



Submission on Proposed Reforms to Western Australian Firearms
Legislation (including *Firearms Act 1973*, *Firearms Regulations 1974*,
Weapons Act 1999 and *Weapons Regulations 1999*)

Prepared By

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Introduction and Authority to comment:

Shooters Union Australia is one of the largest peak bodies in Australia representing the interests of law-abiding firearms users; including but not limited to target shooters, recreational shooters/hunters, arms collectors, primary producers, professional pest controllers, and licensed firearms dealers.

We have members in every State and Territory of Australia and have active state representatives in Queensland, New South Wales, South Australia, the Northern Territory and Western Australia.

We are an Approved Shooting Club in Queensland (No. 80001396) and a Genuine Reason for the ownership of Category A, B and H firearms in that state. Our Collector's Branch is an Approved Historical Society (No. 49001015) in Queensland per Division 2 of the *Weapons Act 1990 (Qld)*.

We are approved by the New South Wales Department of Primary Industries as a LEAP Training organisation (Provider Number 12614) and are also an Approved Hunting Organisation in New South Wales (number 1540) too.

We have a presence in Western Australia and welcome the opportunity to make a submission on the proposed reforms to Western Australia's Firearms Legislation.

General observations:

We agree Western Australia's firearm legislation is well overdue for reform. However, we believe the reforms being proposed are misguided, unnecessary, and are not being put forward in good faith.

Many of the proposed reforms appear to us to be punitive. We also note the high-handed and primary producer-centric approach being touted by WA authorities regarding the proposed reforms. In doing so, the reforms disregard the legitimate interests of competition target shooting and hunting/recreational shooting community who make up the majority of the approximately 89,000 licensed firearms owners in Western Australia.

We do not believe consultation with stakeholders is being undertaken effectively or in good faith. While Police Minister Paul Papalia claims to have engaged in more than 100 separate engagements with stakeholders, the overwhelming feedback from the shooting community is the Government has dictated what the laws would be, ignoring reasoned and reasonable objections, and having MPs issuing template responses to constituent contact and concerns.

Every other State and Territory in Australia has, more or less, the same firearms laws. Indeed, this is the whole purpose of the National Firearms Agreement. These laws licence the shooter,

not the firearm, and these laws have been universally proven to work since they were adopted in 1996.

We question why the Western Australia firearms law reform proposal is not to simply adopt a slightly modified version of the firearms legislation of another State – ideally Queensland’s *Weapons Act 1990*, *Weapons Regulations 2016* and *Weapons Category Regulations 1997*, or even New South Wales’ *Firearms Act 1996* and *Firearms Regulation 2016* - since they have decades of evidence-based effectiveness, are known to be sound and workable laws, and would be an improvement in all areas for WA.

We also do not understand why the WA government is ignoring the recommendations of its own law reform body. In 2016, Law Reform Commission of Western Australia Report 105 made a large number of sensible, reasonable and practical recommendations regarding effective ways to reform WA’s gun laws. These recommendations appear to have been completely ignored.

The submission period for the current reforms has been just one month. This is clearly not long enough for a proper analysis and the formulation of a comprehensive submission on the issue. The only reasonable inference is that the consultation is mere window-dressing. Indeed, Police Minister Paul Papalia has disregarded calls from more than 10,000 of its citizens to extend the submission period. We do not consider this the action of a Government that is genuinely willing to listen to feedback on its proposed laws or reconsider their plans.

Regardless, we have outlined some specific concerns, along with our recommendations, below.

1. Potential Constitutional & Anti-Discrimination issues regarding elements of the proposed “Fit And Proper Person” requirements

Section 4.2 of the Consultation Paper covers the “Fit And Proper Person” requirements for obtaining a firearms licence.

We believe taking into account “The person’s views, opinions and attitudes” may in fact be Constitutionally unsound, representing a breach of the implied Freedom of Speech regarding political and economic matters which the High Court of Australia found to exist in *Lange v Australian Broadcasting Corporation* [1997] HCA 25.

Specifically, the case found that while the ruling does not grant a specific individual right to US-style “Freedom of Speech”, it *does* restrict laws which interfere with free communication about government and politics.¹

¹ <https://www.vgso.vic.gov.au/implicit-constitutional-freedom-political-communication>

We suggest taking into account a person's "views, opinions and attitudes" fails the first element of the *Lange* test, namely "Does the law effectively burden the freedom [of political/economic speech] in its terms, operation or its practical effect?"

Simply put, if people feel that criticising the Government or actions taken by the Government or its servants – even those unrelated to firearms activities – could be used to deny or revoke their firearms licence, then that is a clear burden on their implied right to political or economic speech.

We further note that *Hogan v Hinch* [2011] HCA 4 clarified that "the range of matters that may be characterised as 'governmental and political matters' for the purpose of the implied freedom is broad. They are not limited to matters concerning the current functioning of government. They arguably include social and economic features of Australian society."²

While the *Lange* test involves two further elements (The 'legitimate end' question and the 'reasonably appropriated and adapted' question), we believe a case could be made for the proposed element of the Fit & Proper Person Test to fail them as well – and at a minimum, the Fit & Proper Person element in question, if enacted, will be challenged in the High Court of Australia.

The element regarding a person's "way of living or domestic circumstances" is dangerously vague and is open to serious abuse by government officials seeking to impose their own moral agenda.

As expressed in the form proposed, the idea of person's "way of living or domestic circumstances" could very easily be applied to countless people leading law-abiding but unconventional lifestyles, including but not limited to people in polyamorous relationships, amicably divorced couples still living together due to the ongoing housing affordability crisis, members of the transgender community, or even adherents of certain religions adhering to a traditionalist lifestyle. A more extreme interpretation might even go so far as to say people with messy houses or unkempt properties may potentially run afoul of this provision too.

While Minister Papalia will almost certainly respond that of course it will not be used in that way, that is simply not the point. It is wholly inconsistent with the rule of law upon which Australian society is founded that an individual's right and obligation be dependent upon state officials not abusing their powers.

A number of the potential situations where a person's "way of living or domestic circumstances" could be used against them for firearms licensing purposes are protected at Commonwealth level under the *Sex Discrimination Act 1984 (Cth)* as well in WA by the *Equal Opportunity Act 1984 (WA)*, and we suggest denying a firearms authority on any of the protected grounds has a strong likelihood of ending up in court - again, at considerable expense to the taxpayers of WA.

² <https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2011/4.html>

We submit that the elements regarding “a person’s views, opinions, and attitude” and “the person’s way of living or domestic circumstances” be removed from the draft legislation.

2. 3.2 Hard limits on the number of firearms a licensee may own

We are vehemently opposed to a hard limit on the number of firearms a licensee may own.

We note the 2016 Law Reform Commission of Western Australia Report 105 explicitly noted (Recommendation 54) “There should be no upper limit on the number of firearms a single Firearm Licence holder may possess,” and further that “*The Commission is satisfied that there are sufficient safeguards built into the genuine reason (including reasonable justification) and genuine need tests to prevent the unjustified stockpiling of firearms*”.³

We further believe the rationale for implementing a limit is deeply flawed, emotionally based, and not based on any genuine problem. In so far as the Proposals offer any reasoned basis for the limit, it seems to rest on the idea that a limit will reduce the risks associated with firearms being stolen. However, this does not take into account how many of those firearms are recovered quickly (most of them), or the fact the majority of illegal firearms on the market were either never registered in the first place or have been illegally imported from overseas.

The Australian Criminal Intelligence Commission (ACIC) 2020 report *Illicit Firearms In Australia* states that between 2004-2016, the overwhelming majority of illicit firearms in Australia (79.2%) came from “grey market” sources, such as firearms not registered following the introduction of the National Firearms Agreement.⁴

New South Wales Police have stated that “the illegal importation of firearms, especially modern handguns and assault rifles, is a key driver of gun crime in NSW”, an issue compounded by the fact most illicit firearms imports are not detected or intercepted⁵.

In so far as the theft of firearms might be regarded as an issue by some in the WA Government, the issue is surely that the theft has occurred in the first place and the government’s response should, therefore, be on stronger criminal penalties for people who intentionally steal firearms. As a contributor to public safety this is a far more significant contribution than the limit proposed limit.

We further point out that the West Australian Government and West Australian Police have directly compromised public safety by facilitating the publication of maps on the front page of

³ www.wa.gov.au/system/files/2021-02/LRC-Project-105-Final-Report.pdf

⁴ www.acic.gov.au/sites/default/files/2020-08/illicit_firearms_in_australia.pdf

⁵ www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Illicit_firearms/Report/c02

The West Australian newspaper, and other online media outlets (including *The Daily Mail*) showing where firearms owners (and by extension, their guns) were located.

Claims by WA Government and WAPOL representatives that the maps were not usable to identify specific firearm owner locations have been proven to be demonstrably false, with a number of our members and supporters stating unequivocally that their house is marked on the map(s).

We object to any limit on the number of firearms a licensee may possess and submit this entire section be removed from the proposed legislation.

3. 1.1.2 Associates

It will be open to the Commissioner to consider any person's associations when considering any matter pertaining to a firearm authority.

While we appreciate the intent may be to prevent associates of organised crime groups from acting as a strawman for acquiring firearms illegally, the provision has proposed has significant and unjustifiable regulatory overreach. In particular, we are very concerned at the inclusion of someone's family members or spouse in the decision-making matrix.

It is a foundation principle of justice in Australian law that one is not responsible for the actions and wrongdoing of others. Yet, as proposed, there is significant potential for people who have done nothing wrong themselves to be punished because a family member has criminal convictions or would otherwise be unsuitable to have a firearms licence.

The implication of this section appears to be that a licence applicant is to be taken to support or agree with the actions/attitudes/lifestyle of their family member. This is both unjustified as a matter of fact and inconsistent with the idea of person responsibility that lies at the heart of our legal system.

Why should someone potentially lose their firearms licence merely because a sibling (whom they do not live with) has drug convictions? In a similar vein, would it be considered reasonable to take someone's driver licence from them and confiscate their car because their spouse has been disqualified from driving? No reasonable person would accept this and for the same reason it is not reasonable to take someone's firearms licence off them because of the actions of other people.

We submit that the ability to take into account whether or not someone's family member is also suitable to hold a firearms licence when deciding an application should be removed from the proposals.

4. 1.1.4 Health Requirements

We do not see any rationale in terms of public safety for the requirement that applicants for a firearms licence have a medical assessment. We do not know of any incidents causing harm to the public involving firearms that were caused by an illness or disability of the licence holder. We do know of many examples where people with disabilities are able to find enjoyment through shooting sports. We challenge the WA government to produce any evidence that it has such incidents.

The only thing that mandatory health assessments will achieve is to overburden an already struggling public health system, place GPs in an awkward position (especially if they have ethical or moral objections to people owning firearms), and is likely to result in people avoiding treatment or help for medical issues if they are concerned it might impact their ability to hold a firearms licence.

We submit a medical assessment should only be required if there is an obvious and clear likelihood the applicant has an impairment which would seriously impact their ability to safely use firearms – for example, if someone is applying for a Category C shotgun for clay target purposes on medical grounds due to a lack of dexterity. Mental Health requirements

We also oppose the requirement for mandatory Mental Health checks. Again, there is little to no evidence that such checks are able to identify individuals who are at risk of improper use of firearms. Moreover, such is the nature of mental health issues that even if a person is assessed as mentally stable at the point of application there is no guarantee that they will not develop issues a day, a week, a month, or five years after that assessment. It is largely for this reason that mental health professionals cannot and will not “sign off” on someone’s future behaviour. There is simply no diagnostic tool that can make this assessment.

Additionally, we believe that if these requirements are to be implemented, then WA Police and WA Government staff with access to firearms should also be subject to the same conditions and requirements as individual firearms authority holders – being a Police Officer or a Corrections Officer or a Park Ranger does not make someone immune from mental health issues.

We also note the mental health system across the entire country is badly overstressed as it is, and requiring nearly 100,000 people to engage with a psychologist or psychiatrist for the purposes of firearms authority applications would likely cause the complete collapse of the system in Western Australia. ***We are opposed to any requirement involving mandatory mental health checks except where there is clear evidence of an existing condition which might affect someone’s ability to safely own and use firearms.***

5. 5.5 Mandatory Cancellation or Refusal to Renew

The proposed legislation will require that the Commissioner cancel or refuse to renew a firearm authority if it is not in the interests of public safety that the firearm authority remains in force or is renewed

We do not understand the goal of this proposal. If the Commissioner's power is limited to the grounds set out in the proposal, then it is a purely ministerial, "machinery" provision.

However, the opening paragraph of this section of the Proposal suggest something much more inquisitorial is intended: that the Commissioner shall institute a 'Star Chamber' in which licensees may be dragged before the Commissioner and be required to prove their innocence. That this can even be suggested in the 21st century in a society founded on the rule of law is utterly beyond belief.

We are additionally concerned this element of the Proposal allows for evidence-less banning on firearms just because WAPOL or the WA Government don't like them, as seen recently with the banning of a number of larger-calibre firearms which were proven *not* to have been used in crimes in WA.

We submit this section must involve specific examples of what constitutes "not in the interests of public safety" and not be left entirely up to the Commissioner's discretion.

6. 3.3 Permits

Interstate travellers would need a permit to possess or use a firearm in Western Australia

While the scope and import of this section is unclear, on one reading it indicates that Western Australia will *not* recognise interstate firearms licences. This would amount to a repudiation by the WA Government of the National Firearms Agreement system.

Every other State and Territory in Australia has robust firearms laws based on the National Firearms Agreement and because of this, recognises interstate licences being used temporarily for lawful purposes – for example, a person from Queensland travelling to New South Wales (or vice-versa) to attend a shooting competition or go hunting with the express permission of the landowner can do so under the authority of their Queensland licence.

It may be that repudiation of the National Firearms Agreement system is what is intended. If so, this should be made explicit.

We note Western Australia recognises Driver's Licences issued by other states and territories and submit the same principle should be applied to firearms licences.

7. 3.7 Sound Suppressors

We note the proposed legislation will restrict sound suppressors to use by Government and “Trade” licences. We do not support this restriction, and believe suppressors should be available to all licensed shooters “over the counter”, just as they are in New Zealand, the United Kingdom, and a number of other countries.

Despite what movies and video games might portray, suppressors do *not* silence gunshots, but rather reduce its sound level by about 25-30dB⁶. They are not a public safety threat and there is no evidence-based reason to restrict or effectively ban them.

We submit sound suppressors should be made available to all licensed firearms users, both due to their importance as Personal Protective Equipment (PPE) and because there is no public safety risk associated with them being available to licensed firearms users.

8. 5.9 Reviews by the State Administrative Tribunal

We find the ability of the Commissioner to declare evidence in a SAT review “Exempt” and essentially secret gravely concerning and a wholly unwarranted intrusion onto the human rights of Australian citizens. This proposal denies people with legitimate review grounds natural justice and violates the fundamental principles of transparency in the justice system upon which the Australian legal system depends.

There appears to be nothing in the proposal to prevent the Commissioner from declaring *all* firearm-related SAT matters “exempt”, effectively denying anyone refused a firearms authority from being able to challenge the decision.

We submit the ability to declare evidence “exempt” from SAT review be removed, or clearly stated as to only apply to serious criminal matters (where, for example, making the details public would compromise an ongoing investigation into an organised crime gang).

9. “Offences relating to Firearm Technology”

The discussion paper contains a reference to “Offences relating to firearm technology” and Police “powers in relation to firearm technology” but does not go into specifics.

⁶<https://americansuppressorassociation.com/wp-content/uploads/2020/01/ASA-Virginia-Written-Testimony-December-2019.pdf>

However, firearm technology is defined in the document as including “*a digital or electronic reproduction of a technical drawing of the design of a firearm, major firearm part, prohibited accessory or ammunition; a plan, drawing, instruction, template or computer program, in digital or electronic form, for the manufacture or repair of a firearm, major firearm part, prohibited accessory or ammunition; [or] a hard copy of a digital or electronic [version of the aforementioned]*”.

This is incredibly broad and covers countless innocuous items, including historical reference books (and history articles published online), ammunition reloading manuals, and even potentially prop/costume information such as would be used for theatrical, re-enactment and pop culture convention purposes.

All of what is defined as “Firearm Technology” information is not only widely available on the internet via a simple search engine query, but it has been publicly available in written form to anyone who wished to purchase it since at least the early 19th Century, frequently published by the Government themselves.

We would suggest that laws prohibiting the mere possession of firearm/ammunition schematics or technical drawings would pose a genuine threat to scholarly research and education (particularly that undertaken outside traditional academia or universities), be impossible to enforce, and potentially criminalise hundreds of thousands of people in Western Australia.

Any legislation on this matter must clearly be directly and exhaustively linked to people whose possession is for proven use in serious criminal activity (for example, manufacturing illicit automatic weapons for organised crime groups).

We submit that mere possession of technical drawings or schematics of firearms and/or ammunition should not be restricted, even for people without a firearms licence, as it would be contrary to the public interest to restrict already widely-disseminated and available information.

END OF SUBMISSION