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Firearms Regulation: An Update

by

Abigail Rath and Gareth Griffith

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Abigail Rath and Gareth Griffith

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EXECUTIVE SUMMARY

This background paper provides a update of developments in firearms regulation in Australia and overseas since May 1996. The history of firearms laws in New South Wales, the events leading to the reform of those laws, and the arguments for and against gun control were discussed in the 1996 briefing paper *Gun Control: Historical Perspective and Contemporary Overview*.

Nationwide Agreement on Firearms

At a special firearms meeting of the Australasian Police Ministers' Council ("APMC") on 10 May 1996, all Australian Governments reached an historic agreement for comprehensive firearms law reform. The eleven resolutions passed by the APMC became known as the "Nationwide Agreement on Firearms". Prior to the agreement, firearms laws differed greatly across the States and Territories. Since the agreement, every State and Territory has made substantial changes to its firearms laws (page 1).

Overview of the NSW Firearms Legislation

The NSW firearms laws changed on 1 July 1997 with the commencement of the *Firearms Act 1996* (NSW) and the *Firearms (General) Regulation 1997* (NSW). Under the new regime any current licence holder had to apply for a new licence before 30 July 1998. The most significant changes to the gun laws were as follows:

- a general ban on the use of semi-automatic rifles and shotguns and pump action shotguns, except for specific purposes;
- new licence categories;
- the introduction of a single licence which can cover multiple licence categories;
- proof of genuine reasons for a licence and special need for some licence categories;
- the introduction of firearms registration;
- new storage requirements.

Under section 92 of the Firearms Act 1996, a review of its operation is to be conducted 3 years after the date of its assent and a report tabled in Parliament within 12 months after the end of the 3-year period (pages 1-10).

Comparison of the NSW firearms laws with the Nationwide Agreement on Firearms

New South Wales substantially complies with the Nationwide Agreement and subsequent resolutions of the APMC. Areas of non-compliance include membership of recreational hunting clubs as a genuine reason for owning or possessing a firearm, the provision for minors' permits, the lack of a maximum limit on the amount of ammunition that can be purchased in a given period, the absence of a prohibition of the commercial transport of firearms with ammunition, and the lack of mandatory and approved safety training courses for first time licence applicants (pages 10-19).

Comparative Overview - Firearms Legislation in other States and Territories

All States and Territories have made significant changes to their firearms laws to bring them into line with the Nationwide Agreement on Firearms, although no jurisdiction fully complies with Agreement. In contrast to a number of other States and Territories, New South Wales complies with the APMC resolutions with respect to the 28 day waiting period for licences and permits, and the physical need and ACTA affiliated club requirements for access to Category C firearms for clay target shooting.

The question as to whether the reforms which have taken place in recent years do, in fact, constitute a uniform national scheme is open to conflicting interpretations. There are differences between the various jurisdictions, some of which are points of detail. However others are more substantial in nature, such as the varying requirements in place for firearms safety training courses (pages 19-34).

The Number of Firearms and Firearm Owners

In brief, there are no accurate figures on the number of firearms and the number of firearm owners in Australia. Prior to the enactment of the new firearm laws, there was no national register of firearms, and figures are not yet available from the new national register. Further, in addition to legally held firearms, the number of illegally held firearms must be considered. Clearly, only estimates of the number of illegal firearms can be given and opinions differ on the appropriate estimates.

Under the 1996-97 national buyback scheme, 643,726 firearms which were prohibited under the new laws were handed in. Opinions differ on how many prohibited firearms were not surrendered. Estimates of the percentage of prohibited firearms handed in range from 43% to 80%.

At the time of writing, the NSW Firearms Registry is unable to provide statistics as it has had problems with its system, and is currently reviewing its data. However, in August 1999, the *Sydney Morning Herald* published an article stating that a preliminary assessment of information from the Registry shows that 993,000 firearms are registered in NSW. However, the article stated that this figure is likely to fall when the Registry completes its review of the database (pages 34-38).

The Impact of the Nationwide Agreement on Firearms

The Australian Institute of Criminology is monitoring the effect of the new guns laws and has recently concluded that it is still too soon to determine definitively whether Australia's uniform laws have achieved their aim in reducing firearm-related violence and misuse. However, preliminary findings indicate a decline in firearm-related deaths (pages 38-39).

Proposals for Amendments to the New Firearms Laws

Since the introduction of the new firearms laws, both sides of the gun control debate have expressed dissatisfaction with aspects of the laws and have argued for amendments. Some States have amended the laws contrary to some aspects of the Nationwide Agreement. Areas where there have been calls for amendment include waiver of the 28-day period, access to Category C firearms for members of non-ACTA clubs, changes to the genuine reason of recreational hunting, inspection of storage facilities, minors' permits, removal of guns from homes in cities and towns, banning of semi-automatic handguns, and increased training requirements (pages 39-51).

Overseas Developments

Australia is not alone in the attention being given to firearms control. In the past few years there have been worldwide increases in the level of interest in firearms regulation. In particular, there have been significant recent developments in Canada, New Zealand and the United Kingdom. In addition, the United Nations is taking an active interest in firearms regulation (pages 51-58).

1. INTRODUCTION

At a special firearms meeting of the Australasian Police Ministers' Council ("APMC") on 10 May 1996, all Australian Governments reached an historic agreement for comprehensive firearms law reform. The eleven resolutions passed by the APMC became known as the "Nationwide Agreement on Firearms". Prior to the agreement, firearms laws differed greatly across the States and Territories. Since the agreement, every State and Territory has made substantial changes to its firearms laws.

The history of firearms laws in New South Wales and the events leading to the reform of those laws were discussed in detail in *Gun Control: Historical Perspective and Contemporary Overview* by Marie Swain (Briefing Paper No 11/99). The various arguments for and against gun control were also considered in that paper, as were the tragic events at Port Arthur which provided the catalyst for the Nationwide Agreement on Firearms.

This background paper provides an update of developments since May 1996. Part 2 provides an overview of the NSW firearms laws. Part 3 compares the NSW laws with the Nationwide Agreement on Firearms. Part 4 provides a comparative overview of firearms laws in Australian States and Territories. Part 5 provides a summary of publicly available material on the number of firearms and firearm owners. Part 6 provides a summary of a recent report by the Australian Institute of Criminology on the impact of the new firearms laws. Part 7 outlines arguments put by both sides of the gun control debate for future amendments to the gun laws. Finally, Part 8 provides an overview of significant developments in firearms regulation that have occurred since 1996 in Canada, the United Kingdom, New Zealand and the United Nations.

The publicly available APMC resolutions are provided in Appendices A, B and C. A detailed comparison of the NSW laws with these resolutions is provided in Appendix D.

2. OVERVIEW OF THE FIREARMS ACT 1997 AND THE FIREARMS (GENERAL) REGULATION 1997¹

The NSW firearms laws changed on 1 July 1997 with the commencement of the *Firearms Act 1996* (NSW). Under the new regime any current licence holder had to apply for a new licence before 30 July 1998. The most significant changes to the gun laws were as follows:

- a general ban on the use of semi-automatic rifles and shotguns and pump action shotguns, except for specific purposes.
- new licence categories.
- the introduction of a single licence which can cover multiple licence categories.

¹ References to sections are to the *Firearms Act 1996*; references to clauses are to the *Firearms (General) Regulation 1997*.

-
- proof of genuine reasons for a licence and special need for some licence categories.
 - the introduction of firearms registration.
 - new storage requirements.

Under section 92 of the *Firearms Act 1996*, a review of its operation is to be conducted 3 years after the date of its assent² and a report tabled in Parliament within 12 months after the end of the 3-year period. An overview of the NSW firearms laws is provided below.

Delegation of Police Commissioner's powers: An initial point to make is that, while the Act refers to the powers of the Police Commissioner to issues licences and permits and other matters, in fact it is the NSW Firearms Registry which exercises these powers in practice. Thus, the Commissioner's powers have been delegated to the head of the Registry who, presumably, has sub-delegated various powers to his or her subordinates.³

Principles and objects: The principles and objects of the Act are set out in section 3. The principles: (a) confirm firearm possession and use 'as being a privilege that is conditional on the overriding need to ensure public safety', thereby quashing any claim that individuals have a right to bear arms in NSW;⁴ (b) to improve public safety by imposing 'strict controls' on firearms and 'promoting' the safe and responsible storage and use of firearms; and (c) to facilitate a national approach to the control of firearms. The Act's objects included: (a) to prohibit the possession and use of automatic and self-loading rifles and shotguns except in special circumstances; (b) to establish an integrated licensing and registration scheme; and (c) to require a 'genuine reason' for the possession of a firearm. Section 12(2) makes it clear that an applicant does not have a genuine reason for possessing or using a firearm if the applicant intends to use the firearm for 'personal protection or the protection of any other person', or the 'protection of property' (except in certain circumstances).⁵

Licensing categories and authority conferred by licence: The different categories of

² The Firearms Act 1996 was assented to on 28 June 1996. Note that amendments have been made to the Act, notably by the Firearms Amendment Act 1996 which was assented to on 16 December 1996.

³ Section 81.

⁴ For a commentary on this issue see - G Griffith, *A Right to Bear Arms in NSW?* NSW Parliamentary Library Briefing Paper No 10/96.

⁵ However, note that the *Home Invasion (Occupants Protection) Act 1998* (NSW) and the common law of self-defence provides that, under certain circumstances, a person who acts in self-defence, the defence of his/her property, or the defence of another person, may have a complete defence to criminal liability resulting from his/her use of force. The Home Invasion Act and the common law do not preclude such force involving the use of a firearm. For an overview of the Home Invasion Act and the common law of self-defence, see G Griffith, *Home Invasion and Self Defence: An Update*, NSW Parliamentary Library Briefing Paper No 17/98.

licence are set out under section 8. *Category A* licences are the least restrictive and apply to an array of weapons, from air rifles to shotgun/rimfire rifle combinations. No ‘special need’⁶ must be shown for the licence to be issued. Typically, these licences would apply to members of shooting and hunting clubs. *Category B* licences apply to such weapons as shotgun/centre-fire rifle combinations and, further to section 13, a ‘special need’ must be demonstrated for a *Category B* licence to be issued.

- *Category C* and *D* licences both refer to ‘prohibited firearms’.⁷ *Category C* licences are basically restricted to primary producers who may, for example, own a pump action shotgun with a magazine capacity of no more than 5 rounds.⁸ However, section 17A makes additional provision for *Category C* licences to be issued for clay target shooting purposes. Whereas *Category C* licences refer to ‘prohibited firearms except for limited purposes’, *Category D* licences refer to firearms which are ‘prohibited except for official purposes’. Again, these purposes may include activities related to primary production, such as vertebrate pest control.⁹
- *Category H* licences refer to pistols, for which special restrictions operate under section 16, including the requirement to prove a ‘special need’. In addition, provision is made for a *Firearms Dealer Licence*¹⁰ and a *Firearms Collector Licence*. For the latter, special conditions are set out in section 20, including the requirement to render a firearm inoperable in certain circumstances.

Note that one licence may potentially cover all the licence categories and that only one fee is paid, regardless of how many categories a licence covers.

Genuine reasons for having a licence: Section 12 sets out a Table detailing the ‘genuine reasons for having a licence’, as follows:

- *Sport/target shooting*, which requires the applicant to be a current member of an approved shooting club which is affiliated with one of the organisations prescribed under Clause 78 of the Firearms (General) Regulation 1997. Read together, clauses 25 and 81 require a person to participate in at least 4 shooting competitions or to attend a shooting range conducted by any approved shooting club on no less than 4 occasions over a period of 12 months. Alternatively, a person holding a licence for a pistol for sport/target shooting purposes must attend at least 6 shooting competitions conducted by any approved pistol club, or else attend a shooting range

⁶ Note that a ‘special need’ requirement applies to Categories B, C, D and H licences.

⁷ A general list of prohibited firearms is set out in Schedule 1 to the Act. Certain of these are excluded from *Category C* and *D* licences.

⁸ Section 8 read with section 14 under which a ‘special need’ must be demonstrated.

⁹ Section 20A sets out special conditions of category D licences issued to primary producers. *Category D* weapons include pump action shotguns

¹⁰ Special provisions relating to Firearms dealers are found in Part 4 of the Firearms (General) Regulation 1997.

conducted by such a club on at least 6 occasions. Note that the issuing of a Category C licence under section 17A for clay target shooting purposes is subject to stringent conditions, including the requirement to show a physical need to have a self-loading or pump action shotgun in order to participate in clay target shooting competitions, plus the requirement to participate in at least 4 competitions over any period of 12 months.¹¹

- *Recreational hunting/vermin control*, under which the applicant must either be an owner or occupier of rural land or have appropriate permission to shoot on rural land, on the one hand, or to be a current member of an approved hunting club, on the other. To be a current member of such a club, a person must participate in no less than 2 events organised by the club.¹²
- *Primary production*, under which a primary producer must intend to use the firearm solely in connection with farming or grazing activities.
- *Vertebrate pest animal control*, which refers to such persons as professional contract shooters or a primary producer. Persons employed by authorised government agencies may be issued with a licence under this ‘good reasons’ heading.¹³ A Category D licence issued for the reason of vertebrate pest animal control is not to last more than 12 months.¹⁴
- *Business or employment*, under which the licence must be shown to be ‘necessary in the conduct’ of the applicant’s business or employment. A security guard is one example.
- *Occupational requirements relating to rural purposes*, under which the applicant must be employed or engaged in an appropriate rural occupation.
- *Animal welfare*, a category of reasons which related to such persons as RSPCA officers or veterinary surgeons or some other handler of animals who may need to destroy animals to avoid suffering.
- *Firearms collection*, under which the person must be a member of an appropriate club or society, attend at least one meeting every 12 months and demonstrate that the collection in question ‘has a genuine commemorative, historical, thematic or

¹¹ Section 17A read with clause 30. Note that the requirements differ for a person who, before 15 November 1996, was in lawful possession of a self-loading or pump action shotgun and was a member of a shooting club affiliated with the Australian Clay Target Association.

¹² Clause 27 read with Clause 81 (1) (c). Clauses 26-28 of the Firearms (General) Regulation 1997 set out other relevant requirements.

¹³ Clause 29 sets out the relevant government agencies.

¹⁴ Section 21 (2). Other licences usually last for 5 years (section 21 (1)).

financial value'.¹⁵

Onus on licensee: The onus is on the licensee to notify the NSW Firearms Registry if his or her 'genuine reason' ceases to exist.¹⁶

Special need: In addition to demonstrating a genuine reason for owning, possessing or using a firearm, an applicant for a Category B, C, D or H licence must satisfy a 'special need' requirement. In the case of Category C and D licences this involves showing that the special need cannot be met by a lower category of firearm.¹⁷

The 28-day waiting period and other restrictions: Among the general restrictions on the issue of a licence is the requirement that a licence not be issued until after the end of the period of 28 days after the application was made.¹⁸ This waiting period also applies to permits to acquire a firearm. Other restrictions on the issuing of a licence are also set out in section 11, for example, where an applicant has been convicted in the last 10 years of certain offences or made subject to an apprehended violence order.

Form of licence: Among other things, a licence must contain a recent photograph, bear the signature of the licensee, specify the licence category and specify the registered firearm (or firearms) to which the licence relates. The genuine reason for which the licence was issued is also to be included.¹⁹

Conditions of licence: General conditions apply to all licences, including the requirement to comply with safe keeping and storage requirements and, on conditions agreed to by the licensee and the Police Commissioner, permit inspection by a police officer of the storage facilities. A broader power to subject a licence to conditions is also available.²⁰

Suspension or revocation of licence: A licence may be suspended or revoked in certain circumstances, for example, it must be revoked where a licensee becomes subject to a firearms prohibition order²¹ or an apprehended violence order. It may be revoked, for instance, if a condition of the licence is contravened,²² or where it is not 'in the public

¹⁵ Clause 31 sets out the regulatory requirements.

¹⁶ Clause 12.

¹⁷ Sections 14 and 15. Section 17 refers to 'proof of special need', noting that the sort of evidence required may be specified in the Regulations. To date, this has not occurred.

¹⁸ Section 11 (2).

¹⁹ Section 18.

²⁰ Section 19.

²¹ Section 24 (1) with sections 73 and 74.

²² Section 24 (2).

interest' for the licensee to continue to hold the licence.²³

Surrender and seizure of firearm: If a firearm licence is suspended or revoked the licensee must immediately surrender both the firearm and the licence to a police officer. Seizure by the police is also permitted.²⁴

Permits to acquire a firearm: In addition to requiring a licence to possess or use a firearm, the *Firearms Act 1996* mandates that, where a firearm is to be purchased or otherwise acquired, then a 'permit to acquire' is needed. Only current licence holders may obtain a permit to acquire.²⁵ A separate permit to acquire is needed for each firearm.²⁶ A 28-day waiting period also applies in this context, as does the need for the applicant to have a 'good reason' for acquiring the firearm concerned.²⁷

Other permits: Other permits may also be issued under the Act, including a minor's firearms permit, a permit to allow the shortening or conversion of a firearm, or to possess or use a firearm for film or theatrical productions.²⁸ These 'other permits' are different in kind to both licences and permits to acquire, all of which are general in nature and apply across the board. On the other hand, the 'other permits' are all tailored for specific, individual purposes, as in the case of a minor who has a special reason for using a firearm. The 28-day waiting period does not apply for these 'other permits'.

Minor's firearms permit: Ordinarily a permit or licence holder must be of or above 18 years of age. The exception is where a minor's firearms permit applies of which there are two types. One is a 'Minor's firearms training permit', the second a 'Minor's target pistol permit'. The holder must be at least 12 years of age²⁹ and demonstrate that they have the written permission of a parent or guardian and have received safety instruction in accordance with the regulations. A 'Minor's firearms training permit' permits the holder to use a firearm (other than a pistol or a prohibited firearm)³⁰ of a specific category when receiving safety training under the supervision of a licensee who holds a permit for a similar category of firearm. A 'Minor's target pistol permit' permits the holder to receive safety

²³ Clause 17. Note that a permit may also be suspended or revoked - section 30 (4)-(7) and clause 18.

²⁴ Section 25.

²⁵ A person may submit an application for a licence at the same time as he or she submits an application for a permit to acquire. However, the licence application will need to be processed before the permit to acquire will be considered.

²⁶ Section 31 (2).

²⁷ Section 31 (3).

²⁸ Section 28. Part 6 of the Firearms (General) Regulation 1997 provides for the issuing of 'Additional types of permits', all of which are highly specific in nature.

²⁹ Clause 39. Clause 39A makes one exception to this rule.

³⁰ But note that under section 32 (5A) a minor may possess and use a category C firearm in certain circumstances.

training and participate, under the supervision of a person who holds a licence for a category H firearm, in such events as ‘are approved by the Commissioner’.

Restrictions on permits: Note that, as with licences, the issuing of permits generally is subject to various restrictions, for example, that the applicant is a ‘fit and proper person’ and has not been convicted in the last 10 years of certain offences or made subject to an apprehended violence order.³¹

Registration of firearms: Part 3 of the Firearms Act 1996 is headed ‘Registration of firearms’ and its purpose is to establish a registration scheme for all firearms that is integrated with the licensing and permit scheme.³² The Register is linked to the interstate firearms registers and the National Exchange of Police Information scheme (“NEPI”). The registration scheme provides for the Police Commissioner to issue a notice of registration to the person in whose name the firearm is registered, as well as for cancellation of registration on certain grounds. It is an offence to sell, purchase, possess or use an unregistered firearm. The police must be notified if a registered firearm is stolen, sold or lost. Also, the firearm must be produced for inspection by a police officer at ‘any reasonable time’.

Storage requirements: Section 39 of the Firearms Act 1996 requires that a person who possesses a firearm must take all reasonable precautions to ensure ‘its safe keeping, and that it is not stolen or lost and that it does not come into the possession of a person who is not authorised to possess the firearm’. Category A and B firearms must be stored in a locked receptacle of a type approved by the Commissioner. If the receptacle weighs less than 150 kg when empty it must be fixed in position in order to prevent its easy removal.³³ Category C, D and H firearms must be held in a ‘locked steel safe’ of a type approved by the Commissioner which is bolted to the structure of the premises.³⁴ Ammunition for all categories of firearms must be stored in a separate locked container approved by the Commissioner.

Under Clause 101 of the Regulations, ‘prohibited firearms’ (Category C and D) and all handguns must be unloaded and carried separately from ammunition when being transported.³⁵ Such firearms must be carried in a locked container secured to, or within, the vehicle used for transporting the firearm. Further, the firearm must be rendered temporarily inoperative, for example, by removing the bolt or the firing mechanism, or by using a restraining device such as a trigger lock.

Recognition of interstate licences: Section 26 of the Firearms Act 1996 provides for

³¹ Section 29.

³² It can be read with Part 11 of the Firearms (General) Regulation 1997.

³³ Section 40.

³⁴ Section 41.

³⁵ The clause gives effect to section 57 of the Act.

temporary recognition of interstate licences (the equivalent of a Category A, B or H licence) for the purposes of participating ‘in a shooting competition approved by the Commissioner (or for such other purposes as may be prescribed by the regulations. This includes hunting where one has written permission)’.³⁶ The licensee must hold a corresponding licence in his or her home State for the particular category of firearm. Arrangements are also made for Category C licence holders in specific circumstances.

Licence holders who move permanently to NSW must notify the Commissioner in writing of their intention. In these circumstances, an out-of-State licence for Category A and B firearms is valid for 3 months, while an out-of-State licence for Category C, D and H firearms is valid for 7 days.

Firearms Dealers: Read together, Part 5 of the Firearms Act 1996 and Part 4 of the Firearms (General) Regulation 1997 make detailed provisions in respect to firearms dealers. In particular, stringent record keeping requirements are established.

‘On-the-spot’ inspection of firearms and licences by police: The police can inspect any firearm carried by a person, and demand the production of any relevant licence or permit.³⁷ With reasonable excuse, a licence or permit may be produced within 6 hours of it being demanded by the police. Indeed, a licence or permit can be demanded for inspection at any time.³⁸

Disclosures by doctors and health practitioners: Nothing prevents a medical or health practitioner from informing the Commissioner that a person is unsuited to be in possession of a firearm, either because of his or her mental condition or if, in the practitioner’s opinion, he or she is ‘might attempt to commit suicide, or would be a threat to public safety’.³⁹ There is not a requirement to inform, therefore; only the capacity to do so despite any duty of confidentiality that may apply.

Liability of parents: A parent or guardian who knowingly authorises or permits a contravention of the Firearms Act 1996 or regulations by a minor is to be held liable for that contravention.

Security guards: Part 7 of the Firearms (General) Regulation 1997 sets out special provision relating to security guards. Under the new regime, security guards had to be licensed before 31 December 1997. When applying for a licence the applicant must show ‘Security guard’ as the genuine reason and provide a copy of his or her Security Guard Licence and firearms safety accreditation certificate with the application. Category H (pistol)

³⁶ Additional purposes are set out under clause 23, Firearms (General) Regulation 1997 (NSW). For example, a Category A or B licence holder is authorised to possess and use a firearm for recreational hunting/vermin control or vertebrate pest control.

³⁷ Section 59.

³⁸ Section 68.

³⁹ Section 79 and clause 97.

licences are available to security guards, and in some cases a Category A shotgun may be applied for. A security guard can only carry a shotgun when on duty in an armoured car.⁴⁰ Various restrictions apply to a Security Guards Firearms Licence. For example, the licence only allows the security guard to use his or her employer's firearm, only one firearm can be used at any one time, and the safe carriage of the pistol must be ensured. Moreover, the firearm must be returned to the employer's premises at the end of daily duty.⁴¹ A detailed register is to be kept by security guard employers of firearms and ammunition, as well as of employees licensed to possess them. Each firearm is to be inspected every 3 months and serviced at least once a year. Also, each security guard must undertake a continuing firearms safety training course at least once a year.

Firearms safety training courses: Section 11 (3) (b) of the Firearms Act 1996 requires any person who has never held a licence to undertake a safety training course. Clause 96 of the Firearms (General) Regulation 1997 stipulates that, for firearms other than pistols, the course must be conducted 'by or on behalf of the Firearms Safety Awareness Council. For pistols, it must be an approved course 'conducted by or on behalf of an approved pistol club'. Despite these provisions, at present, safety training courses for first time applicants are not mandatory and no courses have been approved. First time applicants for a non-pistol licence must pass a 20 question multiple choice test. Any training received by a first time applicant for a pistol licence is determined by the applicant's pistol club.

Approval of clubs: Approved clubs play a key role in the operation of the new firearms regime. To be approved, a club must apply to be affiliated to certain Associations designated under the Regulations. In addition, detailed membership information must be provided to the Commissioner. Once approved, a club must then maintain membership details, maintain at least 10 members, submit annual returns and certify that members have met with attendance requirements. Clause 79 sets out where approval for a club may be revoked, including where any member has committed a relevant firearms offence and has not been disqualified by the club as a member.⁴²

Club reporting requirements: An approved club must notify the Firearms Registry within 14 days of any change in membership, including members leaving or changing their names or residential addresses. In addition, the club must submit an annual return relating to club membership. Under this requirement the club must certify that current members have complied with the club membership requirements and provide a list of former club members who have been disqualified for failing to meet membership requirements.⁴³

Club membership requirements: As noted, for a *pistol club*, a current member must participate in at least 6 shooting competitions at an approved pistol club, or attend the

⁴⁰ Clause 61 (2). Or before entering, or after leaving, an armoured car or similar vehicle.

⁴¹ However, a temporary exception is provided for under clause 66.

⁴² Part 9 of the Firearms (General) Regulation 1997.

⁴³ Clause 80.

shooting range of an approved club for shooting practice on at least 6 occasions. For *other shooting clubs*, a current member must participate in at least 4 shooting competitions at an approved shooting club, or attend the shooting range of an approved shooting club for shooting practice on at least 4 occasions. For *hunting clubs*, a current member must participate in at least 2 club hunting, shooting or firearms safety training events held by an approved hunting club. For *collectors' clubs or societies*, a current member must attend the Annual General Meeting or at least one other meeting of an approved club.⁴⁴

Appeals: Under the firearms legislation as originally enacted appeals, including appeals against certain decisions made by the Commissioner, were to be heard by a magistrate of the Local Court. This arrangement changed in 1997, with Part 8 of the Firearms Act 1996 now providing a right of review to the Administrative Decisions Tribunal.⁴⁵

3. COMPARISON OF THE NSW FIREARMS LAWS WITH THE NATIONWIDE AGREEMENT ON FIREARMS

As stated in the introduction, on 10 May 1996, the APMC passed eleven resolutions agreeing to comprehensive firearms law reform. These resolutions are attached at Appendix A.

Since 10 May 1996, the APMC has passed further resolutions amending some aspects of the Nationwide Agreement. The subsequent resolutions have not been formally released, but some of the resolutions some passed on 17 July 1996 were provided in the Police Minister's second reading speech for the Firearms Amendment Bill 1996 (NSW).⁴⁶ These resolutions are attached at Appendix B. In addition, the resolution passed on 15 November 1996 in relation to clay target shooters was provided in a News Release of the Federal Attorney-General. This resolution is attached at Appendix C.

The legislation in NSW substantially complies with the resolutions of the APMC. The relevant legislation is the *Firearms Act 1996 (NSW)* (“**the Act**”), the *Firearms (General) Regulation 1997 (NSW)* (“**the Regulation**”) and the *Firearms (Compensation) Regulation 1996 (NSW)*.

An overview of the APMC resolutions, and the compliance of NSW with the resolutions, is provided below. A detailed comparison of each resolution with the NSW legislation is provided in Appendix D.

Resolution 1: Bans on Specific Types of Firearms: This resolution provided for a ban on all automatic and semi-automatic shotguns and rifles except for military, police, government

⁴⁴ Clause 81. Under clause 82 a club member must notify the club of relevant changes in personal details.

⁴⁵ Section 75. Clause 117 of the Firearms (General) Regulation 1997 sets out the prescribed decisions under section 75 (1)(g).

⁴⁶ NSWPD, 31/10/96, p 5703, per the Hon. P Whelan MP.

or occupational purposes. On 15 November 1996, this resolution was amended to allow the use of semi-automatic and pump action shotguns in clay target shooting competitions.

NSW complies with this resolution.

Resolution 2: Effective Nationwide Registration of all Firearms: This resolution provided that all jurisdictions establish an integrated licence and firearms registration system (if they did not already have such a system), and that all systems be linked through the National Exchange of Police Information (NEPI) to ensure effective nationwide registration of all firearms.

NSW complies with this resolution. Prior to the enactment of the Firearms Act 1996, only handguns were registered in NSW. Under the 1996 Act, all firearms must now be registered. The Act expressly provides that the “Register” is to be linked to NEPI.⁴⁷

Resolution 3(a): Personal Protection: This resolution provided that personal protection not be regarded as a genuine reason for owning, possessing or using a firearm.

NSW complies with this resolution. The legislation provides that an applicant does not have a genuine reason for possessing or using a firearm if the applicant intends to use the firearm for ‘personal protection or the protection of any other person’, or the ‘protection of property’ (except in certain circumstances).⁴⁸

Resolution 3(b): Genuine reason for Owning, Possessing or Using a Firearm: The APMC resolved that a licence applicant must establish one of the following “genuine reasons” for owning, possessing or using a firearm:

- * sporting shooters with valid membership of an approved club (defined as participants in shooting sports recognised in the charters of such major events as the Commonwealth Games, Olympic Games or World Championships);
- * recreational shooters/hunters who produce proof of permission from a landowner;
- * persons with an occupational requirement, eg primary producers, other rural purposes, security employees and professional shooters for nominated purposes;
- * bona fide collectors of lawful firearms; and
- * persons having other limited purposes authorised by legislation or Ministerial approval in writing (for example, firearms used in film production).

NSW complies with this resolution except in the following respects:

⁴⁷ Section 33(3)(a).

⁴⁸ Section 12(2)(a).

Approved sport/target shooting clubs: The legislation does not provide that an approved club must be a participant in shooting sports recognised in the charters of major sporting events.

Recreational hunting: The legislation (but not the resolution) provides that membership of a hunting club establishes a genuine reason of recreational hunting.

Resolution 3(c): Genuine Need: The APMC resolved that over and above satisfaction of the “genuine reason” test, an applicant for a Category B, C, D and H licence must demonstrate a genuine need for the particular type of firearm.

NSW complies with this resolution. The Act provides that the regulations can provide what is needed to establish a special need,⁴⁹ but the regulations do not yet provide anything in this regard.

In contrast to the legislative requirements for a Category C or D licence (although not required by the resolution), there is no legislative requirement that an applicant for a Category B licence produce evidence that the special need for such a licence cannot be met by any other means, including a lower category (that is, a Category A) firearm.

However, a brochure produced by the New South Wales Police Service states:

“If you are applying for a licence for Categories B, C, D or H firearms, you will need to show a special need for using those types of firearms.

For Category B, C or D firearms you will need to explain why a lower category of firearm cannot meet your need. For example, if you are applying for a category B licence and your genuine reason is recreational hunting, you must show that a category A firearm is not sufficient for the type of game you hunt.”⁵⁰

This indicates that, despite the absence on an express legislative requirement, the practice of the Police Service may be to require an applicant for a Category B licence to show a special need by showing that a Category A licence is not sufficient for the proposed purpose.⁵¹

Resolution 3(c): Licence Category C: On 10 May 1996, the APMC resolved that Category C licences will be limited to primary producers only, and that the licence holder will be

⁴⁹ Section 17. Note that in his second reading speech, the Attorney-General said that the issue of how special need is to be shown may be considered further by the APMC: see *NSWPD*, 25/6/96, p 3560, per the Hon. J W Shaw MLC.

⁵⁰ New South Wales Police Service brochure, “Our gun laws have changed”, 9/97 at p 5.

⁵¹ In his second reading speech, the Attorney-General said that the issue of whether special need is to be shown by applicants for a Category B licence may be considered further by the APMC: *NSWPD*, 25/6/96, p 3560, per the Hon J W Shaw MLC.

limited to a maximum of one Category C rifle and one Category C shotgun. On 17 July 1996, the APMC agreed that primary producers with very large properties or more than one property may have more than one rifle and one shotgun, and that employees may use their employer's firearms while working on the property. In addition, on 15 November 1996, the APMC agreed to allow a restricted class of clay target shooters to have access to semi-automatic and pump action shotguns subject to specified conditions.

NSW complies with the above resolutions except as follows in relation to clay target shooting:

- The legislation does not require a shooting club to cancel a person's membership if they fail to take part in a minimum of 4 club competitions per year as required by the resolution.
- The resolution provides that a Category C licence issued for clay target shooting will only authorise use of the firearm on an authorised shooting range in accordance with approved competition and associated training programs. The legislation does not provide for any approved competition and associated training programs.
- The legislation does not subject international competitors to the same requirements as Australian competitors in relation to use and storage as required by the resolution. A Category C licence is subject to the conditions that the firearm be loaded with a maximum of two rounds, that it only be used for shooting at clay targets and associated training programs while on an approved shooting range⁵², and that it be stored in a locked steel safe that cannot be easily penetrated and is bolted to the structure of the premises.⁵³ These conditions do not apply to international competitors. There are no provisions in the legislation specifying conditions in relation to use and storage for international competitors. The standard "Overseas Competitor" permit issued by the Commissioner specifies the following conditions:

"...2) All ammunition must be stored in a locked container and be kept separate from the firearms.

3) The permit holder shall take all reasonable precautions to ensure the safe keeping of the firearm/s at all times to prevent loss, theft or a firearm coming into the possession of an unauthorised person".

In addition, under the APMC resolutions, the only valid purposes or genuine reasons for a Category C licence are primary production and clay target shooting. These are the only purposes currently provided for in the legislation.⁵⁴ However, the Act provides that other

⁵² Section 17A(2).

⁵³ Sections 17A(7) and 41.

⁵⁴ Primary production: section 14(a). Clay target shooting: section 17A.

genuine reasons for a Category C licence may be prescribed in the regulations.⁵⁵

Category D Licences for Primary Producers: At the meeting on 17 July 1996, the APMC agreed that a limited class of primary producers should have access to a Category D firearm for the purpose of culling large feral and Brucellosis and Tuberculosis Campaign (BTEC) animals subject to specified conditions.

NSW complies with this resolution except in the following respects:

- There is no requirement that a primary producer applying for a Category D licence meet all the qualifications which are required for accreditation of professional shooters as required by the resolution. The legislation does not provide for any accreditation of professional contract shooters.
- There is no provision in the legislation specifying that ground culling will only be allowed where airborne culling is not practicable as required by the resolution.

Resolution 4(a): Basic Licence Requirements - applicant: This resolution provided that: a licence applicant must be over 18 years of age; a fit and proper person; provide proof of identity; and undertake adequate safety training.

NSW complies with this resolution. However, NSW provides for minors' firearms permits for persons under 18 years of age. The APMC resolutions make no reference to possession and use of firearms by minors.

Resolution 4(b): Basic Licence Requirements - form, duration and conditions: This resolution specified minimum requirements for the form, duration and conditions of a licence. The requirements included that a licence contain a photograph of the licensee, be issued after a waiting period of 28 days, be issued for a maximum of 5 years, contain a reminder of safe storage requirements, be issued subject to undertakings to comply with storage requirements, and be subject to immediate withdrawal in certain circumstances. The requirement that a licence contain the address of the licensee was withdrawn on 17 July 1996.

NSW complies with all requirements specified in this resolution.

Resolutions 4(c) and 4(d): Interstate Recognition: This resolution provided that all States and Territories recognise licences issued in other Australian jurisdictions for visiting gun owners in order to facilitate the lawful pursuit of sporting and other purposes. For gun owners that move permanently to a new State or Territory, it was agreed that interstate Category A and B licences be recognised for a maximum of 3 months, and interstate Category C, D and H licences be recognised for a maximum of 7 days. On 17 July 1996, the APMC resolved that a hunter would require permission from a land owner in another

⁵⁵ Section 14(a). No other genuine reasons are currently prescribed.

jurisdiction in order to shoot in that jurisdiction, and that such permission would enable the hunter to shoot only on the land described in the permit and owned by the land owner.

NSW complies with this resolution except in the following respects:

- Interstate Category A and B licences are recognised for the purpose of recreational hunting, but there is no requirement for an interstate licensee to obtain permission from a land owner in NSW in order to shoot in NSW.
- If a holder of an interstate Category C, D or H licence notifies the Commissioner that he/she intends to reside in NSW, then the interstate licence is valid for 7 days or until the person's application for a NSW licence has been granted or refused (whichever is the later).⁵⁶ Thus, an interstate Category C, D or H licence may be recognised for longer than 7 days while a person's licence application is being processed.

Resolution 4(e): Licence Categories: This resolution provided the following categories be used in licensing 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 shotguns/rifle combinations;

Licence Category C (prohibited except for occupational purposes):

- semi automatic rimfire rifles with a magazine capacity no greater than 10 rounds;
- semi automatic shotguns with a magazine capacity no greater than 5 rounds;
- pump action shotguns with a magazine capacity no greater than 5 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 5 rounds;
- self-loading rim-fire rifles with a magazine capacity greater than 10 rounds.

⁵⁶ Sections 27(3) and 27(4).

Licence Category H (Restricted):

- all handguns, including air pistols

NSW complies with this resolution.

Resolution 5: Training as a Pre-requisite for Licences: This resolution provided that an accredited course in safety training for firearms must be completed for all first time applicants. It was agreed that the course should be comprehensive and standardised across Australia, subject to accreditation of the course syllabus by an appropriate authority and a system of accredited instructors, outlined in a Firearms Safety Code issued to all new licence applicants, and monitored as to content of courses and the skills of instructors by firearms regulatory authorities. In addition, it was agreed that a specialised course should be established for training of persons employed in the security industry.

NSW complies with this resolution in relation to security guards, but does not comply in relation to first time licence applicants.

A new licence applicant in NSW for any licence category other than category H (pistol licence) does not have to complete any firearms safety training course before being issued with a licence. Rather, the applicant must pass a 20 question multiple choice test conducted by the Firearms Safety Awareness Council.

Any training done by a new applicant for a Category H (pistol) licence is determined by the individual approved pistol club of which the applicant is a member.

Resolution 6: Grounds for Licence Refusal or Cancellation and Seizure of Firearms: This resolution proposed the minimum standards for when licences are to be refused or cancelled. “General reasons” for refusal or cancellation included lack of good character, conviction for an offence involving violence within past five years, contravention of firearm law, unsafe storage, and public interest. “Specific reasons” included where applicant/licence holder has been the subject of an Apprehended Violence Order, or has a conviction for assault with a weapon/aggravated assault within the past five years. “Mental or physical fitness” was specified as a separate ground for refusal or cancellation. The resolution also provided for appeal from a refusal or cancellation of a licence.

It appears that NSW substantially complies with this resolution. As identified by Professor Kate Warner in her report on firearms legislation in Australia published by the Australian Institute of Criminology, the distinction between general and specific reasons in the resolution is not entirely clear. She asks whether the general reasons were intended to be matters which could lead to the conclusion that an applicant was not a fit and proper person, and whether the specific reasons were intended to be grounds on which a licence must be refused or cancelled.⁵⁷ If so, then she notes that revocation is not automatic upon conviction

⁵⁷ Warner K, *Firearms Legislation in Australia*, Australian Institute of Criminology, April 1997, p 37.

for aggravated assault/assault with a weapon.⁵⁸

In addition, there are no defined circumstances (as required by the resolution) as to when it will be within the public interest to refuse or cancel a licence.

Resolution 7: Permit to Acquire: The APMC resolved that a separate permit be required for the acquisition of every firearm. It was agreed that the issue of the 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.

NSW complies with this resolution.

Resolution 8: Uniform Standard for the Security and Storage of Firearms: This resolution provided minimum basic storage standards and other requirements relating to storage of firearms. Different storage standards were specified for Category A and B firearms, and Category C, D and H firearms. The APMC resolved that it should be a precondition to the issuing and renewal of a firearms licence that the licensing authority be satisfied as to the proposed storage and security arrangements. In addition, it was agreed that: failure to comply with storage requirements would be an offence as well as a ground for revocation of a licence; a firearms owner should take reasonable precautions to ensure safekeeping when firearms are temporarily away from their usual place of storage; and a reminder of safe storage responsibilities should be on the licence itself.

NSW complies with this resolution.

Resolution 9: Recording of Sales: The APMC resolved that firearms sales must be conducted only by or through firearms dealers (except in remote locations where local police officers may certify sales). Firearms dealers must ensure that purchasers are appropriately licensed, record and maintain details of the sales, provide the details to the relevant licensing authority, and make their records available to police. The resolution also provided that ammunition should only be sold to purchasers that hold a licence for a firearm which takes that ammunition, and that there be limits on the quantity of ammunition that may be purchased in a given period.

NSW complies with this resolution except that there is no specified maximum amount of ammunition that may be purchased in a given period.

Resolution 10: Mail Order Sales Control and Transport of Firearms: This resolution provided that mail order arrangements must be between licensed firearms dealers only, advertisement of firearms for sale must be conducted by or through a licensed firearm dealer, the movement of Category C, D and H firearms must be in accordance with prescribed safety standards, and that the commercial transport of ammunition with firearms

⁵⁸

ibid.

is prohibited.

NSW complies with this resolution except that there is no prohibition on the commercial transport of ammunition with firearms.

Resolution 11: Compensation/Incentive Schemes: This resolution provided for a 12 month amnesty and buy-back scheme for prohibited firearms. Further resolutions were made in relation to settlement of disputes relating to firearms valuations, selling firearms overseas, and the valuation of firearms dealers' loss of business.

NSW substantially complied with these resolutions.

Collector licences: On 17 July 1996, the APMC agreed to replace the regulatory scheme agreed to on 10 May 1996 in relation to firearms collectors with a new scheme. It was agreed that a collector must be bona fide with a collection of obvious and significant commemorative, historical, thematic or investment value. Category D collection firearms must be rendered permanently inoperable. Other types of firearms must be rendered temporarily inoperable in the specified manner. Collection firearms must be stored in accordance with specified standards. In addition, a Collector Licence does not authorise possession of ammunition (unless an ammunition collector's licence is held), or the discharge of any firearm in the collection.

NSW complies with this resolution.

Ammunition Permit: On 17 July 1996, the APMC agreed to a regulatory regime for ammunition collectors. It was resolved that jurisdictions should consider requiring an ammunition collector to have a licence or permit to purchase or possess ammunition unless covered by an appropriate shooter's licence. All collection ammunition must be rendered inert (other than specified exceptions) and must not contain high explosive, smoke, chemical or lachrymatory agents. Adequate storage requirements must be a condition of an ammunition collector licence.

NSW substantially complies with this resolution. The legislation does not specify any storage requirements, but storage requirements are specified on the standard Ammunition Collectors Permit.

Museum Permit: On 17 July 1996, the APMC resolved that official museums should not be subject to the requirements agreed upon for private collectors, but all other museums should be subject to these requirements. NSW complies with this resolution.

Heirlooms Permit: On 17 July 1996, the APMC resolved that an heirloom permit may be issued for a firearm that has been inherited. Heirloom firearms must be rendered permanently inoperable. NSW complies with this resolution.

4. COMPARATIVE OVERVIEW - FIREARMS LEGISLATION IN OTHER

STATES AND TERRITORIES⁵⁹

What follows is a comparative account of the key aspects of the firearms regimes in the other Australia States and Territories. It is not comprehensive in scope therefore. Broadly speaking, the various Acts and Regulations passed since 1996 establish a national uniform scheme. However, as many commentators have pointed out, important differences exist from one jurisdiction to another. Take, for example, the question of whether one licence should cover all categories of guns in a person's possession: in NSW and Victoria a single-licence scheme of this kind operates, whereas in other jurisdictions, Queensland being one example, separate licences are issued for different categories of gun ownership. In Western Australia, on the other hand, each firearm is licensed separately. The important question is whether differences of this kind are more a matter of administrative practice than underlying principle, leaving the core consistency of the scheme intact. With minor variations, the licence categories for different types of firearms are consistent across the jurisdictions.⁶⁰ Other salient points of convergence and divergence, some of which may be more significant to the integrity of the national scheme, are discussed below.

Registration: The NSW legislative regime establishes a registration scheme for all firearms that is integrated with the licensing and permit scheme.⁶¹ The Register is linked to the interstate firearms registers and the National Exchange of Police Information scheme

⁵⁹ This comparative analysis is based on the report by Kate Warner, *supra* n 57. This is referred to henceforth as 'Warner report'.

⁶⁰ Warner notes that Queensland has two additional categories, Category E and R; South Australia adds 'paint-ball firearms' to Category A and has an additional category of prescribed firearm for which a licence may be obtained; and Victoria also has a Category E but has no Category H (Warner report, page 97).

⁶¹ It can be read with Part 11 of the Firearms (General) Regulation 1997.

(NEPI). Substantially the same arrangements apply in *Tasmania*,⁶² the *ACT*⁶³ and the *Northern Territory*.⁶⁴

- In *Queensland*,⁶⁵ *South Australia*⁶⁶ and *Victoria*⁶⁷ registration is also provided for, but in none of these jurisdictions is mention made of the NEPI system or to the compatibility of its registration scheme to those operating in the other States and Territories. In Queensland, the Commissioner may in certain circumstances make information available to ‘another entity, within or outside the State’.⁶⁸
- On the other hand, *Western Australia* contains no separate legislative requirements for registration. Instead, as Kate Warner explains, licences name and identify the firearm in the licence, with the regulations then providing for a register of licences, permits and approvals. Warner comments, ‘There is no reference in the Act to the NEPI system nor access by other authorities’.⁶⁹

Personal protection not a genuine reason: The NSW Act excludes personal protection and (with certain exceptions) the protection of property from being a genuine reason for owning, possessing or using a gun. Of the other jurisdictions, *Tasmania*,⁷⁰ *Western Australia*⁷¹ and the *ACT*⁷² all expressly exclude personal protection as a genuine reason. *Victoria*, on the other hand, establishes a regime which does not allow ‘self-defence’ to be used as a reason for gun ownership.⁷³ Neither *Queensland*, *South Australia* or the *Northern Territory* appear to expressly provide that personal protection is not a genuine reason for gun ownership.

Genuine reasons for possessing a firearm: The 8 categories of ‘genuine reasons’ for owning, possessing or using a firearm under the NSW Firearms Act 1996 have been discussed. It has been noted, too, that membership of a hunting club permits recreational

⁶² Part 4, Firearms Act 1996 (Tas).

⁶³ Part IV, Firearms Act 1996 (ACT).

⁶⁴ Section 7, Firearms Act 1997 (NT).

⁶⁵ Section 49, Weapons Act 1990 (Qn).

⁶⁶ Section 27 (1)(b), Firearms Act 1977 (SA).

⁶⁷ Part 5, Firearms Act 1996 (Vic).

⁶⁸ Section 49 (3), Weapons Act 1990 (Qn).

⁶⁹ Warner report, p 7. Section 16 of the Firearms Act 1973 (WA) read with clause 21 of the Firearms Regulations 1974.

⁷⁰ Section 37 (2), Firearms Act 1996 (Tas). The protection of family and property (other than in the course of carrying out the duties of a security guard) are also expressly excluded as genuine reasons.

⁷¹ Section 11A (5), Firearms Act 1973 (WA).

⁷² Section 23 (2)(a), Firearms Act 1996 (ACT). Express reference is also made to the protection of other persons and, with certain exceptions, the protection of property.

⁷³ Section 1, Firearms Act 1996 (Vic).

hunting in NSW, as an alternative to the requirement of proof of written permission from the landowner.⁷⁴ The same alternative requirements apply in the *ACT*.⁷⁵

- The *Tasmanian*⁷⁶ and *ACT* statutes are in largely the same form as their NSW counterpart, except that in the *ACT* an additional category of ‘genuine reason’ is added under the title, ‘Composite Entity’, to cover security organisations, approved clubs and appropriate government agencies.⁷⁷ In Tasmania, licence applicants whose genuine reason is sport or target shooting must be members of an ‘approved shooting organisation’. Furthermore, anyone seeking to licence a firearm for recreational hunting or vermin control must produce proof that they have the permission of an owner or occupier of land (or any appropriate government authority).⁷⁸ Comparable arrangements apply in the Northern Territory.⁷⁹ The treatment of ‘genuine reasons’ under the *Northern Territory* firearms statute also follows the same format as the NSW legislation, but ‘museum display’ and ‘inheritance’ are added to the list of reasons.⁸⁰
- For *Victoria*, before any licence can be issued, all applicants must provide written proof that they have permission to hunt on private land, or hold a game licence, or are a member of an approved club, or have appropriate occupational prerequisites.⁸¹ The list of ‘genuine reasons’ is again similar to that found in NSW, but includes a broadly-worded reason which refers to ‘an official, commercial or prescribed purpose or for a purpose authorised by an Act or regulation’.⁸² Likewise, the

Queensland statute adds ‘another reason prescribed under a regulation’ to its categories of genuine reasons to possess a firearm.⁸³ Its club membership and

⁷⁴ The relevant APMC required recreational hunters to produce proof of permission from a landowner. In the NSW statute a range of options are available, of which proof of permission is only one.

⁷⁵ See the Table attached to section 23 of the Firearms Act 1996 (ACT).

⁷⁶ Section 37, Firearms Act 1996 (Tas). Instead of having a separate category for occupational requirements relating to rural purposes (other than vertebrate pest control etc), a separate ‘show or exhibition’ category is added.

⁷⁷ Section 23, Firearms Act 1996 (ACT).

⁷⁸ Sections 38 and 39, Firearms Act 1996 (Tas).

⁷⁹ Part 2, Division 1 (2)-(3), Firearms Regulations 1997 (NT).

⁸⁰ Section 11 (2), Firearms Act 1997 (NT).

⁸¹ Section 10 (2)(a)-(e), Firearms Act 1996 (Vic).

⁸² Section 10 (1)(e), Firearms Act 1996 (Vic). Paintball activities are also included under section 10 (2)(a)(ii)(B).

⁸³ Section 11, Weapons Act 1990 (Qn). Clause 4 of the regulations adds three more genuine reasons: a military re-enactment or historical demonstration; for a sporting organisation to possess a firearm to start sporting events; and for a theatrical organisation to possess a

approval requirements are similar to those in other jurisdictions, but note that (as in NSW and the ACT) recreational shooters must produce either proof of written permission from a landowner or proof of active club membership.⁸⁴

- In her 1997 report, Kate Warner comments that *Western Australia* complies with the APMC resolution in this context, except that, under section 11A (2)(b) of the Firearms Act 1973, a genuine reason is established if the firearm is to be used by the person ‘as a member of an organisation approved under this paragraph’.⁸⁵ This would appear to be broader than the approach envisaged under the APMC resolution. Active membership of a shooting club is required, or for recreational hunting the permission of the owner of the land in question. The Western Australian police advise that, whilst there is no specific legal requirement, the police ‘routinely demand proof (usually in the form of a letter) that an applicant has either the support of a club or permission from a land-owner before they will issue a licence’.⁸⁶
- In *South Australia*, the genuine reasons are set out in the regulations, which include reference to paint-ball shooting and ‘such other purpose as is approved by the Registrar’.⁸⁷ As Kate Warner notes, for South Australia ‘There is no requirement that recreational shooters produce proof of permission from a landowner’⁸⁸

Special or genuine need: In NSW, in addition to demonstrating a ‘genuine reason’ for owning, possessing or using a firearm, an applicant for a Category B, C, D or H licence must satisfy a ‘special need’ requirement. In the case of Category C and D licences this involves showing that the special need cannot be met by a lower category of firearm.⁸⁹ Again, the legislative requirements in *Tasmania* and the *ACT* are substantially similar, with Kate Warner suggesting in her 1997 report that *Queensland* and *Western Australia* also satisfy the terms of the APMC resolution.

On this issue, Warner went on to comment that ‘three jurisdictions, South Australia, Victoria (unless the reason is occupational) and the Northern Territory do not require a genuine need for a category B firearm. Moreover South Australia does not require

firearm for a theatrical production.

⁸⁴ Section 13, Weapons Act 1990 (Qn).

⁸⁵ Warner adds that ‘the sports conducted by approved shooting clubs are not limited to the sports envisaged in the APMC resolution - (Warner, page 11).

⁸⁶ www.ssaa.org.au/lawwa.htm

⁸⁷ Clause 12 (2), Firearms Regulations 1993 (SA). Warner writes that under section 12 (5) of the Principal Act the Registrar must not grant a firearms licence unless satisfied that the applicant intends to use the firearm for the purpose endorsed on the licence (Warner, page 10).

⁸⁸ Warner, p 10.

⁸⁹ Sections 14 and 15. Section 17 refers to ‘proof of special need’, noting that the sort of evidence required may be specified in the Regulations. To date, this has not occurred.

demonstration of a need for a Category H firearm. In Victoria there is no requirement to establish a genuine need for Category D if the reason is official or commercial'.⁹⁰

Category C licences and clay target shooting: It has been noted that the issuing of a Category C licence under section 17A of the NSW Firearms Act 1996 for clay target shooting purposes is subject to stringent conditions, including the requirement to show a physical need to have a self-loading or pump action shotgun in order to participate in clay target shooting competitions, plus the requirement to participate in at least 4 competitions over any period of 12 months.⁹¹

Warner comments in this regard that the physical need requirements do not apply in *South Australia* and *Western Australia*; moreover, in the *Northern Territory* Category C firearms are allowed for sports shooting without restricting it to clay target shooting.⁹²

Later amendments were considered by Professor Simon Chapman who noted that, while the APMC agreement restricted access to Category C firearms to clay target shooters who are affiliated with the Australian Clay Target Association (ACTA), *Victoria*, *Queensland* and the *Northern Territory* amended their legislation to allow licences to 'members of approved clay target clubs using an approved club range, regardless of whether they are affiliated with the ACTA'.⁹³ However, as Chapman goes on to explain, in March 1998 the Prime Minister moved to ban the importation of Category C firearms, subject to certain well-defined exceptions. This action, Chapman noted, 'meant that should any State liberalise access to Category C guns, a person thus newly licenced would have very few opportunities to legally purchase such a gun unless obtaining authorisation from the federal Attorney General. Only those guns placed on the market by the limited number of persons authorised to have access to Category C guns would be legally available to such shooters'.⁹⁴ The significance of these developments for NSW would appear to be that a clay target shooter with a physical disability must now seek the permission of the Federal Attorney General to import either self-loading shotguns or pump-action repeating shotguns (or parts).⁹⁵

Form of licence: Among other things, consistent with the APMC resolution a NSW firearms licence must contain a recent photograph, bear the signature of the licensee, specify the licence category and specify the registered firearm (or firearms) to which the licence relates. The genuine reason for which the licence was issued is also to be included, as is a

⁹⁰ Warner report, p 96.

⁹¹ Section 17A read with clause 30. Note that the requirements differ for a person who, before 15 November 1996, was in lawful possession of a self-loading or pump action shotgun and was a member of a shooting club affiliated with the Australian Clay Target Association.

⁹² Warner report, p 96; Clause 12, Firearms Regulations 1997 (NT).

⁹³ S Chapman, *Over Our Dead Bodies*, Pluto Press 1998, p 164. It seems the Western Australian Government estimated that less than 100 people would be affected by the regulation.

⁹⁴ *Ibid*, p 166.

⁹⁵ Customs (Prohibited Imports) Regulations (Amendment), No 52, 1998.

reminder of the need to comply with safe storage requirements.⁹⁶

Following Warner, it can be said that most jurisdictions have complied with the basic licence requirements under the APMC resolution. Warner comments that, as to the form of the licence itself, 'Queensland does not appear to require a photograph and neither Queensland, Western Australia nor the Northern Territory require a reminder of safe storage responsibilities on the licence'.⁹⁷

The 28-day waiting rule: The issue of the 28-day waiting rule has proved to be particularly controversial. As noted, for *NSW* any licence or permit to acquire a firearm is not to be issued until 28 days after the application was made.⁹⁸ The same applies in *Tasmania*⁹⁹ and the *ACT*.¹⁰⁰

- In *Western Australia* a 28-day waiting period applies to first time licence applicants only¹⁰¹ (permits to acquire are not included, although in practice a person could not possess a firearm without first obtaining an appropriate licence).¹⁰²
- For *Victoria*, licences are generally subject to the 28-day waiting period,¹⁰³ but for permits to acquire the requirement only applies to those who do not already possess a registered firearm under a licence.¹⁰⁴ Unlike Western Australia, in Victoria a new

⁹⁶ Section 18.

⁹⁷ Warner report, p 97.

⁹⁸ Section 11 (2). This requirement does not apply to other permits, such as a minor's firearms permit.

⁹⁹ Sections 35 and 61 of the Firearms Act 1996 (Tas).

¹⁰⁰ Sections 21 (2) and 48 (3) of the Firearms Act 1996 (ACT).

¹⁰¹ However, according to telephone advice from the Firearms Branch of the WA Police Force, different categories of licence are subject to different ratification processes. Thus, a Category A licence may be issued over the counter at the police station, whereas licences for the higher categories are subject to more stringent and time-consuming controls.

¹⁰² Section 18 (6), Firearms Act 1996 (WA). In other words, it may possible to buy a firearm but the dealer could not place the purchaser in possession of that firearm without production of an appropriate licence. Kate Warner explains that in WA 'a licence only entitles its holder to possess and use the firearm named and identified in the licence. If an additional firearm is required then a new licence has to be applied for. If the application is for a licence of the same kind, then an application for expedited approval can be made and the additional firearm can be noted on the current licence - s. 18 (10) and (11)'. See K Warner, *Firearms Legislation in Australia*, p 47.

¹⁰³ Section 33 Firearms Act 1996 (Vic).

¹⁰⁴ Section 107, Firearms Act 1996 (Vic). The Principal Act was amended in 1998 by the Firearms (Amendment) Act 1998. For those who already possess a licence, the Chief Commissioner has the discretion to reduce the waiting period. It was said in the Second Reading Speech, 'It is hoped that the chief commissioner will implement this provision in good faith and ensure that permits to purchase second and subsequent firearms are issued in good time' - *VPD* (Legislative Assembly), 19 February 1998, p 145.

licence is not required each time a firearm is purchased.¹⁰⁵

- In the *Northern Territory* the 28-day period applies to permits to acquire a firearm, but the waiting period may be waived where a person already owns a firearm and has established a genuine need for purchasing subsequent firearms;¹⁰⁶ similarly, a 28-day period applies to the granting of a licence, but a licence may be granted earlier where the applicant is already a licence holder.¹⁰⁷
- For *Queensland*, the 28-day waiting period for a permit to acquire does not apply to existing licence holders who already have one firearm registered in the particular category and it may be waived for other applicants in exceptional cases.¹⁰⁸ The permit cannot, in any event, be issued until the following day.¹⁰⁹ Applications for a firearms licence (as opposed to a permit to acquire) are all made subject to the 28-day waiting period.¹¹⁰
- In *South Australia*, the 28-day waiting period applies to firearms licences¹¹¹ and permits to acquire, although in the case of permits to acquire the Registrar of Firearms may waive the requirement if ‘satisfied that it is safe to do so and that there are special reasons for doing so’.¹¹²

Grounds for licence refusal or revocation: The position in NSW has been explained. Warner commented in this respect that most jurisdictions have ‘dealt very comprehensively’ with the agreed grounds for refusal and cancellation of licences’. She adds, however, that ‘in neither *South Australia* nor *Western Australia* does a domestic violence order, a violence restraint order or a conviction for assault with a weapon automatically result in refusal or revocation’. In respect to South Australia, this appraisal would not appear to be entirely accurate. This is because section 10 of the Domestic Violence Act 1994 does require the courts to make certain supplementary orders where a domestic violence restraining order is issued. In particular, firearms are to be ‘confiscated and disposed of or dealt with as

¹⁰⁵ In WA a firearms licence only entitles the holder to possess etc the firearm named and identified in that licence - section 16 (1), Firearms Act 1973 (WA).

¹⁰⁶ Section 35 (4) and (5), Firearms Act 1997 (NT).

¹⁰⁷ Section 10 (2) and (5).

¹⁰⁸ These would normally apply to persons in the security industry. Note that in Queensland separate licences are issued for different categories of firearms.

¹⁰⁹ Clause 56, Weapons Regulation 1996 (Queensland).

¹¹⁰ Clause 7, Weapons Regulation 1996, (Queensland). The requirement may be waived in exceptional circumstances, notably in relation to applications from security industry personnel. A visitor’s licence is also subject to special conditions.

¹¹¹ Section 12 (8), Firearms Act 1977 (SA).

¹¹² Section 15 (3) and (4), Firearms Act 1977 (SA). The Firearms Section of the SA Police Department advises that very few exceptions have been made in practice (between 35 and 40), and only in such circumstances as when a person found his existing firearm was faulty just before he was to attend an international shooting competition.

directed by the Court'.¹¹³ A similar situation also applies in Western Australia where a violence restraining order includes a restraint prohibiting the person from possessing a firearm or a firearms licence, or obtaining a firearms licence.¹¹⁴

Warner continued: 'Nor does a conviction for assault with a weapon/aggravated assault result in automatic cancellation in NSW, Tasmania or the Northern Territory. The public interest is not specified as a ground in some jurisdictions and failure to notify change of address is not made a ground for cancellation in Tasmania or Western Australia nor, it seems, in the Northern Territory'.¹¹⁵

Firearms safety training courses: In NSW section 11 (3) (b) of the Firearms Act 1996 requires any person who has never held a licence to undertake a safety training course. Clause 96 of the Firearms (General) Regulation 1997 stipulates that, for firearms other than pistols, the course must be conducted 'by or on behalf of the Firearms Safety Awareness Council'. For pistols, it must be an approved course 'conducted by or on behalf of an approved pistol club'. Despite these provisions, at present, safety training courses for first time applicants are not mandatory and no courses have been approved. First time applicants for a non-pistol licence must pass a 20 question multiple choice test. Any training received by a first time applicant for a pistol licence is determined by the applicant's pistol club. A separate scheme for security guards exists requiring security guards to undertake a continuing firearms safety training course at least once a year.¹¹⁶

- In *Queensland*, all new licensees are required to complete an approved safety training course;¹¹⁷ specific provision is also made for security guards.⁸ In *Tasmania*,¹¹⁹ *Victoria*,¹²⁰ and the *Northern Territory*¹²¹ all new licensees are required to complete a safety training course; there appear to be no provisions specific to the security industry in these jurisdictions. In the *ACT* safety training courses for new licensees are to be completed to the satisfaction of the Registrar of Firearms. These

¹¹³ However, the Firearms Branch of the SA Police Service advises that, according to anecdotal evidence, magistrates tend to take a more discretionary approach to the making of these firearms orders than is envisaged under the legislation. Of further relevance is section 99D of the Summary Procedure Act 1921 which again deals with the making of firearms orders.

¹¹⁴ Section 14, Restraining Orders Act 1997.

¹¹⁵ Warner report, p 98.

¹¹⁶ Clause 69 (2), Firearms (General) Regulation 1997.

¹¹⁷ Section 10 (2)(b) and (4), Weapons Act 1990 (Qn).

¹¹⁸ Sections 10 (4) and 124; Clause 47 of the Weapons Regulation 1996 requires the completion of a training course for the renewal of a security licence (guard) - that being one category of licence specified under section 12 of the Act.

¹¹⁹ Section 29 (1)(d), Firearms Act 1996 (Tas). The Firearms Branch of the Tasmanian Police states that such courses are to be conducted through a College of Technical and Further Education (TAFE).

¹²⁰ Section 17 (1)(c), Firearms Act 1996 (Vic).

¹²¹ Section 10 (3)(c), Firearms Act 1997 (NT).

courses are ‘to be prescribed’ and it seems that guidelines have been issued for this purpose.¹²² In addition, clauses 12 and 13 of the regulations make provision for yearly examinations to be conducted for those issued with Category H (pistols) licences for business or employment purposes respectively.¹²³

- For *South Australia*, clause 17 (1) of the regulations provides that the Registrar of Firearms may require a new licensee to complete a safety course;¹²⁴ no separate provision appears to be made for security guards.¹²⁵
- In *Western Australia*, the Act provides that regulations may be made to require new licensees to undertake training courses, but no such regulations have been made to date.¹²⁶ There are therefore no training prerequisites currently in place in Western Australia.¹²⁷

Minor’s firearms permit: As noted, in *NSW* a minor’s firearms permit is available. There are two types. One is a ‘Minor’s firearms training permit’, the second a ‘Minor’s target pistol permit’. The holder must be at least 12 years of age¹²⁸ and demonstrate that they have the written permission of a parent or guardian and have received safety instruction in accordance with the regulations. Substantially the same regime applies in the ACT.¹²⁹

- For *Queensland*, a minor’s licence is available for those who are at least 11 years of age.¹³⁰ Among other things, the licence authorises the holder to use a firearm of a specific category (A, B, H or C) under the supervision of a range officer at an approved shooting range.¹³¹

¹²² According to telephone advice from the Weapons Registry Branch of the Australia Federal Police. These courses are conducted by an accredited ‘Authorised firearm instructor’.

¹²³ These regulations would be relevant to those in the security guard industry.

¹²⁴ Telephone advice from the Firearms Branch of the SA Police Department confirms that three different training courses are in place for different categories of licence. In fact, a training course requirement has been in place in SA since 1993.

¹²⁵ However, clause 17 (2)(c) provides that the safety course provision may apply for the renewal of a licence used by a person employed in the guarding of property.

¹²⁶ Section 10A, Firearms Act 1973 (WA).

¹²⁷ The WA Police Service explain that ‘New applicants are required to complete a safety questionnaire before a licence is issued’ - <http://www.ssaa.org.au/lawwa.htm>

¹²⁸ Clause 39. Clause 39A an exception to this rule where the person is above 10 years of age and was a member of an Australian rifle club before the repeal of the *Australian Rifle Club Regulations*.

¹²⁹ Section 49, Firearms Act 1996 (ACT).

¹³⁰ Section 10 (2), Weapons Act 1990 (Qn).

¹³¹ Clause 23, Weapons Regulations 1996 (Qn). According to the Queensland Police, 548 minor’s licences had been issued to June 1999.

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- For *South Australia*, children down to the age of 10 may use a category A firearm while under supervision;¹³² whereas for all other categories the minimum age is 14. However, the regulations make an exception for minors down to the age of 12 who are members of a ‘recognised firearms club’ and need to hold a licence to participate in a competition or in competitions held inter-state or overseas.¹³³ This enables them to obtain a one-year licence for which they must re-apply each year.
 - In *Tasmania*, the holder of a minor’s permit must be at least 12 years of age and demonstrate that they have the written permission of a parent or guardian. Those minors who are between 12 and 16 can only use firearms at a shooting range, be it for instruction or target shooting purposes; 16 to 18 year olds can use firearms off the range as well.¹³⁴
 - In *Victoria*, ‘junior licences’ may be issued for a category A, B or C long-arm or a handgun to children down to the age of 12 provided they are receiving instruction or engaging in competition shooting.¹³⁵
 - A ‘firearms club junior licence’ may also be issued in the Northern Territory. The licence authorises the holder to possess and use firearms of a specific category while under supervision and either receiving instruction at an approved range or competing in an approved shooting event.¹³⁶ No minimum age requirement is established in the Northern Territory Firearms Act 1997. However, the Police Commissioner has issued a policy under a different head of legislation establishing a minimum age of 16.¹³⁷
 - The situation in *Western Australia* appears to be somewhat different. There the minimum age for the issue of a licence or permit is 18.¹³⁸ However, there are no age restrictions on the use of a firearm, other than a handgun, while under supervision.¹³⁹

¹³² Clause 20 (2), Firearms Regulations 1993 (SA).

¹³³ Clause 50A, Firearms Regulations 1993 (SA). Minors are exempted from section 12 (3) and (8) of the Principal Act , which establish a minimum age of 18 and a 28-day waiting period respectively.

¹³⁴ Section 68, Firearms Act 1996 (Tas).

¹³⁵ Section 18, Firearms Act 1996 (Vic). The junior can only carry or use a firearm if he or she is under the immediate supervision of a holder of an appropriate licence. The junior is not authorised to purchase ammunition - Schedule 2 (4).

¹³⁶ Section 28, Firearms Act 1997 (NT).

¹³⁷ Telephone advice from the Firearms Branch of the Northern Territory Police. It seems that only one junior licence has been issued to date. These licences are restricted to junior shooters representing the Territory in competition.

¹³⁸ Section 10, Firearms Act 1973 (WA).

¹³⁹ Section 8 (1)(n), Firearms Act 1973 (WA). Section 8 generally provides for exemptions from the licensing requirements.

Active club membership requirements: The club membership requirements which apply in NSW have been discussed. Do the other States and Territories have comparable arrangements in place?

- The *ACT* legislation defines what is meant by an ‘active’ club member in its interpretation section. Basically, participation in club shooting activities is required not less than four days each year, or alternatively a person must make a ‘personal contribution’ to the club, such as would satisfy the Firearms Registrar.¹⁴⁰ The approach in *South Australia* is similar, only there the term ‘active member’ is defined in the regulations. For example, a member of a shooting club must participate in shooting activities at least 6 days each year.¹⁴¹
- For the *Northern Territory*, the Police Commissioner requires approved clubs to stipulate in their constitution that a person must participate not less than 12 times per year to qualify as an active club member. This applies, it seems, to all categories of firearms.¹⁴² A comparable approach appears to be taken in *Western Australia* where club constitutions must be approved and where, under those constitutions, club members must attend club shooting activities at least once every 8 weeks. It seems the clubs have a responsibility to inform the police of a failure to comply with this requirement.¹⁴³ In *Tasmania* active club membership requirements are stipulated, although not directly under the legislative scheme. Instead, the relevant requirements are set out under the Certificate of Approval for Clubs, with 3 instances of participation required for category A and B licences and 2 for Category H (pistols).
- The situation in *Queensland* is different in as much as there are no club membership requirements for Category A, B and C firearms, and the requirements for Category H handguns operate largely on a self-enforcement basis.¹⁴⁴
- In *Victoria*, relevant licence holders must be ‘financial’ members of approved clubs, but the extent to which each licence holder is required to actively participate in club activities is a matter for the clubs themselves to decide. In other words, the system operating in Victoria is largely self-regulatory in nature.¹⁴⁵

¹⁴⁰ Section 4, Firearms Act 1996 (ACT).

¹⁴¹ Clause 4 (1)(a)(i), Firearms Regulations 1993 (SA).

¹⁴² Telephone advice from the Firearms Branch of the Northern Territory Police. Note that a submission is presently before Cabinet to require clubs to report upon attendance requirements.

¹⁴³ Telephone advice from the Firearms Branch of the WA Police Service.

¹⁴⁴ Telephone advice from the Weapons Branch of the Queensland Police. It seems that the participation requirements for pistol clubs must be set out in the club constitution, which is then approved by the police. However, these requirements can differ from one club to another, depending on such factors as the accessibility of the clubs to their members.

¹⁴⁵ Telephone advice from the Firearms Branch of the Victorian Police Service.

Storage and safety requirements: Similar arrangements appear to be in place in most other jurisdictions as are in force in NSW. In NSW Category A and B firearms must be stored in a locked receptacle of a type approved by the Commissioner. If the receptacle weighs less than 150 kg when empty it must be fixed in position in order to prevent its easy removal.¹⁴⁶ Category C, D and H firearms must be held in a ‘locked steel safe’ of a type approved by the Commissioner which is bolted to the structure of the premises.¹⁴⁷ Ammunition for all categories of firearms must be stored in a separate locked container approved by the Commissioner.

Of the other jurisdictions, Warner comments that *Queensland* does not require Category C firearms to comply with the higher standard applicable to D and H firearms and does not require separate storage for ammunition. *South Australia* does not require Category A and B firearms to be in a container if they are secured to the wall.¹⁴⁸ Warner notes, too, that *Western Australia* has ‘different standards which appear to be as stringent as the agreed minimum standard’.¹⁴⁹

Firearms Collectors: This was one area where the Warner report was adamant that the regulatory regime agreed to by APMC ‘has not been always been comprehensively adopted’. In particular, it noted that, in *Queensland*,¹⁵⁰ *Western Australia*¹⁵¹ and the *Northern Territory*,¹⁵² the definition of a collection or a collector is wider than the agreed definition. Further to this, Warner commented, ‘The failure in three jurisdiction to adopt the recommended definition of collector creates a potential loophole for persons wishing to retain or obtain a semi-automatic weapon without having a legitimate genuine reason. This is particularly a potential problem in Western Australia where one weapon can constitute a collection and Category D weapons in collections do not have to be rendered permanently

¹⁴⁶ Section 40.

¹⁴⁷ Section 41.

¹⁴⁸ Various alternative arrangements for Category A and B firearms are set out in clause 29 of the Firearms Regulations 1993 (SA), the first of which reads - ‘securely attaching and locking it to part of the building in which it is kept’.

¹⁴⁹ Warner report, p 98. Clause 11A, Firearms Regulations 1974 (WA) sets out the storage security requirements. The clause does not differentiate between categories of firearms but appears to conform with the minimum standard agreed by the APMC. Schedule 4 to the regulations sets out detailed specifications for storage cabinets or containers.

¹⁵⁰ Section 5, Weapons Act 1990. Reference is made to weapons collected as ‘curiosities or ornaments, or for their commemorative, historic, artistic or investment value or mechanical uniqueness’.

¹⁵¹ Section 15, Firearms Act 1973 (WA). Reference is made to ‘significant commemorative, historical, thematic, heirloom, or sentimental value’. One firearm may constitute a firearm collection.

¹⁵² Clause 9, Firearms Regulations 1997 (NT). Reference is made to collecting firearms for display ‘as curiosities or ornaments, or for their historic or artistic value or mechanical uniqueness’.

inoperable.’¹⁵³ It may be that Warner overstates any difficulty which might exist in this context, bearing in mind that the firearm in question must be suitable for collection purposes in the opinion of the WA Commissioner of Police. On the other hand, the scenario she alludes to may not be beyond the bounds of practical possibility.

Also in respect to firearms collector’s licences, Warner commented, ‘The apparent intent of the provision [of APMC] in relation to sales was to restrict sales of Category C and D firearms to other collectors. No jurisdiction has implemented this and all allow sales to registered dealers’.¹⁵⁴

Recognition of inter-state licences for temporary visitors: As noted, the NSW legislation provides for temporary recognition of interstate licences (the equivalent of a Category A, B or H licence) for the purposes of participating ‘in a shooting competition approved by the Commissioner (or for such other purposes as may be prescribed by the regulations. This includes hunting where one has written permission)’.¹⁵⁵ Arrangements are also made for Category C licence holders in specific circumstances.

Similar arrangements have been made in most other jurisdictions, although there appear to be some differences in detail. For example, in *Queensland* the relevant provision appears to apply generally across all categories of firearms;¹⁵⁶ whereas in *Tasmania*, on the other hand, provision is only made for the recognition of Category A, B and H licences.¹⁵⁷ *South*

¹⁵³ Warner report, p 96. The report also states, ‘It is significant that collectors in Queensland and Western Australia do not have to be members of an approved collectors’ club... and Category A and B weapons are not required to be rendered temporarily inoperable in the Northern Territory. There appears to be no special regime for storage in South Australia, Tasmania, Western Australia nor the Australian Capital Territory and possession of ammunition is not expressly prohibited in Queensland, Tasmania, Victoria, Western Australia nor the Northern Territory’. However, in relation to Western Australia for example, the possession of ammunition does appear to be excluded by implication from the terms of section 16 (1)(b) of the Firearms Act 1973. Also, provision is made for a separate ammunition collector’s licence (section 16 (1)(h)). On this issue, Warner states: ‘Neither Queensland, Tasmania nor the Australian Capital Territory have enacted a regime for ammunition collectors. Nor has South Australia but this State has prohibited possession of the types of ammunition that the terms of resolution of 17 July agreed would be banned. The Northern Territory makes provision for permits for ammunition collectors but does not ban the agreed type of ammunition’.

¹⁵⁴ Ibid. On the subject of heirlooms firearms licences, Warner commented: ‘All jurisdictions except South Australia and Western Australia have provisions for heirlooms firearms licences which substantially comply with the conditions resolved upon on 17 July (Tasmania does not require firearms to be rendered permanently inoperable). In Western Australia a collector’s licence must be obtained to possess an heirloom firearm and in South Australia there appear to be no relevant provisions’.

¹⁵⁵ Additional purposes are set out under clause 23, Firearms (General) Regulation 1997 (NSW). For example, a Category A or B licence holder is authorised to possess and use a firearm for recreational hunting/vermin control or vertebrate pest control.

¹⁵⁶ Section 32, Weapons Act 1990 (Qn).

¹⁵⁷ Section 55, Firearms Act 1996 (Tas).

Australia also recognises licences issued in other jurisdictions if firearms are brought into SA for ‘a purpose permitted by these regulations’. As with Queensland, no distinction is made between the different categories of firearms in this context.¹⁵⁸

The notable exception in this respect is *Western Australia* which does not automatically recognise firearms licences issued in other jurisdictions. Under sections 17 and 17A of the Firearms Act 1973 (WA), visitors from inter-state must apply for a temporary permit in order to lawfully possess a firearm registered in another jurisdiction. This can be done by contacting the Firearms Branch of the WA Police Service before entering the State, or by making an application at the first available police station in WA.¹⁵⁹ The WA Police Service notes that it is not obliged to grant a permit: ‘Some interstate visitors have been refused permission to take certain firearms into Western Australia’.¹⁶⁰

Licence holders moving inter-state: Licence holders who move permanently to NSW must notify the Commissioner in writing of their intention. In these circumstances, an out-of-State licence for Category A and B firearms is valid for 3 months, while an out-of-State licence for Category C, D and H firearms is valid for 7 days. Comparable arrangements are in place in *Queensland*,¹⁶¹ *Tasmania*,¹⁶² *Victoria*,¹⁶³ the *ACT*¹⁶⁴ and the *Northern Territory*.¹⁶⁵ In *South Australia*, a person moving to the State must apply to register the firearm, as well as for a licence, within 7 days after arrival. Category A and B firearms may be possessed ‘and used’ for 3 months for an appropriate purpose; Category C, D or H firearms may be possessed only for the same period of time.

Again, *Western Australia* appears to be the notable exception, for no comparable arrangements appear to be in place in the jurisdiction. Presumably, a firearms licence holder moving to WA would have to apply immediately for a licence for each firearm he or she owned or possessed. In the interim a temporary permit could be issued under section 17 of the Firearms Act 1973.

Sales of firearms and ammunition: The terms of the APMC Resolution 9 have been discussed, as has the extent of NSW compliance. The Warner report commented: ‘The

¹⁵⁸ Clause 50, Firearms Regulations 1993 (SA). For the other jurisdictions, see section 185, Firearms Act 1996 (Vic); section 43, Firearms Act 1996 (ACT); and section 92, Firearms Act 1997 (NT).

¹⁵⁹ Under section 17A of the Firearms Act 1973 (WA) shooting clubs may apply for an ‘interstate group permit’.

¹⁶⁰ <http://www.ssaa.org.au/lawwa.htm>

¹⁶¹ Section 33, Weapons Act 1990 (Qn).

¹⁶² Section 56, Firearms Act 1996 (Tas).

¹⁶³ Section 187, Firearms Act 1996 (Vic).

¹⁶⁴ Section 44, Firearms Act 1996 (ACT).

¹⁶⁵ Section 93, Firearms Act 1997 (NT). In the case of a Category C, D or H firearm the licence only remains valid for 2 days from the time the Police Commissioner has been notified.

Western Australian legislation does not appear to restrict firearms sales to licensed dealers while South Australia allows certain authorised officers of recognised firearms clubs to witness transfers. Queensland does not appear to have any provisions regulating the sale of ammunition and few states have tackled the issue of placing limits on the quantity of ammunition that may be purchased. South Australian regulations limit it to a reasonable amount for 12 months and in Tasmania it is left to the Commissioner to determine the amount'.¹⁶⁶

Mail Order Control and Transport: Again, the situation in NSW and the extent of compliance with APMC resolution 10 have been discussed. The Warner report stated in this regard: 'Contrary to the resolution, mail order from dealer to non-dealer is allowed in Queensland and to and from non-dealers in Western Australia. No safety requirements are yet prescribed for the movement of Category C, D and H weapons in South Australia, Victoria or Western Australia and the Northern Territory merely provides that all weapons must be sent by registered post or commercial freight carrier. There are not provisions for the prohibition or regulation of commercial transport of firearms with ammunition in New South Wales, Queensland, Victoria, Western Australia, the Australian Capital Territory or the Northern Territory'.¹⁶⁷

5. THE NUMBER OF FIREARMS AND FIREARM OWNERS

In brief, there are no accurate figures on the number of firearms and the number of firearm owners in Australia. Prior to the enactment of the new firearm laws, there was no national register of firearms, and figures are not yet available from the new national register. Further, in addition to legally held firearms, the number of illegally held firearms must be considered. Clearly, only estimates of the number of illegal firearms can be given and opinions differ on the appropriate estimates. This section provides a summary of available estimates on the number of firearms and firearm owners.

Number of Prohibited Firearms handed in under the National Buyback Scheme

In accordance with the National Agreement on Firearms each State and Territory implemented a 12 month amnesty and "buyback" scheme¹⁶⁸ for firearms which were prohibited under the new laws. Under the buyback scheme, firearm owners were paid the market value of the prohibited firearms they handed in. The scheme was funded by the Federal Government through an increase in the Medicare levy.

The following table¹⁶⁹ provides the number of firearms surrendered and the total amount of compensation paid for each State and Territory under the buyback scheme.

¹⁶⁶ Warner report, p 98.

¹⁶⁷ Ibid.

¹⁶⁸ Except for South Australia where the buyback scheme only operated for 6 months.

¹⁶⁹ Source: "The Australian Firearms Buyback" website: <http://www.gun.law.gov.au/guns/tally/tally.htm>.

Firearms Collected and Compensation Paid under the Buyback Scheme 1996-97		
	Number of Firearms Collected	Compensation paid to firearms owners
NSW	155,285	\$83,600,000
Victoria	207,368	\$101,813,232
ACT	5,380	\$2, 803,918
Tasmania	32,220	\$14,278,476
Northern Territory	9,472	\$5,021,865
South Australia	52,365	\$26,109,527
Queensland	140,832	\$68,071,283
TOTAL	643,726	\$319,833,727

As discussed below, opinions differ on how many prohibited firearms were not surrendered.

Estimates of the Number of Prohibited Firearms

The following table provides estimates of the number of prohibited firearms in each jurisdiction before the buyback scheme. The data for these estimates was collated by the Commonwealth Law Enforcement Board from information provided by firearms registries in each State and Territory.¹⁷⁰

Estimates of numbers of prohibited firearms in each jurisdiction (before the buyback scheme in 1996-97)					
State	Semi-auto shotguns	Semi-auto centrefire	Semi-auto rimfire rifles	Pump-action shotguns rifles	Total prohibited firearms
NSW	55,300	46,300	216,000		450,000
Vic	70,400	6,000	91,000	State	400,000
Qld	47,400	39,000	185,000	by State	386,000
SA	11,486	8,982	40,723	estimates	87,000
WA	4,342	562	25,578	not	43,000

¹⁷⁰

Chapman, supra n 93 at pp 121-122.

Tas	12,300	10,300	48,000	available	100,000
NT	2,478	1,200	5,390		19,000
ACT	808	119	1,916		3,793
TOTAL	204,514	113,263	613,607	557,409	1,488,793

According to these estimates, 43% of prohibited firearms were handed in under the buyback scheme.¹⁷¹ However, the accuracy of these figures has been questioned. Simon Chapman, an academic and gun control advocate, states that “*The estimate of almost 1.5 million prohibited weapons presented in this table is almost certainly exaggerated...*”¹⁷²

Newspoll National Firearms Survey

In June and July 1997, Newspoll conducted a survey for the Australian Firearms Public Education Campaign. The survey was conducted by telephone and was designed to monitor the effectiveness of the buyback in terms of compliance rates, consumers’ self-reported gun ownership and attitudes to gun laws. It was based on a representative sample of 2,400 Australians aged over 18 years of age.

The results of the survey, provided in a news release from the Attorney-General,¹⁷³ included the following:

- 9% of adult Australians (approximately 1.2 million people) are current gun owners.
- Australians own approximately 2.5 million firearms. Based on this figure, each Australian gun owner has approximately 2.1 firearms.
- Despite the number of guns that have been handed in, the number of gun owners has changed comparatively little. A key reason is that many gun owners are in possession of more than one gun, and may hand in their prohibited firearm while still owning a legal firearm.
- Newspoll estimates that before the buyback 45% of gun owners were in possession of a firearm that is prohibited under the new laws. Of these, it is estimated that approximately three-quarters have now handed in or disposed of their prohibited firearms.
- At the time of the survey, the ownership status of those who owned a gun before the buyback was as follows:

¹⁷¹ This percentage was reported in the Sydney Morning Herald, see Wainwright R, “300,000 banned firearms still in circulation”, *The Sydney Morning Herald*, 27/4/98, p 2c.

¹⁷² Chapman, supra n 93 at p 122.

¹⁷³ Attorney-General and Minister for Justice, the Hon. D Williams AM QC MP, News Release, 26 August 1997: <http://law.gov.au/aghomes/agnews/1997newsag/330.htm>.

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- * 16% had disposed of their illegal firearms and were no longer firearm owners;
 - * 17% had disposed of their illegal firearms because of the amnesty but were still owners of legal guns;
 - * 9% had not disposed of their illegal guns and still owned an illegal firearm;
 - * 3% had disposed of illegal firearms but still owned an illegal gun;
 - * 53% did not own an illegal firearm before the buyback, nor did they own an illegal firearm at the time of the survey;
 - * more than 8 in 10 firearm owners at the time of the survey said they would be likely to hand in an illegal firearm if they were to own one.

The federal government claimed that the survey showed that the amnesty and buyback program had worked well and that the vast majority of people were respecting the new laws.¹⁷⁴ However, advocates on both sides of the gun control debate questioned the accuracy of the survey.

Gun Control Australia, an organisation advocating increased firearms regulation, argued that there were at least a million prohibited firearms prior to the buyback scheme, and that the 640,000 guns handed in represented a 64% success rate.¹⁷⁵

The Shooters Party argued that the Newspoll survey results were unreliable because most firearms owners would, for security reasons, deny owning guns if asked by a stranger over the telephone. The Shooters Party states that an estimated 40% of illegal guns were handed in, and that there are an estimated 10 million guns held by Australians.¹⁷⁶

The Number of Shooters

Figures on the number of licensed shooters in Australia are not yet available from the new national register. The following table shows the number of licensed shooters in Australia in June 1995.¹⁷⁷

¹⁷⁴ Ibid.

¹⁷⁵ Crook J, *Port Arthur - Gun Tragedy, Gun Law Miracle*, Gun Control Australia Inc, 1999, p 45.

¹⁷⁶ The Shooters Party, *Frequently Asked Questions*, 1998, <http://www.shootersparty.org.au/faqs.htm>.

¹⁷⁷ Chapman, *supra* n 93 at p 119.

Licensed shooters in Australia (June 1995)			
<i>State</i>	<i>Shooters' licences</i>	<i>Population (million)</i>	<i>Licensing Rate</i>
NSW	150,000	6.115	1:40.8
Vic	272,000	4.502	1:17.3
Qld	302,000	3.277	1:11.7
SA	125,000	1.474	1:11.8
WA	110,000	1.732	1:15.7
Tas	60,000	0.473	1:7.9
NT	20,480	0.174	1:8.5
ACT	7,451	0.304	1:40.8
TOTAL	1,046,931	18.051	1:17.24

New South Wales

At the time of writing, the NSW Firearms Registry was unable to provide statistics on the number of licences, permits and firearms in New South Wales due to problems with its system. The Registry is currently in the process of reviewing its data.

However, in August 1999, the *Sydney Morning Herald* published statistics compiled from information obtained from the NSW Firearms Registry under the *Freedom of Information Act*.¹⁷⁸ The Herald stated that a preliminary assessment of the NSW Firearms Registry shows as many as 993,000 guns are registered in NSW. However, it stated that this figure is likely to fall when the Registry completes its review of the database.¹⁷⁹

6. THE IMPACT OF THE NATIONWIDE AGREEMENT ON FIREARMS

The Australian Institute of Criminology (“AIC”) has established the National Firearms Monitoring Program (“NFMP”) in response to a resolution by the APMC seeking assistance from the AIC in monitoring the effects of the new laws implemented after the Nationwide Agreement on Firearms.

¹⁷⁸ Linda Morris, “Revealed: State of a million legal guns”, *The Sydney Morning Herald*, 26/8/99, p 1. Linda Morris, “Guns the Armed State: Shooters seek rapid fire”, *The Sydney Morning Herald*, 26/8/99, p 5. Linda Morris, “Support for last-chance amnesty”, *The Sydney Morning Herald*, 26/8/99, p 5.

¹⁷⁹ Linda Morris, “Support for last-chance amnesty”, 26 August 1999, p 5.

In May 1999, the AIC published its first report on the impact of the Nationwide Agreement on Firearms.¹⁸⁰ The report concluded that it was still too soon to determine definitively whether Australia's uniform laws have achieved their aim in reducing firearm-related violence and misuse. Preliminary findings were made, but it was noted that conclusive findings cannot be made without an outcome evaluation that takes other factors (social, demographic, economic and institutional) into account. It was recommended that such an evaluation be conducted at least five years after the implementation of the new laws.

In summary, the preliminary findings of the AIC report were as follows:

- In 1997, Australia recorded 85 fewer firearm-related deaths than in 1996 (50 fewer if the victims of Port Arthur are excluded from the 1996 total).
- There was a decline in firearm-related deaths in 1997, mostly due to a decline in the rate of suicides and accidents. This reduction has occurred in each State and Territory, with the exception of NSW and Victoria.
- There is some preliminary evidence that in some cases, for example suicide and armed robbery, firearms are being displaced by other methods and weapons.

7. PROPOSALS FOR AMENDMENTS TO THE NEW FIREARMS LAWS

Since the introduction of the new firearms laws, both sides of the gun control debate have expressed dissatisfaction with aspects of the laws and have argued for amendments. As discussed in Part 4 above, some States have amended the laws contrary to some aspects of the Nationwide Agreement. An overview of the major areas where there have been calls for amendments to the firearms laws are discussed below.

Waiving of the 28-day waiting period for the purchase of second or subsequent firearms

The issue of the 28-day waiting period for the issue of a licence and permit to acquire has proved to be particularly controversial. As discussed in Part 4 above, all jurisdictions except NSW, Tasmania and ACT have provided for exemptions to the 28-day waiting rule.

APMC resolution 7 clearly states that a permit to acquire 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.

¹⁸⁰ Mouzos J, *Firearm-related Violence: The Impact of the Nationwide Agreement on Firearms*, Australian Institute of Criminology, May 1999.

However, opponents of the 28-day waiting period argue that the waiting period is unnecessary when the applicant is already licensed and owns firearms.¹⁸¹

In a 1997 review of firearms control in New Zealand, former High Court Justice Sir Thomas Thorp noted that a number of jurisdictions had introduced waiting periods to allow for a “cooling off”, and to avoid impulse buying by persons in an unbalanced mental or emotional state.¹⁸² He stated that these provisions were said to have particular significance in avoiding access to firearms for the purpose of suicide, which is commonly an impulsive action, particularly in the case of younger persons.

However, Thorp did not recommend the introduction of waiting periods. He said that New Zealand already had a de facto waiting period, no cases of the purchase of a firearm for suicide were identified, and a waiting period would only be of practical value when there would otherwise not have been a firearm available for that purpose. For these reasons, he concluded that there would be little point in delaying a second or third purchase.

The Shooters Party has asked the Federal Minister of Justice and the Police Ministers Council to abolish the 28-day “cooling off” period for people already licensed.¹⁸³

When the Firearms Bill 1996 (NSW) was before the Legislative Council, the Hon. J S Tingle MLC (of the Shooters Party) moved amendments to the Bill to allow for an exemption to the 28-day waiting period where a licensee is competing in a national or international shooting competition and provides proof that his/her firearm has become inoperative and that he/she needs an immediate replacement firearm in order to complete the event. The Opposition urged the Government to consider the amendments with sympathy. The Government opposed the amendments and they were negatived.¹⁸⁴

Access to Category C firearms for clay target shooters who are members of non-ACTA clubs

As discussed in Part 3 above, on 15 November 1996, the APMC agreed to allow a restricted class of clay target shooters to have access to Category C (semi-automatic and pump action shotguns) firearms. The resolution restricted access to these firearms to clay target shooters who are members of clubs affiliated with the Australian Clay Target Association (“ACTA”), and who already owned a Category C firearm or had a physical need for one.

¹⁸¹ See for example, *NSWPD*, 26/6/96, p 3665, per the Hon. J S Tingle MLC.

¹⁸² Thorp T M, *Review of Firearms Control in New Zealand - Report of an Independent Inquiry Commissioned by the Minister of Police*, June 1997, p 161.

¹⁸³ The Shooters Party, *Our Achievements in NSW Parliament 1995-98*, www.shootersparty.org.au/govern/achieve.htm.

¹⁸⁴ *NSWPD*, 26/6/96, p 665-6.

It appears that members of ACTA affiliated clubs were specified by the APMC because ACTA is the body that selects Australian representatives for Olympic and Commonwealth Games competition and is responsible for drawing up the rules and regulations governing the sport in Australia.¹⁸⁵ However, there have been calls to allow members of non-ACTA affiliated clubs to have access to semi-automatic and pump action firearms.

As discussed in Part 4 above, Victoria, Queensland and the Northern Territory provide for access to Category C firearms for members of approved clay target clubs regardless of whether they are affiliated with ACTA. The Shooters Party has asked the Federal Minister of Justice and the Police Ministers to extend access to these types of firearms to all clay target shooters.¹⁸⁶

In the parliamentary debates on the Firearms Amendment Bill 1996 (NSW), the Hon. J S Tingle MLC (of the Shooters Party) argued against the NSW restriction to members of ACTA affiliated clubs only. He submitted that the legislation should provide for special Category C licences for members of shooting clubs affiliated with the Field and Game Association or the Sporting Shooters Association of Australia. He argued that both these organisations conduct regular clay target matches of a type virtually identical with those conducted by ACTA, and that there was no justification for excluding those associations from the exemption provided for ACTA clubs in regard to Category C self-loading and pump-action shotguns.¹⁸⁷

Both the Government and the Opposition were sympathetic to Tingle's proposed amendments in this regard, but declined to accept them because they were not in accordance with the APMC resolution.¹⁸⁸

Allow Category B licence holders to use Category C and D firearms to assist primary producers in pest control

The Sporting Shooters Association of Australia argues that category B licence holders should be allowed to use Category C and D firearms owned by primary producers when assisting in pest control on the primary producer's land whilst under the licensee's supervision.¹⁸⁹ The Association states that landowners often rely on sporting shooters to assist them with feral pest and vermin control.

¹⁸⁵ NSWPD, 4/12/96, p 6950, per the Hon. Jennifer Gardiner MLC.

¹⁸⁶ The Shooters Party, supra n 183.

¹⁸⁷ NSWPD, 4/12/96, pp 6937, 6938, 6948 and 6949, per the Hon. J S Tingle MLC.

¹⁸⁸ NSWPD, 4/12/96, p 6949, per the Hon. J W Shaw MLC, and p 6950, per the Hon. Jennifer Gardiner MLC.

¹⁸⁹ Submission, to Mr Les Tree, Director-General, Ministry for Police, sent by the Sporting Shooters Association to its members to forward to Mr Tree, 1999.

A permanent amnesty for the registration or surrender of unregistered firearms

The Sporting Shooters Association of Australia argues that an ongoing amnesty for the registration or handing in of unregistered firearms will prevent guns from entering the black market.¹⁹⁰ They argue that there are still tens of thousands of unregistered firearms in the community and that people will retain these firearms or dispose of them illegally unless there is an ongoing amnesty.

Membership of Hunting Clubs

As discussed in Part 3 above, contrary to the APMC resolutions, the NSW legislation provides that membership of a hunting club establishes a genuine reason of recreational hunting. This provision was introduced in the Firearms Amendment Bill 1996 (NSW) and was the subject of rigorous debate in the Legislative Council.

When the Minister for Police introduced the provision in parliament, he said the following:

“...the Game Management Council and other hunting organisations argued for the recognition of hunting clubs in the Act as a genuine reason for recreational hunting/vermin control, in the same manner as other clubs are recognised for the genuine reason of sport/target shooting.

I have taken this suggestion up as I believe it provides for better regulation of this group of shooters than individual permission to shoot from a land owner. It will be an alternative to providing that proof of permission...

*Hunting clubs were not recognised by the APMC although, as I have already mentioned, other clubs were. This is an inconsistency within the APMC resolutions and I intend to take this matter up with the Commonwealth at the APMC meeting on 14 and 15 November”.*¹⁹¹

The arguments for and against the recognition of membership of hunting clubs being sufficient to establish a genuine reason of recreational are summarised below.

Arguments for Recognition of Membership of Hunting Clubs:

- Membership of hunting clubs provides the opportunity for greater regulation of recreational hunters than the system of individuals obtaining written permission from land owners.¹⁹²
- Membership of hunting clubs organises the hunting fraternity into an orderly group

¹⁹⁰ Ibid.

¹⁹¹ NSWPD, 31/10/96, p 5705, per the Hon. P Whelan MP.

¹⁹² NSWPD, 31/10/96, p 5705, per the Hon. P Whelan MP; and NSWPD, 4/12/96, p 6947, per the Hon. J W Shaw MLC.

with recognised codes of ethics and mechanisms for dealing with people who break the rules or ethics, or misbehave. They can be expelled from those clubs and consequentially lose their licence.¹⁹³

- The provision will not lead to a proliferation of firearms. It simply allows many people who now have and use firearms responsibly for hunting to keep their firearms.¹⁹⁴
- As membership of sport/target shooting clubs is recognised as establishing a genuine reason of sport/target shooting, in order to be consistent, membership of hunting clubs should be recognised as establishing a genuine reason of recreational hunting.¹⁹⁵

Arguments against Recognition of Membership of Hunting Clubs:

- It is not inconsistent for the legislation to recognise sport/target shooting clubs but not to recognise recreational hunting clubs because recreational hunting is very different from sport/target shooting. The differences include:
 - * Sport/target shooting takes place in a controlled environment; recreational hunting does not.¹⁹⁶
 - * Sport/target shooting takes place at a specific place; recreational hunters hunt at large.¹⁹⁷
 - * Sport/target shooting is an Olympic sport. Recreational hunting is not an Olympic sport, and it would be unacceptable to the international community to allow recreational hunters to compete in the Olympics.¹⁹⁸
 - * Sport/target shooters shoot inanimate objects; recreational hunters kill living animals.¹⁹⁹
- For the above reasons, recreational hunting should be more tightly regulated than

¹⁹³ NSWPD, 4/12/96, p 6937, per Hon. J S Tingle MLC.

¹⁹⁴ NSWPD, 4/12/96, p 6947, per the Hon. J S Tingle MLC.

¹⁹⁵ NSWPD, 31/10/96, p 5705, per the Hon. P Whelan MP.

¹⁹⁶ NSWPD, 4/12/96, p 6941, per the Hon. A G Corbett MLC.

¹⁹⁷ NSWPD, 4/12/96, p 6943, per the Hon. R S L Jones MLC.

¹⁹⁸ NSWPD, 4/12/96, p 6943, per the Hon. R S L Jones MLC.

¹⁹⁹ NSWPD, 4/12/96, p 6943, per the Hon. R S L Jones MLC.

sport/target shooting.²⁰⁰

- The APMC refused to accept membership of hunting clubs as establishing a genuine reason of recreational hunting.²⁰¹
- Recognition of membership of hunting clubs allows a large number of gun owners to keep their weapons without valid justification.²⁰²
- Recognition of membership of hunting clubs makes it more difficult to control the issuing of firearms, and will lead to a proliferation of firearms.²⁰³

Recreational hunting - permission from a land owner

Kate Warner states that the provision specifying that proof of permission by an owner or occupier of rural land establishes the genuine reason of recreational hunting/vermin control is open to abuse. She states:

*“If all the Commissioner requires to be satisfied that the applicant has a genuine reason of recreational hunting or vermin control is a document giving permission to shoot from an owner or occupier of land or a government official such as the Director of the National Parks and Wildlife authority, then there is a real possibility that this is not the genuine reason for obtaining the licence. This is particularly so when the currency of the hunting permit may only be one year but the currency of the licence 5 years”.*²⁰⁴

However, as recognised by Warner, the provisions in relation to proof of permission comply with the APMC resolution.²⁰⁵

The Sporting Shooters Association of Australia argues that the requirement for hunters to carry written permission from landowners should be abolished.²⁰⁶ They argue that landowners will often provide authority to a shooter accepting that the shooter will be accompanied by friends in his/her hunting group. Therefore, they submit that the current

²⁰⁰ NSWPD, 4/12/96, p 6943, per the Hon. R S L Jones MLC; and p 6941, per the Hon. A G Corbett MLC.

²⁰¹ NSWPD, 4/12/96, p 6943, per the Hon. R S L Jones MLC; and p 6941, per the Hon. A G Corbett MLC.

²⁰² NSWPD, 4/12/96, p 6943, per the Hon. R S L Jones MLC; and p 6941, per the Hon. A G Corbett MLC.

²⁰³ NSWPD, 4/12/96, p 6947, per the Hon. Elisabeth Kirkby MLC.

²⁰⁴ Warner, supra n 57 at p 95.

²⁰⁵ Ibid.

²⁰⁶ Supra n 189.

law requiring each member of the group to have individual written permission is impractical and unnecessary. They also argue that verbal permission, rather than written permission, should be acceptable.

Inspection of storage facilities

Simon Chapman states that while the new firearms laws specify minimum standards of storage for firearms, there is little evidence that these standards are being policed.²⁰⁷ He cites a 1997 Sporting Shooters Association of Australia survey that reported that only 2% of respondents had had their premises inspected.²⁰⁸ Chapman argues that the “*object neglect of the implementation of home storage regulations remains a major weakness in Australian gun law regulation*”.²⁰⁹

In NSW, a licence must not be issued unless the Commissioner is satisfied that the specified storage and safety requirements are capable of being met by the applicant.²¹⁰ Further, the applicant must prove that he/she is aware of, understands, and will be able to comply with the specified storage requirements.²¹¹ Contravention of the storage requirements is an offence punishable by 20 penalty units and/or imprisonment for 12 months.²¹²

All licences are subject to the condition that the licensee must permit inspection by a police officer (or other specified person) of the licensee’s storage facilities.²¹³ However, there are no legislative provisions requiring that inspections must be conducted. Arguments for and against mandatory inspection are outlined below.

Arguments against Mandatory Inspection

- The strong penalties for breach of storage requirements encourages compliance with the requirements.²¹⁴
- There are not enough police resources to carry out inspections for every licence holder. This is particularly a problem in one or two person police stations in country

²⁰⁷ Chapman, supra n 93 at p 167.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ *Firearms Act 1996* (NSW), section 11(3)(c).

²¹¹ *Firearms (General) Regulation 1997* (NSW), clause 7.

²¹² *Firearms Act 1996* (NSW), sections 40 and 41.

²¹³ *Firearms Act 1996* (NSW), section 19(2)(c).

²¹⁴ *NSWPD*, 26/06/96, p 3656, per the Hon. J W Shaw MLC. *NSWPD*, 26/11/96, p 6591, per the Hon. P Whelan MP.

areas.²¹⁵

- If people had to pay for mandatory inspection, this would encourage them to disobey the law. People would be encouraged not to comply with licensing and registration provisions.²¹⁶
- If people were required to satisfy storage requirements before obtaining a licence, then they would have to install expensive safes and other storage equipment before they knew whether their licence had been approved.²¹⁷

Arguments for Mandatory Inspection

- Safe storage is crucial for the prevention of theft and minimising access to guns by people (often children) not trained to use them.²¹⁸
- Inspection of storage before a licence is granted was normal process in relation to pistols.²¹⁹
- “Arguments that the sheer number of gun owners precludes any universal system of inspection prior to granting a licence contrasts with the way the state takes seriously building and motor vehicle inspection”.²²⁰ A user pays system of inspection is accepted for building and motor vehicles. The same should apply to firearms storage.²²¹
- Compliance with storage requirements should be proved in accordance with other requirements under the legislation, for example, proof of age.²²²

It has been suggested that guns clubs be responsible for spot checks of storage facilities of

²¹⁵ NSWPD, 26/11/96, p 6589, per the Hon. P Cochran MP.

²¹⁶ NSWPD, 26/11/96, p 6589, per the Hon. P Cochran MP; and p 6590, per the Hon. R Chappell MP.

²¹⁷ NSWPD, 26/11/96, p 6590, per the Hon. P Whelan MP.

²¹⁸ Chapman, supra n 93 at p 95.

²¹⁹ NSWPD, 26/06/96, p 3646, per the Hon. A G Corbett MLC.

²²⁰ Chapman, supra n 93 at p 167.

²²¹ Ibid.

²²² NSWPD, 26/11/96, p 6588, per the Hon. P MacDonald MLC.

their members.²²³

In his report on the review of firearms control in New Zealand, Thorp stated that far too many breaches of security conditions were occurring. He recommended that adequate provision be made for regular and consistent monitoring of security conditions, and that the practice of granting licences on the basis of assurances of compliance with security conditions be discontinued.²²⁴

Minor's Permits

The resolutions of the APMC make no reference to possession and use of firearms by minors. Kate Warner states the following in relation to provisions for minors' permits in all states and territories:

“One of the obvious ways in which the legislation [in all state and territory jurisdictions] fails to implement the spirit of the resolutions is in the inclusion of special licences or permits for persons under the age of 18. I have assumed that the intent of the restriction of licences to persons aged 18 or over (see resolution 4(a)) was to restrict the use and possession of firearms to adults.”²²⁵

When the Firearms Amendment Bill 1996 (NSW) was before the Legislative Council, the Hon. A G Corbett MLC (of the A Better Future for Our Children Party) moved an amendment to the Bill (which was negatived) to specify a minimum age of 14 years for a minor's firearm permit. He argued that this was an appropriate age given the wide range of firearms available to a minor under this permit, and given that a minimum age of 14 was required for possession of spear guns. He noted that the minimum age in the Northern Territory for a minor's permit was 16.²²⁶

The Government did not support an increase in the minimum age to 14 years. The Attorney-General noted that the Government had received many submissions on the point, and was increasing the minimum from 10 to 12 years.²²⁷

The Hon. J S Tingle MLC (of the Shooters Party) did not support an increase in the minimum age to 14. He argued that many children, particularly those on farms, have used a firearm at an early age, often from the age of 10 or 12 years as part of their farming activity. He submitted that the earlier a child is taught to handle a firearm safely, the less

²²³ NSWPD, 26/06/96 p 6943, per the Hon. F J Nile MLC.

²²⁴ Thorp, supra n 182 at pp 148-154.

²²⁵ Warner, supra n 57 at p 30.

²²⁶ NSWPD, 4/12/96, p 6942, 6950 and 695, per the Hon. A G Corbett MLC.

²²⁷ NSWPD, 4/12/96, p 6951, per the Hon. J W Shaw MLC.

likely that child will be a danger at a later age.²²⁸

The Hon. Elisabeth Kirkby MLC (of the Australian Democrats) argued that if the legislation increased the minimum age, it is likely to be ignored. She said that whether or not the amendment was passed, young people on farms aged 10 or 12 years would be taught by their relatives how to use firearms in exactly the same way they are taught to drive motor vehicles (i.e. under the prescribed age).²²⁹

Removal of guns from homes in cities and towns

Gun control advocates have called for laws that require gun owners in cities and towns to store their guns outside of homes in community armouries. Chapman refers to this as “*perhaps the Australian gun control movement’s major policy challenge for the future*”.²³⁰

Chapman states that the main arguments for community armouries are:²³¹

- By law, guns cannot be used in residential settings, thus there is no need to have guns in homes in towns and cities.
- Self defence is not recognised as a legitimate reason to keep a gun, thus this cannot be a reason for allowing guns in homes.²³²
- Guns are regularly stolen by thieves with homes being the most common site for gun theft.
- Removal of guns from homes would reduce accidental firearm discharges by children.
- The time between the impulse to suicide and the retrieval of a gun from an armoury may prevent suicide deaths.
- Guns could not be used to threaten family members during domestic violence episodes.
- If guns were required to be stored in community armouries with an associated storage fee, this would act as a disincentive to many gun owners to retain guns that they seldom use.

Chapman states that in Australia, “ex-residential storage of firearms would only be practical

²²⁸ NSWPD, 4/12/96, p 6951, per the Hon. J S Tingle MLC.

²²⁹ NSWPD, 4/12/96, p 6951, per the Hon. Elisabeth Kirkby MLC.

²³⁰ Chapman, supra n 93 at p 174.

²³¹ Ibid, p 174-5.

²³² Ibid, p 175.

for urban and town residents because of the distances that often exist between population centres”.²³³

Suggested locations for community armouries include shooting clubs, police stations and firearms dealers.²³⁴ Chapman argues that firearms dealers are appropriate sites for community armouries as they already store firearms on their premises, they are heavily secured and have not been frequent targets for theft, they are often open seven days a week to service shooters’ needs, and it would provide welcome income through storage fees to dealers who have suffered a decrease in business since the tightening up of the firearms laws.²³⁵

Arguments against a requirement for handguns to be held by shooting clubs were outlined in a report by the Hon. Lord Cullen after the mass shooting at Dunblane, Scotland as follows:²³⁶

- The concentration of a large number of guns in a single place, often in a remote location, would present an obvious target for organised theft.
- Upgrading the security of the premises would not necessarily discourage, and might even encourage, attack. An example was given of a case in 1995 where thieves carried out a large raid on a pistol club in which they removed the clubhouse roof and used a crane to lift a safe weighing 2.5 tonnes containing a large number of guns.
- If handguns were kept at club premises, shooters would not be able to practice dry-firing at home.
- As shooters often travel to clubs other than their own in order to enter competitions, it would be necessary to release their guns on occasion. A system coordinating the release of guns to their owners could be implemented. However, regardless of what system of checks is maintained, a shooter could easily obtain their gun by entering a competition and then use the gun for an unauthorised purpose.

Lord Cullen noted that many of the same points apply to the suggestions that handguns be

²³³ Ibid, p 175.

²³⁴ Ibid, p 175-6.

²³⁵ Ibid, p 176.

²³⁶ The Hon. Lord Cullen, The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996, 1996, www.official-documents.co.uk/document/scottish/dunblane/dunblane.htm, paragraphs 9.67 - 9.72.

held at police stations or firearm dealers.²³⁷ In addition, it was noted that access to dealers' premises may be difficult, additional security may be required, and dealers may not want the extra responsibility.²³⁸

In relation to firearms being held at police stations, it was noted that similar problems regarding secure accommodation and reasonable accessibility would be raised.²³⁹ Further, it was suggested that it might be thought inappropriate for police to look after shooters' handguns.²⁴⁰

Banning of semi-automatic handguns

Gun control advocates have called for the banning of semi-automatic handguns. It is argued that semi-automatic handguns present the same danger as semi-automatic long-arms, and it is illogical that long-arms, but not handguns, are prohibited subject to limited exceptions.²⁴¹

Increased training requirements

Some gun control advocates have argued for more stringent training requirements for shooters. Gun Control Australia argues that all licence applicants should be required to take a 20-week part time course at TAFE colleges.²⁴²

As stated previously, in NSW there are currently no mandatory training courses specified for first time licensees. An applicant for a non-pistol licence must pass a 20 questions multiple choice test only. Any training received by an applicant for a pistol licence is determined by the applicant's pistol club.

In his report on the review of firearms control in New Zealand, Thorp pointed to the basic firearms safety course run in South Australia as a successful model which should be considered in New Zealand.²⁴³ The South Australian course consists of four hours instruction and two hours practical instruction, each assessed. The course is run through TAFE colleges. Thorp states that since the introduction of the course in 1993, South Australia has observed a reduction in hospital admissions for gunshot injuries and a major reduction in fatal gunshot accidents.

²³⁷ Ibid, paragraph 9.70.

²³⁸ Ibid, paragraph 9.71.

²³⁹ Ibid, paragraph 9.72.

²⁴⁰ Ibid.

²⁴¹ Chapman, supra n 93 at p 176.

²⁴² Turpin M and Crook J, *Fatal Attraction - Towards the Development of Gun Law Theory*, Gun Control Australia, 1998.

²⁴³ Thorp, supra n 182 at pp 189-191.

8. OVERSEAS DEVELOPMENTS

Australia is not alone in the attention being given to firearms control. In the past few years there have been worldwide increases in the level of interest in firearms regulation.²⁴⁴ In particular, there have been significant recent developments in Canada, New Zealand and the United Kingdom. In addition, the United Nations is taking an active interest in firearms regulation. These developments are discussed below.

Canada

Significant reforms to Canadian firearms laws occurred in 1991 and 1995 following a mass killing at Montreal's Ecole Polytechnique on 6 December 1989 when Marc Lepine, armed with a semi-automatic rifle, killed 14 women and injured another 13 people before committing suicide.²⁴⁵

In 1991, Bill C-17 put in place the following measures:²⁴⁶

- A ban on semi-automatic firearms that could be converted to full automatic fire.
- Improvements to screening for the Firearms Acquisition Certificate ("FAC") (Bill C-51 introduced in 1977 required individuals to have an FAC before they could take possession of a firearm), including raising the age to 18, requiring two references, more detailed screening and a mandatory test.
- Safe storage regulation requiring all guns to be stored unloaded and secured with a trigger lock, in a secure container or room, or by disabling the firearm.
- A ban on large capacity magazines with some exceptions.
- Introduction of a mandatory 28-day waiting period before an individual could buy firearms.
- Penalties increased for firearm crimes and new criminal offences created.

In 1995, the *Firearms Act* received Royal Assent and is still in the process of being

²⁴⁴ This is identified in Thorp, *supra* n 182 at pp 105ff.

²⁴⁵ Swain M, *Gun Control: Historical Perspective and Contemporary Overview*, Briefing Paper No 11/96, NSW Parliamentary Library Research Service, May 1996 at p 45; Chapman, *supra* n 93 at p 59.

²⁴⁶ This information is taken from Cukier W, "Firearms Regulation: Canada in the International Context" (1998) 19(1) *Chronic Diseases in Canada*, www.hc-sc.gc.ca/hpb/lcdc/publicat/cdic/cdic191/cd191d_e.html; and the Canadian Firearms Centre website at www.cfc-ccaf.gc.ca/Default_en.htm, in particular the brochure *Focus on Firearms* accessible through www.cfc-ccaf.gc.ca/Research/firea_research.htm. The Canadian Firearms Centre is a consortium of Federal, Provincial and Territorial partners established to coordinate the implementation of the Firearms Act across Canada. The Federal partners include the Department of Justice, the Royal Canadian Mounted Police, Revenue Canada Customs and the Department of Foreign Affairs and International Trade.

implemented. The measures in this Act include:²⁴⁷

- A ban on all handguns with a barrel shorter than 4 inches, all .32 and .25 calibre handguns, any firearm with a sawn-off barrel and some military rifle models such as AK-47 and their variants.
- Registration of all firearms by 2003 (the registration process commenced in 1998).
- Licensing of all firearm owners by 2001 (the licensing process commenced in 1998). Previously, the FAC was required to obtain firearms, not possess firearms, and only 1/3 of gun owners had valid FACs.
- Safety checks on applicants before a license is issued. Safety checks to be done on a new automated system that links police databases with the firearm registry system.
- In the case of new applicants who wish to acquire firearms, spouses and common-law partners with whom the applicant has lived within the last two years will be notified.
- A mandatory minimum sentence of four years imprisonment for 10 serious offences, including manslaughter, sexual assault and robbery, if the offence was committed with a firearm (this provision came into effect on 1 January 1996).
- Controls on the sale of ammunition.
- Tougher controls on importation and exportation (to come into effect on 1 January 2001).

The Canadian Firearms Centre,²⁴⁸ which coordinates the implementation of the *Firearms Act*, claims that the safety checks, done through the automated system linking police and firearms registry databases, have resulted in identification of applicants that pose a threat to public safety that previously would not have been identified, and large increases in revocations.²⁴⁹

*New Zealand*²⁵⁰

Prior to the enactment of the *Arms Act 1983* (NZ), the essential basis of New Zealand's firearms control was registration of individual firearms with only very limited licensing of shooters. The paper-based decentralised firearms register required considerable manual investigation to pinpoint a firearm's owner or location, was of limited effect in locating armed offenders, and was both incomplete and inaccurate. Police concerns about the state of the register led to a review process culminating in the enactment of the *Arms Act 1983* (NZ).

²⁴⁷ Ibid; and further pages in the Canadian Firearms Centre website including "Highlights of the Firearms Act", www.cfc-ccaf-gc.ca/General_public/Highlights/highlights_en.htm; "Phasing-in of Firearms Act - 1999-2003" at www.cfc-ccaf.gc.ca/Act_regulation/Into_Force/InForce_en.html

²⁴⁸ See n 183.

²⁴⁹ Canadian Firearms Centre, "Firearms Act is already making a difference", www.cfc-ccaf.gc.ca/Important_Info/Difference/difference-e.html, revised 15 September 1999.

²⁵⁰ The information in this section is taken from Thorp, *supra* n 182, and Cukier, *supra* n 246.

The 1983 Act shifted the focus from control of firearms to control of users. The registration of shotguns and rifles was dispensed with. Only pistols and restricted firearms were registered. A licence was required to possess a firearm. A licence was issued for life with no later checks on the licence holder's suitability to hold a licence. The prospective licensee had to nominate two referees, attend a lecture on firearms safety, sit a written test and be assessed by a police officer for suitability to hold a licence. There was no limit on the number of firearms.

In 1992, further amendments were made following a mass killing on 13 November 1990 at Aramoana when David Gray, armed with two military style semi-automatic firearms, killed 13 people. The 1992 amendments included increased controls over military style semi-automatic weapons, tighter storage and security requirements, tighter controls over the sale of ammunition and re-vetting of existing licence holders. One of the most controversial amendments was the revocation of lifetime licences, which were replaced by 10 year licences.

In July 1996, following police shootings in September and November 1995, the Minister of Police commissioned a recently retired High Court judge, Sir Thomas Thorp, to conduct an independent review of firearms control. The review was published in June 1997. The principal conclusions were:

*“That the Arms Act 1983 and its subsequent amendments do not provide an effective code for the control of firearms in New Zealand.... That there is a need for radical reform of the firearms laws.”*²⁵¹

The recommended reforms included:

- A return to registration of all firearms.
- Stricter licensing and vetting processes.
- Banning and buyback of military style semi-automatic weapons.
- Amnesty programs.
- Controls on the maximum number of handguns per individual.
- Regular and consistent monitoring of security conditions.
- Limits to the size of collections.
- Controls on the sale of ammunition.
- Sanctions for misuse of firearms.
- Training of shooters.
- Education.

The Arms Amendment (No. 2) Bill 1999, which was introduced in the New Zealand parliament on 14 July 1999 and is currently before the Justice and Law Reform Committee, provides for the re-introduction of the registration of all firearms.

²⁵¹ Thorp, *supra* n 182 at p 237.

Sir Thomas Thorp recognised that the re-introduction of registration would be met with some opposition. However he made the following conclusion:

*“...the reasons which led to the abandonment of firearm registration in 1983 no longer present compelling obstacles in 1997. Not only have technology and methods of administration moved forward since then, but experience has shown that the alternative of total reliance on personal vetting does not meet the reasonable needs of our society.”*²⁵²

United Kingdom²⁵³

The United Kingdom has a long history of strict controls on firearms. Since 1920, a police firearm certificate has been required for the possession of pistols, revolvers, rifles and the ammunition that they take. Machine guns have been prohibited since 1937. A police certificate has been required for shotguns since 1967.

The various controls were consolidated in the *Firearms Act 1968*. This Act provides that the police must, before issuing a firearm certificate, satisfy themselves that the applicant is suitable to possess a firearm. In the case of a pistol or revolver, the police must satisfy themselves that the applicant has a good reason for having the firearm.

Further reforms occurred in 1988 following a mass shooting at Hungerford in 1987 when Michael Ryan, a licensed firearm owner, armed with a handgun and a semi-automatic Kalashnikov rifle, killed 17 people before committing suicide.²⁵⁴ The *Firearms (Amendment) Act 1988* prohibited self loading rifles and short barrelled semi-automatic shotguns, strengthened controls over shotguns, and strengthened controls over the safe keeping of all legally-held firearms.

Additional significant reforms occurred in 1997 following a mass shooting at a primary school in Dublane, Scotland on 13 March 1996 when Thomas Hamilton, a licensed firearm owner, armed with four handguns, killed 16 primary school children and their teacher and injured another 15 children before committing suicide.²⁵⁵ The Conservative government banned all handguns over .22 calibre from 1 July 1997 and required that non-prohibited

²⁵² Thorp, *supra* n 182 at p 185.

²⁵³ Much of the information in this section is taken from Home Affairs Committee, Fifth Report, *Possession of Handguns (Volume II)*, House of Commons, Session 1995-1996, 24 July 1996, Appendix 1.

²⁵⁴ Swain, *supra* n 245 at p 42.

²⁵⁵ Swain, *supra* n 245 at p 22. Cukier, *supra* n 246.

handguns be stored at clubs.²⁵⁶ There was a three month amnesty and buyback scheme.²⁵⁷ Subsequently, the new Labour government extended the ban to cover all handguns effective from 1 February 1998 with a one month amnesty and buyback period.²⁵⁸

United Nations

In 1998, the United Nations published the results of a international study on firearm regulation.²⁵⁹ The study, supported financially by the Australian, Canadian and Japanese governments, covered firearm regulations in 69 countries representing 74% of the world's population. The information for the study was obtained via a survey completed by the States in 1996-97.²⁶⁰ Many States reported that significant firearm policy or programme initiatives had occurred within the previous five years or were taking place at the time of the survey. Australia, Canada, Colombia, Croatia, Czech Republic, Estonia, Fiji, Russian Federation and United Kingdom reported comprehensive reforms of their firearm legislation. Major legislative reform was reported to be under discussion or pending in Brazil, China, Denmark, Finland, India, Jamaica, New Zealand, Peru, Poland, South Africa and Zambia. Only 13 States explicitly reported that no further significant changes were being contemplated.²⁶¹

The following table, compiled by the Canadian Firearms Centre²⁶² from the 1998 United Nations report, provides a quick comparison of firearm regulation and firearm violence in selected States.²⁶³

²⁵⁶ *Firearms (Amendment) Act 1997* (UK). Cukier, supra n 246. Wilkins G and Addicott C, *Firearm Certificate Statistics England and Wales, 1997*, Issue 26/98, 19 November 1998, accesible from www.homeoffice.gov.uk/rds/index.htm. Home Office brochure, *Firearms: Changes in the Law*, 1 July 1997, www.homeoffice.gov.uk/ppd/oppu/gunlaw.htm.

²⁵⁷ Ibid. Also, Home Office brochure, *Firearms Amendment) Act 1997 - Large-Calibre Handgun Compensation Scheme*, June 1997, www.homeoffice.gov.uk/ppd/oppu/compsch.htm.

²⁵⁸ *Firearms (Amendment) (No. 2) Act 1997* (UK). Thomson S, Stancich L, Dickson L, "Gun Control and Showdrop" (1998) 51(3) *Parliamentary Affairs* 329 at p 340. Cukier, supra n 246. Wilkins and Addicott, supra n 256. Home Office brochure, "Small-Calibre Pistol Compensation Scheme & Surrender Arrangements", December 1997, www.homeoffice.gov.uk/ppd/oppu/pistol.htm.

²⁵⁹ United Nations, *International Study on Firearm Regulation*, United Nations Publication, New York, 1998, Sales No. E.89.IV.2.

²⁶⁰ Ibid at p 3.

²⁶¹ Ibid at p 169.

²⁶² See n 246.

²⁶³ *Firearms and the Experience of Other Countries*, Firearms Research Unit, Canadian Firearms Centre, April 1999, www.cfc-ccaf.gc.ca/Research/Research_notes/inter/INTER-EN.html, see Annex I.

AN INTERNATIONAL QUICK-REFERENCE COMPARISON

Country	Household Ownership Levels	Licensing and Registration Restrictions			Firearm Death Rates (per 100,000)		
		Prohibit / Restrict Ownership of Certain	Licensing of Owners	Registration of All Firearms	Firearm Homicide	Firearm Suicide	Accidental Firearm Deaths
Australia	16%	Yes	Yes	Yes	0.56	2.38	0.11
Canada	26%	Yes	Acquisition only; possession starts Dec. 1, 1998	Handguns only; all guns as of Dec. 1, 1998	0.60	3.35	0.13
Germany	10%	Yes	Yes	Yes	0.21	1.23	0.03
Japan	0.57%	Yes	Yes	Yes	0.03	0.04	0.01
New Zealand	20%	Yes	Yes	Handguns only	0.22	2.45	0.29
UK	4%	Yes	Yes	Yes	0.13**	0.33	0.02
USA	41%	Yes	In some states	Handguns in some states	6.24	7.23	0.58

* United Nations. *International Study on Firearm Regulation*. United Nations Publication, New York, 1998. See also *Criminal Justice Reform and Strengthening of Legal Institutions - Measures to Regulate Firearms, Report of the Secretary General*. Commission on Crime Prevention and Criminal Justice, Sixth Session, Vienna, 28 April - 9 May: 1997 (E/CN.15/1997/CRP.4).

** For Great Britain only.

In February 1997, an expert group working on firearms regulation (established pursuant to a resolution of the UN Economic and Social Council) concluded that transnational illicit trafficking in firearms is a serious concern of Member States, and that the absence of effective firearm regulation in one Member State can undermine not only the regulatory efforts but also the effective governance of other Member States.²⁶⁴

In July 1997, following the recommendations of the expert group, the UN Economic and Social Council passed a resolution that explicitly linked firearms in civilian use and unacceptable levels of violence in cities, communities and families.²⁶⁵ The resolution also stated that the Economic and Social Council:

“Encourages Member States to consider, where they have not yet done so, regulatory approaches to civilian use of firearms that include the following common elements:

- (i) Regulations relating to the safe use and storage of firearms;*
- (ii) Appropriate penalties for serious offences involving the misuse of firearms;*
- (iii) Amnesty or similar programmes to encourage citizens to surrender illegal, unsafe or unnecessary firearms;*
- (iv) A licensing system to ensure that persons who are at high risk of misusing firearms are prevented from possessing and using firearms;*
- (v) A record-keeping system for firearms, including a requirement for appropriate marking of firearms at manufacture and at import to assist criminal investigations, discourage theft and ensure the accountability of owners;”²⁶⁶*

Between September 1997 and January 1998, there were 4 regional workshops on firearms regulation. The agendas for the workshops included the possible development of a UN declaration of principles in relation to firearms regulation. It has been suggested that the regulatory measures specified in Economic and Social Council resolution above be included

²⁶⁴ UN Commission of Crime Prevention and Criminal Justice, sixth session, *Criminal Justice Reform and Strengthening of Legal Institutions Measures to Regulate Firearms*, United Nations, 7 March 1997, E.CN.15/1997/4.

²⁶⁵ UN Economic and Social Council resolution 1997/28, *Firearm regulation for purposes of crime prevention and public health and safety*, 21 July 1997.

²⁶⁶ *Ibid* at paragraph 5.

in the declaration of principles.²⁶⁷

Work on firearms regulation is continuing at the international level including the ongoing maintenance and updating of the UN database on firearms regulation and statistics from Member States.²⁶⁸

9. CONCLUSIONS

Since 1996 there have been a number of developments in firearms regulation in both Australia and overseas. All Australian States and Territories have made significant changes to their firearms laws to bring them into line with the Nationwide Agreement on Firearms, although no jurisdiction fully complies with the Agreement.

New South Wales substantially complies with the Nationwide Agreement and subsequent resolutions of the APMC. Areas of non-compliance include membership of recreational hunting clubs as a genuine reason for owning or possessing a firearm, the provision for minors' permits, the lack of a maximum limit on the amount of ammunition that can be purchased in a given period, the absence of a prohibition of the commercial transport of firearms with ammunition, and the lack of mandatory and approved safety training courses for first time licence applicants.

In contrast to a number of other States and Territories, New South Wales complies with the APMC resolutions with respect to the 28 day waiting period for licences and permits, and the physical need and ACTA affiliated club requirements for access to Category C firearms for clay target shooting.

More broadly, the question as to whether the reforms which have taken place in recent years do, in fact, constitute a uniform national scheme is open to conflicting interpretations. As the comparative overview of the firearms legislation in the States and Territories showed, there are differences between the various jurisdictions. Some of these are points of detail; others, however, are more substantial in nature, such as the varying requirements in place for firearms safety training courses.

The Australian Institute of Criminology is monitoring the effect of the new guns laws and has recently concluded that it is still too soon to determine definitively whether Australia's uniform laws have achieved their aim in reducing firearm-related violence and misuse. However, preliminary findings indicate a decline in firearm-related deaths.

Not unexpectedly, since the introduction of the new firearms laws, both sides of the gun

²⁶⁷ UN Commission of Crime Prevention and Criminal Justice, seventh session, *Criminal Justice Reform and Strengthening of Legal Institutions: Measures to Regulate Firearms*, United Nations, 29 September 1998, E.CN.15/1998/4 at paragraph 33 to 38.

²⁶⁸ See United Nations International Study on Firearm Regulation website at www.ifs.univie.ac.at/~uncjin/firearms/index.htm.

control debate have expressed dissatisfaction with aspects of the laws and have argued for amendments. The extent and direction of any amendments remains to be seen. However, any amendments made in New South Wales, and in Australia generally, will occur in the context of worldwide increases in the level of attention being given to firearms regulation.

APPENDIX A
AUSTRALASIAN POLICE MINISTERS' COUNCIL
SPECIAL FIREARMS MEETING

CANBERRA
10 MAY 1996

RESOLUTIONS

AUSTRALASIAN POLICE MINISTERS' COUNCIL

SPECIAL FIREARMS MEETING

CANBERRA
10 MAY 1996

RESOLUTIONS

1. Bans on Specific Types of Firearms

RESOLUTION

Council resolved:

- (a) that all jurisdictions ban the sale, resale, transfer, ownership, possession, manufacture and use of those firearms banned or proposed to be banned from import other than in the exceptional circumstances listed in paragraph 1.2 of the Commonwealth proposal (see *below*).

para 1.2 The only need for the use of an automatic or semi-automatic longarm would be:

- *military;*
- *police or other government purposes; and*
- *occupational categories of shooters who have been licensed for a specified purpose (eg extermination of feral animals).*

- (b) that all jurisdictions ban competitive shooting involving those firearms banned or proposed to be banned from import.

Council agreed to implement its resolution via the following action plan:

1. **All jurisdictions** to ban the sale, resale, transfer, ownership, possession, manufacture and use of those firearms banned or to be banned from import other than in the following exceptional circumstances:
 - military use;
 - police or other government purposes; and
 - occupational categories of shooters who have been licensed for a specified purpose (eg extermination of feral animals).
2. **All jurisdictions** to ban competitive shooting involving those firearms banned or proposed to be banned from import.
3. **The Commonwealth** to ban the importation of all semi-automatic self-loading and pump action longarms, and all parts, including magazines, for such firearms, included in Licence Category D, and control the importation of those firearms included in Licence Category C.

2. Effective Nationwide Registration of All Firearms

RESOLUTION

Council resolved:

- (a) that New South Wales, Queensland and Tasmania immediately establish an integrated licence and firearms registration system and that all other jurisdictions review their existing registration systems to ensure that all systems are compatible.
- (b) that these databases be linked through the National Exchange of Police Information (NEPI) to ensure effective nationwide registration of all firearms.

Council noted that there is an urgent need for funds to upgrade NEPI and for additional recurrent funding

Council resolved to implement its resolution via the following action plan:

1. **New South Wales, Queensland and Tasmania** to immediately establish a registration system for all firearms in consultation with NEPI.
2. **Victoria, ACT, South Australia, Western Australia and Northern Territory** to work with NEPI in reviewing existing systems to ensure compatibility.
3. **All jurisdictions** to link their registration systems to NEPI.
4. **New South Wales, Tasmania, Victoria and Western Australia** to immediately place the names of all firearms licence holders in their States on NEPI's Police Reference System.

3. Genuine Reason for Owning, Possessing or Using a Firearm

RESOLUTION

Council resolved:

- (a) that personal protection not be regarded as a genuine reason for owning, possessing or using a firearm.
- (b) that the following classifications be used to define the "genuine reason" an applicant must show for owning, possessing or using a firearm:
 - sporting shooters with valid membership of an approved club (defined as participants in shooting sports recognised in the charters of such major sporting events as the Commonwealth Games, Olympic Games or World Championships);
 - recreational shooters/hunters who produce proof of permission from a landowner;
 - persons with an occupational requirement, eg primary producers, other rural purposes, security employees and professional shooters for nominated purposes;
 - bona fide collectors of lawful firearms; and
 - persons having other limited purposes authorised by legislation or Ministerial approval in writing (for example, firearms used in film production).
- (c) 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.

For Licence Category C:

- application will be limited to primary producers;
 - the applicant must satisfy the licensing authority that there is a genuine need for the use of the firearm that pertains to the applicant's occupation, which cannot be achieved by some other means, and that the need cannot be satisfied by a firearm under Category A or B;
 - a Category C licence holder will be limited to the maximum of one rifle and one shotgun of the types covered by Category C;
 - the application is to be approved by the Commissioner of the Police, who may impose conditions as to the use of the firearm, including as to the geographical location of its use; and
 - licensing authorities will develop uniform guidelines to be approved by Council.
- (d) that firearms collectors should be regulated by means of a licence and permit system designed to test their bona fides. The licensing process should include a provision for an initial inspection of storage facilities and for subsequent mutually arranged inspections. All such inspections will be subject to the recognition of the individual's right to privacy. The onus of defining "bona fide firearms collector" rests with each State and Territory.

However, the following principles should underpin the regulation of bona fide firearms collectors:

- the firearms which are the subject of the collection should be of or above a defined age;
- firearms in a collection which have been manufactured after 1 January 1946 must be rendered inoperable;
- collectors may not possess ammunition for a collection firearm;
- no prohibited firearm may be included in a collection;
- any attempt to restore firearms in the collection to usable condition should be regarded as a serious offence and subject to severe penalties; and
- all operating firearms which are owned by the collector should be subject to the same level of regulation as any other operating firearm.

Council agreed to implement its resolution via the following action plan:

1. **All jurisdictions** confirm that personal protection is not a genuine reason for owning, possessing or using a firearm.
2. **All jurisdictions** 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. The classifications used to define "genuine reason" are as follows:
 - (a) sporting shooters with valid membership of an approved club (defined as participants in shooting sports recognised in the charters of such major sporting events as the Commonwealth Games, Olympic Games or World Championships);
 - (b) recreational shooters/hunters who produce proof of permission from a landowner;
 - (c) persons with an occupational requirement, eg primary producers, their licensed employees, other rural purposes, security employees and professional shooters for nominated purposes;
 - (d) bona fide collectors of lawful firearms; and
 - (e) persons having other limited purposes authorised by legislation or Ministerial approval in writing (for example, firearms used in film production).
3. **All jurisdictions** to 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.

For Licence Category C:

- application will be limited to primary producers;
- the applicant must satisfy the licensing authority that there is a genuine need for the use of the firearm that pertains to the applicant's occupation, which cannot be achieved by some other means, and that the need cannot be satisfied by a firearm under Category A or B;

- a Category C licence holder will be limited to the maximum of one rifle and one shotgun of the types covered by Category C;
 - the application is to be approved by the Commissioner of the Police, who may impose conditions as to the use of the firearm, including as to the geographical location of its use; and
 - licensing authorities will develop uniform guidelines to be approved by Council.
4. **All jurisdictions** to immediately implement a uniform system for regulating firearms collectors by means of the licence and permit system as follows:
- (a) the firearms which are the subject of the collection should be of or above a defined age;
 - (b) firearms in a collection which have been manufactured after 1 January 1946 must be rendered inoperable;
 - (c) collectors may not possess ammunition for a collection firearm;
 - (d) no prohibited firearm may be included in a collection;
 - (e) any attempt to restore firearms in the collection to usable condition should be regarded as a serious offence and subject to severe penalties; and
 - (f) all operating firearms which are owned by the collector (ie those not forming part of the collection) should be subject to the same level of regulation as any other operating firearm.

4. Basic Licence Requirements

RESOLUTION

Council resolved:

- (a) that in addition to the demonstration of "genuine reason", a licence applicant should be required to:
 - be aged 18 years or over;
 - be a fit and proper person;
 - be able to prove identity through a system similar to that required to open a bank account, that is, a 100 point system requiring a passport or multiple types of identification; and
 - undertake adequate safety training.
- (b) that the licence:
 - bear a photograph of the licensee;
 - be endorsed with the category of the firearm;
 - be endorsed with the holder's address;
 - be issued after a waiting period of not less than 28 days;
 - be issued for a period of no more than 5 years;
 - contain a reminder of safe storage responsibilities;
 - be issued subject to undertakings to comply with storage requirements, to provide details of proposed storage provisions at the time of licensing, and

- submit to a mutually arranged (with due recognition of privacy) inspection by licensing authorities of storage facilities;
- be subject to immediate withdrawal of licence and confiscation of firearms in certain circumstances. (Jurisdictions may wish to consider appropriate penalties - additional to withdrawal or confiscation - for the failure to comply with security and storage conditions.)
 - (c) 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.
 - (d) that jurisdictions recognise, for a period of no longer than 3 months, a category A or B firearm licence issued in another jurisdiction to an individual who moves permanently to a new jurisdiction for such an individual with a licence categories C, D and H, a period of recognition will not exceed 7 days.
 - (e) that the following categories be used in the licensing 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 shotguns/rifle combinations;

Licence Category C (prohibited except for occupational purposes)

- semi automatic rimfire rifles with a magazine capacity no greater than 10 rounds;
- semi automatic shotguns with a magazine capacity no greater than 5 rounds;
- pump action shotguns with a magazine capacity no greater than 5 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 5 rounds;
- self-loading rim-fire rifles with a magazine capacity greater than 10 rounds.

Licence Category H: (Restricted)

- all handguns, including air pistols

Council agreed to implement its resolution via the following action plan:

1. **All jurisdictions** to establish the following licensing requirements:
 - (a) that in addition to the demonstration of "genuine reason", a licence applicant should be required to :
 - be aged 18 years or over;
 - be a fit and proper person;
 - be able to prove identity through a system similar to that required to open a bank account, that is, a 100 point system requiring a passport or multiple types of identification; and
 - undertake adequate safety training; and
 - (b) that the licence:
 - bear a photograph of the licensee;
 - be endorsed with the category of the firearm;
 - be endorsed with the holder's address;
 - be issued after a waiting period of not less than 28 days;
 - be issued for a period of no more than 5 years;
 - contain a reminder of safe storage responsibilities;
 - be issued subject to undertakings to comply with storage requirements, to provide details of proposed storage provisions at the time of licensing, and submit to a mutually arranged (with due recognition of privacy) inspection by licensing authorities of storage facilities;
 - be subject to immediate withdrawal of licence and confiscation of firearms in certain circumstances. (Jurisdictions may wish to consider appropriate penalties - additional to withdrawal or confiscation - for the failure to comply with security and storage conditions.)
2. **All jurisdictions** to consider appropriate penalties - additional to withdrawal of licence or confiscation of firearms - for failing to comply with security and storage conditions.
3. **All jurisdictions** to recognise visiting licensees for sporting purposes and (other than licence categories C, D and H and for a limited period) for individuals moving permanently to a new jurisdiction, as outlined in the following:
 - (a) 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.
 - (b) that jurisdictions recognise, for a period of no longer than 3 months, a category A or B firearm licence issued in another jurisdiction to an individual who moves permanently to a new jurisdiction for such an individual with a licence categories C, D and H, a period of recognition will not exceed 7 days.
4. **All jurisdictions** to adopt the categories proposed by Council for the licensing of firearms as follows:

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 shotguns/rifle combinations;

Licence Category C (prohibited except for occupational purposes)

- semi automatic rimfire rifles with a magazine capacity no greater than 10 rounds;
- semi automatic shotguns with a magazine capacity no greater than 5 rounds;
- pump action shotguns with a magazine capacity no greater than 5 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 5 rounds;
- self-loading rim-fire rifles with a magazine capacity greater than 10 rounds.

Licence Category H: (Restricted)

- all handguns, including air pistols

5. Training as a Prerequisite for Licensing

RESOLUTION

Council resolved:

- (a) that all jurisdictions require the completion of an accredited course in safety training for firearms for all first time licence applicants.

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 which emphasises both safety and storage issues and is distributed to all new licence applicants prior to attending the course of instruction;

- monitored as to content of courses and the skills of instructors by firearms regulatory authorities;
- (b) that a specialised course should be established for training of persons employed in the security industry.

Council agreed to implement its resolution via the following action plan:

1. **The Commonwealth** to chair a Working Party, to include representatives of firearms interest groups, to develop an accredited course for safety training in firearms.
2. **All jurisdictions** to introduce a requirement for the completion of an accredited course in safety training for firearms for all new licence applicants
3. **All jurisdictions** to establish a specialised course for training of persons employed in the security industry.

6. Grounds for Licence Refusal or Cancellation and Seizure of Firearms

RESOLUTION

Council resolved:

- (a) that jurisdictions set out in legislation circumstances in which licence applications are to be refused or licences are to be cancelled. The following minimum standards are proposed:
 - *general reasons* - not of good character; conviction for an offence involving violence within the past five years; contravene firearm law; unsafe storage; no longer genuine reason; not in public interest due to (defined) circumstances; not notifying of change of address; licence obtained by deception;
 - *specific reasons* - where applicant/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 past five years;
 - *mental or physical fitness* - reliable evidence of a mental or physical condition which would render the applicant unsuitable for owning, possessing or using a firearm.
- (b) that in regard to the latter point, 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.
- (c) that a Commonwealth/State working party, including health officials, police and medical representation, be established to examine possible criteria and systems for determining mental and physical fitness to own, possess or use a firearm. The working party should report to the second APMC meeting for 1996, but jurisdictions should not delay the introduction of necessary legislative changes while awaiting its report.
- (d) that jurisdictions will establish an appeal from a refusal of a licence application and the cancellation of a licence.

Council agreed to implement its resolution via the following action plan:

1. **All jurisdictions** to immediately implement a uniform minimum standard of circumstances, to be set out in legislation, in which applications are to be refused or licences cancelled.
2. **All jurisdictions** to undertake a review of their legislation to ensure that it is consistent with the uniform, minimum standards as follows:
 - *general reasons* - not of good character; conviction for an offence involving violence within the past five years; contravene firearm law; unsafe storage; no longer genuine reason; not in public interest due to (defined) circumstances; not notifying of change of address; licence obtained by deception;
 - *specific reasons* - where applicant/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 past five years;
 - *mental or physical fitness* - reliable evidence of a mental or physical condition which would render the applicant unsuitable for owning, possessing or using a firearm.
3. **All jurisdictions** to establish a working party, including health officials, police and medical representation, to examine possible criteria and systems for determining mental and physical fitness to own, possess or use a firearm. The working party should report to APMC's November 1996 meeting.
4. That jurisdictions will establish an appeal from a refusal of a licence application and the cancellation of a licence.

7. Permit to Acquire

RESOLUTION

Council resolved:

- (a) that a separate permit be required for the acquisition of every firearm.
- (b) 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.

Council agreed to implement its resolution via the following action plan:

1. **New South Wales, Queensland, Tasmania, the ACT and the Northern Territory** to require a separate permit to be required for the purchase of every firearm.
 2. **All jurisdictions** to require a separate permit for any other method of acquisition of every firearm.
 3. **All jurisdictions** to establish a 28-day waiting period prior to the issuing of all firearms permits.
8. **Uniform Standard for the Security and Storage of Firearms**

RESOLUTION

Council resolved that all firearms and ammunition be stored in secure conditions as follows:

- 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 frame of 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 any firearms.
- should a firearms owner or possessor wish to store firearms through measures other than those indicated in legislation, he or she would have the burden of persuading the firearms regulatory authority that he or she can provide the level of security not less than that required by the relevant approved practices;
- 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";

- the firearms safety booklet to be distributed to all new licence applicants prior to attending for a course of instruction should also feature clear and precise information on the obligations as regards storage of firearms;
- a reminder of safe storage responsibilities should be on the licence itself;
- security at gun dealer premises will require the dealer meeting such additional requirements as the firearms regulatory authority deems appropriate having regard to the type of activity of the dealer;
- where approval has been given for the possession or use of a firearm for a limited purpose such as film production (see 3.3), the person authorised must meet such requirements as the firearms regulatory authority deems appropriate having regard to the type of activity for which possession has been authorised.

Council agreed to implement its resolution via the following action plan:

1. **All jurisdictions** to develop a standard approach to the storage of firearms and ammunition.

9. Recording of Sales

RESOLUTION

Council resolved:

- (a) that firearms sales be conducted only by or through licensed firearms dealers.
- (b) that the following principles should underpin firearms dealer recording of firearms transactions:
 - firearms dealers should continue to be obliged under penalty to ensure that purchasers are appropriately licensed for the firearm to be purchased;
 - firearms dealers should be required to record and maintain details (type, make, calibre and serial number) of each weapon purchased or sold against the identity (name, address and licence number) of the seller or the purchaser;
 - firearms dealers should be required to provide records to the National Register of Firearms through the State/Territory licensing authority;
 - police personnel investigating a crime or checking the compliance of licensed gun dealers with recording responsibilities should have the right to inspect the records of licensed gun dealers without the need to give notice to the licensee; and
 - special provisions may have to be put in place in those jurisdictions which have remote locations where licensed gun dealers may not be readily

available (it may be possible, for instance, to authorise local police officers to certify sales/purchases in such circumstances).

- (c) that jurisdictions legislate to allow the sale of ammunition only for those firearms for which the purchaser is licensed and that there be limits on the quantity of ammunition that may be purchased in a given period.
- (d) on the purchase of ammunition, the relevant licence must be produced.

Council agreed to implement its resolution via the following action plan:

1. **All jurisdictions** to legislate to ensure that firearms sales be conducted only by or through licensed firearms dealers.
2. **All jurisdictions** to adopt the following principles to underpin firearms dealer recording of firearms transactions:
 - firearms dealers should continue to be obliged under penalty to ensure that purchasers are appropriately licensed for the firearm to be purchased;
 - firearms dealers should be required to record and maintain details (type, make, calibre and serial number) of each weapon purchased or sold against the identity (name, address and licence number) of the seller or the purchaser;
 - firearms dealers should be required to provide records to the National Register of Firearms through the State/Territory licensing authority;
 - police personnel investigating a crime or checking the compliance of licensed gun dealers with recording responsibilities should have the right to inspect the records of licensed gun dealers without the need to give notice to the licensee; and
 - special provisions may have to be put in place in those jurisdictions which have remote locations where licensed gun dealers may not be readily available (it may be possible, for instance, to authorise local police officers to certify sales/purchases in such circumstances).
3. **All jurisdictions** to legislate to allow the sale of ammunition only for those firearms for which the purchaser is licensed and to place limits on the quantity of ammunition that may be purchased in a given period.
4. On the purchase of ammunition, the relevant licence must be produced.

10. Mail Order Sales Control

RESOLUTION

Council resolved:

- (a) to adopt the following principles in relation to mail order firearms sales:
 - mail order arrangements will apply strictly on a licensed gun dealer to licensed gun dealer basis;
 - advertisement of firearms for sale will be prohibited unless the sale is to be conducted by or through a licensed gun dealer;

- the movement of firearms covered by Licence Categories C, D and H must be in accordance with prescribed safety requirements;
 - the commercial transport of ammunition with firearms will be prohibited; and
- (b) that each jurisdiction pass the necessary legislation to enforce these principles within their borders.

Council agreed to implement its resolution via the following action plan:

1. **All jurisdictions** to develop and introduce legislation to ensure that, within their own borders, -
 - mail order arrangements will apply strictly on a licensed gun dealer to licensed gun dealer basis;
 - advertisement of firearms for sale will be prohibited unless the sale is to be conducted by or through a licensed gun dealer;
 - the movement of firearms covered by Licence Categories C, D and H will be in accordance with prescribed safety requirements; and
 - the commercial transport of ammunition with firearms will be prohibited.
2. **All jurisdictions** to consider whether they wish to put in place measures to provide for individuals living in remote locations where gun dealers are not readily available.

11. COMPENSATION/INCENTIVE ISSUES

RESOLUTION

Council resolved:

- (a) that a common basis for fair and proper compensation, based on the value of each firearm as at March 1996, be agreed between jurisdictions to prevent gun owners from offering their firearms to the State/Territory which offers the 'best price'.
- (b) that there be a public education campaign to highlight the firearms amnesty and compensation program.
- (c) to note that the Commonwealth will make a financial contribution to the public education campaign.
- (d) that a 12 month national amnesty be established, during which the public education campaign would persuade firearm owners to comply, and warn of severe penalties where firearms are not voluntarily surrendered.
- (e) that, after the amnesty has concluded, each jurisdiction have severe penalties, which to the extent practicable should be uniform, for breaches of the firearms control laws.

APPENDIX B

**PUBLICLY AVAILABLE RESOLUTIONS OF
THE AUSTRALASIAN POLICE MINISTERS COUNCIL MADE ON
17 JULY 1996**

PUBLICLY AVAILABLE RESOLUTIONS OF THE AUSTRALASIAN POLICE MINISTERS COUNCIL MADE ON 17 JULY 1996

(From the second reading speech of the Hon. P Whelan MP for the *Firearms Amendment Bill 1996*, New South Wales Parliamentary Debates, 31 October 1996 at p 5703)

MULTIPLE CATEGORY C FIREARMS FOR PRIMARY PRODUCERS WITH LARGE RURAL PROPERTIES

The Council resolved:

- (a) that, in the case of very large properties, or where one primary producer owned a number of properties, more than one licence for a category C firearm be permitted for use on that property or those properties;
- (b) that the licence enable employees of licence holders to use the employer's firearms only while working on the property.

CATEGORY D FIREARMS FOR PRIMARY PRODUCERS

At the meeting on the 17 July 1996, it was agreed that a limited class of primary producers should have access to a Category D firearm for the purpose of culling large feral and Brucellosis and Tuberculosis Campaign (BTEC) animals. It was resolved that the following conditions should apply:

- (i) The licence may only be issued where there is a demonstrated need for a category D firearm for the culling of large feral animals (e.g. where a government authority requires the undertaking of specific culling within the relevant area);
- (ii) the applicant must meet all of the qualifications which are required for accreditation of professional shooters, including safety training requirements;
- (iii) the licence may only be issued for a nominated period not exceeding one year, in accordance with the demonstrated need;
- (iv) the firearm must, upon expiry of the nominated period, be returned to the authorities or stored in accordance with arrangements approved by the authorities;
- (v) the geographical location of the use of the firearm must also be limited (normally, to the applicant's property);
- (vi) only one category D firearm may be issued per individual applicant;
- (vii) the applicant must obtain approval from the Civil Aviation Safety Authority to shoot from a helicopter;
- (viii) the applicant must show that no other means of dealing with the problem (including the use of a different category firearm, or the contracting of a professional shooter) is

practicable;

- (ix) the use of category D firearms for ground (i.e. non-airborne) culling will only be allowed where airborne culling is not practicable.

ADDRESS NOT ON LICENCE

The Council resolved:

- (a) It should not be mandatory to include the home address of the licensee on the licence provided that the register includes the licensee's address.

INTERSTATE RECOGNITION

The Council resolved:

- (i) that existing legislative arrangements or planned legislation in jurisdictions should be sufficient to permit bona fide competition shooters to pursue their sport in jurisdictions other than that in which they held a licence; and
- (ii) that a hunter would require permission from a land owner in another jurisdiction in order to shoot in that jurisdiction and that such permission would enable the hunter to shoot only on the land described in the permit and owned by the land owner.

COMMERCIAL TRANSPORT

The Council resolved:

- (i) commercial transport of firearms and ammunition should only be allowed under secure conditions prescribed by legislation or regulation.

ADVERTISEMENT OF FIREARMS

The Council resolved:

- (i) private owners should be allowed to advertise their firearms, with serial number, provided the sale is conducted through a licensed dealer to ensure the integrity of the firearms register.

COLLECTOR LICENCES

The Council agreed to replace the regulatory scheme for collectors agreed to on 10 May 1996 to with the following:

- (i) that a collector must be a bona fide collector in the opinion of the authorising officer such that the authorising officer must be satisfied that the collection will be of obvious and significant commemorative, historical, thematic or investment value;
- (ii) that category D firearms be permitted in a firearms collection provided they have been rendered permanently inoperable;
- (iii) that all other firearms manufactured after 1900 be permitted in a firearms collection s provided they have been rendered temporarily incapable of use by removal and separate secure storage of the bolt and/or firing pin or, if not feasible, an appropriate trigger lock;
- (iv) that any jurisdiction wishing to do so may apply the stricter (permanently inoperable) standard to category C firearms held by collectors in that jurisdiction;
- (v) that prohibited firearms held under the above terms not be bought, sold, transferred or otherwise disposed of except between bona fide collectors with approval of the appropriate authority and through the agency of a registered dealer;
- (vi) that the recommended standard for storage and security of collection firearms be based upon the Northern Territory police standard;
- (vii) that no ammunition for any firearm in a collection be allowed except if an ammunition collector's licence is held or a separate licence is held enabling use of a firearm which takes that ammunition;
- (viii) that a collector's licence not authorise the discharge of any firearm in the collection unless authorised by special permit in prescribed circumstances;
- (ix) that jurisdictions consider not applying any requirement for licensing or registering a collection firearm which was manufactured before 1900 and for which no cartridge ammunition is commercially available; and
- (x) that jurisdictions consider requiring that a firearms collector be a member of an approved firearms collector's club or association.

AMMUNITION PERMIT

The Council agreed to a regulatory regime for ammunition collectors as follows:

- (i) that jurisdictions give consideration to requiring a collector of firearms ammunition to have a licence or permit for purchase or possession of that ammunition unless covered by an appropriate shooter's licence;
- (ii) that purchase or sale be permitted only from or to another licensed collector or firearms dealer;
- (iii) all ammunition in a collection must be rendered inert except for all sporting ammunition and military ammunition of UN hazard classification code 1.4.s up to 20mm calibre and

must not contain high explosive, smoke, chemical, or lachrymatory agents; and

- (iv) that adequate storage requirements be a condition of the licence and that storage facilities comply with explosives regulations in each jurisdiction.

MUSEUM PERMIT

The Council resolved:

- (a) that official museums (being those which are operated by Commonwealth, State or Territory governments and authorities, including the military and other approved museums) should not be subject to the requirements agreed upon for private collectors; and
- (b) that individual jurisdictions would review legislation to ensure that all other museums are subject to the requirements agreed upon for private collectors.

HEIRLOOMS PERMIT

The Council resolved:

- (a) that where the owner of an heirloom firearm is unable to establish a "genuine reason" for continued possession of that firearm and/or does not qualify for a collector's licence, jurisdictions may issue the heirloom owner with a special category of licence;
- (b) that, before an heirloom licence is issued, the owner must provide sufficient proof of inheritance of the heirloom;
- (c) that such a licence apply only to a single gun, or a matched pair or set;
- (d) that all heirloom firearms be rendered permanently inoperable; and
- (e) that an heirloom licence not authorise the discharge of the heirloom firearm or firearms in any circumstance.

NATIONAL SURRENDER SCHEME

The Council resolved that the national surrender scheme shall cease on 30 September 1997.

SALE OVERSEAS

The Council resolved that all jurisdictions would establish a process to enable the consignment of high-value, non-military style firearms with nominated dealers for overseas sale.

VALUATION PROCESS FOR FIREARMS DEALERS' LOSS OF BUSINESS

The Council resolved:

- (a) That all jurisdictions would apply the following valuation process for compensating firearms' dealers for loss of business resulting from the new firearms laws in the relevant State or Territory:
 - (i) compensation would be available to any dealer whose business includes the sale, repair or importation of firearms;
 - (ii) such a firearms dealer, in respect of compensation for loss of business, is to arrange for a certified valuation to be conducted by an appropriately qualified professional person according to commercially accepted standards;
 - (iii) the dealer should be entitled to include the reasonable cost of the valuation in his claim for loss of business;
 - (iv) the dealer is required to accept the valuation; and
 - (v) that the valuation may be subject to audit.
- (b) That persons who sell, repair or import firearms but are unable to establish that any loss of business is compensable under paragraph (a) will be entitled to claim compensation for any prohibited firearms surrendered; and
- (c) that each jurisdiction determine how to identify and license dealers to continue trade in category C and D firearms.

MECHANISM FOR SETTLEMENT OF DISPUTES RELATING TO VALUATIONS OF FIREARMS

The Council resolved:

- (a) All jurisdictions would appoint arbitrators to assess the value of firearms which are either listed at over \$2,500 and the value is disputed by their owner, or unlisted; and
- (b) all jurisdictions agree to the following arbitration process:
 - (i) an owner who is unsatisfied with the list price for his high-value firearm may submit it to an arbitrator for valuation;
 - (ii) where the valuation arrived at by the arbitrator is lower than the "list price" for that firearm, the arbitrator's valuation will prevail;
 - (iii) the cost of the valuation is payable by the owner of the firearm;

- (iv) the cost of the valuation is non-compensable; and
- (v) there be no appeal from the arbitration process.

APPENDIX C

**RESOLUTION OF THE AUSTRALASIAN POLICE MINISTERS COUNCIL
MADE ON 15 NOVEMBER 1996 IN RELATION TO
CLAY TARGET SHOOTERS**

RESOLUTION OF THE AUSTRALASIAN POLICE MINISTERS COUNCIL MADE ON 15 NOVEMBER 1996 IN RELATION TO CLAY TARGET SHOOTERS

(Source: News Release of the Attorney-General and Minister for Justice, the Hon. Daryl Williams AM QC MP, 26/11/96, <http://law.gov.au/aghome/agnews/1996news/17726.htm>)

ACCESS BY A RESTRICTED CLASS OF CLAY TARGET SHOOTERS TO CERTAIN CATEGORY C FIREARMS

Ministers recognised that the international rules of clay target shooting allow the use of semi-automatic and pump action shotguns loaded with no more than two shots in competition, and agreed to implement the following regime:

- (a) a restricted class of shooters would be permitted to access certain Category C firearms under the following conditions:
 - (i) the applicant for the licence must, as at 15 November 1996, possess a semi-automatic or pump action shotgun for use in clay target competition and be an existing member of a club affiliated with the Australian Clay Target Association (ACTA);
 - (ii) in the case of a new applicant, the application must be supported, in writing, by an officer of an ACTA affiliated club, sufficient to satisfy the licensing authority that the applicant has a physical need (for reasons of lack of strength and dexterity) such as to require a semi-automatic or pump action shotgun in order to participate in clay target events;
 - (iii) the applicant must take part in a minimum of four club competitions per year with cancellation of membership for failing to comply;
 - (iv) the licence will only authorise use of the firearm on an authorised shooting range, in accordance with approved competition and associated training programs (including the loading of no more than two shots at a time) with misuse being subject to criminal penalties;
 - (v) the firearm, when not in use, must be stored in a locked, steel safe of a thickness to ensure it is not easily penetrable, bolted to the structure of a building; and
 - (vi) these conditions must be explicitly stated in legislation or regulations and, in addition, ACTA rules must stipulate these minimum requirements and must require ACTA to notify licensing authorities of membership cancellation.
- (b) the Commonwealth will amend the Customs (Prohibited Imports) Regulations to allow the importation by international competitors, for a limited period and subject to exportation on expiry of that period, of certain semi-automatic and pump action shotguns for clay target competitions; and
- (c) international competitors in Australia will be subject to the same requirements as Australian competitors in relation to use (paragraph (a)(iv)) and storage (paragraph (a)(v)).

APPENDIX D

DETAILED COMPARISON OF NSW FIREARMS LEGISLATION WITH NATIONWIDE AGREEMENT ON FIREARMS

DETAILED COMPARISON OF NSW FIREARMS LEGISLATION WITH NATIONWIDE AGREEMENT ON FIREARMS

Provided below is a summary of the NSW's compliance with the Nationwide Agreement on Firearms followed by a detailed comparison and discussion of the legislative provisions.

Summary

Resolution	Compliance
1. Bans on Specific Types of Firearms.	NSW complies.
2. Effective Nationwide Registration of all Firearms.	NSW complies.
3(a) and 3(b). Genuine Reason for Owning, Possessing or Using a firearm.	NSW complies except that membership of a hunting club is recognised as establishing a genuine reason of recreational hunting, and sport/target shooting clubs do not have to participate in shooting sports recognised in the charters of major sporting events.
3(c). Genuine Need.	NSW complies
3(c). Licence Category C. Multiple Category C firearms. Clay target shooting.	NSW complies except that a clay target shooting club does not have to cancel a person's membership if they fail to take part in 4 club competitions per year, and international competitors are not subject to the same use and storage requirements as Australian competitors. In addition there are no approved competition and associated training programs for clay target shooting.
Category D firearms for primary producers.	NSW complies except there is no accreditation of professional contract shooters, and consequently no requirement that primary producers satisfy accreditation qualifications. In addition, there is no requirement that ground culling will only be allowed where airborne culling is not practicable.

Resolution	Compliance
4(a) and 4(b). Basic Licence Requirements.	NSW complies except that a person under the age of 18 may obtain a minors' permit.
4(c) and 4(d). Interstate Recognition.	<p>NSW complies except that an interstate Category C, D or H licence may be valid for longer than 7 days while a person's licence application is being processed.</p> <p>Further, Interstate category A and B licences are recognised for the purposes including recreational hunting, but there is no requirement for an interstate licensee to obtain permission from a land owner in NSW in order to shoot in NSW.</p>
4(e). Licence Categories.	NSW complies.
5. Training as a Prerequisite for Licences.	NSW does not comply in relation to first time licence applicants. Safety training courses for first time applicants are not mandatory and no courses have been approved. First time applicants for a non-pistol licence must pass a 20 question multiple choice test. Any training received by a first time applicant for a pistol licence is determined by his/her pistol club.
6. Grounds for refusal or cancellation and seizure of firearms.	NSW substantially complies. Revocation is not automatic upon conviction for aggravated assault/assault with a weapon. There are no defined circumstances as to when it will be within the public interest to refuse to issue or revoke a licence. There is no express provision that a balance needs to be struck between the rights of the individual to privacy and fair treatment, and the responsibility of authorities to prevent danger.
7. Permit to Acquire.	NSW complies.

Resolution	Compliance
8. Uniform Standard for the Security and Storage of Firearms.	NSW complies.
9. Recording of Sales.	NSW complies except that there is no specified maximum amount of ammunition that may be purchased in a given period.
10. Mail Order Sales Control.	NSW complies except that there is no prohibition on the commercial transport of ammunition with firearms.
11. Compensation/Incentive Schemes	NSW substantially complied.
Collector Licences.	NSW complies.
Ammunition Permit.	NSW substantially complies.
Museum Permit.	NSW complies.
Heirlooms Permit.	NSW complies.

Detailed Comparison and discussion of legislative provisions

The APMC resolutions are provided in the boxes in bold font. The corresponding NSW legislative provisions are provided in the boxes in non-bold font. A summary of NSW's compliance with each resolution is provided in the shaded boxes following the resolution and the discussion of the legislative provisions. Unless otherwise specified, all section references are to the *Firearms Act 1996* (NSW) ("the Act") and all clause references are to the *Firearms (General) Regulation 1997* (NSW) ("the Regulation").

Resolution 1: BANS ON SPECIFIC TYPES OF FIREARMS

Council resolved:

- (a) that all jurisdictions ban the sale, resale, transfer, ownership, possession, manufacture and use of those firearms banned or proposed to be banned from import other than in the exceptional circumstances listed in paragraph 1.2 (see below).

para 1.2 The only need for the use of an automatic or semi-automatic longarm would be:

- * military;**
 - * police or other government purposes; and**
 - * occupational categories of shooters who have been licensed for a specified purpose (eg extermination of feral animals).**
- (b) that all jurisdictions ban competitive shooting involving those firearms banned or proposed to be banned from import.**

At the meeting on 15 November 1996, this resolution was amended to allow the use of semi-automatic and pump action shotguns in clay target shooting competitions under specified circumstances.

Relevant Provisions:

- (a) An object of the Act is “to prohibit the possession and use of all automatic and self-loading rifles and shotguns except in special circumstances” (section 3(2)(a)).**

“Prohibited firearms” are listed in Schedule 1 of the Act. The list includes all military-style and non-military-style self loading centre fire rifles, all self-loading and pump action shotguns, and all self-loading rim fire rifles.

Prohibited firearms are prohibited except in accordance with Licence Categories C and D for the purposes of primary production and clay target shooting (Category C), and vertebrate pest control (Category D) (see Licence Categories C and D in section 8, and restrictions on the issue of these licences in sections 14 and 15; in relation to Category C licences issued for clay target shooting purposes see section 17A). Additional purposes may be prescribed for Category C licences (section 14(a)), but no additional purposes are currently specified.

Police officers, prison officers and members of the armed forces are not guilty of any offences under the Act and regulations for anything done while acting in the ordinary course of their duties (section 6(2)).

- (b) A Category C or D licence does not authorise the possession or use of a prohibited firearm for the purposes of any shooting competition, other than in accordance with section 17A (clay target shooting) or the regulations (section 9(2)) (currently no applicable regulations).**

Compliance:

NSW complies with this resolution.

Resolution 2: EFFECTIVE NATIONWIDE REGISTRATION OF ALL FIREARMS

Council resolved:

- (a) that New South Wales, Queensland and Tasmania immediately establish an integrated licence and firearms registration system and that all other jurisdictions review their existing registration systems to ensure that all systems are compatible.
- (b) that these databases be linked through the National Exchange of Police Information (NEPI) to ensure effective nationwide registration of all firearms.

Council noted that there is an urgent need for funds to upgrade NEPI and for additional recurrent funding.

Relevant Provisions:

- (a) Prior to the enactment of the *Firearms Act 1996* (NSW), only handguns were registered in NSW. Under the 1996 Act all firearms must now be registered. The Registration system is provided for in Part 3 of the Act and Part 11 of the Regulation.

The "Register of Firearms" is maintained by the Commissioner (who has delegated this power to the NSW Firearms Registry) and includes particulars of each firearm and the licence or permit of the person in respect of whom the firearm is registered (section 33(2)).

- (b) The Act expressly provides that the Register is to be linked to the National Exchange of Police Information (section 33(3)(a)).

Compliance:

NSW complies with this resolution.

Resolution 3(a) and 3(b): GENUINE REASON FOR OWNING, POSSESSING OR USING A FIREARM

Council resolved:

- (a) that personal protection not be regarded as a genuine reason for owning, possessing or using a firearm.

- (b) that the following classifications be used to define the "genuine reason" an applicant must show for owning, possessing or using a firearm:
- * sporting shooters with valid membership of an approved club (defined as participants in shooting sports recognised in the charters of such major sporting events as the Commonwealth Games, Olympic Games or World Championships);
 - * recreational shooters/hunters who produce proof of permission from a landowner;
 - * persons with an occupational requirement, eg primary producers, other rural purposes, security employees and professional shooters for nominated purposes;
 - * bona fide collectors of lawful firearms; and
 - * persons having other limited purposes authorised by legislation or Ministerial approval in writing (for example, firearms used in film production).

Relevant Provisions:

- (a) The NSW legislation expressly provides that an applicant for a licence does not have a genuine reason for possessing or using a firearm if the applicant intends to possess or use the firearm for personal protection, the protection of any other person, or the protection of property (other than for specified purposes) (section 12(2)).
- (b) The following classifications are used to define "genuine reasons" for possessing or using a firearm (see table to section 12):

Sport/Target Shooting: An applicant, and a licence holder, under this class must be a current member of a shooting club approved by the Commissioner (table to section 12 and clause 25).

A member of an approved pistol club must participate in at least 6 shooting competitions, or attend a shooting range for shooting practice at least 6 times, over a period of 12 months (clauses 25 and 81(1)(a)).

A member of any other approved shooting club must participate in at least 4 shooting competitions, or attend a shooting range for shooting practice at least 4 times, over a period of 12 months (clauses 25 and 81(1)(b)).

The Commissioner must not approve a club unless it has at least 10 members, its rules are appropriate, and the Commissioner is satisfied that it has a genuine and proper constitution, that it will conduct its activities with proper regard to safety, it will conduct regular meetings and activities, and it will maintain adequate insurance (clause 78(3)).

The club must also be affiliated with one of a number of specified associations, for example, the National Rifle Association of Australia, or the NSW Amateur Pistol Association (clause 77(3)(d)).

The legislation does **not** provide that an approved club must be a participant in shooting sports recognised in the charters of major sporting events (as required by the resolution).

Recreational hunting/vermin control: An applicant under this class must be the owner or occupier of rural land, or have appropriate permission to shoot on rural land, or be a current member of an approved hunting club (table to section 12).

Permission to shoot on rural land must be in writing or the applicant must produce a statutory declaration verifying that such permission has been given (clause 26).

A member of an approved hunting club must participate in at least 2 events, organised by any approved hunting club, involving hunting, shooting or firearms safety training over a period of 12 months (clauses 27 and 81(1)(c)).

Hunting clubs are required to obtain written permission from the owner or occupier of land to conduct club-organised hunts on that land (clause 28(a)). Members of hunting clubs are required to obtain written permission from the owner or occupier of land to conduct private hunting activities on that land (clause 28(b)).

The Commissioner must not approve a club unless it has at least 10 members, its rules are appropriate, and the Commissioner is satisfied that it has a genuine and proper constitution, that it will conduct its activities with proper regard to safety, it will conduct regular meetings and activities, and it will maintain adequate insurance (clause 78(3)).

Note that the APMC resolution does **not** provide that membership of a hunting club is sufficient to show a genuine reason under this class.

Occupational Requirements: The classes of genuine reasons relating to occupational requirements in the Act are as follows (see table to section 12):

Primary production: The applicant's occupation must be the business of primary producer, or the applicant must be the owner, lessee or manager of land used for primary production.

Vertebrate pest animal control: The applicant must be a professional contract shooter, authorised by a prescribed government agency or be participating in an authorised campaign to eradicate large feral animals or animals affected by brucellosis or tuberculosis.

Business or employment: The applicant must demonstrate that it is necessary in the conduct of the applicant's business or employment to possess or use the

Category of firearm for which the licence is sought.

Occupational requirements relating to rural purposes: The applicant must be employed or engaged in a rural occupation that requires the possession or use the Category of firearm for which the licence is sought.

Animal welfare: The applicant must be a veterinary surgeon, an officer of the RSPCA or the Animal Welfare League who is a special constable, a person employed by the Department of Agriculture or a Rural Lands Protection Board with responsibilities for animal welfare, or a handler of animals who may need to destroy animals to avoid suffering.

Bona fide collectors of lawful firearms: An applicant under this class must demonstrate that his/her firearms collection has a genuine commemorative, historic, thematic or financial value. The applicant must also be a current member of the an approved collectors' society or club.

A member of an approved collector's club must attend the club's annual general meeting or at least one other meeting over a period of 12 months (clauses 31 and 81(1)(d)).

Persons having other limited purposes authorised by legislation or Ministerial approval in writing: A holder of a firearms licence under the Act must be over 18 years of age and have a genuine reason for possessing or using the firearm in accordance with the above classifications. Any possession or use of a firearm by a minor or for other purposes is dealt with by permit. Types of permits which may be issued include a permit to acquire a firearm¹, a minor's permit², or a permit to possess or use firearms in film or theatrical productions.³

Compliance:

NSW complies with this resolution except in the following respects:

Approved sport/target shooting clubs: The legislation does not provide that an approved club must be a participant in shooting sports recognised in the charters of major sporting events as specified in the resolution.

¹ See section 31.

² See section 32.

³ See generally section 28 and Part 6 of the Regulation.

Recreational hunting: The legislation (but not the resolution) provides that membership of a hunting club establishes a genuine reason of recreational hunting.

Resolution 3(c): GENUINE NEED

Council resolved:

- (c) **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.**

Relevant Provisions:

- (c) ***Special need:*** In accordance with the provisions referred to below, a "special need" is required for a Category B, C, D or H. Section 17 provides that the regulations can provide what is needed to establish a special need. The regulations do not yet prescribe anything in this regard.

Category B: An applicant for a Category B licence must produce evidence of a special need (section 13). In contrast to the legislative requirements for a Category C or D licence (although not required by the resolution), there is no legislative requirement that an applicant for a Category B licence produce evidence that the special need for such a licence cannot be met by any other means, including a lower category (i.e. a Category A) of firearm.

Category C: An applicant for a Category C licence must produce evidence of a special need (section 14(b)) that cannot be met by any other means, including by the authority conferred by a Category A or B licence (section 14(c)).

Category D: An applicant for a Category D licence must produce evidence of a special need (section 15(b)) that cannot be met by any other means, including by the authority conferred by a Category A, B or C licence, or by engaging the services of a professional contract shooter (section 15(c)).

Category H: An applicant for a Category H licence must produce evidence of a special need (section 16(b)).

Compliance:

NSW complies with this resolution.

Resolution 3(c): LICENCE CATEGORY C

The Council resolved the following for licence Category C:

- * application will be limited to primary producers;
- * the applicant must satisfy the licensing authority that there is a genuine need for the use of the firearm that pertains to the applicant's occupation, which cannot be achieved by some other means, and that the need cannot be satisfied by a firearm under Category A or B;
- * a Category C licence holder will be limited to the maximum of one rifle and one shotgun of the types covered by Category C;
- * the application is to be approved by the Commissioner of the Police, who may impose conditions as to the use of the firearm, including as to the geographical location of its use; and
- * licensing authorities will develop uniform guidelines to be approved by Council.

Multiple Category C firearms for primary producers with large rural properties:

At the meeting on 17 July 1996, the Council resolved:

- (a) That, in the case of very large properties, or where one primary producer owned a number of properties, more than one licence for a category C firearm be permitted for use on that property or those properties;
- (b) that the licence enable employees of licence holders to use the employer's firearms only while working on the property.

Clay target shooters:

On 15 November 1996, the APMC agreed to allow access by a restricted class of clay target shooters to semi-automatic and pump action shotguns.

The Ministers recognised that the international rules of clay target shooting allow the use of semi-automatic and pump action shotguns loaded with no more than two shots in

competition, and agreed to implement the following regime:

- (a) a restricted class of shooters would be permitted to access certain Category C firearms under the following conditions:

 - (i) the applicant for the licence must, as at 15 November 1996, possess a semi-automatic or pump action shotgun for use in clay target competition and be an existing member of a club affiliated with the Australian Clay Target Association (ACTA);
 - (ii) in the case of a new applicant, the application must be supported, in writing, by an officer of an ACTA affiliated club, sufficient to satisfy the licensing authority that the applicant has a physical need (for reasons of lack of strength and dexterity) such as to require a semi-automatic or pump action shotgun in order to participate in clay target events;
 - (iii) the applicant must take part in a minimum of four club competitions per year with cancellation of membership for failing to comply;
 - (iv) the licence will only authorise use of the firearm on an authorised shooting range, in accordance with approved competition and associated training programs (including the loading of no more than two shots at a time) with misuse being subject to criminal penalties;
 - (v) the firearm, when not in use, must be stored in a locked, steel safe of a thickness to ensure it is not easily penetrable, bolted to the structure of a building; and
 - (vi) these conditions must be explicitly stated in legislation or regulations and, in addition, ACTA rules must stipulate these minimum requirements and must require ACTA to notify licensing authorities of membership cancellation.
- (b) the Commonwealth will amend the Customs (Prohibited Imports) Regulations to allow the importation by international competitors, for a limited period and subject to exportation on expiry of that period, of certain semi-automatic and pump action shotguns for clay target competitions; and
- (c) international competitors in Australia will be subject to the same requirements as Australian competitors in relation to use (paragraph (a)(iv)) and storage (paragraph (a)(v)).

Relevant Provisions:

Under the resolutions, a Category C licence can only be issued for the purposes of primary production or clay target shooting. These are the only purposes or genuine reasons currently provided for in the legislation (section 14(a) - primary production; section 17A - clay target shooting). However, the Act provides that other genuine reasons for a Category C licence may be prescribed in the regulations (section 14(a)). No other genuine reasons are currently prescribed.

A licence (of any category) may be issued by the Commissioner subject to such conditions as the Commissioner thinks fit to impose (section 19(1)).

Multiple Category C firearms:

A Category C licence generally authorises the licensee to own one Category C rifle and shotgun (section 8(1)).

However, the number of firearms authorised under the licence may be increased if a special need for more than one shotgun and rifle is established (for example because of the size of the rural property concerned, or because the licensee is involved in more than one rural property) (section 8(1)).

A category C licence authorises an employee of the licensee to possess or use a category C firearm whilst carrying out duties in connection with the licensee's farming or grazing activities (section 8(1)). The employee must be eligible to be issued with a licence and authorised by the Commissioner in writing (section 8(1)).

Special Category C licence: Clay target shooting:

(a) The relevant provisions are:

- (i) An applicant for a "special category C licence" (that is, a Category C licence for the purpose of participating in clay target shooting competitions) must, immediately before 15 November 1996, possess a semi-automatic or pump action shotgun for use in clay target competition and be a member of a shooting club associated with the Australian Clay Target Association ("ACTA") (section 17A(3)); or
- (ii) An applicant for a special category C licence must provide a written statement from an ACTA affiliated approved club to the effect that the applicant is a current member of the club, and needs to have a self-loading or pump action shotgun in order to participate in clay target shooting competitions (section 17A(4)).
- (iii) A holder of a special category C licence must participate in at least 4 clay target shooting competitions over a period of 12 months (section 17A(6) and clause 30). The legislation does not require cancellation of membership for failing to comply with this provision.

- (iv) A special category C licence is subject to the restrictions that the shotgun be loaded with a maximum of two rounds, and that it only be used for shooting at clay targets and associated training programs while on an approved shooting range (section 17A(2)).

It appears that breach of these restrictions would fall within the offence of unauthorised possession or use of firearms under section 7.

The legislation does not provide for approved competition and associated training programs.

- (v) All category C firearms must be stored in a locked steel safe that cannot be easily penetrated, bolted to the structure of the premises (section 17A(7)) and section 41).

- (c) Clause 48 of the Regulation provides for international, temporary visitors permits for competitions. The permit authorises the holder to possess and use the firearm only for the purposes of competing in the competition and purposes related to the competition (clause 48(5)). The NSW legislation does not subject international competitors to the same requirements as Australian competitors in relation to use (see para. (a)(iv) above) and storage (see para. (a)(v) above). See comments below in relation to conditions placed on an overseas competitor permit.

Compliance:

NSW complies with the above resolutions **except** in the following respects:

Special Category C - Clay target shooting:

The legislation does not require a shooting club to cancel a person's membership if they fail to take part in a minimum of 4 club competitions per year.

The legislation does not provide for any approved competition and associated training programs.

The legislation does not subject international competitors to the same requirements as Australian competitors in relation to use and storage.

Comment:

International competitors are not subject to the same requirements as Australian competitors in relation to the use and storage of Category C firearms used for the purpose of clay target shooting. As discussed above, a special category C licence (applying to NSW competitors) is subject to the conditions that the firearm be loaded with a maximum of two rounds, and that it only be used for shooting at clay targets and associated training programs while on an approved training range. Further, the firearms must be stored in a locked steel safe that cannot be easily penetrated and is bolted to the structure of the premises.

These conditions do not apply to international competitors. There are no provisions in the legislation specifying conditions in relation to use and storage for international competitors. However, the standard "Overseas Competitor" permit issues by the Commissioner specifies the following conditions:

"...2) All ammunition must be stored in a locked container and be kept separate from the firearms.

3) The permit holder shall take all reasonable precautions to ensure the safe keeping of the firearm/s at all times to prevent loss, theft or a firearm coming into the possession of an unauthorised person".

CATEGORY D FIREARMS FOR PRIMARY PRODUCERS

At the meeting on the 17 July 1996, it was agreed that a limited class of primary producers should have access to a Category D firearm for the purpose of culling large feral and Brucellosis and Tuberculosis Campaign (BTEC) animals. It was resolved that the following conditions should apply:

- (i) The licence may only be issued where there is a demonstrated need for a category D firearm for the culling of large feral animals (e.g. where a government authority requires the undertaking of specific culling within the relevant area);
- (ii) the applicant must meet all of the qualifications which are required for accreditation of professional shooters, including safety training requirements;
- (iii) the licence may only be issued for a nominated period not exceeding one year, in accordance with the demonstrated need;
- (iv) the firearm must, upon expiry of the nominated period, be returned to the authorities or stored in accordance with arrangements approved by the authorities;
- (v) the geographical location of the use of the firearm must also be limited (normally, to the applicant's property);
- (vi) only one category D firearm may be issued per individual applicant;
- (vii) the applicant must obtain approval from the Civil Aviation Safety Authority to shoot from a helicopter;
- (viii) the applicant must show that no other means of dealing with the problem (including the use of a different category firearm, or the contracting of a professional shooter) is practicable;
- (ix) the use of category D firearms for ground (i.e. non-airborne) culling will only be allowed where airborne culling is not practicable.

Relevant Provisions:

Category D: An applicant for a Category D licence must establish the genuine reason of vertebrate pest control (section 15(a)).

An applicant for a Category D licence must be a professional contract shooter, a person employed or authorised by a prescribed government agency, or a primary producer (table to section 12).

Access to Category D Firearms by Primary Producers:

The following provisions apply to primary producers applying for, or holding, a Category D licence:

- (i) A primary producer applying for a Category D licence must be participating in an authorised campaign conducted by, or on behalf of, a government agency or public authority to eradicate large feral animals or animals that are affected by brucellosis or tuberculosis (table to section 12).
- (ii) There are no provisions in the legislation for accreditation of professional contract shooters, and there is no requirement that a primary producer applying for a Category D licence meet all the qualifications which are required for accreditation of professional shooters.
- (iii) A Category D licence issued to a primary producer can only be valid for up to 12 months (section 21(2)). Further, a primary producer can use the Category D firearm only in the circumstances specified in the licence (eg for airborne culling) (section 20A(b)).
- (iv) A primary producer with a Category D licence must return the firearm to the licensed firearms dealer from whom it was acquired or otherwise deal with the firearm in accordance with arrangements approved by the Commissioner (section 20A(a)).
- (v) The use of a Category D firearm by a primary producer is limited to the rural property specified in the licence (section 8(1)).
- (vi) A Category D licence authorises a primary producer to possess or use only one Category D firearm (section 8(1)).
- (vii) A person must obtain permission in writing from the Civil Aviation Safety Authority in order to discharge a firearm while on board an aircraft (clause 144 of the *Civil Aviation Regulations*).
- (viii) A primary producer applying for a Category D licence must produce evidence that the special need cannot be met by any other means (including by the authority conferred by a category A, B or C licence, or by engaging the services of a professional contract shooter) (section 15(c)).

- (ix) There is no provision in the legislation that ground culling will only be allowed where airborne culling is not practicable. However, the Act does provide that a primary producer with a Category D licence can use the firearm only in the circumstances specified in the licence (for example, for airborne culling) (section 20A(b)).

Compliance:

NSW complies with the above resolution except in the following respects:

- * The legislation does not provide for accreditation of professional contract shooters, and there is no provision specifying that a primary producer applying for a Category D licence meet all the qualifications which are required for accreditation of professional shooters.
- * There is no provision in the legislation specifying that ground culling will only be allowed where airborne culling is not practicable.

Resolution 4(a) and 4(b): BASIC LICENCE REQUIREMENTS

Council resolved:

- (a) that in addition to the demonstration of "genuine reason", a licence applicant should be required to:
- (i) be aged 18 years or over;
 - (ii) be a fit and proper person;
 - (iii) be able to prove identity through a system similar to that required to open a bank account, that is, a 100 point system requiring a passport or multiple types of identification; and
 - (iv) undertake adequate safety training.
- (b) that the licence:
- (i) bear a photograph of the licensee;
 - (ii) be endorsed with the category of the firearm;
 - (iii) be endorsed with the holder's address;
 - (iv) be issued after a waiting period of not less than 28 days;
 - (v) be issued for a period of no more than 5 years;
 - (vi) contain a reminder of safe storage responsibilities;
 - (vii) be issued subject to undertakings to comply with storage requirements, to provide details of proposed storage provisions at the time of licensing, and submit to a mutually arranged (with due recognition of privacy) inspection by licensing authorities of storage facilities;
 - (viii) be subject to immediate withdrawal of licence and confiscation of firearms in certain circumstances. (Jurisdictions may wish to consider appropriate

penalties - additional to withdrawal or confiscation - for the failure to comply with security and storage conditions.)

On 17 July 1996, the Council resolved:

- (a) It should not be mandatory to include the home address of the licensee on the licence provided that the register includes the licensee's address.

Relevant Provisions:

- (a) An applicant must
- (i) be aged 18 or over (section 10(2)(a));
 - (ii) be a fit and proper person (section 11(3)(a));
 - (iii) be able to prove identity in accordance with the requirements under the *Financial Transactions Reports Act 1988* (Cth) that apply in respect of opening a bank account (section 10(2)(b));
 - (iv) undertake firearms training and safety courses prescribed by the regulation if the applicant has never held a licence under the current Act or a previous Act (section 11(3)(b)). Prescribed safety courses are approved courses that are conducted by or on behalf of the Firearms Safety Awareness Council (for firearms other than pistols), or approved courses that are conducted by or on behalf of an approved pistol club (for pistols) (clause 96(1)). The relevant course to be completed by applicants for particular categories of licence is to be determined by the Commissioner (clause 96(3)).
- (b) The licence must:
- (i) contain a recent photograph of the licensee (section 18(2)(a));
 - (ii) specify the licence category (section 18(2)(c));
 - (iii) note: in accordance with the resolution on 17 July 1996, the licensee's address is not provided on the licence. The current residential address of the person in whose name a firearm is registered is kept on the register (clause 87(a)).
 - (iv) be issued after a waiting period of not less than 28 days (section 11(2));
 - (v) be issued for a period of not more than 5 years (section 21(1));
 - (vi) contain a reference to the requirements under this Act relating to the storage and safe keeping of the firearm (section 18(2)(h));
 - (vii) be issued subject to the conditions that the licensee comply with the relevant safe keeping and storage requirements under this Act (section 19(2)(a)); specify the premises where the firearm is authorised to be kept (section 18(2)(g)); and permit inspection by a police officer (or such other person prescribed in the regulations) of the licensee's storage facilities (section 19(2)(c)).
 - (viii) Revocation of licence: A licence is automatically revoked if the licensee becomes subject to a firearms prohibition order or an apprehended violence order (section 24(1)). A licence may be revoked under specified circumstances (section 24(2) and clause 17).

Confiscation: If a licence is suspended or revoked, the person who held the licence must surrender all firearms and the licence to the police (section 25).

Penalties for failure to comply with security and storage conditions: The Act provides penalties in this regard (sections 39, 40 and 41).

Minors' Permits:

The NSW legislation provides for Minors' Firearms Training permits and Minors' Firearms Target Pistol permits. Minors must be of or above 12 years of age and under 18 years, have completed a firearms safety training course in accordance with the regulations (section 32(2)), and have written consent of a parent or guardian (sections 32(3)).

The Minors' Firearms Training permit authorises possession and use of Category A and B firearms, and Category C firearms for clay target shooting competition (subject to the same restrictions as a special category C licence for the purpose of clay target shooting) (section 32(5)). The Minors' Firearms Target Pistol permit authorises possession and use of target pistols (section 32(6)). Both permits authorise possession and use of the firearms only under supervision and for the purpose of receiving instruction in the safe use of the firearm or for approved competitions (sections 32(5) and 32(6)).

Compliance

NSW complies with this resolution **except** that the legislation provides for minors' permits for persons under 18 years of age.

Resolutions 4(c) and 4(d): INTERSTATE RECOGNITION

The Council resolved:

- (c) 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.**
- (d) that jurisdictions recognise, for a period of no longer than 3 months, a category A or B firearm licence issued in another jurisdiction to an individual who moves permanently to a new jurisdiction for such an individual with a licence categories C, D and H, a period of recognition will not exceed 7 days.**

At the meeting on 17 July 1996, the APMC resolved:

- (i) That existing legislative arrangements or planned legislation in jurisdictions should be sufficient to permit bona fide competition shooters to pursue their sport in jurisdictions other than that in which they held a licence; and**

- (ii) that a hunter would require permission from a land owner in another jurisdiction in order to shoot in that jurisdiction and that such permission would enable the hunter to shoot only on the land described in the permit and owned by the land owner.

Relevant Provisions:

- (c) The relevant provisions are:

- * Interstate Category A and B licences are recognised for the purposes of participation in shooting competitions approved by the Commissioner, practising for such shooting competitions, recreational hunting/vermin control, vertebrate pest animal control and taking fish in accordance with the *Fisheries Management Act 1994* (sections 26(1) and clause 23(1)).
- * Interstate Category H licences are recognised for the purposes of participation in shooting competitions approved by the Commissioner and practising for such shooting competitions (section 26(1) and clause 23(2)).
- * Interstate licensees are authorised to possess (but not use) Category A, B or H licences in specified circumstances (clause 23(3)).
- * Interstate licensed security guards are authorised to possess or use a pistol or shotgun for security activities (clause 23(4)).
- * Interstate Category C licences held by primary producers are recognised for the purpose of farming or grazing activities (section 26(2)(a)).
- * Interstate Category C licences held by professional contract shooters are recognised for the purpose of controlling vertebrate pest animals on rural land (section 26(2)(b)).
- * Interstate Category C licences for self-loading or pump action shotguns are recognised for the purpose of participation in recognised clay target shooting competitions (section 26(2)(c)).

- (d) The relevant provisions are:

- * If a holder of an interstate Category A or B licence notifies the Commissioner that he/she intends to reside in NSW, then the interstate licence is valid for 3 months or until the person's application for a NSW licence has been granted or refused (whichever is sooner) (section 27(1) and 27(2)).
- * If a holder of an interstate Category C, D or H licence notifies the Commissioner that he/she intends to reside in NSW, then the interstate licence is valid for 7 days or until the person's application for a NSW licence has been granted or refused (whichever is later) (section 27(3) and 27(4)). Thus, an interstate Category C, D or H licence may be recognised for longer than 7 days while a person's licence application is being processed. Note that the application for the NSW licence must be made within 7 days of notification of the Commissioner (section 27(4)(b)).

- (i) See provisions referred to in paragraph (a) above.
- (ii) An interstate licensee of the equivalent of a category A or B licence is authorised to possess and use a firearm of the relevant kind for purposes including recreational hunting (clause 23(1)(a)). There is no requirement that the licence holder obtain permission from a land owner in NSW to shoot in NSW.

Compliance:

NSW complies with this resolution **except** in the following respects:

Interstate category A and B licences are recognised for the purposes including recreational hunting, but there is no requirement for an interstate licensee to obtain permission from a land owner in NSW to shoot in NSW.

An interstate Category C, D or H licence may be valid for longer than 7 days while a person's licence application is being processed.

Resolution 4(e): LICENCE CATEGORIES

- (e) that the following categories be used in the licensing 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 shotguns/rifle combinations;

Licence Category C (prohibited except for occupational purposes)

- * semi automatic rimfire rifles with a magazine capacity no greater than 10 rounds;
- * semi automatic shotguns with a magazine capacity no greater than 5 rounds;
- * pump action shotguns with a magazine capacity no greater than 5 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 5 rounds;
- * self-loading rim-fire rifles with a magazine capacity greater than 10 rounds.

Licence Category H: (Restricted)

- * all handguns, including air pistols

Relevant Provisions:

Section 8 specifies the firearms falling within each licence category, and the authority conferred by each licence category. Prohibited firearms are specified in Schedule 1 of the Act.

Compliance:

NSW complies with this resolution.

Resolution 5: TRAINING AS A PREREQUISITE FOR LICENCES

Council resolved:

- (a) that all jurisdictions require the completion of an accredited course in safety training for firearms for all first time licence applicants.

The course should be:

- (i) comprehensive and standardised across Australia for all licence categories;
- (ii) 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;
- (iii) outlined in a Firearms Safety Code which emphasises both safety and storage issues and is distributed to all new licence applicants prior to attending the course of instruction;

- (iv) monitored as to content of courses and the skills of instructors by firearms regulatory authorities;
- (b) that a specialised course should be established for training of persons employed in the security industry.

Relevant Provisions:

- (a) The Act provides that first time licence applicants must have completed firearms training and safety courses as are prescribed in the regulations (section 11(3)(b)). The Regulation (clause 96(1)) provides that prescribed courses are:

- * for firearms other than pistols - approved courses that are conducted by or on behalf of the Firearms Safety Awareness Council;
- * for pistols - approved courses that are conducted by or on behalf of an approved pistol club.

The relevant course to be completed by applicants for particular licences or permits is to be determined by the Commissioner (clause 96(3)). The Commissioner may approve persons to be instructors for such courses on such terms as the Commissioner may determine (clause 96(4)).

Despite these provisions, at present, safety training courses are not mandatory and no courses have been approved. The current position in relation to training for first time licence applicants is as follows:

For firearms other than pistols:

Although the legislation refers to "firearms training and safety courses", a new licence applicant does not have to complete any course or training. Rather, the applicant must pass a "Firearms Safety Awareness Test" run by the Firearms Safety Awareness Council. This is a 20 question multiple choice test based on a information in a handbook published by the Firearms Safety Awareness Council.

For pistols:

Any training done by a new licence applicant is determined by the individual approved pistol club that the applicant belongs to.

- (b) A security guard must undertake, at least once a year, such continuing firearms safety training courses as may be approved (clause 69(2)). An approved firearms accreditation course is prescribed for the purposes of the Act (clause 96(2)).

In practice, a security guard must complete a course known as the Firearms Accreditation Course which was designed in conjunction with the Police Service. This course must be run by instructors who hold a Prohibited Weapons Instructor Permit. There are 3 security

companies in NSW that have been approved to provide training for this instructor permit.

Compliance:

NSW complies with this resolution in relation to security guards, but does not comply in relation to first time licence applicants.

A new licence applicant in NSW for any licence category other than category H (pistol licence) does not have to complete any firearms safety training course before being issued with a licence. Rather, the applicant must pass a 20 question multiple choice test conducted by the Firearms Safety Awareness Council.

Any training done by a new applicant for a Category H (pistol) licence is determined by the individual approved pistol club that the applicant belongs to.

Resolution 6: GROUNDS FOR LICENCE REFUSAL OF CANCELLATION AND SEIZURE OF FIREARMS

Council resolved:

(a) that jurisdictions set out in legislation circumstances in which licence applications are to be refused or licences are to be cancelled. The following minimum standards are proposed:

- * general reasons - not of good character; conviction for an offence involving violence within the past five years; contravene firearm law; unsafe storage; no longer genuine reason; not in public interest due to (defined) circumstances; not notifying of change of address; licence obtained by deception;**
- * specific reasons - where applicant/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 past five years;**
- * mental or physical fitness - reliable evidence of a mental or physical condition which would render the applicant unsuitable for owning, possessing or using a firearm.**

(b) that in regard to the latter point, 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.

- (c) that a Commonwealth/State working party, including health officials, police and medical representation, be established to examine possible criteria and systems for determining mental and physical fitness to own, possess or use a firearm. The working party should report to the second APMC meeting for 1996, but jurisdictions should not delay the introduction of necessary legislative changes while awaiting its report.
- (d) that jurisdictions will establish an appeal from a refusal of a licence application and the cancellation of a licence.

Relevant Provisions:

- (a) The relevant provisions are as follows:

* **general reasons**

Not of good character

Refusal: a licence must not 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 (section 11(3)(a)).

A licence must not be issued if the Commissioner has reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of the applicant's way of living or domestic circumstance (section 11(4)(a)).

Revocation: a licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

Conviction for offence involving violence

Refusal: a licence must not be issued to a person who has been convicted of a prescribed offence within the past 10 years (section 11(5)(b)). The prescribed offences include offences involving violence (clause 5(c)). The past cut-off period of 10 years is double the 5 year period specified in the resolution.

Revocation: a licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

Contravene firearm law

Refusal: a licence must not be issued to a person who has been convicted of a prescribed offence within the past 10 years (section 11(5)(b)). The prescribed offences include offences relating to firearms (clause 5(a)). The resolution did not specify any past cut-off period.

Revocation: a licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

A licence may be revoked if the licensee contravenes any provision of the Act or regulations whether or not the licensee has been convicted of an offence or contravention (section 24(2)(b)(ii)).

A licence may be revoked if the licensee contravenes any condition of the licence (section 24(2)(b)(iii)).

Unsafe storage

Refusal: a licence must not be issued unless the Commissioner is satisfied that the storage and safety requirements set out in the Act are capable of being met by the applicant (section 11(3)(c)).

Before being issued with a licence, the applicant must prove that he/she is aware of, and understands, the requirements of the Act concerning firearm safety and storage, and that he/she will be able to comply with those requirements (clause 7).

Revocation: a licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

A licence may be revoked if the licensee contravenes any condition of the licence (section 24(2)(b)(iii)). Compliance with safe keeping and storage requirements under the Act is a condition of a licence (section 19(2)(a)).

No longer genuine reason

Revocation: a licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

Not in public interest due to defined circumstances

Refusal: The Commissioner may refuse to issue a licence if s/he considers that issue of the licence would be contrary to the public interest (section 11(7)).

Revocation: a licence may be revoked if the Commissioner considers that it is not in the public interest for the licensee to continue to hold it (clause 17).

A licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

There are no defined circumstances as to when it will be within the public interest to refuse to issue or revoke a licence.

Not notifying change of address

Revocation: a licensee must notify the Commissioner of a change of address

within 7 days (section 69). Failure to do so is a ground for revocation (section 24(2)(b)(ii)).

Licence obtained by deception

Revocation: a licence may be revoked if the licensee has supplied information which was false or misleading in a material particular in, or in connection with, the application for the licence (section 24(2)(b)(i)).

*** specific reasons**

Apprehended Violence Order

Refusal: a licence must not be issued to a person who has been subject to an apprehended violence order (other than an order which has been revoked) within the past 10 years (section 11(5)(c)).

Revocation: a licence is automatically revoked if the licensee becomes subject to a apprehended violence order (section 24(1)).

A licence is automatically suspended on the making of an interim apprehended violence order (section 23(1)).

The Commissioner must suspend a licence if the Commissioner is aware that the licensee has been charged with a domestic violence offence or the Commissioner has reasonable cause to believe that the licensee has committed or has threatened to commit a domestic violence offence (section 22(2)).

Conviction for assault with a weapon/aggravated assault

There are no provisions relating specifically to convictions for assault with a weapon or aggravated assault. Consequences attached to convictions for these offences are the same as other offences involving firearms, weapons or violence.

Refusal: a licence must not be issued to a person who has been convicted of a prescribed offence within the past 10 years (section 11(5)(b)). The prescribed offences include offences relating to firearms or weapons (clause 5(a)) and offences involving violence (clause 5(c)). The past cut-off period of 10 years is double the 5 year period specified in the resolution.

Revocation: a licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

*** mental or physical fitness**

Refusal: A licence must not be issued if the Commissioner has reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of any previous attempt by the applicant

to commit suicide or cause self-inflicted injury (section 11(4)(b)), or because of the applicant's intemperate habits or being of unsound mind (section 11(4)(c)).

Revocation: a licence may be revoked for any reason for which a licence would be required to be refused (section 24(2)(a)).

There is no express provision to the effect that a physical condition may be a ground for refusing or revoking a licence.

- (b) There is no express provision to the effect that a balance needs to be struck between the rights of the individual to privacy and fair treatment, and the responsibility of authorities to prevent danger.

The Act provides immunity to a medical practitioner, psychologist, nurse or counsellor who informs the Commissioner that, in his/her opinion, a patient is unsuitable to be in possession of a firearm because of the patient's mental condition, or because the practitioner thinks the patient might attempt suicide or be a threat to public safety (section 79 and clause 97).

- (c) There are no criteria specified in the legislation for the determination of mental and physical fitness to own, possess or use a firearm.
- (d) A person may appeal to the Administrative Decisions Tribunal against the refusal or revocation of a licence (section 75).

Compliance:

It appears that the NSW legislation substantially complies with this resolution.

As identified by Kate Warner, the distinction between general and specific reasons in the resolution is not entirely clear. She asks whether the general reasons were intended to be matters which could lead to the conclusion that an applicant was not a fit and proper person, and the specific reasons grounds on which a licence must be refused or cancelled? (see Warner K, *Firearms Legislation in Australia*, Australian Institute of Criminology, April 1997, p 37)

If so, then she notes that revocation is not automatic upon conviction for aggravated assault/assault with a weapon.

In addition, there are no defined circumstances (as required by the resolution) as to when it will be within the public interest to refuse to issue or to revoke a licence.

Further, there is no express provision in the legislation to the effect that a balance needs to be struck between the rights of the individual to privacy and fair treatment, and the responsibility of authorities to prevent danger.

Resolution 7: PERMIT TO ACQUIRE

Council resolved:

- (a) that a separate permit be required for the acquisition of every firearm.
- (b) 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.

Relevant Provisions:

- (a) A separate permit to acquire is required in respect of each firearm to be acquired by a holder of a licence or permit (section 31(2)).
- (b) A permit to acquire is subject to a 28 day waiting period (section 31(3)(b)).

Compliance:

NSW complies with this resolution

Resolution 8: UNIFORM STANDARD FOR THE SECURITY AND STORAGE OF FIREARMS

Council resolved that all firearms and ammunition be stored in secure conditions as follows:

- (i) 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;
- (ii) 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;
- (iii) 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 frame of 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 any firearms.
- (iv) should a firearms owner or possessor wish to store firearms through measures other than those indicated in legislation, he or she would have the burden of persuading the firearms regulatory authority that he or she can provide the level of security not less than that required by the relevant approved practices;
- (v) 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";
- (vi) the firearms safety booklet to be distributed to all new licence applicants prior to attending for a course of instruction should also feature clear and precise information on the obligations as regards storage of firearms;
- (vii) a reminder of safe storage responsibilities should be on the licence itself;
- (viii) security at gun dealer premises will require the dealer meeting such additional requirements as the firearms regulatory authority deems appropriate having regard to the type of activity of the dealer;
- (ix) where approval has been given for the possession or use of a firearm for a limited purpose such as film production (see 3.3), the person authorised must meet such requirements as the firearms regulatory authority deems appropriate having regard to the type of activity for which possession has been authorised.

Relevant Provisions:

- (i) A licence must not be issued unless the Commissioner is satisfied that the storage and safety requirements set out in Part 4 of the Act are capable of being met by the applicant

(section 11(3)(c)).

- (ii) A person who possesses a firearm must take all reasonable precautions to ensure its safe keeping, to ensure it is not stolen or lost, and that it does not come into the possession of a person who is not authorised to possess it. Failure to take reasonable precautions in this regard is an offence (section 39).

A licence may be revoked if the licensee contravenes any provision of the Act or regulations, or contravenes any condition of the licence (sections 24(2)(b)(ii) and 24(2)(b)(iii)). A condition of all licences is that the licensee comply with the relevant safe keeping and storage requirements under the Act (section 19(2)(a)).

If a licence is suspended or revoked, the person who held the licence must immediately surrender all firearms to the police (section 25(1)(a)). The police can seize any firearm from a person whose licence has been suspended or revoked (section 25(2)).

- (iii) The following standards apply for storage of firearms:

- * Licence Category A and B: firearm must be stored in a locked receptacle of an approved type that is constructed of hard wood or steel and is not easily penetrable (section 40(1)(a)). If the receptacle weighs less than 150 kilograms when empty, it must be fixed to prevent its easy removal (section 40(1)(b)). The locks of the receptacle must be of solid metal and of an approved type (section 40(1)(c)).
- * Licence Category C, D and H: firearm must be stored in a locked steel safe of an approved type that cannot be easily penetrated (section 41(1)(a)). The safe must be bolted to the structure of the building (section 41(1)(b)).
- * Ammunition: any ammunition must be stored in a locked container of an approved type that is kept separate from the firearms (sections 40(1)(d) and 41(1)(c)).

- (iv) A licensee does not have to comply with the above storage requirements if he/she satisfies the Commissioner that he/she has provided alternative arrangements that are of a standard not less than the above requirements (sections 40(2) and 41(2)).

- (v) A person who possesses a firearm must take all reasonable precautions to ensure its safe keeping, to ensure it is not stolen or lost, and that it does not come into the possession of a person who is not authorised to possess it. Failure to take reasonable precautions in this regard is an offence (section 39).

- (vi) An applicant for a licence must be provided with information concerning the firearm storage and safety requirements under the Act (section 10(3)(b)).

(vii) A licence must contain a reference to the storage and safety requirements under the Act (section 18(2)(h)).

(viii) Firearms displayed by a licensed firearms dealer must be secured in such a manner as would reasonably prevent their removal by anyone other than the dealer or an employee (section 48(1)). A dealer must ensure that a displayed firearm is under the immediate supervision of the dealer or an employee (section 48(2)(a)). A dealer must ensure that a firearm is not displayed unless reasonable precautions are taken to prevent it from being stolen.

A firearms dealer licence that authorises a dealer to carry on business at specified premises must not be issued unless the Commissioner is satisfied that the premises are suitable having regard to the nature of the proposed activities, the kinds of firearms, the provision for safekeeping of firearms and the security of the premises (section 34).

(ix) The Regulation contains a general provision that a permit may be subject to such conditions as the Commissioner thinks fit (clause 22), including conditions concerning the safe storage of the firearm (clause 22(2)). There are also specific provisions for particular kinds of permits in relation to conditions concerning security and safe storage (firearms museum permit - clause 45(4)(c); permits for firearms used in film, television or theatrical productions - clause 46(4)(d); theatrical armourer's permit - clause 47(2)(b)).

Compliance

NSW complies with this resolution.

Resolution 9: RECORDING OF SALES

Council resolved:

- (a) that firearms sales be conducted only by or through licensed firearms dealers.**
- (b) that the following principles should underpin firearms dealer recording of firearms transactions:**
 - (i) firearms dealers should continue to be obliged under penalty to ensure that purchasers are appropriately licensed for the firearm to be purchased;**
 - (ii) firearms dealers should be required to record and maintain details (type, make, calibre and serial number) of each weapon purchased or sold against the identity (name, address and licence number) of the seller or the purchaser;**

- (iii) firearms dealers should be required to provide records to the National Register of Firearms through the State/Territory licensing authority;**
 - (iv) police personnel investigating a crime or checking the compliance of licensed gun dealers with recording responsibilities should have the right to inspect the records of licensed gun dealers without the need to give notice to the licensee; and**
 - (v) special provisions may have to be put in place in those jurisdictions which have remote locations where licensed gun dealers may not be readily available (it may be possible, for instance, to authorise local police officers to certify sales/purchases in such circumstances).**
- (c) that jurisdictions legislate to allow the sale of ammunition only for those firearms for which the purchaser is licensed and that there be limits on the quantity of ammunition that may be purchased in a given period.**
- (d) on the purchase of ammunition, the relevant licence must be produced.**

Relevant Provisions:

- (a) All firearms sales must be through a licensed firearms dealer (section 51).**
- (b) The provisions relating to recording of sales are:**
 - (i) It is an offence for a firearms dealer to sell a firearm to someone who is not authorised to possess the firearm, or to sell a firearm to someone without seeing the purchaser's licence or permit and the purchaser's permit to acquire (section 44).**
 - (ii) For each sale of a firearm or firearm part, a firearms dealer must record (amongst other things) the make, serial number, calibre, type, action and magazine capacity (section 45(2)(d)(iii)). For each purchase, receipt, sale or transfer of a firearm, a firearms dealer must record (amongst other things) the name, address and licence number of the other person dealing with the dealer (section 45(2)).**
 - (iii) Each record required to be made by a firearms dealer must be sent to the Commissioner within 7 days of the record being made (clause 33).**

Quarterly returns of a firearms dealers records must also be forwarded to the Commissioner (section 46).
- (iv) A dealer must make his/her records available to the police on demand (section 45(6)(a)).**

(v) An authorised police officer may witness firearms sales and purchases in circumstances where a licensed firearms dealer is not reasonably available (sections 51(1)(c) and 51(2)(c)). The Regulation provides that a licensed firearms dealer is not reasonably available if the nearest firearms dealer is more than 100 km away from both the buyer and the seller (clause 99(2)).

(c) Ammunition can only be sold to or possessed by a person that holds a licence or permit for a firearm which takes that ammunition, or a person who is authorised to buy or possess the ammunition by permit (sections 65(1) and 65(2)).

Section 65(2) provides that ammunition that is purchased at any one time must not exceed the any amount prescribed by the regulations. No maximum amount has been prescribed yet.

(d) When purchasing ammunition, the purchaser must produce his/her licence (section 65(1)).

Compliance:

NSW complies with this resolution **except** that there is no specified maximum amount of ammunition that may be purchased in a given period.

Resolution 10: MAIL ORDER SALES CONTROL

Council resolved:

- (a) to adopt the following principles in relation to mail order firearms sales:
- (i) mail order arrangements will apply strictly on a licensed gun dealer to licensed gun dealer basis;
 - (ii) advertisement of firearms for sale will be prohibited unless the sale is to be conducted by or through a licensed gun dealer;
 - (iii) the movement of firearms covered by Licence Categories C, D and H must be in accordance with prescribed safety requirements;
 - (iv) the commercial transport of ammunition with firearms will be prohibited.
- (b) that each jurisdiction pass the necessary legislation to enforce these principles within their borders.

On 17 July 1996, the Council resolved:

- * commercial transport of firearms and ammunition should only be allowed under secure conditions prescribed by legislation or regulation.

* private owners should be allowed to advertise their firearms, with serial number, provided the sale is conducted through a licensed dealer to ensure the integrity of the firearms register.

Relevant Provisions:

- (a) The relevant provisions are:
- (i) Firearms and firearm barrels must not be sent by mail to an address within NSW (section 52). A firearms dealer may send a firearm or a firearm barrel to another firearms dealer at an address outside NSW (section 53).
 - (ii) Advertisements of firearms for sale are prohibited unless a licensed firearms dealer places the advertisement (section 54(a)), or the proposed sale is arranged through a licensed firearms dealer (section 54(b)) and the advertisement contains the licence or permit number of the seller, and the name of the dealer concerned (clause 98).
 - (iii) *Commercial transportation:* Firearms being transported commercially must be stored in a locked container secured to the vehicle or in a locked compartment within the vehicle, and must not be able to be seen while being conveyed (section 56 and clause 100(a)). All reasonable precautions must be taken to ensure that the firearm is not lost or stolen while it is being conveyed (section 56 and clause 100(b)).

Non-commercial transportation: Prohibited (Category C and D) firearms and pistols (Category H) being transported for non-commercial purposes must be rendered temporarily incapable of being fired, kept in a locked container secured to or kept within the vehicle, kept separate from any ammunition and must not be loaded (section 57 and clause 101(a)). These requirements do not apply to primary producers under specified circumstances (section 57 and clause 101(2)).
 - (iv) See paragraph (iii) above for the requirements in relation to commercial transportation of firearms. There is no prohibition on the commercial transport of ammunition with firearms.

Compliance:

NSW complies with the resolution **except** that there is no prohibition on the commercial transport of ammunition with firearms.

Resolution 11: COMPENSATION/INCENTIVE SCHEMES

Council resolved:

- (a) that a common basis for fair and proper compensation, based on the value of each firearm as at March 1996, be agreed between jurisdictions to prevent gun owners from offering their firearms to the State/Territory which offers the 'best price'.**
- (b) that there be a public education campaign to highlight the firearms amnesty and compensation program.**
- (c) to note that the Commonwealth will make a financial contribution to the public education campaign.**
- (d) that a 12 month national amnesty be established, during which the public education campaign would persuade firearm owners to comply, and warn of severe penalties where firearms are not voluntarily surrendered.**
- (e) that, after the amnesty has concluded, each jurisdiction have severe penalties, which to the extent practicable should be uniform, for breaches of the firearms control laws.**

Extension of Amnesty

On 17 July 1996, the Council resolved that the national surrender scheme shall cease on 30 September 1997.

Settlement of Disputes Relating to Valuations of Firearms

On 17 July 1996, the Council resolved the following in relation to settling disputes relating to the valuation of firearms:

- (a) All jurisdictions would appoint arbitrators to assess the value of firearms which are either listed at over \$2,500 and the value is disputed by their owner, or unlisted; and**
- (b) all jurisdictions agree to the following arbitration process;**
 - (i) an owner who is unsatisfied with the list price for his high-value firearm may submit it to an arbitrator for valuation;**
 - (ii) where the valuation arrived at by the arbitrator is lower than the "list price" for that firearm, the arbitrator's valuation will prevail;**
 - (iii) the cost of the valuation is payable by the owner of the firearm;**

- (iv) the cost of the valuation is non-compensable; and
- (v) there be no appeal from the arbitration process.

Sales Overseas Option

On 17 July 1996, the Council resolved the following in relation to the option of selling prohibited firearms overseas:

- (a) that all jurisdictions would establish a process to enable the consignment of high-value, non-military style firearms with nominated dealers for overseas sale.

Valuation Process for Firearms Dealers' Loss of Business

On 17 July 1996, the Council resolved:

- (a) That all jurisdictions would apply the following valuation process for compensating firearms' dealers for loss of business resulting from the new firearms laws in the relevant State or Territory:
 - (i) compensation would be available to any dealer whose business includes the sale, repair or importation of firearms;
 - (ii) such a firearms dealer, in respect of compensation for loss of business, is to arrange for a certified valuation to be conducted by an appropriately qualified professional person according to commercially accepted standards;
 - (iii) the dealer should be entitled to include the reasonable cost of the valuation in his claim for loss of business;
 - (iv) the dealer is required to accept the valuation; and
 - (v) that the valuation may be subject to audit.
- (b) That persons who sell, repair or import firearms but are unable to establish that any loss of business is compensable under paragraph (a) will be entitled to claim compensation for any prohibited firearms surrendered; and
- (c) that each jurisdiction determine how to identify and license dealers to continue trade in category C and D firearms.

Relevant Provisions:

- (a) *Compensation:* New South Wales implemented a “buy back” scheme for prohibited firearms which ran for 12 months from 1 October 1996 (section 78). The amount of compensation paid for different types of firearms was specified in the schedules to the *Firearms (Compensation) Regulation 1996* (“the Compensation Regulation”). For some types of firearms, different compensation amounts were specified for new and used firearms. Owners of firearms valued at over \$2,500 could elect to submit the firearm for valuation (clause 6(3) of the Compensation Regulation). Firearm Dealers were compensated at the amount of the dealer’s retail sale price for the firearm as at 1 March 1996 (clause 8 of the Compensation Regulation).
- (d) *Amnesty:* New South Wales provided an amnesty in relation to the offence under section 7 of possession (but not use) of specified prohibited firearms (Schedule 3, Part 2, clause 3 of the Act). The amnesty did not apply to the use of the firearms. The general amnesty ended on 30 September 1997 (clause 115). The amnesty was extended to 30 June 1998, and in specified circumstances to 31 December 1998, for the limited purpose of surrendering the firearm to the police (clause 116). There were also extensions for limited periods and in limited circumstances for existing licensees (clauses 114A, 114B and 118).
- (e) *Offences:* The New South Wales legislation provides for many offences for breaches of the legislative requirements.

A key offence of unauthorised possession or use of firearms (section 7) has a maximum penalty of 50 penalty units and/or imprisonment for 2 years on summary conviction, or 10 years imprisonment (for prohibited firearms or pistols) or 5 years imprisonment (for other firearms) on indictment.

Settlement of Disputes Relating to Valuations of Firearms

- (a) The Regulation provided for firearms valuers approved by the Commissioner (clause 6(3) of the Compensation Regulation).
- (b) The relevant provisions are:
- (i) Rather than accepting the price specified in the regulations, an owner of a prohibited firearm valued (in the regulations) at over \$2,500 could elect to submit the firearm for valuation (clause 6(3) of the Compensation Regulation).
 - (ii) Where an owner elected to obtain a valuation, the amount of compensation payable was the amount assessed by the valuer regardless of whether that amount was less than the price specified in the regulations (clause 6(3) of the Compensation Regulation).
 - (iii) The cost of the valuation was payable by the owner of the firearm (clause 6(3) of the Compensation Regulation).

- (iv) see paragraph (iii) above.
- (v) There was no provision for appeal from a valuation.

Sales Overseas Option

- (a) An owner of specified non-military style prohibited firearm valued (in the regulations) at over \$2,500 could place the firearm on consignment with a firearms dealer for the purpose of selling the firearm overseas.

Valuation Process for Firearms Dealers' Loss of Business

- (a) Section 78A provides that a licensed firearms dealer is entitled to compensation from the State for any loss of business. The compensation is to be determined by the Valuer-General in accordance with any approved valuation guidelines.
- (b) Any person who acquired possession of a prohibited firearm before the commencement 1 October 1997 was entitled to compensation (section 78(2)).
- (c) A firearms dealers' licence specifies on the licence the kinds of firearms the licensee is authorised to deal in (section 8).

Compliance

NSW substantially complied with these resolutions.

COLLECTOR LICENCES

On 17 July 1996, the Council agreed to replace the regulatory scheme for collectors agreed to on 10 May 1996 to with the following:

The Council resolved:

- (i) That a collector must be a bona fide collector in the opinion of the authorising officer such that the authorising officer must be satisfied that the collection will be of obvious and significant commemorative, historical, thematic or investment value;
- (ii) that category D firearms be permitted in a firearms collection provided they have been rendered permanently inoperable;
- (iii) that all other firearms manufactured after 1900 be permitted in a firearms collection s provided they have been rendered temporarily incapable of use by removal and separate secure storage of the bolt and/or firing pin or, if not feasible, an appropriate trigger lock;

- (iv) that any jurisdiction wishing to do so may apply the stricter (permanently inoperable) standard to category C firearms held by collectors in that jurisdiction;**
- (v) that prohibited firearms held under the above terms not be bought, sold, transferred or otherwise disposed of except between bona fide collectors with approval of the appropriate authority and through the agency of a registered dealer;**
- (vi) that the recommended standard for storage and security of collection firearms be based upon the Northern Territory police standard;**
- (vii) that no ammunition for any firearm in a collection be allowed except if an ammunition collector's licence is held or a separate licence is held enabling use of a firearm which takes that ammunition;**
- (viii) that a collector's licence not authorise the discharge of any firearm in the collection unless authorised by special permit in prescribed circumstances;**
- (ix) that jurisdictions consider not applying any requirement for licensing or registering a collection firearm which was manufactured before 1900 and for which no cartridge ammunition is commercially available; and**
- (x) that jurisdictions consider requiring that a firearms collector be a member of an approved firearms collector's club or association.**

Relevant Provisions:

- (i) An applicant must demonstrate that his/her collection has genuine commemorative, historical, thematic or financial value (table to section 12).
- (ii) Category D firearms in a collection must be rendered permanently inoperable in the manner prescribed in the Regulation (section 20(a) and clauses 31(3), 31(4), 31(4A) and 31(5)).
- (iii) All firearms manufactured after 1900 in a collection must be rendered temporarily inoperable by removing the bolt or firing mechanism and keeping it separate in an approved locked container, or by using an approved trigger lock (section 20(b)).
- (iv) The legislation does not require that Category C firearms in a collection be rendered permanently inoperable.
- (v) A Category C or D firearm that is to be part of a collection can only be sold, transferred or disposed of to or from a licensed firearm dealer or through a licensed firearms dealer to the licensed collector (sections 20(c) and 20(d)).

- (vi) Collection firearms must be stored on premises approved by the Commissioner and stored in accordance with the standards prescribed in the Act (Part 4 of the Act) and the Regulation (section 20(e) and clause 31(6)).
- (vii) A Firearms Collector licence does not authorise the possession of ammunition for any firearm in the collection (section 9(3)).
- (viii) A Firearms Collector licence authorises the possession (but not the use) of collection firearms (section 8(1)). A permit for the use of a collection firearm may be issued (section 28(f)).
- (ix) There is no exception within the NSW legislation for pre-1900 firearms, i.e. licensing and registration of these firearms are required.
- (x) An applicant for a Collector licence must be must a member of an approved collectors' society or club (table to section 12).

Compliance

NSW complies with this resolution.

AMMUNITION PERMIT

On 17 July 1996, the Council agreed to a regulatory regime for ammunition collectors as follows:

- (i) That jurisdictions give consideration to requiring a collector of firearms ammunition to have a licence or permit for purchase or possession of that ammunition unless covered by an appropriate shooter's licence;
- (ii) that purchase or sale be permitted only from or to another licensed collector or firearms dealer;
- (iii) all ammunition in a collection must be rendered inert except for all sporting ammunition and military ammunition of UN hazard classification code 1.4.s up to 20mm calibre and must not contain high explosive, smoke, chemical, or lachrymatory agents; and
- (iv) that adequate storage requirements be a condition of the licence and that storage facilities comply with explosives regulations in each jurisdiction.

Relevant Provisions:

- (i) A permit authorising the purchase or possession of ammunition for the purpose of an ammunition collection may be issued (clause 59(1)). Note that a Firearms Collector licence does not authorise the possession of ammunition (section 9(3)).
- (ii) It is an offence for a person to buy or possess ammunition unless that person holds a licence or permit for a firearm which takes that ammunition, or that person is authorised by permit to buy or possess the ammunition (section 65(2) or 65(3)). It is an offence to sell ammunition to someone who is not authorised to buy it (section 65(1)).

A condition specified on an Ammunition Collectors Permit is that the holder *“shall ensure any ammunition that forms part of the collection is disposed of only to a licensed firearms dealer or the holder of an Ammunition Collectors Permit or is surrendered to Police”*.

- (iii) All collection ammunition must be rendered inert (other than specified exceptions) (clause 59(3)(a)), and must not contain high explosive, smoke, chemical or lachrymatory agents (clause 59(3)(b)).
- (iv) The legislation provides only that it is a condition of the licence that the ammunition is stored safely in accordance with such directions as may be approved (clause 59(3)(c)). The legislation does not specify any storage requirements, but storage requirements are specified on the permit. The legislation and the permit do not expressly provide that storage facilities comply with explosive regulations.

Compliance:

NSW substantially complies with this resolution.

The legislation does not specify any storage requirements, but storage requirements are specified on the Ammunition Collectors Permit under the heading “General Instructions” (see below).

Comment:

An Ammunition Collectors Permit includes the following under the heading “Standard Conditions”:

“The holder of this permit shall ensure active ammunition is stored securely and separately to any ammunition that forms part of the collection”.

An Ammunition Collectors Permit specifies the following under the heading “General Instructions - Security Arrangements”:

“The premises must be a permanent structure with secure locks on all openings and the ammunition must be:

stored in a cupboard:

- *of sturdy construction in wood or steel to provide a reasonable level of security against unauthorised entry*
- *secured to the structure if weighing less than 150 kg when empty*
- *must be fitted with a solid metal lock*
- *the door must be fitted with a three point locking mechanism and padlocked by means of a hasp and staple of lever handle*

or stored in a display case:

- *of solid construction, padlocked*
- *all glass panelling must be of a minimum grade of 638mm and be laminated*
- *secured to the floor and wall of the structure”*

MUSEUM PERMIT

On 17 July 1996, the Council resolved:

- That official museums (being those which are operated by Commonwealth, State or Territory governments and authorities, including the military and other approved museums) should not be subject to the requirements agreed upon for private collectors; and**
- that individual jurisdictions would review legislation to ensure that all other museums are subject to the requirements agreed upon for private collectors.**

Relevant Provisions:

- A permit for the possession of firearms by a person employed or engaged in the operation of a public museum may be issued (clause 45(1)). Public museum is defined in the Regulation (clause 45(6)). The permit is subject to prescribed conditions (clause 45).**
- Museums that do not fall within the definition of “public museum” will (by default) be subject to the same requirements as apply to private collectors.**

Compliance:

NSW complies with this resolution

HEIRLOOMS PERMIT

On 17 July 1996, the Council resolved:

- (a) That where the owner of an heirloom firearm is unable to establish a "genuine reason" for continued possession of that firearm and/or does not qualify for a collector's licence, jurisdictions may issue the heirloom owner with a special category of licence;
- (b) that, before an heirloom licence is issued, the owner must provide sufficient proof of inheritance of the heirloom;
- (c) that such a licence apply only to a single gun, or a matched pair or set;
- (d) that all heirloom firearms be rendered permanently inoperable; and
- (e) that an heirloom licence not authorise the discharge of the heirloom firearm or firearms in any circumstance.

Relevant Provisions:

- (a) A permit authorising the possession of an heirloom firearm may be issued (clause 44(1)).
- (b) Before issuing an heirloom permit, the Commissioner must be satisfied that the firearm has been inherited (clause 44(2)(a)).
- (c) An heirloom permit applies only to a single firearm or to a matched pair of firearms (clause 44(5)).
- (d) Before issuing an heirloom permit, the Commissioner must be satisfied that the firearm has been rendered permanently inoperable (clause 44(2)(b)).
- (e) An heirloom permit does not authorise the owner to use the firearm to which the permit relates (clause 44(3)).

Compliance:

NSW complies with this resolution.