



The Law Reform Commission of Western Australia
Review of the Firearms Act 1973
Submission from the Australian Deer Association Inc.
January 2016

Executive Summary

The Australian Deer Association (ADA) is a national organisation representing the interests of deer hunters. The association was established in 1969 and has branches in every state and territory of Australia.

ADA has an interest in this review process as the majority of our members own and use firearms in the course of their recreation. We thank the commission for the opportunity to comment and commend the commission on the compilation of a comprehensive document which gives good examination and background to the issues.

ADA believes that all policy, laws and regulations affecting firearms and firearm owners should be treated the same as any other area of public policy and be on based on facts and data not on instinct, intuition or prejudice.

The firearms registration and regulation regime in Western Australia is generally regarded as the most onerous in Australia. This does not necessarily mean that they are the most effective in addressing public safety concerns or that they are best practice.

Ensuring public safety is the rationale for the regulation of firearms' owners and the firearms they own. However this rationale does not provide the basis for unsupported, excessive, ineffective or inefficient policies, regulations or processes.

The securing of public safety must be founded on the reality that licensed firearm owners are, as a cohort, law abiding and responsible citizens and neither they nor the guns that they own feature in any meaningful way in firearm-related crime.

This assessment of shooters is not limited to shooting organisations. Addressing the Standing Committee on Public Administration Inquiry into the Potential Environmental Contribution of Recreational Hunting systems in 2014, Assistant Commissioner (State Crime) Craig Ward said:

We know there are a number of illicit firearms in the community. Predominantly, though, the eighty something thousand licensed firearm owners in Western Australia are law-abiding citizens who have gone through a probity process to verify their capacity to own a firearm. We do not have a general issue with gun crime, for want of a better term, coming from that sector

(Transcript, Session 4, 18th June, 2014).

Consequently legislation affecting law-abiding gun owners and the guns that they own must be demonstrably necessary, relevant, efficient, effective and as unobtrusive as practically possible.

The requirement for firearm licence applicants to have storage pre-approved prior to being granted a licence serves no practical purpose and is an unnecessary impediment. Likewise, the requirement for serviceability certificates serves no practical purpose.

The full cost recovery basis principle is inequitable. There is not an obligation on legislators and regulators to ensure that the system is effective, efficient and workable.

The concept is applied selectively. Every tennis club, football club, cricket club and every other sport is not subjected to the same requirement. . One example is pensioner discount for fishers but not for shooters.

There is also is not a requirement to offset the cost of a registration system from which shooters do not derive any benefit with the economic benefit either provide or could provide to the State if they were allowed to do so.

For example a study undertaken by the Victorian Department of Environment and Primary Industries in 2013 revealed that the economic benefit of hunting alone to Victoria is more than \$430 million.

However, in Western Australia, while there is an insistence on full cost recovery from shooters, governments will not allow shooters to participate in hunting, game management or pest control programmes on public land.

The merging of the Weapons Act with the Firearms Act would only serve to make the compliance burden on firearms more difficult to understand and, therefore, should not be supported.

The discrimination against firearms and other items based purely on appearance is not practical and should cease.

The fit and proper person test should apply only at the licensing stage and the legislation should license the person and not the firearm.

Restrictions on owning multiple firearms of similar type should be abolished as should the legislative concept of genuine need. There is not any evidence to demonstrate that these measures have led to a reduction in the number of gun-related homicides or gun-related suicides.

Nor is there evidence to support any move to regulate shooting clubs.

Licences should be issued on plastic cards for terms of up to five years to reduce the administrative burden.

The current training regime for new licence applicants focuses on critical safety messages. There is no evidence to suggest that the addition of a practical component would serve any purpose.

Provisions should be made for licence holders to use the storage of other licence holders.

The definition of ammunition should be amended to exclude spent ammunition casings to avoid inadvertently catching innocent people in regulation.

The prohibition of the use of sound moderators has no logical basis and should be removed.

2.5 Approaches to National Framework

The discussion paper notes 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.

ADA agrees with this observation but cautions that it does not necessarily follow that the WA Firearms Act was or is an exemplar of best practice in comparison to the legislation that exists in other jurisdictions. There is no evidence that the level of gun-related homicides and gun-related suicides are lower in Western Australia because of the provisions of the Firearms Act.

The paper also appears to couch the concept that it is possibly desirable that the Western Australian legislation be more draconian or restrictive than the equivalent legislation in other jurisdictions:

It is often argued that there is an inherent benefit in consistency of laws throughout jurisdictions in Australia. According to this viewpoint, firearms legislation should aim for parity between different states and territories. 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.

ADA does not challenge this statement. However, it would be interesting to know whether Western Australia applies this proposition consistently to every area of public policy for which it has constitutional responsibility, particularly when it represented at the myriad of COAG and COAG-related meetings.

More important, however, is the point not made in the comment above and that is the obligation of governments, when discharging their responsibilities, to base decisions on facts and data and not instinct, prejudice, or supposition

Licensed firearm owners are law abiding and responsible and that any legislation affecting them should be both demonstrably necessary and seek to cause the minimum possible disturbance to their amenity.

3.2 Perspectives on the purpose of firearms regulation – The Commission’s View

The paper notes the commission’s view that

The primary aim of firearms regulation is to prevent the harm that firearms may cause as dangerous items.

ADA supports this proposition. Consequently, laws or proposals affecting firearms ownership or firearms owners must be based on facts and data and the ability to reduce the level of gun-related homicides and gun-related suicides.

Thus ADA supports the Commission’s view that

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.

Proposal 2

Point 1

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

The ADA urges the Commission and legislators to exhibit caution in effectively granting discretion and powers under the Act to more Police members.

Police unions tend to view the private ownership of firearms as a health and safety issue for police members. An illustration of this is in the hyperbolic response from the Queensland Police Union when the Queensland Government announced the formation of a ministerial weapons advisory panel to examine potential reductions in ‘red tape’ in 2012. Union President Ian Leavers opined that

If anything, we shouldn't reduce red tape for gun owners but increase it” and “a reduction in red tape around gun ownership will simply mean more people will die. It's as simple as that.

Given that police unions and associations in Australia have ‘coverage’ rates exceeding 90% of sworn police members it is reasonable to contend that this type of institutionalised attitude permeates throughout the Police force, and, in turn, affects the attitude of individual members towards private firearm ownership.

Point 2

Western Australia Police review the use of its staff with a view to eliminating doublehandling and streamlining the application process

ADA supports this proposal and notes the longstanding and systemic failures in data collection, maintenance and use outlined in the paper. It is desirable to shooters that the proposal stipulates that any inefficiency which unduly impacts on the amenity of firearm licence holders and applicants should be identified and eliminated.

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*

ADA submits that the commission recommend that the Western Australia Police review the design of the new firearms licensing and registry system prior to implementation to ensure that it is efficient and effective and provides the fastest and simplest possible mechanism for firearm licence applicants and holders to apply and renew licences; and that it will enhance community safety by reducing the numbers of gun-related homicides and gun-related suicides.

ADA further submits that the review after the first year be predicated on the tenet that licensed firearm owners are customers of the system and, as such, the review should focus on the customer experience and how the system has reduced the number of gun-related suicides and gun-related homicides..

6.3 Application processing - time delays

ADA notes the detail of the significant and unwarranted delays encountered by licence applicants. The paper notes that other jurisdictions are remarkably more efficient than Western Australia in this regard; in light of this observation most of the excuses for delays offered by Western Australia Police ring hollow. Consistent with the principle that the licensing and regulation system should cause the minimum possible inconvenience to law abiding firearm owners and licence applicants, ADA urges the commission to recommend that Western Australia Police conduct a thorough review of all application processes relating to firearms, the primary focus of which should be the customer experience and a reduction in the number of gun-related suicides and gun-related homicides. This review should not be limited to the current arrangements in place with Australia Post and should consider approaches adopted in other jurisdictions which minimise inconvenience to firearm licence holders and applicants.

6.4 Application processing - storage and pre-approval

ADA draws the commission's attention to the process followed in most other Australian jurisdictions whereby applicants are only required to purchase a firearm following being issued with a permit to acquire it. The requirement for the firearms to be accompanied with a serviceability certificate at the time of transfer is an impost which does not exist in comparable jurisdictions and which offers no demonstrable benefit to firearm owners since gun dealers are not competent to make such assessments or to the safety of the community more generally.

The notion of a firearm licence holder being required to provide evidence of the suitability of storage for applications for firearms subsequent to the first is also an unnecessary impost on people who have already been deemed to be responsible and law abiding citizens. Firearm licence holders are still subject to random inspections of storage arrangements and these two elements provide the rigour required to satisfy the concerns of the community without unnecessarily impacting the amenity of firearm owners.

The ADA recommends that the commission argue for the removal of requirements for serviceability certificates and for the removal of a requirement to provide evidence of storage arrangements for all firearms other than the first one.

ADA notes the concerns outlined by the commission regarding the collection of firearms from dealers in a timely manner. ADA notes that the regulatory requirements in Western Australia place imposts on firearm dealers that do not apply to any other business and do not enhance community safety but do make it more difficult for firearm dealers to operate successful businesses.

ADA supports any initiative that underpins the viability of firearm dealerships and supports an amendment to ensure that firearms are collected in a timely manner as long as such an amendment is framed in such a manner as to ensure that it does not inadvertently impact of firearm owners who have genuine intent to purchase but who have been delayed from collecting a firearm due to business, employment or personal circumstances (e.g. fly in – fly out workers, etc.).

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

The notion of the WA licensing system working on a “cost recovery basis” is flawed for the reasons previously cited.

All that the current regime does is to provide a disincentive for shooters to acquire licences and to buy firearms. This outcome well may please the ideological agendum of some.

Ironically, it is conceivable that a more workable and efficient system could entice more shooters to acquire and retain a shooter’s licence, consequently allowing the regulator to achieve economies of scale and put downward pressure on licence fees.

As previously stated the current cost recovery system also fails to take into account the significant financial and social benefits realised by the WA community through the shooting sports. These benefits have been well documented in the Australian Hunter Survey which was conducted by the University of Queensland in 2011/2012 and as well as the study conducted for the Victorian Government estimating the economic impact of hunting to Victoria in 2013.

The ADA calls on the commission to consider recommending a move away from the cost recovery system towards one which is more aligned with best practice in other jurisdictions.

Of the few jurisdictions that charge an application fee for a new firearm licence, WA is the most expensive by more than 100% (\$252.00 compared to \$91.35 in Queensland). This is clearly an artificial barrier to entry to the shooting sports and should be removed.

ADA also recommends that the commission recommend the introduction of pensioner discounts on licence fees. Shooting provides a number of physical and social benefits for shooters who are on a pension. WA provides discounts of 50% for fishing licence holders who are under 16 years of age; hold a Seniors Card; receive an age, disability support or widow’s pension; a pension under the Coal Industry Superannuation Act 1989; a pension as a widow or widower of a member of the forces, a service pension as a person who is totally and permanently incapacitated under the Commonwealth Veterans Entitlements Act 1986 or the spouse, defacto, widow or widower of a Veteran or TPI pensioner or someone who was the de facto partner of one immediately before their death.

It is inconsistent and inequitable that the same classes of pensioner are eligible for a discount to assist them to continue to enjoy their recreation if they choose to go fishing but not if they choose to go shooting.

7.3 The *Weapons Act 1999 (WA)*

ADA argues that all regulations affecting its members should be easily understandable and workable; any merging of the *Weapons Act* with the *Firearms Act* would only seek to complicate what is already an onerous and prescriptive set of legislation.

ADA supports the view of Western Australia Police that these two acts should not be merged.

7.5.3 Firearms which ‘closely resemble’ prohibited firearms

The situation whereby a permit to acquire a firearm cannot be granted if

In the Police Commissioner’s opinion, the firearm ‘closely’ resembles a firearm that is prohibited under regulation 26

risks unnecessarily affecting the ability of licensed firearm owners to procure or modify firearms based on comfort, performance or aesthetics whilst delivering no tangible benefit to the interests of public safety. Licensed firearm owners have already demonstrated and understanding of, and willingness to comply with, all legal requirements relating to the safe ownership, use and storage of firearms.

The (then) acting Police Commissioner’s response to a parliamentary question about the impact on public safety caused by a Category B firearm resembling in appearance a Category D firearm is, unfortunately, typical of the illogical and ideologically driven environment that tends to prevail in discussions about legal firearms:

A Category B2 class firearm 369 that has the appearance of a Category D1 class firearm 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.

Legislation should be made and administered based on facts and data, not presumptive hysteria and base fear mongering.

The commission noted the statement of a Parliamentarian in 2013 which sums the argument up nicely:

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.

ADA argues that any clause discriminating against a firearm based purely on appearance should be deleted.

8.2 Fit and proper person – additional firearms

ADA supports a system which ensures that Firearm Licence applicants are ‘fit and proper’ people. This is demonstrably in the interests of community safety and of law abiding firearm owners. The anomaly in Western Australia whereby the ‘fit and proper person’ test is re-applied for every firearm purchase adds no clear benefit to the interests of public safety whilst compounding inefficiencies and, consequently, end user costs in the licensing system. ADA supports the arguments advanced by the Hon Rick Mazza, in this regard, as noted by the Commission:

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 ‘many enthusiasts license 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’. 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.

8.2.2 ‘Licence the person, not the firearm’

ADA supports the contention 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 ‘dual licensing’ system that operates in Western Australia, particularly to the degree that it prohibits licensed firearm owners from borrowing firearms from each other, offers no demonstrable benefit to public safety and serves only to unnecessarily create difficulties and inconvenience for licensed firearm owners. As noted by the commission at point 10.2, this also has negative safety implications if followed to the letter of the law. The important principle is that the licensed firearm owner is a ‘fit and proper person’. To that end, the ADA fully supports Proposal 18 with no restrictions other than the usual storage and use requirements that apply to all licensed shooters.

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

Whilst the notion of ensuring that a shooter has a genuine reason to gain a licence is straightforward enough, there is no demonstrable public safety benefit in then restricting the use of firearms by that person to the use (or property) stated on the proof of genuine reason provided. Once again the interests of public safety are served by the application of the ‘fit and proper person’ test, not by the imposition of arbitrary restrictions on what would otherwise be safe and lawful use of firearms once somebody is licensed.

ADA notes the Commission’s view 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, and the Commission understands that law enforcement authorities in other Australian jurisdictions have not 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.

If primary producers were unable to seek the assistance of recreational shooters to manage game or control pests it would have an adverse community effect.

Primary producers, and especially small and medium-sized enterprises, with limited and often any staff other than family members presumably may have to use poisons or hire professional shooters. Such an outcome would not be in the interests of either primary producers or consumers.

ADA re-iterates the principle that legislation affecting firearm owners should be based on facts and data. In the absence of any evidence of a problem it is not logical to support any change to the current arrangement in this regard.

A number of Western Australian residents travel to Eastern States (particularly Victoria) in order to hunt wild game (deer and ducks) on public land. This is a legitimate and genuine reason for having a firearm and interstate hunting licenses should be recognised by the Western Australian regulators as a genuine reason for obtaining a license and firearm.

9.1.5 ‘Genuine reason’- multiple firearms - policy and practice

Once a firearm licence holder has been deemed to be a ‘fit and proper person’ the interests of public safety are not advanced by the application of arbitrary limits on the number of firearms they may possess. The character of the licence holder and their demonstrated desire to abide by regulatory requirements is of primary importance. As acknowledged by the commission a firearm licence holder can have a plethora of good reasons for requiring different firearms (even multiple firearms of the same calibre) to suit a range of applications and preferences. We re-iterate the statement made by ADA WA State President Jeff Stuart in his submission to the commission of January 2015, 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.

And his explanation 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.

9.2 ‘Genuine need’

ADA submits that the genuine need test should be abolished in conjunction with the adoption of the principle of ‘licensing the person, not the firearm’ as discussed earlier. Once a person has been deemed a ‘fit and proper’ person to possess and use firearms of a certain category, the genuine need test becomes an unnecessary level of bureaucracy which offers no demonstrable benefit to the interests of public safety.

9.2.1 Membership of an approved shooting club as genuine need

A number of approved shooting clubs offer a number of services to members other than those considered in the Firearms Act or the Firearms Regulations. In the absence of clear facts and data justifying a change, ADA is opposed to any move to regulate the activities or membership of clubs other than is already required by the Corporations Act and comparable legislation regulating not-for-profit organisations.

9.2.2 ‘Genuine need’- Category D firearms - pest control

Consistent with the principles of establishing that a licence holder is a ‘fit and proper person’ and of ‘licensing the person, not the firearm’ ADA would support amendments to provide that persons who require a firearm for their occupation may be permitted to retain the right to possess such firearms between contracts.

10.3 Licence terms and renewals

The term of a licence has no effect on the basic compliance requirements (i.e. updating address details, etc.) associated with it. Whilst ADA's preferred position is for licensing for life, it is accepted that the licence terms are a component of the National Firearms Agreement and will be applied in some form by the Western Australian government. Cognisant of that, the ADA recommends that all licence terms be set by default at five years, but with options for shorter terms to provide for variable financial situations. ADA would also support a requirement for the regulator to send reminder notices regarding licence renewals. In the instance that a renewal payment is dishonoured by the relevant bank, ADA would urge that there be a requirement for the licence holder to be contacted and given a reasonable opportunity to rectify the situation prior to their licence being deemed expired.

10.4 Serviceability certificates

ADA supports the assertion made by the Sporting Shooters Association of WA Inc on 8 September 2014, that the need to obtain serviceability certificates:

Adds an unnecessary layer of compliance cost for both the community and the government, 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, which are all details that must be provided by the applicant when applying to license 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.

It is noted that Western Australia Police have argued that it is important that certificates be retained in the interests of public safety; however, there are not any facts or data to support this assertion.

The requirement for a serviceability certificate offers no demonstrable benefit to public safety and adds to the cost for firearm dealers and the regulator which is ultimately borne by the end user.

It also creates an unnecessary inconvenience for the consumers.

The requirement is unnecessary and should be removed.

10.5 Extracts of Licence

The principle of 'licensing the user, not the firearm' would address the issue of needing to fit a list of all firearms on a single card or with the presumably expensive option of implanting information on a chip impregnated in a plastic card and of dealers needing to install and maintain card readers. ADA would favour the introduction of simple and durable plastic licence cards as is the practice in most (if not all) other Australian jurisdictions.

ADA would welcome the introduction of an ICT system which would enable direct communication between firearm dealers and the regulator, however this should be offered on an opt in basis rather than being a regulatory requirement which would have the potential to impact on the operations and viability of a dealer's business.

10.6 Training

The primary factor affecting public safety with regards to firearms is the user's understanding of fundamental firearm safety rules. There is no evidence to suggest that the introduction of a practical component to the initial training required to be undertaken by new licence applicants has any effect on the safety of either the public or the firearm user. ADA notes the Commission's statement that it is:

Not aware of any evidence that the existing training requirement is deficient

In the absence of clear evidence proving a benefit, the ADA would not support the introduction of a practical component to the training for first-time applicants.

10.7 Recognition of interstate licences

Western Australia is the only jurisdiction in Australia that does not recognise Interstate Firearms Licences. The temporary permit system is unnecessarily onerous and provides no demonstrable benefit over the arrangements which prevail in other States and Territories. ADA would support an amendment to the Firearms Act to recognise Interstate Firearms Licences for a period of six months.

11.3 Storage of firearms – possession and allowing access

Given that there is already a legislative requirement that only properly licensed people have access to firearm storage receptacles there is no logical benefit in prohibiting licensed firearm owners from storing a firearm or firearms belonging to another licensed firearm owner. The current prohibition unnecessarily disadvantages people who are visiting friends and people who are renting properties and are not authorised to make the necessary alterations to provide adequate storage as legislated. There is no evidence to suggest that the storage of legal firearms for licensed firearm owners by other licensed firearm owners poses any risk to the safety of the public.

ADA would support an amendment of the Firearms Act to provide for storage of firearms by firearm licence holders other than the owners.

11.5.1 Definition of 'ammunition'

ADA would support amendments that ensure that that people in possession of spent ammunition casings are not deemed to be in possession of ammunition.

14.4 General offences - other

ADA supports the submission of the Sporting Shooters Association of Australia (WA) 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. 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. 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.

There is no evidence to suggest that sound moderators on long arms feature in crime. ADA suggests the current prohibition on sound moderators is illogical and should be removed.