether or not the person is authorised to possess it, if in the member's opinion possession of it by that person may result in harm being suffered by any person; or that person is not at that time a fit and proper person to be in possession of it.¹³³⁸ For the purposes of exercising the powers given by section 24(2), a member of the Western Australia Police may enter and search any premises on which, in his or her opinion, there are reasonable grounds to suspect that any firearm or ammunition may be found in the possession of a person in the circumstances described in that subsection.¹³³⁹
- section 24(4), a member of the Western Australia Police may question any person suspected on reasonable grounds of being able to furnish information relating to an offence or suspected offence under the Act; stop, search and detain any person suspected on reasonable grounds of possessing a firearm or ammunition without lawful excuse; stop, search and detain any vehicle or conveyance where there are reasonable grounds to suspect that a firearm is kept without

lawful excuse; and arrest any person suspected on reasonable grounds of committing an offence under the Act.¹³⁴⁰

The powers that section 24 gives to a member of the Western Australia Police may be exercised without a warrant, with one exception.¹³⁴¹ This exception is the power to enter and search any premises on which, in the member's opinion, there are reasonable grounds to suspect that any firearm or ammunition may be found in the possession of a person who in the member's opinion is not at that time a fit and proper person to be in possession of it; or where possession of it by that person may result in harm being suffered by any person. That particular power may be exercised without a warrant only if a member of the Western Australia Police is reasonably of the opinion that there is an immediate threat of harm being suffered by a person, and that the delay that would be involved in obtaining a warrant would be likely to increase the risk or extent of such harm, and the member of the Western Australia Police provides the Commissioner with a written report explaining the reasons for that opinion after the powers are exercised.¹³⁴²

The above powers in section 24 of the *Firearms Act* are in some instances very broad. The powers in section 24(2) above may be exercised solely on the basis of the opinion of a member of the Western Australia Police; the Act does not require that this opinion be based on reasonable grounds.

By contrast, the exercise of the powers in section 24(2a) requires a police officer to have an opinion that reasonable grounds exist, which is appropriate given this power allows police to enter and search a premises; an infringement of civil rights which is arguably greater than that of having firearms temporarily seized. Further, this power can only be exercised with a warrant, or, in the absence of a warrant, where a written report is provided after the fact which explains the reasons for a police officer's opinion that there was an immediate threat of harm being suffered by a person and that the delay that would have been involved in obtaining a warrant would have been likely to increase the risk or extent of such harm.¹³⁴³

Similarly, the powers in section 24(4)(a), (b) and (c), which include powers to question, stop, search, detain and arrest a person, all require that a police officer's relevant suspicion be based on reasonable grounds.

¹³³⁷ *Firearms Act 1973* (WA), s 24(1).

¹³³⁸ *Firearms Act 1973* (WA), s 24(2).

¹³³⁹ *Firearms Act 1973* (WA), s 24(2a).

¹³⁴⁰ *Firearms Act 1973* (WA), s 24(4).

¹³⁴¹ *Firearms Act 1973* (WA), s 24(7).

¹³⁴² *Firearms Act 1973* (WA), s 24(7).

¹³⁴³ *Firearms Act 1973* (WA), s 24(7).

The powers in section 24(3) can, like those in section 24(2), be exercised on the basis of the officer's opinion; he or she may examine a firearm in the possession of a person and may seize and take possession of it if he or she is of the opinion that it is unsafe or unserviceable.

The sections that give a police officer power to seize firearms or ammunition – sections 24(1), 24(2) and 24(3) – do not require that the police officer's opinion be based on reasonable grounds.

The power in section 24(1) is somewhat distinct as it can only be exercised if the person in possession of the firearm or ammunition fails to provide their licence or permit, evidence that he or she is authorised to have such possession otherwise than a licence or permit or is exempt from the requirement to hold a licence, or the Extract of Licence, or if the officer is not satisfied that the person's possession of the firearm or ammunition is otherwise authorised. That is, there is a clear factual basis for the seizure of firearms in this instance: the failure of the person to have on their person evidence of their authorisation to possess firearms.

The powers of seizure in sections 24(2) and (3) are different and can be exercised, respectively, on the basis of an officer's opinion that:

- a person's possession of the firearm or ammunition may result in harm being suffered by any person, or that the person is not at the time a fit and proper person to be in possession of it; and
- a firearm, possession of which is not authorised under a Firearm Collector's Licence, is unsafe or unserviceable.

Given the nature of these provisions, it seems that the reason for making these powers exercisable solely on the basis of a police officer's opinion is the need to prevent immediate or imminent harm to any person. It is also relevant that sections 24(2) and (3) do not authorise a police officer to detain or arrest a person, but simply to take possession of firearms or ammunition. The consequences for the individual might therefore be regarded as not being severe enough to warrant a requirement that there be reasonable grounds for an officer's opinion, particularly when weighed against the harm that the exercise of these powers is sought to prevent, noting that possession of firearms is a privilege rather than a right.

However, seizure of firearms could negatively impact licensees, particularly if the firearms are used in connection with a licensee's work. In addition, other relevant legislation requires that when goods are seized, an officer's opinion or suspicion be based on reasonable grounds. For instance:

- The *Dangerous Goods Safety Act 2004 (WA)* provides that a Dangerous Goods Officer¹³⁴⁴ may, if he or she 'suspects on reasonable grounds' that there has been a contravention of that Act, seize any dangerous goods involved, or a sample of them, and any container or vehicle in which they are being stored or transported, and anything that is or may afford evidence of the contravention.¹³⁴⁵ Similarly, if a Dangerous Goods Officer 'suspects on reasonable grounds' that any substance or thing may be dangerous goods or an ingredient of dangerous goods or that anything may have been in contact with dangerous goods, he or she may, for enforcement purposes, seize the substance, a sample of it, or the thing.¹³⁴⁶
- The *Criminal Investigation Act 2006 (WA)* states that if the Act provides that an officer may seize a thing that is relevant to an offence, the officer may do so only if he or she reasonably suspects certain circumstances exist, such as that the thing is property that has been stolen or otherwise unlawfully obtained, that possession of the thing at that time and place by the person in possession of it is unlawful, or that it is necessary to seize the thing to prevent it from being used in the commission of another offence.¹³⁴⁷

Distinctions can be drawn between the above provisions and sections 24(2) and 24(3) of the *Firearms Act*. On its terms, the power in section 24(2) is explicitly to be exercised for the purpose of preventing harm, as distinct from investigating an offence. If one takes the view that firearms are uniquely dangerous, and that the *Firearms Act* exists in order to prevent harm caused by these dangerous things, it may be concluded that the current approach taken in sections 24(2) and (3) is appropriate. Conversely, it may be concluded that the powers in section 24(2) and 24(3) of the *Firearms Act* are too broad. The Commission seeks stakeholders' views on this matter below.

In addition, section 24(6) of the *Firearms Act* also provides that a person who:

- refuses or fails without lawful excuse to answer any question put by a member of the Western Australia Police under the Act;¹³⁴⁸

1344 Dangerous Goods Officers are appointed under section 27 of the *Dangerous Goods Safety Act 2004 (WA)*.

1345 *Dangerous Goods Safety Act 2004 (WA)*, s 37(1)(a) and (b).

1346 *Dangerous Goods Safety Act 2004 (WA)*, s 37(2)(a) and (b).

1347 *Criminal Investigation Act 2006 (WA)*, s 146(a), (c) and (e)(iv).

1348 *Firearms Act 1973 (WA)*, s 24(6)(a).

- wilfully misleads or wilfully attempts to mislead any member of the Western Australia Police in any particular manner likely to affect the discharge of his or her duty under the Act;¹³⁴⁹ or
- refuses or fails to produce any licence or permit he or she holds under the Act, or any firearm in respect of which any such licence or permit is issued, or any Extract of Licence issued in respect of any such licence or permit or in respect of any exemption or other authorisation, within reasonable time after demand made by a member of the Western Australia Police,¹³⁵⁰

commits an offence punishable by a \$4,000 fine.

The terms of section 24(6) of the *Firearms Act* were considered during the 2008 Western Australia Police Review of the Act. The review report noted that '[f]ollowing the recent creation of the new Police Licensing Services and recommendations of the CAT review¹³⁵¹ it is anticipated that the number of functions previously undertaken by police officers will now be undertaken by police staff and outsourced' and proposed that it was 'timely to review this provision to open it up to circumstances where persons other than police officers may be undertaking duties required under the *Firearms Act*'.¹³⁵²

Accordingly, the review recommended that section 24 of the *Firearms Act* be amended 'to ensure that the offence of wilfully misleading takes account of future situations where police staff or other persons may be involved in administration of that statute'.¹³⁵³ The current applications process includes involvement from persons who are not police officers – including unsworn officers and persons employed by Australia Post – but this recommendation has not been implemented.

Question 39:

Should section 24 of the *Firearms Act 1973* (WA) be amended to provide:

- in section 24(1), that the officer must be satisfied *on reasonable grounds* that a person's possession of firearms or ammunition is not authorised before the officer is empowered to seize the firearms or ammunition;
- in section 24(2), that the officer's opinion that possession of a firearm or ammunition by a person may result in harm being suffered by any person, or that the person is not at the time a fit and proper person to be in possession of it, must be based *on reasonable grounds*;
- in section 24(3), that the officer's opinion that a firearm is unsafe or unserviceable must be based *on reasonable grounds*; and
- in section 24(6), that the offence of wilfully misleading or wilfully attempting to mislead any member of the Western Australia Police in any particular likely to affect the discharge of his or her duty under the *Firearms Act 1973* (WA) also applies with respect to persons administering the Act who are not members of the Western Australia Police?

14.10 Seizure and disposal of firearms under the *Firearms Act 1973* (WA)

There also appears to be a lack of clarity in the requirements surrounding the treatment of firearms which are seized by Western Australia Police under the *Firearms Act*, as distinct from firearms which are seized in accordance with other legislation.¹³⁵⁴ Section 24(5) of the *Firearms Act* provides that 'any firearm or ammunition seized ... under the provisions of subsection (1) shall be dealt with according to law'.¹³⁵⁵ However, firearms and ammunition may also be seized under subsection (2), and firearms may be seized under subsection (3).

¹³⁴⁹ *Firearms Act 1973* (WA), s 24(6)(b).

¹³⁵⁰ *Firearms Act 1973* (WA), s 24(6)(c).

¹³⁵¹ The 2008 Western Australia Police Review noted that the 'CAT review was completed in February 2008 and examined the Western Australia Police management of firearm licensing'; *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 28, n4.

¹³⁵² *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 28.

¹³⁵³ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 28.

¹³⁵⁴ See *Restraining Orders Regulations 1997* (WA), r 5.

¹³⁵⁵ *Firearms Act 1973* (WA), s 24(5).

The *Firearms Regulations* also make some provision for the storage and treatment of firearms and ammunition after they have been seized, but these provisions are limited; they appear only to apply to firearms and ammunition seized by officers under section 24(2) while exercising the power in section 24(2a).

Regulation 22A of the *Firearms Regulations* provides that if a member of the Western Australia Police exercises powers of entry without a warrant under section 24(2a) of the *Firearms Act* and, when those powers were exercised, any firearm or ammunition was seized or taken under section 24(2) of the Act:

- the member of the Western Australia Police seizing it is to notify the officer in charge of the Firearms Branch by telephone, facsimile, or similarly speedy means as soon as practicable;¹³⁵⁶
- if the owner of the firearm or ammunition seized is neither the holder of a licence relating to it nor otherwise lawfully entitled to possess it, the Commissioner is required, within 21 days after notification of the seizure of any firearm or ammunition is given to the Firearms Branch, to give the owner notice under section 33(1)(c) of the *Firearms Act* requiring the owner to lawfully dispose of it¹³⁵⁷ unless the owner dies or cannot be found or a prosecution has been commenced for an offence relating to the firearm or ammunition seized;¹³⁵⁸
- if the owner of the firearm or ammunition seized is the holder of a licence relating to it or is otherwise lawfully entitled to possess it, the Commissioner is required, within 21 days after notification of the seizure of any firearm or ammunition is given to the Firearms Branch, to return it to the owner, revoke the licence and give the owner notice under section 33(1)(c) of the *Firearms Act* requiring the owner to lawfully dispose of the firearm or ammunition, or give the owner a request under section 20(1a) of the Act,¹³⁵⁹ unless the owner cannot be found or a prosecution has been commenced for an offence relating to the firearm or ammunition seized;¹³⁶⁰
- if the Commissioner gives the owner of the firearm or ammunition a request under section 20(1a) of the *Firearms Act*, the Commissioner must, within 21

days after information is supplied or a submission is made, or within the 28-day period specified in section 20(1a) of the Act (whichever happens first) either return the firearm or ammunition seized to the owner or revoke the licence and give the owner notice under section 33(1)(c) of the *Firearms Act* requiring the owner to lawfully dispose of the firearm or ammunition,¹³⁶¹ unless the owner cannot be found or a prosecution has been commenced for an offence relating to the firearm or ammunition seized.¹³⁶²

These obligations, on the face of the Regulations, apply only to firearms which are seized under section 24(2) of the *Firearms Act* during a search conducted under 24(2a) without a warrant. It is unclear whether these obligations also exist with respect to firearms or ammunition seized during the course of exercising the power in section 24(2a) with a warrant, or when powers are exercised under section 24(1), (2) or (3) alone.

Provision is also made for the disposal of firearms in other circumstances. Section 33 of the *Firearms Act* provides that where 'any firearm or ammunition is in the possession of a member of the Western Australia Police' and

- the owner cannot be found;¹³⁶³
- the owner, not being the holder of a relevant licence or otherwise lawfully entitled to possession of it, dies;¹³⁶⁴ or
- the owner, not being the holder of a relevant licence or otherwise lawfully entitled to possession of it, refuses or fails lawfully to dispose of it within three months after notice in writing from the Commissioner, or within such longer period as the Commissioner may by the notice allow, requiring him to do so;¹³⁶⁵

the Police Commissioner may 'dispose of that firearm or ammunition in accordance with the regulations by destruction, sale or otherwise'. The *Firearms Regulations* provide that where the Commissioner disposes of a firearm or ammunition in his or her possession under section 33 of the *Firearms Act* he or she may retain the firearm in the Police Department Armoury and Ballistics Library,¹³⁶⁶ dispose of it through the State Supply Commission,¹³⁶⁷ or destroy the firearm

1356 *Firearms Regulations 1974* (WA), r 22A(3).

1357 *Firearms Regulations 1974* (WA), r 22A(4).

1358 *Firearms Regulations 1974* (WA), r 22A(5)(a) and (b).

1359 *Firearms Regulations 1974* (WA), r 22A(6)(a), (b) and (c). Section 20(1a) of the *Firearms Act 1973* (WA) provides that the Commissioner may, in writing, request a person who is the holder of any licence, permit, or approval to supply information, or further information, that the Commissioner considers to be necessary in order to determine whether or not the holder remains a fit and proper person, or to make a submission to show cause why the power of revocation should not be exercised. If that information is not supplied, or that submission is not made, to the Commissioner in a form acceptable to the Commissioner within 28 days, or such further period as the Commissioner may approve, the licence, permit or approval may be revoked.

1360 *Firearms Regulations 1974* (WA), r 22A(9)(a) and (b).

1361 *Firearms Regulations 1974* (WA), r 22A(7).

1362 *Firearms Regulations 1974* (WA), r 22A(9)(a) and (b).

1363 *Firearms Act 1973* (WA), s 33(1)(a).

1364 *Firearms Act 1973* (WA), s 33(1)(b).

1365 *Firearms Act 1973* (WA), s 33(1)(c).

1366 *Firearms Regulations 1974* (WA), r 12(a).

1367 *Firearms Regulations 1974* (WA), r 12(b).

or ammunition by smelting or other approved method under police supervision.¹³⁶⁸ Section 33 also makes provision for the use of the proceeds of any sale of a firearm by the Commissioner; if after reasonable inquiry the Commissioner is of the opinion that the owner cannot be contacted, the net proceeds are credited to the Consolidated Account.¹³⁶⁹

In short, there does not appear to be any one provision, in either the *Firearms Act* or the *Firearms Regulations*, which comprehensively sets out how firearms must be dealt with when they come into police custody.

The Commission considers that the requirements surrounding seizure of firearms and ammunition under the *Firearms Act*, and provisions for the treatment, return, sale or destruction of those goods, or for the revocation of licences following such seizure, should be specified with greater clarity. It should be possible to consult the *Firearms Act* and *Firearms Regulations* and come to a clear understanding of:

- when Western Australia Police can seize firearms;
- what must then be done with those firearms, in all circumstances; and
- whether, and how, the owner of the firearm may seek to recover the firearm.

For its part, Western Australia Police has advised that as a matter of practice, procedures under regulation 22A of the *Firearms Regulations* and section 24 of the *Firearms Act* are followed whenever a firearm is seized, but has acknowledged that this could be made clearer.¹³⁷⁰

Proposal 40:

- that the *Firearms Regulations 1974 (WA)* be amended to provide that the requirements of Regulation 22A apply to all firearms and ammunition seized by Western Australia Police, whether under the *Firearms Act 1973 (WA)* or any other power.

14.11 Firearms prohibition orders

In New South Wales,¹³⁷¹ South Australia¹³⁷² and Tasmania¹³⁷³ 'firearms prohibition orders' are used to provide for restrictions on particular individuals.

For instance, in South Australia the *Firearms Act 1977 (SA)* provides that the Registrar of Firearms may issue a firearms prohibition order against a person if satisfied that possession of a firearm by the person would be likely to result in undue danger to life or property; or that the person is not a fit and proper person to possess a firearm; and that it is in the public interest to prohibit the person from possessing and using a firearm.¹³⁷⁴

Once a person is subject to a firearms prohibition order, he or she is disqualified from obtaining any licence or permit under the Act; it is an offence punishable by up to \$75,000 or imprisonment for 15 years for that person to acquire, possess or use a firearm.¹³⁷⁵ Persons subject to a firearms prohibition order may not be present at or join a firearms club or reside at premises on which there is a firearm, firearm part or ammunition.¹³⁷⁶ Severe penalties are also prescribed for supplying a firearm, firearm part or ammunition to a person subject to a firearms prohibition order.¹³⁷⁷ The Act also provides for the issue of interim firearms prohibition orders by police officers.¹³⁷⁸

There is limited information available on the impact of laws providing for firearms prohibition orders. The *Firearms Act 1977 (SA)* required the Minister for Police to cause a report to be prepared on the first two years' operation of the Firearms Prohibition Orders amendments, which came into effect on 27 November 2008. The report was required to address the number of firearms prohibition orders issued and revoked; the number of reviews and appeals relating to firearms prohibition orders; and the outcome of each review or appeal that has been completed or finally determined.¹³⁷⁹ The report, tabled in the South Australian parliament on 1 March 2012, was very brief. It noted that as of 21 December 2010, 56 firearms prohibition orders had been issued, none had been revoked, and one appeal had been commenced in relation to a firearms prohibition order. The report also noted that:

- 35 firearms prohibition orders had been issued against members or associates of various Outlaw Motorcycle Gangs;
- two firearms prohibition orders had been issued against illicit firearms manufacturers (one of which was believed to have been manufacturing machine guns and other automatic weaponry for Outlaw Motorcycle Gangs);

¹³⁶⁸ *Firearms Regulations 1974 (WA)*, r 12(c).

¹³⁶⁹ *Firearms Act 1973 (WA)*, s 33(2).

¹³⁷⁰ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 22.

¹³⁷¹ See *Firearms Act 1996 (NSW)*, Part 7.

¹³⁷² See *Firearms Act 1977 (SA)*, Part 2A.

¹³⁷³ See *Firearms Act 1996 (Tas)*, Part 8.

¹³⁷⁴ *Firearms Act 1977 (SA)*, s 10B(1).

¹³⁷⁵ *Firearms Act 1977 (SA)*, ss 10C(1) and (3).

¹³⁷⁶ *Firearms Act 1977 (SA)*, ss 10C(5) and (7).

¹³⁷⁷ *Firearms Act 1977 (SA)*, s 10C(10).

¹³⁷⁸ *Firearms Act 1977 (SA)*, s 10A.

¹³⁷⁹ *Firearms Act 1977 (SA)*, s 10D.

- 19 firearms prohibition orders had been issued against persons with other criminal backgrounds or affiliations; and
- eight persons had either been arrested or reported for breaching their firearms prohibition orders, and the matters were still before the courts.¹³⁸⁰

In New South Wales, legislation, which came into effect on 1 November 2013, extended police powers relating to firearms prohibition orders.¹³⁸¹ The amendments enable members of the police to detain and search a person in respect of whom a firearms prohibition order has been made, and to enter and search any premises, vehicles, vessels or aircraft that the person occupies, controls or manages.¹³⁸² The police can use these powers to determine whether the person has contravened the firearms prohibition order, and can exercise them without a search warrant. The New South Wales Ombudsman is currently reviewing these amendments and scrutinising police use of the Act's new search powers until 1 November 2015.¹³⁸³ At the end of this period the Ombudsman is required to prepare a report on the exercise of these powers, which the Minister must table in parliament.¹³⁸⁴

It was reported prior to the April 2013 Council of Australian Governments meeting that the Commonwealth would be encouraging 'all premiers to consider adopting the SA legislation as part of the national crackdown on firearms and gang crime'.¹³⁸⁵ The then Commonwealth Justice Minister Jason Clare was reported as saying: 'The Commonwealth is of the view that all states and territories should provide police with additional search powers, targeted at those who are subject to an FPO, to allow police to move quickly to search for and, if found, seize illegal firearms' and that 'the SA laws should be used as a model for other states and territories'. The COAG communiqué included an agreement that Senior Officials would consider 'implementation of additional firearm search powers to target repeat offenders'.¹³⁸⁶

Western Australia Police has advised that it would support amendments to the *Firearms Act* to provide for the issue of Firearms Prohibition Orders in Western Australia,¹³⁸⁷ and has proposed that such amendments

would be similar to sections 73 and 74 of the *Firearms Act 1996* (NSW). In summary, these sections provide that:

- the Police Commissioner may make a firearms prohibition order against a person if, in the Commissioner's opinion, 'the person is not fit, in the public interest, to have possession of a firearm';¹³⁸⁸
- a firearms prohibition order takes effect when it is personally served on the person against whom it is made;¹³⁸⁹
- the Commissioner may revoke a firearms prohibition order at any time for any, or no, stated reason;¹³⁹⁰
- a person who is subject to a firearms prohibition order must not acquire, possess or use a firearm, firearm part or ammunition;¹³⁹¹
- a person must not supply or give possession of a firearm, firearm part or ammunition to another person knowing that the other person is subject to a firearms prohibition order;¹³⁹² and
- a person subject to a firearms prohibition order must not reside at premises where there are firearms, firearm parts or ammunition¹³⁹³ and must not without reasonable excuse attend the premises specified in a firearms dealer's licence, a shooting range, the premises of a firearms club, or any other premises of a kind prescribed by the regulations.¹³⁹⁴

A person the subject of a firearms prohibition order may seek a review of this decision in the Civil and Administrative Tribunal.¹³⁹⁵

In considering the proposal for introducing firearms prohibitions orders, it is relevant to consider existing restrictions on firearm possession in Western Australia.

14.11.1 Restrictions on firearms possession

There is provision in the *Criminal Organisations Control Act 2012* (WA) for control orders to be made against members of declared criminal organisations and persons who have an association with a declared

¹³⁸⁰ Report prepared by the Commissioner of Police, dated 22 December 2010.

¹³⁸¹ *Firearms and Criminal Groups Legislation Amendment Act 2013* (NSW).

¹³⁸² *Firearms Act 1996* (NSW), s 74A.

¹³⁸³ *Firearms Act 1996* (NSW), s 74B(1).

¹³⁸⁴ *Firearms Act 1996* (NSW), s74B(4) and (5).

¹³⁸⁵ *Adelaide Advertiser* 18 April 2013.

¹³⁸⁶ Council of Australian Governments Meeting – Communiqué, 19 April 2013, Canberra. Accessed at https://www.coag.gov.au/sites/default/files/COAG_Communique_190413.pdf.

¹³⁸⁷ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 30.

¹³⁸⁸ *Firearms Act 1996* (NSW), s 73(1).

¹³⁸⁹ *Firearms Act 1996* (NSW), s 73(2).

¹³⁹⁰ *Firearms Act 1996* (NSW), s 73(3).

¹³⁹¹ *Firearms Act 1996* (NSW), ss 74(1), (2) and (3).

¹³⁹² *Firearms Act 1996* (NSW), ss 74(4) and (5).

¹³⁹³ *Firearms Act 1996* (NSW), s 74(6). A defence is provided in section 74(7).

¹³⁹⁴ *Firearms Act 1996* (NSW), s 74(8).

¹³⁹⁵ *Firearms Act 1996* (NSW), s 75(1)(f). However, section 75(1A) provides that a person may not apply for a review of a firearms prohibition order if the person would be required under section 11(5) or 29(3) to be refused a licence or permit (a disqualified person) had the person not been subject to a firearms prohibition order. Section 75(1B) provides further that the decision to make a firearms prohibition order against a disqualified person is taken to be an administratively reviewable decision for the purposes of section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* and that section applies, with such modifications as are necessary, in relation to the decision to make such an order.

criminal organisation, which prevent their possessing or using firearms. In addition, the *Firearms Regulations* also provide restrictions on the grant of Dealer's Licences where the applicant is a close associate of persons who are not fit and proper persons.

The *Criminal Organisations Control Act 2012 (WA)* provides for control orders to be made against members of declared criminal organisations and persons who have an association with a declared criminal organisation. As soon as practicable after a declaration that an organisation is a criminal organisation has been made, notice of the declaration must be published in the Gazette and in at least one newspaper circulating throughout Western Australia.¹³⁹⁶ To date, no such declarations have been made.

Control orders may be made where the court is satisfied that one of the following grounds exist for making a control order in relation to a person, and that it is appropriate in the circumstances to make the order:

- that the person is a member of a declared criminal organisation;¹³⁹⁷
- that the person is or purports to be a former member of an organisation that is a declared criminal organisation (whether or not the organisation was a declared criminal organisation at the time of the person's former membership) but has an ongoing involvement with the organisation and its activities;¹³⁹⁸ or
- that the person engages in, or has engaged in, serious criminal activity and regularly associates with members of a declared criminal organisation.¹³⁹⁹

Control orders may impose many restrictions on persons subject to the order, including prohibiting them from possessing a firearm,¹⁴⁰⁰ or prohibiting them from carrying on any activity that requires a Dealer's Licence, Repairer's Licence, Manufacturer's Licence or Shooting Gallery Licence under the *Firearms Act*.¹⁴⁰¹

The *Criminal Organisations Control Act 2012 (WA)* also provides that if an interim control order or control order prohibits a person from possessing a firearm, then it is a condition of the order that the

person is prohibited from possessing or obtaining a firearms licence, and must, within 24 hours after the order comes into force, deliver to the custody of the Police Commissioner at a police station all firearms licences held by the person.¹⁴⁰²

Failure to comply with the requirement to surrender a firearm enlivens a police power to enter and search a place, without warrant, and seize a prohibited item, firearms licence or authorisation if a police officer suspects on reasonable grounds that the person to whom the interim control order or control order relates has a prohibited item, firearms licence or authorisation in his or her possession in that place.¹⁴⁰³ It is an offence for a co-licensee or responsible person to allow a controlled person access to a firearm.¹⁴⁰⁴

The restrictions in the *Criminal Organisations Control Act 2012 (WA)* apply only to persons who are members or associates of a declared criminal organisation. The provisions therefore cannot be applied to prevent persons from accessing firearms who do not fall within these categories but who may have, for instance, a long history of violent offending or threatening behaviour. Such people would arguably have applications for licences refused; the discretion accorded to the Police Commissioner in section 11 of the *Firearms Act* is broad.

However, firearms may also be accessed by persons who do not hold individual licences and who therefore have not undergone the application process provided for in the *Firearms Act*. For example, employees of organisations which hold Corporate Licences, as noted above at paragraph 12.4, may possess, carry or use firearms or ammunition without holding an individual licence, within certain parameters.¹⁴⁰⁵ Persons permitted to possess, carry or use a firearm or ammunition by virtue of a Corporate Licence are formally exempted from the licensing requirements of the *Firearms Act*.¹⁴⁰⁶ In addition, and as noted above, the *Firearms Act* provides for other exemptions from the licensing process, including:

- approved commercial carriers or warehousemen;¹⁴⁰⁷
- persons working for a primary producer, or who are family members of a primary producer, and who are using a firearm licensed to that primary producer for the purpose of destroying

¹³⁹⁶ *Criminal Organisations Control Act 2012 (WA)*, s 15(1).

¹³⁹⁷ *Criminal Organisations Control Act 2012 (WA)*, s 57(2)(a).

¹³⁹⁸ *Criminal Organisations Control Act 2012 (WA)*, s 57(2)(b).

¹³⁹⁹ *Criminal Organisations Control Act 2012 (WA)*, s 57(2)(c).

¹⁴⁰⁰ *Criminal Organisations Control Act 2012 (WA)*, s 58(2)(d)(i).

¹⁴⁰¹ *Criminal Organisations Control Act 2012 (WA)*, ss 58(2)(a), 80(1)(c) and 80(3).

¹⁴⁰² *Criminal Organisations Control Act 2012 (WA)*, s 82(3).

¹⁴⁰³ *Criminal Organisations Control Act 2012 (WA)*, s 83(2).

¹⁴⁰⁴ *Criminal Organisations Control Act 2012 (WA)*, s 108.

¹⁴⁰⁵ Section 16(1)(c) of the *Firearms Act 1973 (WA)* provides that an employee or agent of the relevant organisation, a person acting at the request of the organisation, or a person employed in the Public Sector by or under an employing authority, within the meaning of the *Public Sector Management Act 1994*, who is required or authorised by the organisation to act on behalf of the organisation in respect to a relevant act or omission, may be permitted to possess, carry or use a firearm or ammunition either on the premises of the organisation, or in the course of carrying out a function approved by the Commissioner and authorised by the organisation, in accordance with the terms, restrictions, limitations and conditions applicable to that licence.

¹⁴⁰⁶ *Firearms Act 1973 (WA)*, s 8(1)(f).

¹⁴⁰⁷ *Firearms Act 1973 (WA)*, s 8(1)(g).

vermin or stock, where the use of the firearm and ammunition is expressly authorised by the primary producer for the purpose of primary production; or who are in possession of such firearm or ammunition while carrying it directly between two such pieces of land or directly between such land and any other place where it is authorised by law to be held; if the use of the firearm and ammunition by that person is expressly authorised by the primary producer;¹⁴⁰⁸

- a person who, as an employee or partner of the holder of a licence to conduct a shooting gallery, or as a customer of a shooting gallery being conducted pursuant to this Act, handles or uses a firearm or ammunition at that shooting gallery in accordance with the conditions, restrictions and limitations, if any, specified in the licence relating to that shooting gallery;¹⁴⁰⁹ and
- a person who, with the permission of the owner of the firearm on an approved range, possesses, handles or uses a firearm or ammunition for a firearm that is the property of, or is the property of a member of, an approved club or other approved organisation and is held by that owner under a licence or permit granted under the *Firearms Act*.¹⁴¹⁰

While commercial carriers or warehousemen must be approved, there appears to be no approval requirement on persons who are employed by, or are family members of, a primary producer. It is possible, for instance, that some persons who are employed by, or are family members of, primary producers may not be capable of satisfying the requirements of the 'fit and proper person' test in the *Firearms Act*.¹⁴¹¹ The same may also apply to a person who seeks to shoot at an approved range or a shooting gallery.

The provisions of the *Firearms Act* therefore do not appear to rule out entirely the possibility of persons who are not fit and proper persons being capable of accessing firearms. Further, the restrictions provided for in the *Criminal Organisations Control Act 2012* (WA) will only apply to particular classes of persons. In view of this, the Commission considers that it is worth exploring whether a system of firearms prohibition orders ought to be adopted in Western Australia.

Question 40:

- Should the *Firearms Act 1973* (WA) be amended to provide for firearms prohibition orders, as in New South Wales?

14.11.2 Restrictions on Dealer's Licences

The *Firearms Regulations* provides for restrictions on the issue of Dealer's Licences to ensure that criminal organisations do not become involved in the firearms trade. Restrictions on the ability of certain persons to be employed in firearm dealerships were an aspect of the 2002 National Firearm Trafficking Policy Agreement.¹⁴¹²

Specifically, the Regulations provide that applications for the issue or renewal of a Dealer's Licence must include information about each person who will, if the application is successful, be a 'close associate' of the applicant.¹⁴¹³ A 'close associate' of a holder of a dealer's licence is defined as a person who:

- holds any relevant financial interest,¹⁴¹⁴ or is entitled to exercise any relevant power¹⁴¹⁵ (whether in his or her own right or on behalf of any other person) in the business of the holder, and by virtue of that interest or power is able to exercise a significant influence over or with respect to the conduct of that business;¹⁴¹⁶ or
- holds any relevant position,¹⁴¹⁷ whether in his or her own right or on behalf of any other person, in the business of the holder.¹⁴¹⁸

The Regulations provide that the Police Commissioner must not issue or renew a Dealer's Licence if he or she:

- is not satisfied that the applicant is to be the person primarily responsible for the management of the business to be carried on under the authority of the licence;¹⁴¹⁹ or
- is of the opinion that a person who will be (if the licence is granted or renewed) a close associate of the applicant is not a fit and proper person to be a close associate of the holder of a Dealer's Licence.¹⁴²⁰

1408 *Firearms Act 1973* (WA), s 8(1)(i)(i) and (ii). The State Administrative Tribunal has found that section 8(1)(i) of the Act does not preclude a family member of a primary producer from applying for a licence in his or her own right, and has noted that section 8 is 'intended to be a relaxation of what is otherwise a very strict licensing regime, but is not intended to be restrictive in itself'; see *Cutbush and Commissioner of Police* [2010] WASAT 45 at [38], [36].

1409 *Firearms Act 1973* (WA), s 8(1)(l).

1410 *Firearms Act 1973* (WA), s 8(1)(m).

1411 See *Firearms Act 1973* (WA), ss 11(1)(c), 11(2), 11(3) and 11(6).

1412 See Bricknell S, 'Firearm trafficking and serious and organised crime gangs', Research and Public Policy Series no. 116, Canberra: Australian Institute of Criminology, June 2012, 9–10, accessed at http://www.aic.gov.au/media_library/publications/rpp/116/rpp116.pdf.

1413 *Firearms Regulations 1974* (WA), r 6D and 6G.

1414 'Relevant financial interest' is defined to mean, in relation to a business, any interest in the capital or assets of the business or any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise; see *Firearms Regulations 1974* (WA), r 6C(1)(a) and (b).

1415 'Relevant power' is defined to mean any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others, to participate in any managerial or executive decision, or to elect or appoint any person to any relevant position; see *Firearms Regulations 1974* (WA), r 6C(1)(a) and (b).

1416 *Firearms Regulations 1974* (WA), r 6C(2)(a).

1417 'Relevant position' is defined to mean, in relation to a business, a position whose holder participates in the management of the business, whether in the capacity of a director, manager or secretary or otherwise; see *Firearms Regulations 1974* (WA), r 6C(1).

1418 *Firearms Regulations 1974* (WA), r 6C(2)(b).

1419 *Firearms Regulations 1974* (WA), r 6E(a).

1420 *Firearms Regulations 1974* (WA), r 6E(b).

These Regulations allow for scrutiny of the business of firearm dealerships, in particular scrutiny of persons who may be involved in a business behind the scenes but not be listed on a licence application.

The Regulations provide, further, that a Dealer's Licence may be made subject to the condition that particular prescribed persons cannot be employed by the business,¹⁴²¹ or that such persons cannot act as agents for, or participate in the management of, the business.¹⁴²² The Regulations define 'prescribed person', for this purpose, as a person who:

- within a period of ten years before being employed in that business has been convicted in Western Australia of an offence under Part II Chapter IX¹⁴²³ or Part V¹⁴²⁴ (other than Chapters XXXIV¹⁴²⁵ and XXXV¹⁴²⁶) of the *Criminal Code* (that is, of an offence against the person);¹⁴²⁷ or
- within a period of ten years before being employed in that business has been convicted elsewhere of a substantially similar offence;¹⁴²⁸ or
- within a period of ten years before being employed in that business has had his or her Dealer's Licence revoked by the Police Commissioner for any reason;¹⁴²⁹ or
- within a period of ten years before being employed in that business has had his or her application for a licence, permit or approval refused by the Police Commissioner, or had a licence, permit or approval revoked, because:
 - the Commissioner was not satisfied that the person was a fit and proper person to hold the approval, permit or licence;¹⁴³⁰ or
 - the Commissioner considered that the issue of the licence or grant of the permit or approval to the person would be contrary to the public interest;¹⁴³¹ or
- is subject to a violence restraining order;¹⁴³² or
- is subject to a conditional release order, community based order, intensive supervision order, suspended imprisonment or an early release order under the Sentencing Act 1995

(WA), or a similar order or bond made or entered into elsewhere;¹⁴³³ or

- is subject to a disqualification order made under section 27A of the *Firearms Act*,¹⁴³⁴ which provides that a court making a violence restraining order against a person may order that, for a term set by the court or until a court orders to the contrary, the person be disqualified from holding any licence, permit, or approval, or any particular licence, permit, or approval, under the *Firearms Act*.¹⁴³⁵

The Regulations also provide that if the holder of a Dealer's Licence is prosecuted for a breach of a licence condition¹⁴³⁶ for employing a prescribed person or permitting a prescribed person to act as agent for or participate in the management of the business, it is a defence for the holder to prove that he or she did not know and could not reasonably be expected to have known that the person was a prescribed person.¹⁴³⁷

Similar provisions do not exist in respect of Repairer's Licences,¹⁴³⁸ Manufacturer's Licences¹⁴³⁹ and Corporate Licences,¹⁴⁴⁰ all of which also allow employees of the holder to access firearms. The Commission considers that it is worth exploring whether the restrictions applying to the holders of Dealers' Licences should also extend with respect to these other licence categories.

Question 41:

- Should the restrictions on Dealer's Licences be extended to Repairer's Licences, Manufacturer's Licences and Corporate Licences?

14.12 Domestic violence, restraining orders and the *Firearms Act 1973* (WA)

A firearm may be used to intimidate or control a person despite it not being discharged, and it has been suggested that this may particularly be the case in situations of family or domestic violence. A 2009

1421 *Firearms Regulations 1974* (WA), r 6F(2)(a).

1422 *Firearms Regulations 1974* (WA), r 6F(2)(b).

1423 Part II Chapter IX of the *Criminal Code* contains offences relating to unlawful assemblies and breaches of the peace. These offences include taking part in a riot (section 65), being armed in or near a place of public entertainment (section 68B), being armed in public in company (section 68C), and being armed in a way that may cause fear (section 68).

1424 Part V of the *Criminal Code* contains offences against the person and relating to parental rights and duties and against the reputation of individuals. Offences against the person in this part include murder (section 279), manslaughter (section 280), unlawful assault causing death (section 281), grievous bodily harm (section 297), wounding and similar acts (section 301), common assault (313) and assault causing bodily harm (section 317).

1425 Chapter XXXIV of the *Criminal Code* contains offences relating to parental rights and duties, including child-stealing (section 343) and deserting a child under 16 (section 344).

1426 Chapter XXXV of the *Criminal Code* contains the offence of criminal defamation (section 345).

1427 *Firearms Regulations 1974* (WA), r 6F(1)(a)(i).

1428 *Firearms Regulations 1974* (WA), r 6F(1)(a)(ii).

1429 *Firearms Regulations 1974* (WA), r 6F(1)(b).

1430 *Firearms Regulations 1974* (WA), r 6F(1)(c)(i).

1431 *Firearms Regulations 1974* (WA), r 6F(1)(c)(ii).

1432 *Firearms Regulations 1974* (WA), r 6F(1)(d).

1433 *Firearms Regulations 1974* (WA), r 6F(1)(e).

1434 *Firearms Regulations 1974* (WA), r 6F(1)(f).

1435 *Firearms Act 1973* (WA), s27A(1).

1436 Under section 21(2) of the *Firearms Act 1973* (WA).

1437 *Firearms Regulations 1974* (WA), r 6F(3).

1438 *Firearms Act 1973* (WA), s 16(1)(e).

1439 *Firearms Act 1973* (WA), s 16(1)(f).

1440 *Firearms Act 1973* (WA), ss 16(1)(c) and (2).

submission by Women’s Health New South Wales made in response to a discussion paper on the NSW Domestic and Family Violence Strategic Framework stated: ‘Guns will often not be fired in domestic violence but they are being used as a deadly tool for control over the family and to silence the family from making positive changes to end the abuse’.¹⁴⁴¹ Unfortunately there is ‘a lack of up-to-date, published information about the incidence of firearms use in an intimate partner context in Australia, and the legal status of those firearms’.¹⁴⁴²

All firearms legislation in Australia makes provision for domestic violence offenders to a certain extent; the 1996 National Agreement included a requirement that all jurisdictions provide that it shall be a ground for rejecting applications where the applicant or licence holder has been the subject of an Apprehended Violence Order, Domestic Violence Order, restraining order or conviction for assault with a weapon/aggravated assault within the previous five years.¹⁴⁴³ In addition, the 2002 National Handguns Agreement included agreement that suspension or cancellation of licences and seizure of firearms must occur immediately upon the issue of an Apprehended Violence Order or Domestic Violence Order on a firearm licence holder.¹⁴⁴⁴

The *Firearms Act* provides that the Police Commissioner has sufficient grounds for forming an opinion that a person is not a fit and proper person if the Police Commissioner is satisfied that at any time within the period of five years before the person applies for the approval, permit or licence, a violence restraining order was made against the person.¹⁴⁴⁵ The restraining order need not have been made in the context of alleged domestic violence. The *Firearms Act* further provides that a court making a violence restraining order against a person may order that, for a term set by the court or until a court orders to the contrary, the person be disqualified from holding any licence, permit, or approval under the Act.¹⁴⁴⁶ If a violence restraining order that disqualifies the relevant person from holding a licence, permit or approval is made against a person who already holds a licence, permit or approval, then that licence, permit or approval is suspended and of no effect for so long as the disqualification order is in place.¹⁴⁴⁷

The *Restraining Orders Act 1997* (WA) provides that, subject to some exceptions, every violence restraining order includes a restraint prohibiting the person who is bound by the order from being in possession of a firearm or firearms licence, and from obtaining a firearms licence.¹⁴⁴⁸ The Act provides that when making a violence restraining order a court may permit the respondent to have possession of a firearm, and, if necessary, a firearms licence relating to it, on such conditions as the court thinks fit if satisfied that:

- a) the respondent cannot carry on the respondent’s usual occupation unless the respondent is permitted to have possession of a firearm;
- b) the behaviour in relation to which the order was sought did not involve the use, or threatened use, of a firearm; and
- c) the safety of any person, or their perception of their safety, is not likely to be adversely affected by the respondent’s possession of a firearm.¹⁴⁴⁹

The *Restraining Orders Regulations 1997* (WA) provides that a firearm or firearms licence seized by or provided to police in accordance with the *Restraining Orders Act 1997* (WA) is to be held in safe custody by the Police Commissioner until the restraining order ceases to be in force, it is reclaimed by a co-licensee, or it may otherwise be lawfully disposed of.¹⁴⁵⁰ While the firearm is in safe custody, it bears an identifying tag or tie label which includes the name and address of the owner and the depositor of the firearm, the date of deposit, the type of firearm, the maker’s name, the serial number of the firearm and the calibre.¹⁴⁵¹

The restrained person may reclaim the firearm or firearms licence once the order has ceased to be in force. However, if a firearm being held by the Police Commissioner has not been reclaimed within one month after the restraining order ceases to be in force, the Commissioner may regard the restrained person and any co-licensee as an owner who cannot be found for the purposes of section 33 of the *Firearms Act*.¹⁴⁵²

Similarly, if a firearms licence held by the Police Commissioner is not reclaimed within one month after the restraining order ceases to be in force, the Commissioner may regard the restrained person as

1441 Women’s Health NSW (Peak Association for the 22 NSW Government-funded Women’s Health NGOs), ‘Response to the Discussion Paper, NSW Domestic and Family Violence Strategic Framework’, 2009, 19, accessed at http://www.whnsw.asn.au/PDFs/NSW_Domestic_and_Family_Violence_Strategic_Framework_Discussion_Paper.pdf. Similar arguments have also been made elsewhere; see for instance Law Reform Commission of Australia, Report No. 30 – Domestic Violence, 56, accessed at <http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC30.pdf>.

1442 Submission from the Public Health Association of Australia (WA Branch), 8 October 2014, 3.

1443 Australasian Police Ministers’ Council, Special Firearms Meeting, 10 May 1996, Resolutions, 10, accessed at <http://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>.

1444 Ministerial Council on the Administration of Justice, Australasian Police Ministers’ Council Special Meeting on Firearms (Handguns) November 2002, Sydney, Consolidated Resolutions, 4.

1445 *Firearms Act 1973* (WA), s 11(3)(a)(iv).

1446 *Firearms Act 1973* (WA), s 27A(1).

1447 *Firearms Act 1973* (WA), s 27A(3).

1448 *Restraining Orders Act 1997* (WA), s 14(1)(a) and (b).

1449 *Restraining Orders Act 1997* (WA), s 14(5).

1450 *Restraining Orders Regulations 1997* (WA) r 5(1)(a), (b) and (c).

1451 *Restraining Orders Regulations 1997* (WA), r 5(5), *Firearms Regulations 1974* r 11(2).

1452 *Restraining Orders Regulations 1997* (WA) r 5(3).

having requested, under section 20(4) of the *Firearms Act*, that the firearms licence be cancelled.¹⁴⁵³

Further, the *Restraining Orders Regulations 1997* (WA) provide that, before returning a firearm or firearms licence, the Police Commissioner must have regard to section 20 of the *Firearms Act*,¹⁴⁵⁴ which sets out the Commissioner's powers to revoke, or to refuse to renew, a licence under the Act.

The *Prohibited Behaviour Orders Regulations 2011* (WA) make similar provision for persons claiming their firearms after an order under that Act has ceased to have effect.¹⁴⁵⁵

The Commission is interested in exploring the question whether the *Firearms Act* and the *Restraining Orders Act 1997* (WA) are interacting effectively. There has been some suggestion that, while firearms are in police custody during the course of a violence restraining order, renewal notices are not sent to the licensees and therefore the licences expire and must be applied for anew.¹⁴⁵⁶ The Commission would welcome feedback on this and any other issues relating to restraining orders and the *Firearms Act*.

Question 42:

- Is the interaction between the *Firearms Act 1973* (WA) and the *Restraining Orders Act 1997* (WA) operating effectively?

14.13 Convictions and charges for offences involving violence

In the immediate aftermath of the Sydney siege (discussed in Annexure 1), when it was erroneously reported that the gunman held a firearms licence, there was some speculation as to how he could have obtained and retained a licence given his criminal history.¹⁴⁵⁷ At the time of the siege, the gunman was on bail for serious violent offences: accessory to murder (before and after the fact), and 40 charges of indecent and sexual assault.¹⁴⁵⁸ As it transpired, the gunman did not hold a firearm licence. However, in view of the questions that were raised in the wake of the siege it is worth exploring the position a licensed firearms owner would be in under the *Firearms Act* if charged with serious offences.

14.13.1 Convictions

Firstly, it is worth noting the position of persons who are convicted of offences under the *Firearms Act*, offences involving firearms under other legislation, notably the *Criminal Code*, or other serious violent offences.

The *Firearms Act* makes provision for the forfeiture of firearms upon a person's conviction. Specifically, section 28 of the Act provides that when a person is convicted for any offence under any written law, the court may order that any firearm, ammunition, silencer, or any other item to which the Act applies 'relating to the charge' be forfeited to the Crown.¹⁴⁵⁹ However, this section only applies to firearms that are *related to the charge* in respect of which the person was convicted, and this wording has been interpreted narrowly.¹⁴⁶⁰ This means that, if a person owns multiple firearms and is convicted of an offence which was committed using one firearm, only the specific firearm used in the offence can be ordered to be forfeited to the crown. In addition, a person sentenced for a serious violent offence which does not involve a firearm cannot be ordered to forfeit his or her firearms under this section of the *Firearms Act*.

Section 28 therefore provides the court with limited flexibility, and there may be instances in which this is detrimental. For example, if person A owns several firearms and is convicted of threatening person B¹⁴⁶¹ by saying he or she will shoot Person B (without specifying with which particular firearm this threat is to be effected), it is unclear how any individual firearm could be said to be 'related to the charge'. This lack of flexibility could be addressed by removing the words 'related to the charge' to provide the courts with more options. However, there may be concerns that this would give the courts too wide a power to require people to forfeit private property to the Crown. It is arguable that this power should only be enlivened where a person is sentenced for an offence that either involves a firearm or casts doubt on a person's fitness to use and possess a firearm. The Commission considers that the question of the court's power to order forfeiture of firearms and ammunition merits exploration and has invited submissions on this point below.

1453 *Restraining Orders Regulations 1997* (WA) r 5(4).

1454 *Restraining Orders Regulations 1997* (WA) r 5(2).

1455 *Prohibited Behaviour Orders Regulations 2011* (WA), r 7.

1456 Meeting with Hon Rick Mazza MLC, 2 December 2015.

1457 'Tony Abbott questions gun laws as he announces inquiry into Martin Place siege', *WA Today*, 17 December 2014, accessed at <http://www.smh.com.au/federal-politics/political-news/tony-abbott-questions-gun-laws-as-he-announces-inquiry-into-martin-place-siege-20141217-1295y2.html>.

1458 Department of the Prime Minister and Cabinet and Department of the Premier and Cabinet New South Wales, *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, vi, 37, accessed at <https://www.dpmc.gov.au/pmc/publication/martin-place-siege-joint-commonwealth-new-south-wales-review>.

1459 *Firearms Act 1973* (WA), s 28. This section also provides that where it appears to the court that the firearm or ammunition, silencer or other item belongs to some other person, who is lawfully entitled to possession and is not guilty of any offence in relation to it under the *Firearms Act 1973* (WA), the court shall order the firearm or ammunition, silencer or other item to be delivered to that other person.

1460 See *Coumbe v Whittaker* [1999] WASC 151.

1461 Section 338A of the *Criminal Code* provides that any person who makes a threat with intent to (a) gain a benefit, pecuniary or otherwise, for any person; or (b) cause a detriment, pecuniary or otherwise, to any person; or (c) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act; or (d) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act, is guilty of a crime. Where the threat is to kill a person, the penalty is ten years' imprisonment; in any other case it is seven years' imprisonment. See also *Criminal Code* s 338B.

In addition, as noted at paragraph 14.5 of this Discussion Paper, the *Sentencing Act 1995 (WA)* also sets out additional options for courts when sentencing an offender for a ‘firearms offence’,¹⁴⁶² an offence involving assault with a weapon, or an offence involving violence.¹⁴⁶³ Where a court is sentencing an offender in respect of one of these offences, the court may order that, for a term set by the court, the offender be disqualified from holding or obtaining a licence, permit or approval under the *Firearms Act*.¹⁴⁶⁴ When the court makes such an order, any relevant licence, permit or approval held by the offender under the *Firearms Act* is suspended and has no effect for so long as the disqualification order is in place, or, if the order so specifies, it is cancelled.¹⁴⁶⁵ The court must also ensure that details of the offence and the order are made known to the Police Commissioner.¹⁴⁶⁶ Data obtained from the Department of the Attorney General discloses that in 2014:

- two orders for a firearms licence disqualification were made when sentencing offenders for offences committed under the *Criminal Code*;
- two orders for a firearm licence disqualification were made when sentencing offenders for offences committed under the *Firearms Regulations*;
- six orders for a firearm licence disqualification were made when sentencing offenders for offences committed under the *Misuse of Drugs Act 1981 (WA)*;
- 11 orders for a firearm licence disqualification were made when sentencing offenders for offences committed under the *Weapons Act 1999 (WA)*; and
- 61 orders for a firearms licence disqualification were made when sentencing offenders for offences committed under the *Firearms Act*.

In 2014, there were 1,448 charges for an offence under the *Firearms Act* which resulted in a conviction. In 61 of these cases a firearm disqualification order was made.¹⁴⁶⁷ It appears therefore that such orders are only made in a small minority of cases. Offences under the *Firearms Act* vary in seriousness, and it may be that many of these are not so serious as to

warrant a disqualification. However, the possibility of a mechanism for an automatic disqualification is canvassed below.

The remaining course of action open to Western Australia Police is the Police Commissioner’s power to revoke the licence¹⁴⁶⁸ of a person who has been convicted. The Police Commissioner’s ability to revoke licences generally is discussed at paragraph 5.7. However, the Commission understands that revocations take time, partly because the Licensing Enforcement Division within Western Australia Police will not necessarily become aware that a licensee has been convicted of a relevant offence as soon as the conviction occurs. When the Police Commissioner takes action to revoke a licence under the *Firearms Act*, he or she must give notice in writing to the holder, including the reasons for the decision,¹⁴⁶⁹ and a person whose licence is revoked may seek a review of this decision in the SAT.¹⁴⁷⁰

The Commission understands from Western Australia Police that a person whose licence is revoked has three months from the time of the notice to dispose of his or her firearms and ammunition.¹⁴⁷¹ The three-month period apparently comes from section 33(1)(c) of the *Firearms Act*, which provides that where:

any firearm or ammunition is in the possession of a member of the Western Australia Police if ... the owner, not being the holder of a licence relating thereto or otherwise lawfully entitled to possession of it, refuses or fails lawfully to dispose of it within a period of three months after notice in writing from the Commissioner, or within such longer period as the Commissioner may by the notice allow, requiring him to do so ... the Commissioner may dispose of that firearm or ammunition in accordance with the regulations by destruction, sale or otherwise.¹⁴⁷²

That section 33(1)(c) applies to revocations is not clear from the face of section 20 (which sets out the Police Commissioner’s power to revoke licences), and the Commission suggests that the *Firearms Act* be amended to make this clearer.

In addition, the *Firearms Regulations* provides that a licence that has been revoked must be delivered to

1462 ‘Firearms offence’ is defined as: stealing, attempting to steal, or conspiring to steal a firearm or ammunition; receiving or attempting to receive or conspiring to receive a firearm or ammunition; an offence where a party to the offence (whether that party is charged or not) uses or is in possession of a firearm or ammunition during the commission of the offence; an offence where a firearm or ammunition is used after the commission of the offence (whether by the offender or by another party to the offence) to assist the offender to avoid, or to attempt to avoid, apprehension; or an offence under the *Firearms Act 1973 (WA)*; see *Sentencing Act 1995 (WA)*, s 106(4a). For the purposes of this definition, ‘ammunition’ includes replica ammunition, ammunition rendered inoperative, and blank ammunition, and ‘firearm’ has the same definition as in the *Firearms Act 1973 (WA)* and includes a replica firearm and a firearm rendered inoperative; see *Sentencing Act 1995 (WA)*, s 106(5).

1463 *Sentencing Act 1995 (WA)*, s 106(1).

1464 *Sentencing Act 1995 (WA)*, s 106(1).

1465 *Sentencing Act 1995 (WA)*, s 106(3)(a) and (b).

1466 *Sentencing Act 1995 (WA)*, s 106(4).

1467 Firearms Disqualifications – Information obtained from the Department of the Attorney General on 19 June 2015.

1468 *Firearms Act 1973 (WA)*, s 20.

1469 *Firearms Act 1973 (WA)*, s 20(3).

1470 *Firearms Act 1973 (WA)*, s 22(2).

1471 *Firearms Act 1973 (WA)*, s 33(1)(c).

1472 *Firearms Act 1973 (WA)*, s 33(1)(c).

police within seven days of receipt of the notice of revocation.¹⁴⁷³ The Commission understands that as a matter of practice, firearms are taken at the time a letter is provided in accordance with section 33(1) (c), and are then held by Western Australia Police for three months. At the end of this three-month period, the licence is revoked, unless the licensee has sought a review of this decision.¹⁴⁷⁴

Again, the Commission considers that it would be helpful for the *Firearms Act* to set out more clearly how revocations are effected. Relevantly, the provisions of the *Firearms Act* and *Firearms Regulations* which relate to the seizure of firearms more generally are discussed in this Discussion Paper at paragraph 14.10.

In addition, it is of some concern to the Commission that there does not appear to be any mechanism for the automatic suspension of a firearm licence where a person is found guilty of serious violent offences, such as murder, manslaughter or grievous bodily harm. Instead, reliance is placed on Western Australia Police to revoke the licence in situations where the court does not impose a disqualification order. This leaves open the possibility of a time lag between a person's conviction, which demonstrates their unfitness to hold a firearms licence, and the revocation of that licence.

The Commission invites submissions on a proposal to provide for a rebuttable presumption of disqualification in these circumstances. Importantly, in order to provide the court with an appropriate degree of flexibility, the proposal provides that an order should not be made where it is not in the interests of justice to do so. This is intended to account for occasions where it may not be just to disqualify a person on the basis of a conviction. For instance, there may be an occasion where a person commits an offence involving violence that is on a minor scale, such as a common assault, and requires a firearm in their course of his or her employment (such as where the person is a primary producer).

Proposal 41:

- that section 106 of the *Sentencing Act 1995* (WA) be amended to provide for a rebuttable presumption that a disqualification order will be made where a person is sentenced for a 'firearms offence', an offence involving assault with a weapon, or an offence involving violence, unless it would be contrary to the interests of justice to do so;
- section 20 of the *Firearms Act 1973* (WA) be amended to make clear:
 - the period during which a person must dispose of firearms and ammunition following revocation of his or her licence; and
 - when and how Western Australia Police may seize firearms and ammunition following revocation of a licence; and
- section 28 of the *Firearms Act 1973* (WA) be amended to extend its operation to allow forfeiture of any firearms where the charge or offence either involves physical violence, or involves the use or threatened use of a firearm.

14.13.2 Charges

There is no provision in the *Firearms Act* or the *Firearms Regulations* for the automatic seizure of firearms and firearms licences where a person is charged with violent offences, as distinct from where a person becomes subject to a violence restraining order. There is also no provision in the *Bail Act 1982* (WA) requiring a person who holds a firearm licence, who is charged with a violent offence and is released on bail, to automatically surrender his or her firearm/s and licence, although it would be possible on the face of the *Bail Act 1982* (WA) for a bail decision-maker to impose a condition on these terms.¹⁴⁷⁵

At the pre-conviction stage, there is no specific mechanism in the Act to confiscate firearms and ammunition possessed by persons charged with violent offences. On one view, given that at this stage in proceedings a person has simply been charged with an offence, and has not been (and may never be) convicted of it, this may be an appropriate approach. However, it is worth considering whether there is sufficient certainty as to how legally owned firearms are and should be dealt with, where the owner is charged with a serious offence.

¹⁴⁷³ *Firearms Regulations 1974* (WA), r 13.

¹⁴⁷⁴ Email correspondence from Carl Fisher, Project Officer, Licensing Services, Licensing Enforcement Division, Western Australia Police, 16 April 2015.

¹⁴⁷⁵ Relevantly, *Bail Act 1982* (WA), Schedule 1, Part D, cl. 2(2)(b) and (c) provide respectively that conditions may be imposed to ensure that an accused does not while on bail commit an offence; or does not endanger the safety, welfare or property of any person.

It appears the consequences for a licensed firearms owner of being charged with violent offences depends largely on police discretion. As noted elsewhere in this paper at paragraph 14.10, the *Firearms Act* provides that a police officer may 'seize and take possession of any firearm or ammunition that is in the possession of a person, whether or not the person is licensed or otherwise authorised to possess it', if in the police officer's opinion possession of the firearm or ammunition by that person may result in harm being suffered by any person; or that person is not at the time a fit and proper person to be in possession of it.¹⁴⁷⁶ It should be borne in mind that the definition of 'possession' in the *Firearms Act* is broad; the Act provides that 'possession', in addition to actual physical possession of a firearm or ammunition, means the custody or control of it, or having and exercising access to it in any place either alone or in common with others.¹⁴⁷⁷ A police officer arresting a person for a serious violent offence, or a police officer who subsequently becomes aware that a person who has been arrested for such an offence is a licensed firearms owner, may choose to seize the person's firearm or firearms on this basis and hold it pending trial.

As noted above, it is also possible for the Police Commissioner to revoke a licence held under the *Firearms Act*.¹⁴⁷⁸ Most of the grounds on which a licence may be revoked require the Police Commissioner to be 'satisfied' that a particular state of affairs exists.¹⁴⁷⁹ However, the Act also provides that the Commissioner has a sufficient ground for forming an opinion that a person is not a fit and proper person to hold an approval, permit or licence under the *Firearms Act* if the Commissioner 'suspects, on the basis of an intelligence report or other information held in relation to the person, that the person is a threat to public safety'.¹⁴⁸⁰ In theory, then, a licence could be revoked on the basis that a person has been arrested for a serious violent offence.

If the person were ultimately found not guilty, they would have to make a fresh application for a licence, which would impose a burden on them. If licences could be suspended pending a hearing of particularly serious charges (as is the case with violence restraining orders), this might be a preferable option, although it could still impose a hardship on licensees who use firearms in the course of their work and may be seen as harsh given it would occur at the stage where charges are merely laid and a person is presumed not guilty.

The Commission invites submissions on the concept of an automatic licence suspension, as distinct from a revocation or disqualification, where a person is charged with the offences listed in section 106 of the *Sentencing Act 1995* (WA). Such a mechanism would also reduce any possible time lag between a person being charged and the suspension of the licence. However, in order to address the potential for unfairness, it is proposed that a mechanism be provided for a person to seek to overturn a suspension; this will be particularly relevant where a person uses a firearm in the course of his or her employment.

Proposal 42:

that the *Firearms Act 1973* (WA) be amended to provide:

- for automatic temporary suspensions of licences, permits and approvals, and temporary surrender of firearms and ammunition, where a person has been charged with a 'firearms offence', an offence involving assault with a weapon, or an offence involving violence; and
- for a mechanism allowing the person charged to apply to the court to have that suspension overturned.

Offences and penalties – other

The *Firearms Act* also provides that a person who permits possession of any firearm or ammunition to be taken by another person 'where there are reasonable grounds for believing that he knows, or ought to know, that the other person is affected by alcohol or drugs, or alcohol and drugs, or that the other person is of unsound mind, commits an offence'. The penalty for this offence is imprisonment for 18 months or a \$6,000 fine.¹⁴⁸¹

The wording of this offence is unusual; it does not simply require that there be reasonable grounds to suspect that a person is affected by alcohol and/or drugs but adds the additional element that there must be reasonable grounds to suspect that the relevant person 'knew or ought to know' that a particular state of affairs existed.

The Commission suggests that, in the event that the *Firearms Act* is restructured to add clarity (as discussed at paragraph 5.9), the language in this offence be reconsidered.

¹⁴⁷⁶ *Firearms Act 1973* (WA), s 24(2).

¹⁴⁷⁷ *Firearms Act 1973* (WA), s 4.

¹⁴⁷⁸ *Firearms Act 1973* (WA), s 20.

¹⁴⁷⁹ For instance, the Police Commissioner may revoke a licence if he or she is satisfied that harm may be suffered by any person as a result of a person retaining or regaining possession of a firearm or ammunition, that to do so is in the public interest, or that a person who is the holder of a licence, permit or approval could not, because of section 11 of the Act, be granted the approval or permit or issued the licence if the person were then applying for it. See *Firearms Act 1973* (WA), ss 20(1)(aa), 20(1)(ac) and 20(1)(a)(iii).

¹⁴⁸⁰ *Firearms Act 1973* (WA), s 11(3)(c).

¹⁴⁸¹ *Firearms Act 1973* (WA), s 23(1).

15. OPERATION UNIFICATION

The Commission's terms of reference requires it to consider 'any relevant issues arising from the recent Operation Unification'.

'Operation Unification' is the name given to an annual two-week national campaign (which took place for the first time in 2013) against unlicensed firearms run by police in each Australian state and territory under the direction of the Australia New Zealand Policing Advisory Agency.

15.1 'Operation Unification' – inter-jurisdictional Agreement

Police Ministers agreed to the 'Operation Unification' campaign at a June 2012 meeting of the Standing Council on Police and Emergency Management following a report on the illegal firearms market, commissioned by the then Commonwealth Minister for Home Affairs and Minister for Justice, the Hon Jason Clare MP, from the Australian Crime Commission.

The Australian Crime Commission's report concluded that, as a conservative estimate, there were more than 250,000 longarms and 10,000 hand guns in the illicit firearms market, and also noted that firearms that flow into the illicit market may be used by criminals for many decades (the oldest firearm traced by the Australian Crime Commission was a revolver manufactured in 1888). The report also concluded that the illegal firearms market was sourced from firearms:

- that were never surrendered or registered following the 1996 gun buyback scheme stolen from legitimate owners;
- diverted by dishonest dealers, illegal imports; and
- made or reactivated by backyard operators.

The Australian Crime Commission undertook a tracing analysis of 3,186 weapons that Australian law enforcement agencies seized, concluding that 12 per cent had been stolen or were the subject of staged theft. The report was classified and has not been publicly released.¹⁴⁸²

The communiqué from the Standing Council on Police and Emergency Management meeting noted that Ministers invited the Chief Executive Officer of the Australian Crime Commission, Mr John Lawler

APM, to present the findings of the Australian Crime Commission's National Illicit Firearms Assessment. After considering the findings, Ministers agreed to a range of activities to progress a national response to firearms crime. These included:

- in-principle agreement to the development of a national ballistics identification network;
- development of a national firearms registry, which was agreed in principle;
- implementation of a National Firearms Identification Database, consistent with the Interpol Firearm Reference Table;
- The Australian Crime Commission, working in conjunction with CrimTrac and in consultation with all jurisdictions, establishing a set of nationally agreed key data for both registered and unregistered firearms;
- The Australian Crime Commission developing Illicit Firearms Assessments in 2013–2014 and 2014–2015, including an analysis of illicit domestic use and trafficking, and the importation of illicit firearms;
- development of an Enhanced National Firearms Serial Number Tracing Capability, which was agreed to in principle;
- stronger legislation to target firearms trafficking;
- strengthening of the integrity of firearms regulation across jurisdictions through the use of criminal intelligence and stronger identity management;
- establishing a working party to analyse further gaps and opportunities to strengthen legislation governing firearms possession and use;
- development of a coordinated national operational response to serious organised crime involving firearms, including targeted enforcement measures against high risk groups;
- working with the Commonwealth's newly established Firearm Intelligence Target Team inside the Australian Customs and Border Protection Service to fuse together all available intelligence from law enforcement agencies and target criminal key groups at the border; and
- development of a national community awareness campaign in relation to unlicensed firearms.¹⁴⁸³

¹⁴⁸² As noted above, the report itself cannot be accessed. However, a fact sheet on illicit firearms containing some of the report's findings can be accessed via the website of the Australian Crime Commission at <https://www.crimecommission.gov.au/publications/intelligence-products/crime-profile-fact-sheets/illicit-firearms>.

¹⁴⁸³ Standing Council on Police and Emergency Management, Communiqué 29 June 2012, 1–2, accessed via <http://www.ag.gov.au/EmergencyManagement/Pages/StandingCouncilonPoliceandEmergencyManagementMeetingDatesandCommunique.aspx>.

'Operation Unification' grew out of the final point of agreement – the community awareness campaign.

The joint Commonwealth–New South Wales review of the Sydney Siege, which is discussed in Annexure 1, briefly referred to Operation Unification. The review noted: 'An estimated 1,500 firearms are stolen each year, with relatively few of these recovered. This presents an ongoing concern for police nationally, as are the links to organised crime. To this end, *Operation Unification – Illegal Guns Off Our Streets* is a joint initiative of police agencies focussed on getting illicit firearms out of the hands of criminals through short amnesty periods in each state and territory. Over two weeks in June 2014, through reports from the public, seizure operations and firearms being handed in, over 180 illicit firearms were removed from circulation in a two-week period and 65 charges laid over a period of weeks in 2014'.¹⁴⁸⁴

15.2 'Operation Unification' in Western Australia

Thus far, 'Operation Unification' has taken place twice, from 24 May to 7 June 2013 and from 16 to 29 June 2014. Speaking in parliament on 23 May 2013, the Police Minister, Ms Liza Harvey MLA, explained of the inaugural Operation Unification campaign that:

[t]his nationwide policing effort ... acknowledges that criminals do not respect borders. That is why police are working together across Australia to get illicit firearms off our streets and out of homes.

... the possession and use of illicit firearms are significant elements of criminal activity in WA and in Australia more broadly. Trafficking of firearms, including the movement of firearm parts across borders, is an ongoing concern for police jurisdictions, as are the links to organised crime. According to the Australian Crime Commission's national illicit firearms assessment, it is estimated that there are more than 250,000 longarms and 10,000 hand guns in the illicit firearms market in Australia. Operation Unification is aimed at recovering these illicit firearms, including those in the possession of criminals and in particular those used by organised crime groups or suspected by police of being used for the purpose of criminal activity. It is also aimed at encouraging members of the public to contact Crime Stoppers on 1800 333 000 with any information they may have about illicit firearms. The intelligence gathered

from people calling Crime Stoppers can be used by police to assist in tackling this problem and the criminal activity associated with it. It is also a good time to remind people that firearms that are not safely stored are at risk of being stolen and falling into the hands of criminals.

Statistics collected throughout the operation will be used to inform future investigations by police agencies into illicit firearms, to enhance coordination across jurisdictions and collaboration with other intelligence agencies, and to strengthen operational arrangements.¹⁴⁸⁵

In the lead-up to the 2013 Operation Unification campaign, it was reported that 459 guns had been stolen in Western Australia during the previous year, compared to the national estimate of 1,500 gun thefts yearly. In particular, it was reported that in May 2013 there had been 57 gun thefts, seven of which were stolen in one night alone from a single home.¹⁴⁸⁶ State Crime Acting Commander Tony Flack was quoted as advising that 'quite a number of lawful firearms owners are being targeted in terms of having their firearms stolen from their premises' and that 'organised crime seems to be finding their way and are now producing their own firearms ... from raw material and that is organised, that is particularly concerning given the seizures of those home-made firearms tend to be semi-automatic weapons'. Mr Flack advised that firearms could sell for between \$5,000 and \$10,000 on the black market, and stated that the risk to the community from illegal firearms was 'self-evident', as firearms are 'easily concealable and can effect mass casualties'.¹⁴⁸⁷

Some stakeholders have submitted that firearm recovery statistics reported under Operation Unification should be treated with caution; it has been posited that 'many firearms "recovered" were merely returned through the existing channels available to dealers as part of the ongoing destruction of dilapidated firearms'.¹⁴⁸⁸

Western Australia Police has advised that it considers that Operation Unification is 'largely successful' and has noted that 'members of the public do come into possession of unlicensed firearms (often through deceased estates) and conducting publicised amnesties is effective in removing these firearms from the community'.¹⁴⁸⁹ The issue of amnesties more broadly is considered at paragraph 14.1 of this Discussion Paper.

1484 Department of the Prime Minister and Cabinet and Department of the Premier and Cabinet New South Wales, *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, 49, accessed at <https://www.dpmc.gov.au/pmc/publication/martin-place-siege-joint-commonwealth-new-south-wales-review>.

1485 L Harvey, *Hansard*, 23 May 2014, accessed at [http://www.parliament.wa.gov.au/Hansard/Hansard.nsf/0/19F8088029E75E5348257BBE0013386C/\\$File/A39%20S1%2020130523%20All.pdf](http://www.parliament.wa.gov.au/Hansard/Hansard.nsf/0/19F8088029E75E5348257BBE0013386C/$File/A39%20S1%2020130523%20All.pdf)

1486 Spooner R, 'Legal gun owners targeted by crime: police', *WA Today*, 23 May 2013, accessed at <http://www.watoday.com.au/wa-news/legal-gun-owners-targeted-by-crime-police-20130523-2k2zi.html>.

1487 Quoted in Spooner R, 'Legal gun owners targeted by crime: police', *WA Today*, 23 May 2013, accessed at <http://www.watoday.com.au/wa-news/legal-gun-owners-targeted-by-crime-police-20130523-2k2zi.html>.

1488 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 7.

1489 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 27.

Western Australia Police also provided the following table summarising the outcomes of Operation Unification in 2013:

Operation Unification – Illicit Firearms results

Statistics Reported	National	WA
Phone calls to Crime Stoppers Australia (CSA)	318	46
Investigations initiated as a result of phone calls to CSA	217	29
Premises searched	87	14
Number of illicit firearms seized	110	34
Arrests	52	9
Charges	104	48
Notices issued	96	Nil

Information on the outcomes of Operation Unification in 2014 has also been requested and is being sought by Western Australia Police.¹⁴⁹⁰

Question 43:

- Do you have any comment on any issues arising from Operation Unification?

¹⁴⁹⁰ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 28.

16. OTHER RELEVANT PARLIAMENTARY INQUIRIES

Reports specifically referred to in the Terms of Reference have been considered elsewhere in this Discussion Paper. Report 68 of the Joint Standing Committee on Delegated Legislation – Explanatory Report in relation to the Firearms Amendment Regulations 2013 is considered at paragraph 6.1.2. In addition, the Auditor General's 2013 *Information Systems Audit Report* is considered at paragraph 6.2.

Two additional relevant reports, one from the Western Australian Parliament and one from the Senate, are discussed below, and the report into the Sydney Siege is considered in Annexure 1.

16.1 Standing Committee on Public Administration – Inquiry into the Potential Environmental Contribution of Recreational Hunting Systems

Currently, it is illegal to discharge a firearm on Crown land in Western Australia.¹⁴⁹¹ Recreational hunting therefore takes place on pastoral leases or on privately owned land, and large areas in the state are excluded from recreational hunting. Unallocated Crown Land and unmanaged reserves comprise 36 per cent of the state's land mass.¹⁴⁹²

On 27 November 2013, the Western Australian Legislative Council directed the Standing Committee on Public Administration to inquire into recreational hunting systems. Specifically the Legislative Council moved, in part, that it:

- (a) acknowledges the use in other states of regulated, licensed recreational hunting systems and the potential environmental contribution made in controlling pest animals on public lands, together with the possible economic, cultural and recreational benefits to the community; and
- (b) directs that the Public Administration Committee inquire into the benefits or otherwise of a similar system being adopted in Western Australia.¹⁴⁹³

The report of the Standing Committee on Public Administration on recreational hunting was tabled on 10 March 2015. The report recommended that the

Government introduce a two-year trial of recreational hunting on public land in Western Australia, taking into consideration the following issues that should be addressed:

- native title and legislative requirements;
- carrying out a thorough risk management assessment;
- measuring the impact on feral animal numbers;
- measuring the impact on the local economy and tourism in nearby areas;
- implementing an online booking and GPS tracking system following the New South Wales model.

The Standing Committee on Public Administration further recommended that the trial be located in two separate areas, such as a reclaimed pastoral station in the mining and pastoral region and a state forest in the southwest land division.¹⁴⁹⁴

Two members of the Standing Committee on Public Administration, who were both members of the Opposition, tabled a minority report that dissented from the majority's findings and recommendation. This report recommended that recreational hunting not be permitted on Unallocated Crown Land.¹⁴⁹⁵

The majority of the findings in these two reports are not directly relevant to the Commission's review of the *Firearms Act*; the findings concern such matters as systems for recreational hunting that exist in other jurisdictions, global positioning system (GPS) technology, the need for conclusive data on the effectiveness or otherwise of recreational hunting as a form of feral animal control, the potential impact of a recreational hunting scheme on native title, and the existence of animal welfare concerns. However, some aspects of the report do touch on the administration of the *Firearms Act*, as follows.

The majority report of the Standing Committee on Public Administration quoted one stakeholder who was critical of the level of training required to obtain a licence under the *Firearms Act 1973* (WA)

1491 *Land Administration Act 1997* (WA), s 267(2)(h).

1492 Slattery C, Director General, Department of Lands, *Transcript of Evidence*, 18 June 2014, 2, cited in Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 35, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1493 Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 1, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1494 Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, Recommendation 1, 65, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1495 Minority Report of Hon Amber-Jade Sanderson MLC and Hon Darren West MLC in regard to Regulated, Licensed Recreational Hunting Systems in Australia, 5, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

as 'substandard'. The stakeholder contended that the required training 'should, at the minimum, encompass some sort of practical component, where someone actually has physical contact with a firearm prior to getting a firearms licence; at the moment there is none'.¹⁴⁹⁶ The issue of training requirements is considered at paragraph 10.6 of this Discussion Paper.

In addition, the majority report referred briefly to evidence provided by Western Australia Police about the potential impact of a recreational hunting scheme on police resources. Western Australia Police had advised the Standing Committee on Public Administration that in 2013 its officers had attended 28 properties to respond to concerns from residents who had heard gunfire, and 55 per cent of these incidents had occurred between 6 pm and 10 pm.¹⁴⁹⁷ Western Australia Police expressed concern that 'recreational shooting on public land will inevitably see a significant rise in these types of complaints, whether justified or not',¹⁴⁹⁸ but concluded that an increase could be managed within existing resources.¹⁴⁹⁹

The minority report was also critical of the administration of the 'property letter' requirement in the *Firearms Act*. The minority report quoted from the Auditor General's June 2013 report discussed above at paragraph 6.2 as follows:

one property owner had provided property letters (a property letter is a letter declaring the right of an individual to shoot on a particular property) to over 270 applicants over the past 17 months. We noted that these firearms had all been purchased from the same firearms dealers. Similarly we found another case where over 80 property letters had been provided by the same property owner for firearms purchased from a single dealer.¹⁵⁰⁰

The minority report stated that 'WA Police have failed to tackle this questionable practice'.¹⁵⁰¹ The issue of 'property letters' is considered at paragraph 9.1.1.

The Commission does not propose to make any recommendations specifically arising out of the Standing Committee on Public Administration's report on Recreational Hunting Systems. It does however note that if recreational hunting were to

be allowed, on a trial basis or permanently, on public land, the Act would require amendment and it may have consequential implications for the Commission's proposals in relation to property letters in respect of using firearms on private land.

16.2 Senate inquiry – gun-related violence

16.2.1 Background information

A Senate Committee, the Legal and Constitutional Affairs References Committee, has also recently reported on the ability of Australian law enforcement authorities to eliminate gun-related violence in the community. The terms of reference for the Committee's inquiry were as follows:

- a. the estimated number, distribution and lethality of illegal guns, including both outlawed and stolen guns, in Australia;
- b. the operation and consequences of the illicit firearms trade, including both outlawed and stolen guns within Australia;
- c. the adequacy of current laws and resourcing to enable law enforcement authorities to respond to technological advances in gun technology, including firearms made from parts which have been imported separately or covertly to avoid detection, and firearms made with the use of 3D printers;
- d. the extent to which the number and types of guns stolen each year in Australia increase the risk posed to the safety of police and the community, including the proportion of gun-related crime involving legal firearms which are illegally held;
- e. the effect banning semi-automatic handguns would have on the number of illegally held firearms in Australia;
- f. stricter storage requirements and the use of electronic alarm systems for guns stored in homes;
- g. the extent to which there exist anomalies in federal, state and territory laws regarding the ownership, sale, storage and transit across state boundaries of legal firearms, and how these laws relate to one another; and
- h. any related matters.

1496 Beaton Z, Manager, Beaton Firearms, *Transcript of Evidence*, 13 August 2014, 2, cited in Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 55, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1497 Supplementary Information from Western Australia Police, 18 June 2014, 5, cited in Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 62, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1498 Supplementary Information from Western Australia Police, 18 June 2014, 6, cited in Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 62, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1499 Ward C, Assistant Commissioner State Crime, Western Australia Police, *Transcript of Evidence*, 18 June 2014, cited in Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 63, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1500 Cited in Minority Report of Hon Amber-Jade Sanderson MLC and Hon Darren West MLC in regard to Regulated, Licensed Recreational Hunting Systems in Australia, 4, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

1501 Minority Report of Hon Amber-Jade Sanderson MLC and Hon Darren West MLC in regard to Regulated, Licensed Recreational Hunting Systems in Australia, 4, accessed at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/626C36B10F4939A748257E040022A00E/\\$file/pc.rhs.150304.rpf.023.xx.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/626C36B10F4939A748257E040022A00E/$file/pc.rhs.150304.rpf.023.xx.pdf).

The Legal and Constitutional Affairs References Committee released its report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, on 9 April 2015.

Some aspects of the report are relevant to the current review; for instance, questions relating to storage and the extent to which anomalies exist in federal, state and territory laws regarding the ownership, sale, storage and transit across state boundaries of legal firearms. However, the focus of the Legal and Constitutional Affairs References Committee was on illicit firearms, rather than on the administration of licensing regimes such as that created by the *Firearms Act*.

The Legal and Constitutional Affairs References Committee noted that it had received 'over 400 submissions, many of which were concerned about the impact the inquiry might have on the ownership and use of firearms', and its report emphasised from the outset that 'the main focus of this inquiry was on illicit firearms in Australia', and that although 'some of the terms of reference refer to regulation of registered firearms that are legally held, this is in the context of ensuring that these are not diverted to the illicit market'.¹⁵⁰²

As with the report of the Standing Committee on Public Administration on recreational hunting schemes discussed above, different members of the Legal and Constitutional Affairs References Committee provided two separate reports. One report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, was authored by a majority of the voting members of the Legal and Constitutional Affairs References Committee. The other, *Report by a Majority of Senators Attending the Inquiry*, dissented from the first report and, although it included two non-voting members was said to be 'the report of the majority of Senators of the committee who actually attended hearings and private meetings of the committee'.¹⁵⁰³ Effectively, as one media report put it, both documents claimed the 'majority view'.¹⁵⁰⁴ The existence of two separate reports, with separate recommendations, coinciding with party political divisions,¹⁵⁰⁵ demonstrates the polarising nature of issues surrounding firearm regulation.

16.2.2 Senate Inquiry – recommendations of the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*

Given the specific focus of the Legal and Constitutional Affairs References Committee's report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, several of its recommendations are not directly relevant to the present review of the *Firearms Act*.

The report recommends, for instance, that 'the Commonwealth Government provide funding to allow programs, such as the National Firearms Monitoring Program and the National Firearm Theft Monitoring Program, and reports, such as those in the Firearm Theft in Australia series, to continue on an ongoing basis'.¹⁵⁰⁶ The report also recommends that 'the Australian Institute of Criminology conduct within three years a review of current data collection and reporting arrangements, with a particular focus on:

- the need for more accurate data on firearm thefts, the recovery of stolen firearms and seizures of illegally imported firearms;
- the quality and comparability of data provided to Commonwealth agencies by state and territory police; and
- greater inter-agency cooperation with regards to data sharing'.¹⁵⁰⁷

16.2.2.1 Updating the 1996 National Firearms Agreement

The report on the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community* recommends that the 1996 National Firearms Agreement be updated, which is relevant to the regulation of firearms in Western Australia. Specifically, the report recommends that the 1996 National Firearms Agreement 'be updated to implement nationally consistent regulation in the following areas:

- firearms, firearm parts and firearm accessories;
- ammunition; and
- the storage of firearms'.¹⁵⁰⁸

1502 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 3, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1503 Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 96, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1504 'Greens claim foul in Senate guns report', SBS, 10 April 2015, accessed at <http://www.sbs.com.au/news/article/2015/04/10/greens-claim-foul-senate-guns-report>.

1505 The second report was said to be: 'the report of the majority of Senators of the committee who actually attended hearings and private meetings of the committee and is presented as a majority-alternative to the Chair/Labor's Report of the Legal and Constitutional Affairs References Committee's inquiry into the ability of Australian law enforcement authorities to eliminate gun-related violence in the community ... It is endorsed by Senators from the Liberal party, National Party and Liberal Democratic Party, comprising a majority of those who attended the Committee's hearings (The Majority)'; see Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 96, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1506 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 1, 88 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1507 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 2, 88 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1508 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 3, 90 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

The *Report by a Majority of Senators Attending the Inquiry* opposed this recommendation on the basis that 'these matters should remain responsibility for state and territory governments'.¹⁵⁰⁹

The recommendation is relevant to the current review, but extends beyond its scope. The specific issue of firearm deactivation, which was considered in the report, is discussed elsewhere in this Discussion Paper at paragraph 7.7, the issue of storage is considered at chapter 11, and definitions of 'firearm' and 'ammunition' are discussed at chapter 7 and 11.5.1 respectively.

In terms of firearm parts, the report on the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community* observed that the 1996 National Firearms Agreement had not required jurisdictions to provide for the registration of parts and inconsistencies between jurisdictions as to whether this was done, created risks.¹⁵¹⁰ The report cited a report from the Australian Institute of Criminology, which contended that registration of firearm parts in all jurisdictions 'would enable police to more easily trace ownership history and the movement of firearms constructed illegally from firearm parts'.¹⁵¹¹

Western Australia does not require licensing or registration of firearm parts; indeed the *Firearms Act* does not contain any definition of firearm parts. However, the Act provides that where a firearm is carried in parts by, or is otherwise in the possession of, two or more persons, each of these persons is deemed to be in possession of the firearm.¹⁵¹² The *Firearms Regulations* also provides that the holders of Repairer's Licences and Dealer's Licences must maintain records of 'all firearms and major firearm parts brought into stock'.¹⁵¹³ The Regulations provide further that 'major firearm part' means 'any slide, barrel, revolving chamber, frame, receiver, trigger assembly or magazine'.¹⁵¹⁴ The view of Western Australia Police is that this definition only applies to a dealer's reporting functions and that a separate definition of 'major firearm part' is required in the *Firearms Act*.¹⁵¹⁵

Western Australia Police has advised that the lack of a comprehensive definition of a major firearm part

creates uncertainty as to what constitutes a firearm and what parts of a firearm must be recorded and licensed. Accordingly, Western Australia Police has advised that it would support an amendment to the *Firearms Act* to provide that a 'major firearm part' means any of the following items:¹⁵¹⁶

- (a) a gas piston, friction assembly, action bar, breech bolt or breech block;
- (b) a firearm barrel;
- (c) an assembled trigger mechanism;
- (d) a receiver;
- (e) a magazine designed or intended for use with a firearm; and
- (f) something, other than a complete firearm, that includes one or more of these items.¹⁵¹⁷

In addition, Western Australia Police has advised that 'there is no offence for a firearms dealer to sell unlegislated parts, for example; collapsible stocks, pistol grips and muzzle brakes' but that 'when these parts are fitted to a firearm it could then be subject to 26B of the *Firearms Regulations* ... and be deemed a "firearm of military appearance"'.¹⁵¹⁸

Relevantly, it should be noted that the *Firearms Act* provides that it is an offence to alter a firearm 'from the design or characteristics of its original manufacture' or 'so that its calibre, character or kind differs from what it was when any current licence or permit relating to it was issued', or to be in possession of a firearm that has been altered in this way.¹⁵¹⁹ This offence appears broad enough to include the addition of any firearm parts which substantially change the nature of a firearm. The Act contains no definitions of 'character' or 'kind', so Western Australia Police has advised that it would refer to the dictionary definitions of these words in applying this section of the Act.¹⁵²⁰

In addition, the 2002 National Firearms Trafficking Policy Agreement included agreement on legislative provisions to regulate not only the manufacture of firearms, but also the manufacture of firearm parts.¹⁵²¹ However, such a provision does not exist in Western Australia. It might be unduly onerous to

1509 Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 148, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1510 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 48, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1511 Bricknell S, 'Firearm trafficking and serious and organised crime gangs', Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, 21, cited in Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 49, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1512 *Firearms Act 1973* (WA), s 25(2). Section 25(1) provides that for the purposes of this section the term 'firearm' is deemed to include a reference to the ammunition for the firearm.

1513 *Firearms Regulations 1974* (WA), r 18(1)(b)(i).

1514 *Firearms Regulations 1974* (WA), r 18(1a).

1515 Correspondence from GE Dreiergs, Deputy Commissioner of Western Australia Police (Specialist Services), 20 July 2015, 3.

1516 Western Australia Police is of the opinion that, for the purposes of reporting under regulation 18 only, the definition contained at regulation 18(1a) should be maintained; per correspondence from GE Dreiergs, Deputy Commissioner of Western Australia Police (Specialist Services), 20 July 2015, 3.

1517 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 31.

1518 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 5.

1519 *Firearms Act 1973* (WA), s 23(5)(c).

1520 Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 5.

1521 See Bricknell S, 'Firearm trafficking and serious and organised crime gangs', Research and Public Policy Series no. 116, Canberra: Australian Institute of Criminology, June 2012, 9, accessed at http://www.aic.gov.au/media_library/publications/rpp/116/rpp116.pdf.

require a licence for the manufacture of each and every component in a firearm, and such a provision could perhaps usefully be limited to major firearm parts.

Proposal 43:

that the *Firearms Act 1973* (WA) be amended to:

- include a definition of ‘major firearm part’;
- to provide that these items cannot be possessed without a licence; and
- to provide that the manufacture of major firearm parts without a licence is an offence.

16.2.2.2 Security of information held by approved clubs

The report on the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community* also recommended that ‘the Commonwealth Government, together with state and territory governments, establish national standards for the security of membership data held by gun clubs’.¹⁵²² This report observed that ‘evidence given during the inquiry indicated that gun and shooting clubs are not currently required to follow any particular rules and standards in relation to the security of their membership records’ and concluded that the ‘vulnerability of gun ownership records held by clubs should be rectified’.¹⁵²³ The *Report by a Majority of Senators Attending the Inquiry* opposed this recommendation on the basis that ‘membership data held by gun clubs should remain a responsibility of state and territory governments’.¹⁵²⁴

Stakeholders have raised issues regarding the security of information possessed by approved clubs in the context of the present review: one stakeholder advised that a former, and aggrieved, member of an approved club sought to obtain membership lists, which has ‘major public safety ramifications’.¹⁵²⁵ The *Associations Incorporation Act 1987* (WA) provides that a member of an incorporated association may inspect the association’s register of members, which includes postal or residential addresses, and may make a copy or take an extract from the register.¹⁵²⁶ This may be seen to represent a risk: such

a list (including addresses for persons likely to store firearms at their places of residence) could represent valuable information to criminal gangs.

The Commission notes that there is currently a Bill before the West Australian Parliament that seeks to repeal and replace the *Associations Incorporation Act 1987* (WA). Among other things, this Bill provides that members may give a postal or email address, or other prescribed information as to how they can be contacted, for the purposes of the membership register.¹⁵²⁷ In addition, the Bill provides that, although members may still inspect the register (and make a copy of or take an extract from it), the rules of an incorporated association may require a member who wishes to do so to ‘provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the association’.¹⁵²⁸

The Bill also provides that a person who uses or discloses information in the register of members of an incorporated association for a purpose not connected with the affairs of the association or the administration of the Act is liable to a fine of \$10,000.¹⁵²⁹

In view of the fact that this Bill is still before Parliament, the Commission does not propose to make any recommendation regarding information in membership registers of incorporated associations.

16.2.2.3 Amnesties

The *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community* report’s recommendation for ‘an ongoing, Australia-wide gun amnesty’ (with consideration given to ways in which this can be done without limiting the ability of police to pursue investigative leads for serious firearm-related crimes)¹⁵³⁰ is discussed at paragraph 14.1.

16.2.2.4 Firearm data holdings – updates

The report also recommended that ‘all jurisdictions update their firearm data holdings and ensure the data is transferred to the National Firearms Interface’.¹⁵³¹ The Commission understands that this is presently being done in Western Australia.

1522 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 4, 91 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1523 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, 91 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1524 Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 149, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1525 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 7.

1526 *Associations Incorporation Act 1987* (WA), s 27. Similar provision is also made in relation to an incorporated association’s record of office holders; see *Associations Incorporation Act 1987* (WA), s 29.

1527 Associations Incorporation Bill 2014 (WA), cl 53(2)(b), (c) and (d).

1528 Associations Incorporation Bill 2014 (WA), cl 54(3). See also cl 56(2).

1529 Associations Incorporation Bill 2014 (WA), cl 57(1).

1530 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 5, 91 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1531 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 6, 92 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

16.2.2.5 3D Printed Firearms

The report also made two recommendations regarding 3D printed firearms, which are discussed elsewhere in this Discussion Paper at chapter 13.¹⁵³² These recommendations were as follows:

- that Australian governments investigate the requirement for uniform regulations in all jurisdictions covering the manufacture of 3D printed firearms and firearm parts.
- that Australian governments continue to monitor the risks posed by 3D manufacturing in relation to the manufacture of firearms and consider further regulatory measures if the need arises.¹⁵³³

16.2.2.6 Funding

It should also be noted that the report recommends that 'Australian governments consider committing further funding and resourcing to assist in implementing the preceding recommendations'.¹⁵³⁴

16.2.3 Senate Inquiry – Recommendations of the Report by a Majority of Senators Attending the Inquiry

The *Report by a Majority of Senators Attending the Inquiry* did not support the above recommendations, with the exception of the recommendations: for the implementation of an Australia-wide firearm amnesty; that jurisdictions update their firearm data holdings and transfer data to the National Firearms Interface; and that governments continue to monitor the risks posed by 3D manufacturing in relation to the manufacture of firearms.¹⁵³⁵ The *Report by a Majority of Senators Attending the Inquiry* made five recommendations, as follows:

- that the Commonwealth commission a study into the social, economic and environmental benefits of hunting across Australia, similar to the report that was released by the Victorian Government in 2013;
- that the Commonwealth establish a formal mechanism for industry and firearm user groups to be consulted on issues relating to firearms regulation;
- that the Commonwealth continue to pursue improvements in border control for detecting illegal imports of firearms and firearms parts;

- that the Commonwealth review its contribution to firearms regulation in the context of the Reform of the Federation White Paper;
- that state and territory governments investigate avenues to deregulate the firearm industry to ease the economic burden on governments, industry and legal firearm users.¹⁵³⁶

Again, none of these recommendations is directly relevant to the current review as most of them relate to the Commonwealth. With respect to the final recommendation, the Discussion Paper has considered the extent to which the industry is regulated within Western Australia and, where appropriate, made proposals or identified questions in relation to potential simplification and streamlining of existing regulatory requirements.

1532 See the Commission's comments above at chapter 13 and following in respect of 3D firearms.

1533 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendations 7 and 8, 93, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1534 Senate Standing Committees on Legal and Constitutional Affairs, Report, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015, Recommendation 9, 94 accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1535 Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 149, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

1536 Senators the Hon Ian MacDonald, Linda Reynolds, Bridget McKenzie and David Leyonhjelm, *Report by a Majority of Senators Attending the Inquiry*, 149-150, accessed at http://www.aph.gov.au/~media/Committees/Senate/committee/legcon_ctte/Illicit_firearms/report.pdf.

17. OTHER ISSUES

17.1 Reviews and appeals

Any person who is aggrieved by a decision made by or on behalf of the Police Commissioner may apply to the State Administrative Tribunal for a review of the decision.¹⁵³⁷ When dealing with a matter in the exercise of its review jurisdiction, the SAT has the same jurisdiction, functions and discretions as those of the maker of the reviewable decision.¹⁵³⁸ In the case of decisions made under the *Firearms Act*, this person will be the Police Commissioner or a person acting on his or her behalf.

The SAT is not limited to the statement of reasons given by the decision-maker,¹⁵³⁹ and may take into account any additional or new information that was not available to the original decision-maker at the time the decision was made.¹⁵⁴⁰ Reviews of decisions by the SAT are therefore conducted on a *de novo* basis, and the purpose of the review 'is to produce the correct and preferable decision at the time of the decision upon the review'.¹⁵⁴¹ The SAT may affirm the original decision,¹⁵⁴² vary it,¹⁵⁴³ or set it aside.¹⁵⁴⁴ If the SAT sets the original decision aside, it may substitute its own decision¹⁵⁴⁵ or send the matter back to the decision-maker for reconsideration in accordance with any directions or recommendations that the SAT considers appropriate.¹⁵⁴⁶ The SAT may also make any orders it considers appropriate.¹⁵⁴⁷ The SAT's decision is regarded as a decision of the original decision-maker.¹⁵⁴⁸

In terms of decisions made under the *Firearms Act* more specifically, the SAT has noted that 'no party bears any formal onus to prove any facts, but an applicant for a firearm licence, or a person seeking a review of a decision to revoke a licence, bears a practical onus to satisfy the SAT that the requirements of s 11 ... have been met'.¹⁵⁴⁹

The SAT's 2014 Annual Report noted that 24 applications were made for review of decisions under the *Firearms Act* in 2013–2014; 57 applications were

made in 2012–2013; and 75 were made in 2011–2012.¹⁵⁵⁰

Appeals from decisions of the SAT are heard in the Supreme Court.

17.1.1 Role of the State Administrative Tribunal

Firearms owners have expressed some concerns relating to the review of decisions by the State Administrative Tribunal. Some of these concerns do not relate to the SAT *per se*. For instance, firearms owners have simply advised that, notwithstanding that reasons are provided for the refusal of applications,¹⁵⁵¹ it is often difficult for licence applicants to understand how Western Australia Police arrives at decisions in relation to applications, particularly where these decisions might reflect internal Western Australia Police policy. Moreover, firearms owners regard it as unsatisfactory that further information as to the reasons for rejection of a licence application can only be gained by seeking a review by the SAT, at a cost of \$367 per application.¹⁵⁵²

Firearms owners have also noted that since reviews are not limited to matters that were before the original decision-maker, Western Australia Police can provide additional reasons to oppose an application that were not originally relied upon.¹⁵⁵³ This cuts both ways, of course; an applicant may also provide additional material to support his or her application. Relevantly, the SAT has commented that the Police Commissioner:

takes a risk in putting before the Tribunal evidence or material which is not in the strongest possible form to establish that for which the Commissioner contends. In a case in which the applicant on review gives credible evidence, it may often be the case that the correct and preferable decision will then be that the material relied upon by the Commissioner is insufficient to create doubt about whether the applicant is a fit and proper person for the intended purpose.¹⁵⁵⁴

¹⁵³⁷ *Firearms Act 1973* (WA), s 22.

¹⁵³⁸ *State Administrative Tribunal Act 2004* (WA), s 29(1).

¹⁵³⁹ *State Administrative Tribunal Act 2004* (WA), s 27(3).

¹⁵⁴⁰ *State Administrative Tribunal Act 2004* (WA), s 27(1).

¹⁵⁴¹ *State Administrative Tribunal Act 2004* (WA), s 27(2).

¹⁵⁴² *State Administrative Tribunal Act 2004* (WA), s 29(3)(a).

¹⁵⁴³ *State Administrative Tribunal Act 2004* (WA), s 29(3)(b).

¹⁵⁴⁴ *State Administrative Tribunal Act 2004* (WA), s 29(3)(c).

¹⁵⁴⁵ *State Administrative Tribunal Act 2004* (WA), s 29(3)(c)(i).

¹⁵⁴⁶ *State Administrative Tribunal Act 2004* (WA), s 29(3)(c)(ii).

¹⁵⁴⁷ *State Administrative Tribunal Act 2004* (WA), s 29(3).

¹⁵⁴⁸ *State Administrative Tribunal Act 2004* (WA), s 29(5)(a).

¹⁵⁴⁹ *Ludgate and Commissioner of Police* [2013] WASAT 151 at [36], citing *Wignall and Commissioner of Police* [2006] WASAT 206 at [282] and *Nickels and Commissioner of Police* [2010] WASAT 19 at [22].

¹⁵⁵⁰ *State Administrative Tribunal of Western Australia Annual Report 2014*, 28.

¹⁵⁵¹ *Firearms Act 1973* (WA), s 18(8) provides that where the Police Commissioner refuses an application, whether original or by way of renewal, or issues it subject to any restriction, limitation or condition, he or she must notify the applicant, in writing, of the reasons for the decision.

¹⁵⁵² LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014. The State Administrative Tribunal website provides that an application fee of \$367 is charged for applications under the *Firearms Act 1973* (WA) and that there is also a hearing fee of \$367 for each day or part of a day allocated.

¹⁵⁵³ LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

¹⁵⁵⁴ *Smith and Commissioner of Police* [2011] WASAT 31 at [46].

It has also been suggested that where a dispute is settled in mediation or as part of an out-of-court agreement the resulting lack of a formal, recorded decision means there is limited guidance for future applicants about their likelihood or otherwise of success.¹⁵⁵⁵ From the perspective of many firearms owners, the Western Australia Police decision-making process in evaluating applications remains somewhat opaque.

Some suggestion has been made that a licensing complaints panel, comprising a legal practitioner, a police officer, and a firearms expert, ought to be established. Such a panel would review disputes before they reach the SAT and would 'circumvent disputes arising from the licensing system'.¹⁵⁵⁶

The Commission appreciates the intent of such proposals. It is, however, important to bear in mind the purpose that the establishment of the SAT was intended to serve. As the then Attorney General stated at the time the Bill creating the State Administrative Tribunal was debated in Parliament, the SAT was viewed as conferring the following benefits:

the removal of confusion in the public mind because one overarching tribunal is identified as the place where people can seek redress; less formal, less expensive and more flexible procedures than used in traditional courts by using a more inquisitorial and less adversarial approach; the development of best tribunal practices – both procedural and in terms of common decision-making principles across various jurisdictions; improved quality and consistency in decision-making; in a democratic context, the provision of a more appropriate and timely means for citizens to obtain administrative justice; in many instances, the improvement in public accountability of official decision-making flowing from heightened scrutiny of administrative decisions; separation of the licensing and registration functions carried out by vocational bodies from the disciplinary function; and avoiding the ad hoc creation of new tribunals to provide administrative review in evolving areas of government decision-making.¹⁵⁵⁷

It should also be noted that the President of the SAT can ensure that members reviewing a decision have appropriate experience and knowledge. Section 11(6)(c) of the *State Administrative Tribunal Act 2004* (WA) provides that in specifying the persons,

and the number of persons, who will constitute the SAT for dealing with a particular matter, the President is to have regard to, among other things, the extent to which any sitting member needs to have special knowledge or experience that is relevant to the matter.¹⁵⁵⁸ The Commission understands that the SAT applies this section as a matter of practice for all matters across its jurisdiction, and that it has 116 sessional members, in addition to its 19 fulltime members, to assist in meeting this requirement.¹⁵⁵⁹

The Commission also understands that the nature of decisions made under the *Firearms Act*, which the SAT reviews, is such that technical firearms knowledge is not typically required.¹⁵⁶⁰ This is because such decisions tend to concern a person's suitability to be issued with a licence, rather than with specific types of firearms or their use. The Commission is advised that where technical knowledge of firearms or ballistics is needed in a particular matter the SAT informs itself by requiring the parties to bring expert witnesses to give expert evidence at hearings.¹⁵⁶¹ The Commission understands that this is also the practice adopted by the SAT in relation to decisions made under other enabling Acts, in respect of which there are few applications for review. The SAT has over 150 enabling Acts which confer jurisdiction on it, and the Commission is advised that it would be impractical to appoint sessional members for each specific situation.¹⁵⁶²

The Commission does not propose to make any recommendations about the role of the SAT in reviewing decisions under the *Firearms Act*.

However, it would be possible for the *Firearms Act* to provide for an internal review process to give firearms licensees and would-be licensees an additional avenue which might obviate the need to seek a review by the SAT. Some of the other Acts that provide for review by the SAT also establish other avenues by which a decision made under the Act can be challenged. For instance, the *Animal Welfare Act 2002* (WA) provides that a person can object to a decision if he or she has not previously sought a review of the decision.¹⁵⁶³ The Minister deals with objections, and must give the person who made the objection a reasonable opportunity to make submissions in relation to the objection, and must deal with the objection as expeditiously as possible.¹⁵⁶⁴ The Minister must also give the person who made the objection written notice of his or her decision and the reasons for it.¹⁵⁶⁵ A

1555 LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

1556 Submission from the Sporting Shooters Association of Australia (WA) Inc (SSAAWA), provided 8 September 2014, 6. See also submission from Hon Rick Mazza MLC, 4 December 2014, 4.

1557 McGinty J, Extract from *Hansard*, Legislative Assembly, 24 June 2003, 9102.

1558 *State Administrative Tribunal Act 2004* (WA), s 11(6)(c).

1559 Correspondence from Mr Mark Street, Executive Manager, State Administrative Tribunal, 17 March 2015.

1560 Correspondence from Mr Mark Street, Executive Manager, State Administrative Tribunal, 17 March 2015.

1561 Correspondence from Mr Mark Street, Executive Manager, State Administrative Tribunal, 17 March 2015.

1562 Correspondence from Mr Mark Street, Executive Manager, State Administrative Tribunal, 17 March 2015.

1563 *Animal Welfare Act 2002* (WA), s 72(1).

1564 *Animal Welfare Act 2002* (WA), s 73(1)(a) and (b).

1565 *Animal Welfare Act 2002* (WA), s 73(3).

person aggrieved by a reviewable decision may apply to the SAT for a review of that decision if he or she has not lodged an objection to the decision, or has lodged an objection but has not been given notice of the Minister's decision within 35 days after the objection was lodged.¹⁵⁶⁶ In addition, a person who has lodged an objection and *has* been given notice of the Minister's decision may apply to the SAT for a review of the Minister's decision on the objection.¹⁵⁶⁷

Similarly, the *Dangerous Goods Safety Act 2004 (WA)* provides that a person who has been given a direction or notice may request that the Chief Officer review it.¹⁵⁶⁸ Decisions made by the Chief Officer following such reviews are included as 'reviewable decisions',¹⁵⁶⁹ so a person aggrieved by one may apply to the SAT for review.

The Commission considers that it is desirable that a formal internal review process be established in respect of decisions made under the *Firearms Act* to be conducted by an officer of at least a specified rank, such as inspector, to allow for re-examination of decisions before formal applications for review are made to the SAT. Such a review process should allow a person aggrieved by a decision made under the *Firearms Act* to provide written submissions as to their objection.

Proposal 44:

- that the *Firearms Act 1973 (WA)* be amended to provide for a preliminary internal review mechanism, pursuant to which objections to decision are considered by an officer of at least a specified rank, such as inspector.

17.1.2 State Administrative Tribunal – costs

It has also been proposed that the State Administrative Tribunal should have the capacity to award costs, including for legal advice, where the SAT reverses a decision to refuse a licence application.¹⁵⁷⁰

In general, parties bear their own costs in a proceeding of the SAT.¹⁵⁷¹ The SAT can order that one party pay another party's costs,¹⁵⁷² but such orders are rare.¹⁵⁷³ Indeed, the *State Administrative Tribunal Act 2004 (WA)* provides that one of the SAT's 'main objectives'

is to 'minimise the costs to parties'.¹⁵⁷⁴ The Act further provides that, without limiting anything else that may be considered in making an order that a party pay the costs of another party where the matter that is the subject of the proceeding comes within the SAT's review jurisdiction, the SAT is to have regard to:

- whether the party (in bringing or conducting the proceeding before the decision-maker in which the decision under review was made) genuinely attempted to enable and assist the decision-maker to make a decision on its merits,¹⁵⁷⁵ and
- whether the party (being the decision-maker) genuinely attempted to make a decision on its merits.¹⁵⁷⁶

There is no definitive list of circumstances in which the SAT will order costs against a party, but the SAT's website sets out the following relevant factors:

- where a party has contributed to costs being incurred unnecessarily, by its unreasonable or inappropriate conduct;
- where a party has been found to have been untruthful in its dealings with the other party or the SAT;
- where a party's case has been shown to be weak or without merit; and
- where a party has been required to commence the proceeding in order to establish an objectively clear entitlement.¹⁵⁷⁷

The SAT can also order that a party pay for the costs of the proceeding incurred by the SAT itself, as distinct from the other party.¹⁵⁷⁸

It has been suggested that the SAT does not often use its existing powers to award costs, and that if this power were used, it might encourage greater consistency in Western Australia Police decision-making processes.¹⁵⁷⁹

In considering these suggestions as to costs it should be recalled that, as noted above, in considering whether to make a costs order against a party, the SAT is to have regard to whether the decision-maker genuinely attempted to make a decision on its merits.¹⁵⁸⁰ It is therefore already open for the SAT to conclude that the Police Commissioner has not genuinely attempted

¹⁵⁶⁶ *Animal Welfare Act 2002 (WA)*, s 74(1)(a) and (b).

¹⁵⁶⁷ *Animal Welfare Act 2002 (WA)*, s 74(2).

¹⁵⁶⁸ *Dangerous Goods Safety Act 2004 (WA)*, s 54(3).

¹⁵⁶⁹ *Dangerous Goods Safety Act 2004 (WA)*, s 67(1)(c).

¹⁵⁷⁰ Submission from Hon Rick Mazza MLC, 4 December 2014, 4.

¹⁵⁷¹ *State Administrative Tribunal Act 2004 (WA)*, s 87(1).

¹⁵⁷² *State Administrative Tribunal Act 2004 (WA)*, s 87(3).

¹⁵⁷³ See 'Costs and Costs Orders', accessed at http://www.sat.justice.wa.gov.au/C/costs_and_costs_orders.aspx.

¹⁵⁷⁴ *State Administrative Tribunal Act 2004 (WA)*, s 19(b).

¹⁵⁷⁵ *State Administrative Tribunal Act 2004 (WA)*, s 87(4)(a).

¹⁵⁷⁶ *State Administrative Tribunal Act 2004 (WA)*, s 87(4)(b).

¹⁵⁷⁷ See 'Costs and Costs Orders', accessed at http://www.sat.justice.wa.gov.au/C/costs_and_costs_orders.aspx.

¹⁵⁷⁸ *State Administrative Tribunal Act 2004 (WA)*, s 88(2).

¹⁵⁷⁹ LRCWA Consultation Meeting with the Firearms Reference Group, 8 September 2014.

¹⁵⁸⁰ *State Administrative Tribunal Act 2004 (WA)*, s 87(4)(b).

to make a decision on the merits, and to award costs accordingly. Awarding costs in every instance where the SAT sets aside the Police Commissioner's decision not to award a licence (or to revoke a licence) would risk implying that all licence application refusals were the result of the failure genuinely to attempt to make a decision on the merits. It would also tend to imply that licences under the *Firearms Act* are granted as of right, and a failure to grant a licence is necessarily an aberration. The Commission notes further that it has not been suggested that the applicant should pay the costs of Western Australia Police where an application for a review of a decision of the Police Commissioner is unsuccessful and the SAT affirms the Commissioner's decision.

The SAT's website notes that there are areas of the SAT's jurisdiction in which it is accepted that an order for costs will generally be made, such as where a vocational regulation body succeeds in disciplinary action against a practitioner and in compulsory land acquisition matters when the compensation arising from the compulsory acquisition of a property is assessed.¹⁵⁸¹ Enabling Acts may modify the operation of the *State Administrative Tribunal Act 2004 (WA)*¹⁵⁸² and a specific power for awarding costs is also included in the *Guardianship and Administration Act 1990 (WA)*.¹⁵⁸³

In view of the purpose for which the SAT was established and the powers that already exist in the *State Administrative Tribunal Act 2004 (WA)*, the Commission does not propose to make any recommendations regarding costs.

17.2 Use of firearms by Aboriginal people for traditional purposes

The *Firearms Act* regulates the use and possession of firearms in Western Australia, including for hunting purposes. There are also other sources of a right to hunt in Western Australia that are specific to Aboriginal people.

The right of Aboriginal people to hunt is enshrined in other Western Australian legislation, although such legislation does not specifically provide that firearms may be used. For instance, section 104 of

the *Land Administration Act 1997 (WA)* provides that 'Aboriginal persons may at all times enter upon any unenclosed and unimproved parts of the land under a pastoral lease to seek their sustenance in their accustomed manner'.¹⁵⁸⁴ However, section 267 of the *Land Administration Act 1997 (WA)* makes it an offence, without either the permission of the Minister or reasonable excuse, to discharge any firearm or other weapon on Crown land.¹⁵⁸⁵ Pastoral leases are included in the definition of Crown land.¹⁵⁸⁶ Other relevant State legislation is discussed further below.

In addition, a native title right to hunt (among other traditional rights) can be claimed and recognised under the *Native Title Act 1993 (Cth)*.¹⁵⁸⁷ If a native title claim is registered, it attracts certain procedural rights, such as the right to negotiate in particular circumstances. A claim is 'determined' when the Federal Court or High Court determines that native title exists in the claimed area.

Adaptation

The question whether hunting is still regarded as 'traditional' when modern methods are used – such as vehicles, firearms and so forth – has been the subject of some controversy. In its *Aboriginal Customary Laws Review (Project 94)* the Commission previously noted:

Although there are probably still some Aboriginal people that employ entirely traditional hunting and fishing methods, most have adopted more efficient contemporary tools such as firearms, nylon fishing lines, nets, boats and vehicles. In many cases, and as a direct result of colonialism, the knowledge of how to manufacture and use traditional hunting tools has been irrevocably lost. In these circumstances to insist on the exercise of Aboriginal harvesting rights only by use of traditional methods means effectively to deny Aboriginal people their customary rights to harvest natural food resources.¹⁵⁸⁸

The Commission also noted that the Australian Law Reform Commission had previously recommended that 'in determining whether an activity is 'traditional' attention should be focused on the purpose of the activity rather than the method'.¹⁵⁸⁹

1581 See 'Costs and Costs Orders', accessed at http://www.sat.justice.wa.gov.au/C/costs_and_costs_orders.aspx.

1582 *State Administrative Tribunal Act 2004 (WA)*, s 18(2).

1583 *Guardianship and Administration Act 1990 (WA)*, s 16(4).

1584 *Land Administration Act 1997 (WA)*, s 104.

1585 *Land Administration Act 1997 (WA)*, s 267(2)(h).

1586 *Land Administration Act 1997 (WA)* s 3(1) provides that 'Crown land' means, subject to subsections (2), (3), (4) and (5), means all land, except for alienated land. 'Alienated land' is defined to mean 'land held in freehold' and subsections (2)–(5) read as follows:

(2) All land below high water mark, including the beds and banks of tidal waters, is Crown land unless that land is inundated land or other alienated land.

(3) When tidal waters form the boundary of a parcel of land or a person holds the freehold of parcels of land adjoining tidal waters —

(a) the land below high water mark (except for land which was alienated land immediately before the appointed day) is Crown land; and

(b) if the line of the high water mark shifts over time by gradual and imperceptible degrees, the boundaries of the parcel or parcels of land shift with the high water mark.

(4) No act to occupy, use, build or carry out works or remove material, with or without lawful authority, is capable of causing land below high water mark to cease to be Crown land.

(5) Land that becomes raised above high water mark, whether gradually or imperceptibly or otherwise, because of the building or carrying out of works, is Crown land.

1587 Section 223(1) of the *Native Title Act 1993 (Cth)* defines 'native title', providing that 'the expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where: the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and the rights and interests are recognised by the common law of Australia. Section 223(2) specifically provides that without limiting subsection (1), rights and interests in that subsection includes hunting, gathering, or fishing, rights and interests.

1588 Law Reform Commission of Western Australia, *Aboriginal Customary Laws Discussion Paper*, 2005, 370.

1589 Australian Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, Report No 31 (1986), [977].

In a native title context, some consideration has been given to this question. In *Yanner v Eaton*,¹⁵⁹⁰ the majority of the High Court observed that the hunter in question's use of a harpoon-type weapon and a dinghy with an outboard motor 'was an evolved, or altered form of traditional behaviour ... the use of this mechanical device to provide transport during the hunt was not a method of hunting known to the appellant's tribe before contact with non-indigenous people'. The majority commented that: '[a]t trial, the Magistrate held that this method of hunting was consistent with the traditional custom of the appellant's indigenous community. This finding is not challenged'.¹⁵⁹¹

The case of *Yorta Yorta v Victoria*¹⁵⁹² did not focus on traditional hunting, but it is relevant to the question of 'tradition' more generally. In that case, Gleeson CJ, Gummow and Hayne JJ observed that 'demonstrating some change to, or adaptation of, traditional law or custom ... will not necessarily be fatal to a native title claim'. However, such change 'may, in a particular case, take on considerable significance in deciding the issues presented by an application for determination of native title'. Their Honours stated that the:

relevant criterion to be applied in deciding the significance of change to, or adaptation of, traditional law or custom is readily stated (though its application to particular facts may well be difficult). The key question is whether the law and custom can still be seen to be traditional law and traditional custom. Is the change or adaptation of such a kind that it can no longer be said that the rights or interests asserted are possessed under the traditional laws acknowledged and the traditional customs observed by the relevant peoples when that expression is understood in the sense earlier identified?¹⁵⁹³

In the context of a claimed native title right to hunt, the question whether the hunting remains traditional will therefore focus on whether it is carried out in accordance with traditional laws and customs. This may include questions such as whether traditional rules about who may hunt, which animals may be hunted, and how the catch is to be divided up among a group are followed.

Previous recommendations

In the Commission's *Aboriginal Customary Laws Review*, the Commission noted that the legality of the use of firearms by Aboriginal people for hunting on Crown land in Western Australia was unclear.¹⁵⁹⁴

The 2008 Police Review briefly considered the interaction of the *Firearms Act* and Aboriginal customary law, and referred to the *Aboriginal Customary Laws Review*. Relevantly, the *Aboriginal Customary Laws Final Report* recommended, at Recommendation 105:

1. that section 267 of the *Land Administration Act 1997* (WA) be amended to make clear the legislative intention in relation to the use of firearms for customary hunting on Crown land and pastoral leasehold land pursuant to exemptions contained in section 104 of the *Land Administration Act 1997* (WA) and section 23 of the *Wildlife Conservation Act 1950* (WA).
2. that the definition of 'land' in the *Land Administration Act 1997* (WA), which includes land seaward to three nautical miles, and its impact on fisheries interests and protection of marine fauna, be considered in determining the permissible use of firearms under the *Land Administration Act 1997* (WA).
3. that the responsible Ministers institute a collaborative review of relevant legislation, including the *Firearms Act*, the *Land Administration Act 1997* (WA), the *Wildlife Conservation Act 1950* (WA) and the *Conservation and Land Management Act 1984* (WA), to ensure that permissible use of firearms in customary harvesting activity is clearly noted.¹⁵⁹⁵

Since this time, amendments have been made to the *Wildlife Conservation Act 1950* (WA) and the *Conservation and Land Management Act 1984* (WA).

Section 23 of the *Wildlife Conservation Act 1950* (WA) is now more fulsome than it was in 2006,¹⁵⁹⁶ when the *Aboriginal Customary Laws Discussion Paper* was released. This section currently provides that it is a defence to a charge of an offence against the Act of taking flora or fauna to prove:

¹⁵⁹⁰ [1999] HCA 53.

¹⁵⁹¹ [1999] HCA 53 at [68].

¹⁵⁹² [2002] HCA 58.

¹⁵⁹³ [2002] HCA 58 at [83].

¹⁵⁹⁴ See Law Reform Commission of Western Australia, *Aboriginal Customary Laws Discussion Paper*, 2005, 382, and Law Reform Commission of Western Australia, *Aboriginal Customary Laws Final Report*, 2006, 311.

¹⁵⁹⁵ Law Reform Commission of Western Australia, *Aboriginal Customary Laws Final Report*, 2006, Recommendation 105, 312.

¹⁵⁹⁶ Previously, section 23 read:

(1) Notwithstanding any other provisions of this Act, a person — who is "a person of Aboriginal descent" as that term is defined in section 4 of the *Aboriginal Affairs Planning Authority Act 1972*, may take fauna or flora — upon Crown land or upon any other land, not being a nature reserve or wildlife sanctuary, but where occupied, with the consent of the occupier of that land, sufficient only for food for himself and his family, but not for sale — and the Governor may, if he is satisfied that the provisions of this section are being abused or that any species of fauna or flora which is being taken under the authority of this section is likely to become unduly depleted, by regulation suspend or restrict the operation of this section in such manner and for such period and in such part or parts of the State as he thinks proper.

(2) The CEO may issue a certificate to any person authorising him to sell the skins of kangaroos which he has lawfully taken for food under the provisions of this section. See Reprint 7 of the *Wildlife Conservation Act 1950* (WA) as at 6 October 2006.

- that the accused is an Aboriginal person;¹⁵⁹⁷ and
- that the accused took the fauna or flora for an Aboriginal customary purpose;¹⁵⁹⁸ and
- in taking the fauna or flora the accused complied with any regulations that restrict or exclude the operation of this subsection; and
- if the offence is alleged to have been committed on land other than CALM Act land,¹⁵⁹⁹ the person who has control or management of the land consented to the taking of the fauna or flora; and
- if the offence is alleged to have been committed in an area in respect of which exclusive native title¹⁶⁰⁰ exists, the accused either held the exclusive native title alone or with other persons, or took the flora or fauna with the consent of the exclusive native title holder.¹⁶⁰¹

The *Wildlife Conservation Act 1950* (WA) further provides that an Aboriginal person who takes fauna or flora for an Aboriginal customary purpose must not sell the fauna or flora, or any part of it, unless, under the regulations, that sale is excepted or the person is authorised or licensed to do so.¹⁶⁰²

Similar changes were made to section 103A(3) of the *Conservation and Land Management Act 1984* (WA) which complement those made in the *Wildlife Conservation Act 1950* (WA).

These amendments to the *Wildlife Conservation Act 1950* (WA) and the *Conservation and Land Management Act 1984* (WA) were made by the *Conservation Legislation Amendment Act 2011* (WA).

The recent Inquiry conducted by the Public Administration Committee into the potential environmental contribution of recreational hunting systems considered the issue of Aboriginal people on Crown land using firearms. This inquiry is discussed elsewhere in this paper at paragraph 16.1.

In a submission provided to the Inquiry, the Department of Lands advised that section 23 of the *Wildlife Conservation Act 1950* (WA), section 23A of the *Conservation and Land Management Act 1984* (WA) and section 104 of the *Land Administration Act 1997* (WA) – which refer, respectively, to an ‘Aboriginal customary purpose’ and ‘seeking sustenance in their accustomed manner’ – would be considered ‘a reasonable excuse’ for the purposes of section 267 of the *Land Administration Act 1997* (WA) or performing an act permitted under another written law¹⁶⁰³ for the purposes of the *Land Administration (Land Management) Regulations 2006* (WA).¹⁶⁰⁴ That is, in the view of the Department of Lands, these sections would permit an Aboriginal person to discharge a firearm on Crown land.¹⁶⁰⁵

This ‘reasonable excuse’ does not exclude the operation of the *Firearms Act*. The submission of the Department of Lands concluded that ‘an Aboriginal person, provided the Governor has not suspended or restricted the taking of flora or fauna, will be able to use a firearm on Crown land, *provided the firearm is licensed* and the firearm is being used to take fauna for his or her own use’ [emphasis added].¹⁶⁰⁶

The submission also concluded that an Aboriginal person who is a native title holder as defined in section 224 of the *Native Title Act 1993* (Cth)¹⁶⁰⁷ may also have the right to hunt on Crown land, and that such activity must be conducted in accordance with section 211 of the *Native Title Act 1993* (Cth). That section provides, among other things, that if:

- the exercise or enjoyment of native title rights and interests in relation to land or waters includes carrying out hunting activities; and
- a Commonwealth, state or territory law prohibits or restricts persons from carrying on the class of activity other than in accordance with a licence, permit or other instrument granted or issued to them under law; and

1597 For the purposes of this section ‘Aboriginal person’ is defined as ‘a person wholly or partly descended from the original inhabitants of Australia’; *Wildlife Conservation Act 1950* (WA) s 23(1).

1598 For the purposes of this section, ‘Aboriginal customary purpose’ is defined as: (a) preparing or consuming food customarily eaten by Aboriginal persons; or (b) preparing or using medicine customarily used by Aboriginal persons; or (c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or (d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c); see *Wildlife Conservation Act 1950* (WA) s 23(1).

1599 For the purposes of this section, ‘CALM Act land’ means land, or land and waters, listed in the *Conservation and Land Management Act 1984* (WA) section 5; and land that, under the *Conservation and Land Management Act 1984* (WA) section 8C, is under the management of the CEO; and land to which the *Conservation and Land Management Act 1984* (WA) section 131 applies; see *Wildlife Conservation Act 1950* (WA) s 23(1).

1600 The term ‘exclusive native title’ is defined to mean native title rights and interests (as defined in section 223 of the *Native Title Act 1993* (Cth)) that exist in relation to the area, whether or not they have been determined under the *Native Title Act 1993* (Cth) to exist; and that confer possession, occupation, use and enjoyment of the area on the holders of the native title rights and interests to the exclusion of all others; see *Wildlife Conservation Act 1950* (WA) s 23(1).

1601 *Wildlife Conservation Act 1950* (WA) s 23(3)(a)–(e).

1602 *Wildlife Conservation Act 1950* (WA) s 23(5). The penalty provided is a fine of \$4,000.

1603 *Land Administration (Land Management) Regulations 2006* (WA) r 7 provides that a person does not commit an offence under these regulations for doing something contrary to these regulations if the person has authority to do the thing under any other written law. Relevantly, r 13(1)(b) provides that a person must not, on regulated land, kill, injure, capture, chase, disturb, interfere with or feed any animal and r 13(4) provides that a person must not, on regulated land, be in possession of a hunting device with the intention that it be used in a manner prohibited by subregulation (1) or that is a danger to the public. Regulation 13(6)(b) provides that firearms are included in the definition of ‘hunting device’.

1604 Mr Colin Slattery, Director General, Department of Lands, Submission to Standing Committee on Public Administration: Inquiry into recreational hunting systems in Western Australia, 13, accessed at <http://www.parliament.wa.gov.au/Parliament/commit.nsf/a7b78ee55fef62a4825772700174a2c/62ddef71ad4c582448257cda0006e682?OpenDocument>.

1605 Section 267 of the *Land Administration Act 1997* (WA) makes it an offence, without either the permission of the Minister or reasonable excuse, to discharge any firearm or other weapon on Crown land; see *Land Administration Act 1997* (WA), s 267(2)(h).

1606 Mr Colin Slattery, Director General, Department of Lands, Submission to Standing Committee on Public Administration: Inquiry into recreational hunting systems in Western Australia, 13, accessed at <http://www.parliament.wa.gov.au/Parliament/commit.nsf/a7b78ee55fef62a4825772700174a2c/62ddef71ad4c582448257cda0006e682?OpenDocument>.

1607 *Native Title Act 1993* (Cth) s 224 provides that ‘native title holder’, in relation to native title, means (a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust, the prescribed body corporate; or (b) in any other case, the person or persons who hold the native title.

- the law does not provide that such a licence, permit or other instrument is only to be granted or issued for research, environmental protection, public health or public safety purposes; and
- the law is not one that confers rights or interests only on, or for the benefit of, Aboriginal peoples or Torres Strait Islanders;

then, the law does not prohibit or restrict the native title holders from hunting, or from gaining access to the land or waters for the purpose of hunting, where they do so for the purpose of satisfying their personal, domestic or non-commercial communal needs and is an exercise or enjoyment of their native title rights and interests.¹⁶⁰⁸

However, the *Native Title Act 1993* (Cth) also provides that, in so doing, the native title holders are subject to laws of general application.¹⁶⁰⁹ Therefore, an Aboriginal person who wishes to exercise a native title right to hunt within Western Australia, and to use a firearm for this purpose, will require a licence, permit or approval under the *Firearms Act*.

The submission of the Department of Lands also observed that a 'registered native title claimants' – that is, a person who is a member of a registered native title claim that has not yet been determined – 'possesses similar rights of access to a native title holder, except that [the *Native Title Act 1993* (Cth)] also provides specific provisions for access to non-exclusive agricultural and pastoral leases for traditional activities according to section 44B'.¹⁶¹⁰

Although the ability to use firearms for traditional hunting is still not clearly spelt out in the relevant legislation, it is plain that in some circumstances Aboriginal people may use firearms on Crown land; however, it appears they must also comply with the requirements of the *Firearms Act*, which has not been designed to accommodate these circumstances. For instance, 'traditional hunting' or 'seeking sustenance' is not included in the list of 'genuine reasons' set out in section 11A(2) of the Act.

In its *Aboriginal Customary Laws* Final Report, the Commission noted that the submission of Western Australia Police stated that any legislative change must complement the *Firearms Act* and that any exemption for Aboriginal people should be made explicit in the *Firearms Act* so that police officers are aware of it in the event that they are called upon to resolve a complaint for actions contravening the Act.¹⁶¹¹

In the 2008 Police Review, Western Australia Police noted further that 'sub-sections 11A(1), 11A(2)(c), 23(10) and 23(10a) of the *Firearms Act* ... will restrict Indigenous persons from freely hunting on any land and therefore will contradict the intention of the other Acts'.¹⁶¹² Accordingly, the review recommended that these sections of the Act be amended 'to complement other relevant Acts in relation to the use of firearms for customary hunting by Indigenous persons on Crown land'.¹⁶¹³

The relevance of the sections identified by Western Australia Police is as follows:

- The 'genuine reason' requirement in section 11A(1) of the *Firearms Act* does not include traditional hunting as a genuine reason.
- In respect of the 'recreational hunting and shooting' genuine reason in section 11A(2)(c), there is seemingly no provision for an applicant to provide details of a registered or determined native title right to hunt on particular land, or an intention to seek sustenance or engage in traditional hunting, as distinct from a 'property letter' from the owner of land.
- Section 23(10) provides that a person who uses a firearm on land belonging to another person without the express or implied consent of the owner or occupier of that land (or some person apparently authorised to act on behalf of the owner or occupier) without reasonable excuse commits an offence.¹⁶¹⁴ It appears to be unclear whether traditional hunting (or, more specifically, a registered or determined native title claim which includes a right to hunt) on a pastoral lease will constitute a 'reasonable excuse'.
- Section 23(10a) provides that it is an offence for a person, without reasonable excuse, to carry a firearm, other than on a road open to the public, onto or across land that is used for or in connection with primary production without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier.¹⁶¹⁵ It appears to be unclear whether traditional hunting (or, more specifically, a registered or determined native title claim which includes a right to hunt) on a pastoral lease will constitute a 'reasonable excuse'.

¹⁶⁰⁸ *Native Title Act 1993* (Cth), s 211.

¹⁶⁰⁹ *Native Title Act 1993* (Cth), s 211, note.

¹⁶¹⁰ Mr Colin Slattery, Director General, Department of Lands, Submission to Standing Committee on Public Administration: Inquiry into recreational hunting systems in Western Australia, 13, accessed at <http://www.parliament.wa.gov.au/Parliament/commit.nsf/a7b778ee55fef62a482577200174a2c62ddef71ad4c582448257cda0006e682?OpenDocument>.

¹⁶¹¹ Law Reform Commission of Western Australia, *Aboriginal Customary Laws Final Report*, 2006, 312.

¹⁶¹² *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 30.

¹⁶¹³ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 30.

¹⁶¹⁴ *Firearms Act 1973* (WA), s 23(10).

¹⁶¹⁵ *Firearms Act 1973* (WA), s 23(10a).

The recommendation in the 2008 Police Review, to amend these sections of the *Firearms Act* has not been implemented.

More recently, Western Australia Police has advised that it considers that the current provisions of the *Firearms Act* are adequate in this context and that, therefore, no amendment is required. More specifically, Western Australia Police have advised as follows:

The Department of Parks and Wildlife (DoPAW) oversee the management of Crown land through the *Conservation and Land Management Act* and Regulations. Recent amendments have verified any person who seeks permission to use firearms on Crown land, including indigenous [*sic*] persons using firearms for customary hunting, must be the holder of an appropriate firearms licence. DoPAW have regulations and guidelines for Aboriginal customary activities on DoPAW-managed lands and waters.

DoPAW will not issue landholder permission letters to support original or additional firearm applications. Therefore the current requirements of Sections 11A(1) and 11A(2)(c) will remain a requirement, prior to a person seeking permission to use a firearm on Crown land.

DoPAW will provide permission for indigenous [*sic*] persons to use firearms for customary hunting on Crown land upon application or notice. DoPAW will manage a controlled hunting system which will require licensed persons to apply or advise of their intention to use a firearm on Crown land. This control mechanism is to ensure an accountable and safe environment for the shooter and other community users of Crown land. Therefore the current firearm offences created in Sections 23(10) and (10a) will apply.

Current provisions are adequate. Provided a person has a genuine reason such as recreational shooting and they have permission from a landowner they can shoot on any property provided they have approval from the owner or occupier. WA Police do not support hunting on land without permission.¹⁶¹⁶

This information suggests that there is a clear system in place for licensed persons to engage in traditional hunting on Crown land.

However, the fact remains that the *Firearms Act* provides no guidance as to how Aboriginal people seeking licences in order to engage in traditional hunting can do so in the first place. On the face of the Act, an Aboriginal person seeking to engage

in traditional hunting would have to try to meet the requirements of an existing genuine reason. For instance, he or she could seek a licence for recreational shooting¹⁶¹⁷ or as a member of an approved shooting club,¹⁶¹⁸ although neither of these would actually constitute the person's genuine reason. This seems contrary to the scheme of the Act, which contemplates that a person must provide specific information to support their actual genuine reason for a licence. Further, it has the potential to create confusion and uncertainty. The Commission reiterates recommendation 105 from its *Aboriginal Customary Laws Final Report* and also makes the following proposals:

Proposal 45:

- that the 'genuine reason' requirement in section 11A(1) of the *Firearms Act 1973* (WA) be amended to include 'traditional hunting';
- where a person has nominated 'traditional hunting' as his or her genuine reason, in lieu of a 'property letter' he or she ought to be able to provide evidence of:
 - his or her membership of a registered or determined native title claim over an area; or
 - his or her identity as an Aboriginal person wishing to engage in traditional hunting in accordance with section 23 of the *Wildlife Conservation Act 1950* (WA), section 23A of the *Conservation and Land Management Act 1984* (WA) and section 104 of the *Land Administration Act 1997* (WA); and
- that a person's status as an Aboriginal person engaging in traditional hunting, a registered native title claimant or determined native title holder be accepted as 'reasonable excuse' for the purposes of sections 23(10) and 23(10a) of the *Firearms Act 1973* (WA).

17.3 Ammunition sales

The *Firearms Act* provides that where the holder of a Dealer's Licence sells ammunition the dealer must make an entry in the prescribed manner in a record kept for this purpose and must 'cause verification of that transaction to be entered in, or affixed to, the record in the prescribed manner or obtain the signature thereto of the person to whom the ammunition is supplied'.¹⁶¹⁹ The *Firearms Regulations* provide, further, that the record is to be maintained in Form 19 in an Ammunition Sales Book, or in

¹⁶¹⁶ Correspondence from Dr Karl O'Callaghan, Commissioner of Western Australia Police, 16 June 2015, 26.

¹⁶¹⁷ *Firearms Act 1973* (WA), s 11A(2)(c).

¹⁶¹⁸ *Firearms Act 1973* (WA), s 11A(2)(a).

¹⁶¹⁹ *Firearms Act 1973* (WA), s 30(3).

such other manner as the Police Commissioner may approve.¹⁶²⁰

The Commission is advised that, as a matter of practice, persons who purchase ammunition are required to fill out an entry in a dealer's register and that the information they are required to provide (including their residential address) can then be viewed by subsequent purchasers.¹⁶²¹ Stakeholders have advised that this is a cause for concern, and it has been suggested that, given a firearms licence has a person's address on it, purchasers of ammunition should simply be required to provide their licence number rather than also providing their address.

Proposal 46:

- that Form 19 in Schedule 1 of the *Firearms Regulations 1974 (WA)* be amended to remove the 'address' column.

17.4 Prescribed forms

The 2008 Police Review observed that the Act provides that regulations may be made with respect to, among other things, the forms to be used for the purposes of the Act.¹⁶²² The Review noted that the forms that are prescribed are contained in Schedule 1 of the *Firearms Regulations* and concluded that it would be 'more practical and better for the administration of granting firearm licences to have the forms approved by the Commissioner of Police'.¹⁶²³ Accordingly, it recommended that the forms found in Schedule 1 of the *Firearms Regulations* be approved rather than prescribed.¹⁶²⁴

Question 44:

- Should the *Firearms Act 1973 (WA)* be amended to facilitate forms being approved by the Police Commissioner rather than prescribed in the *Firearms Regulations 1974 (WA)*?

¹⁶²⁰ *Firearms Regulations 1974 (WA)*, r 17(2).

¹⁶²¹ Meeting with Hon Rick Mazza MLC, 18 June 2015.

¹⁶²² *Firearms Act 1973 (WA)*, s 34(2)(e).

¹⁶²³ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 31.

¹⁶²⁴ *Review of the Firearms Act 1973*, Report to the Minister for Police, August 2008, 31.

SUBMISSIONS AND CORRESPONDENCE RECEIVED

Submission from Hon Rick Mazza MLC, 20 December 2013, 3 February 2014 and 4 December 2014

Submissions from Dr Leo Laden, 18 June 2014, 30 October 2014, and 5 January 2015

Submissions from Mr Ross Allanson, enclosing additional documents, 19 June 2014 and 6 October 2014

Submission from Mr Bryan Finlay, 10 August 2014

Submission from Mr Tony O'Brien, 11 August 2014

Submission from Animal Pest Management Services, 29 September 2014

Correspondence from the State Administrative Tribunal, 14 October 2014

Submissions from Sporting Shooters Association of Australia (WA) Inc, provided 8 September 2014 and 23 February 2015.

Submission from Roy Alexander & Sons (Mr Murray Alexander OAM and Mr Ian Alexander), provided 8 September 2014

Submission from the Public Health Association of Australia (WA Branch), 8 October 2014

Correspondence from Queensland Police Service, received 16 January 2014

Submission from the Australian Deer Association, 31 January 2015

Submission from the Pastoralists & Graziers Association of WA (Inc) 13 February 2015

Submission from the Northern Territory Police, 18 February 2015

Correspondence from the Hon Tony Piccolo MP, Minister for Police, South Australia, 5 March 2015

Submission from Mr Peter Metcalfe, Executive Director, Livestock Industries, Department of Agriculture and Food (WA), 13 March 2015

Submission from the Western Australian Meat Industry Authority, 27 March 2015

Submission from RSPCA Australia Inc, 1 April 2015

Submission from Animals' Angels, 8 April 2015

Submission from Australian Livestock & Property Agents Association Ltd, 16 May 2015

Correspondence from Hon Wade Noonan, Minister for Police, Victoria, 20 May 2015

Correspondence from Western Australia Police, 16 June 2015

Correspondence from the Hon MT Hidding MP, Minister for Police, Tasmania, 16 June 2015

Correspondence from Western Australia Police, 20 July 2015

Correspondence from Western Australia Police, 4 September 2015



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