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Firearms Legislative Review

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Disclaimer

This research paper does not necessarily reflect the policy position of the Australian Government or the Australian Institute of Criminology.

Table of contents

Acknowledgements.....	2
Disclaimer.....	2
Executive Summary.....	6
Introduction.....	8
Background.....	8
Purpose.....	9
Method.....	9
Legislative Review.....	11
1. Prohibition on specific types of firearms.....	11
1.1 Prohibited firearms.....	11
1.2 Prohibited Handguns.....	11
1.3 Possession of a prohibited firearm.....	11
2. Border protection.....	13
3. Nationwide registration.....	13
4. Licensing requirements.....	14
4.1 Basic licensing requirements.....	14
4.2 Interstate recognition of licences.....	16
4.3 Genuine reason.....	17
4.4 Genuine need.....	18
4.5 Licence categories.....	19
5. Category C firearms.....	20
5.1 Basic requirements.....	20
5.2 Exemptions for clay target shooters.....	21
6. Category D firearms.....	22
7. Handguns.....	23
7.1 Graduated access.....	23
7.2 Membership requirements.....	23
8. Safety training.....	25
9. Firearms Collectors.....	25
10. Ammunition collectors.....	27
11. Museums.....	28
12. Heirloom firearms.....	28
13. Grounds for refusal, cancellation or suspension.....	29
14. Permits to acquire.....	30
15. Security and storage.....	31
16. Reporting obligations.....	32
16.1 Clubs.....	32
16.2 Medical profession.....	32

17.	Record keeping	33
17.1	Records	33
17.2	Ammunition and firearm parts	33
17.3	Production and inspection	34
18.	Mail order control.....	35
19.	Manufacture of firearms	36
20.	Firearm dealers	38
20.1	Close associates	38
20.2	Employment of proscribed persons.....	39
21.	Sale and purchase of firearms	40
21.1	Definitions	40
21.2	Offences	41
22.	Interstate firearm offence	42
23.	Compensation/Incentive issues	43
	Implications.....	44
1.	Prohibition on specific types of firearms.....	44
3.	Nationwide registration.....	44
4.	Licensing requirements	45
4.1	Basic licensing requirements	45
4.2	Interstate recognition of licences	46
4.3	Genuine reason	46
4.4	Genuine need	46
4.5	Licence categories	46
5.	Category C firearms	47
5.2	Exemptions for clay target shooters	47
6.	Category D firearms	47
7.	Handguns	48
7.1	Graduated access.....	48
7.2	Membership requirements	48
8.	Safety training	49
9.	Firearm Collectors.....	49
10.	Ammunition Collectors	49
11.	Museums.....	49
12.	Heirloom firearms.....	50
13.	Grounds for refusal, cancellation or suspension.....	50
14.	Permits to acquire	50
15.	Security and storage	50
16.	Reporting.....	51
16.1	Clubs.....	51

17.	Record Keeping.....	51
17.1	Records	51
17.2	Ammunition and firearm parts	51
17.3	Production and inspection	52
18.	Mail order control.....	52
19.	Manufacture of firearms	53
20.	Firearm Dealers.....	53
20.1	Close associates	53
20.2	Employment of proscribed persons	53
21.	Sale and purchase of firearms	53
21.1	Definitions	53
21.2	Offences	54
22.	Interstate firearm offence	54
	Conclusion	54

See also Appendices to the Firearms Legislative Review

List of Tables

Table 1.	Penalties for unauthorised possession of a firearm, by jurisdiction.....	11
Table 2.	Penalties on conviction of certain firearm offences, by jurisdiction.....	36

Executive Summary

The Australian Government Attorney-General's Department (AGD) commissioned the Australian Institute of Criminology (AIC) to conduct a legislative review of firearm laws in Australia. The need for a review was identified in response to concerns raised by the Australasian Police Ministers' Council (APMC) Firearms Policy Working Group.

The review examines the extent to which Australian, state and territory government legislation complies with the resolutions of the following agreements:

- National Firearms Agreement (1996)
- National Firearms Trafficking Agreement (2002)
- Council of Australian Governments Agreement on Handguns (2002).

The report has been drafted following detailed examination of the firearm legislation of each state and territory and was prepared in conjunction with consultation with representatives from police and justice services from each jurisdiction.

The report discusses the consolidated resolutions of the agreements, assesses the extent of compliance of each state and territory and highlights the relevant areas of divergence. The report further identifies potential legislative anomalies and summarises the implications for firearm policy across Australia.

While most jurisdictions substantially comply with the resolutions, there are inconsistencies in how the states and territories have interpreted and addressed these requirements. The main areas of divergence from the consolidated resolutions and the relevant discrepancies between the jurisdictions relate to the following:

- penalties for the possession of prohibited firearms
- registration of firearm parts, including frames and receivers
- genuine need required for category B firearms
- restrictions relating to clay target shooters, including minimum participation rates
- handgun restrictions, including probation requirements and requirements to acquire a handgun
- restrictions relating to firearm collectors, including club membership requirements, heirloom firearms and ammunition collectors
- waiver of the mandatory 28 day waiting period to acquire a firearm
- minimum standards for security and storage provisions
- annual reporting requirements for shooting clubs
- limits on possession/purchase of ammunition (quantity)
- offences relating to false entries in firearm transaction records, particularly dealers
- regulation for sending firearms via mail/post
- possession of firearms on which serial numbers have been defaced/removed
- close associate provisions for firearm dealers
- prohibition on the employment of proscribed persons in firearm dealerships
- offences relating to the sale and purchase of firearms, including inspection of relevant licences, and trafficking offences
- interstate firearm offences.

The report concludes that while much progress has been made in the attempt to standardise firearm regulation across Australia, divergence from the resolutions of the firearm agreements has significantly weakened the national framework for the control of firearms as envisaged by the Australasian Police Ministers' Council.

Introduction

Background

Over the last decade, the regulation of firearms in Australia has progressed significantly in response to specific incidents such as the Port Arthur shootings in Tasmania in 1996 and the Monash University shootings in 2002. Following these events, the Australian, state and territory governments, through the Australasian Police Ministers' Council (APMC) and the Council of Australian Governments (COAG) entered into national agreements in an attempt to prevent such events from re-occurring.

There have been three main national agreements responsible for the shaping of Australian firearms law. These are:

- the National Firearms Agreement (1996)
- the National Firearms Trafficking Policy Agreement (2002)
- the National Handgun Control Agreement (2002).

The aim of these agreements was to encourage the adoption of consistent firearm legislation in all states and territories to ensure a uniform national approach to the regulation of firearms. While the Australian Government has constitutional power to legislate in relation to the importation of firearms, the responsibility for regulation of the use, possession and sale of firearms in each jurisdiction is held by the relevant state or territory government.

In the late 1990's Australia underwent an extensive national firearm law reform process, starting with a special meeting of the APMC in May 1996 in response to the mass shootings in April 1996 at Port Arthur. A national plan for the regulation of firearms was agreed, with resolutions refined at subsequent meetings to form the basis of the National Firearms Agreement (1996). The Agreement resulted in restricted legal possession of automatic and semi-automatic firearms and further restricted the legal importation of non-military centrefire self-loading firearms to those with a maximum magazine capacity of five rounds. The Agreement further committed all states and territories to a firearm registration scheme and the licensing of persons in order to legally possess and use firearms. In addition to the introduction of laws, phased in from July 1996 to August 1998, were designed to minimise the legal acquisition of firearms by unsuitable persons. These resolutions were further refined at subsequent meetings of the APMC 17 July 1996 and 15 November 1996.

The National Firearms Agreement (1996) was implemented by the states and territories in stages over the following years, including provision for a 12 month national amnesty and a compensation buyback scheme. The Australian Government continued to work with the governments of the states and territories to develop new legislative and policy initiatives in support of the National Firearms Agreement and to improve community safety through the regulation of firearms generally. In March 2000, the penalties for illegal firearm trafficking were increased and through amendments to the *Customs Act 1901 (Cth)*, criminal offences relating to the importation of firearms are currently punishable on conviction by a penalty of up to \$275,000 fine and/or 10 years imprisonment.

At the APMC meeting on 17 July 2002, Ministers resolved that under the National Firearm Trafficking Policy Agreement (2002), all jurisdictions will make further provision for the control of the illegal trade in firearms in Australia. The Trafficking Agreement sought to achieve this purpose through increased border protection, the introduction of nationally consistent regulation of the legal manufacture of firearms and tighter recording and reporting provisions for transactions involving firearms and major firearm parts.

Following the death of two students in a handgun shooting at Monash University in October 2002, the Australian, state and territory governments implemented further legislative reforms through the introduction of the National Handgun Control Agreement (2002). In response to the shootings, the APMC met in November 2002 and adopted 28 resolutions aimed at restricting the availability and use of handguns, particularly those which are easily concealable. The resolutions included a restriction on the possession of handguns based on calibre, barrel length and magazine capacity and a system of graduated access to handguns for legitimate sporting shooters. The prohibition on certain handguns was accompanied by a surrender and buyback of handguns and certain parts and accessories, commencing July 2003.

In December 2002 COAG endorsed the 28 resolutions made by the APMC and agreed that legislative and administrative measures to implement the National Handgun Control Agreement (2002) should be in place by 30 June 2003. Additionally, the Customs (Prohibited Imports) Regulations 1956 (Cth) were amended to restrict the importation of prohibited handguns and handgun parts as envisaged by the APMC. Further amendments to the *Criminal Code Act 1995 (Cth)* by the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002 (Cth)* established a criminal offence for interstate/cross-border trafficking of firearms, with substantial penalties for those convicted of firearm trafficking.

Purpose

The aim of this review is to examine the extent to which Australian, state and territory government legislation complies with the resolutions of the following agreements:

- National Firearms Agreement (1996)
- National Firearms Trafficking Agreement (2002)
- Council of Australian Governments Agreement on Handguns (2002).

The need for a legislative review of firearms legislation was identified by the Firearms Policy Working Group (FPWG) and endorsed by the Senior Officers Group (SOG) in order to identify legislative differences and existing loopholes in firearms law across Australia.

The outcomes of the review will be:

- gaining a comprehensive understanding of the level of compliance of each jurisdiction with the above firearms agreements
- reviewing the adequacy of current firearm laws based on identified loopholes in the legislation.

Method

As some of the earlier resolutions have been amended by those in the later agreements, prior to the review the resolutions were consolidated into a single comprehensive firearms agreement (see Appendix A). The resolutions were consolidated according to subject area (for example, all resolutions relating to the safe storage of firearms).

The following report is an examination of the consolidated resolutions and the associated Australian, state and territory government compliance. The review involved examination of the state and territory firearms legislation and subordinate legislation, followed by consultation with each jurisdiction and an assessment of the level of compliance with the resolutions.

The main report outlines the consolidated resolutions by subject area, followed by jurisdictional compliance. The main areas of divergence from the resolutions and the associated implications are highlighted at the end of the report. A detailed examination of the

firearms legislation of each state and territory is presented in Appendices B – I, with a summary of compliance across all jurisdictions presented in Appendix J.

The following legislation including all amendments as in force at 1 January 2006 has been used in preparing this review:

New South Wales:

Firearms Act 1996 No 46 (NSW)

Firearms (General) Regulation 1997 (NSW)

Victoria:

Firearms Act 1996 (Vic)

Firearms Regulations 1997(Vic)

Queensland:

Weapons Act 1990 (Qld)

Weapons Regulation 1996 (Qld)

Weapons Categories Regulation 1997(Qld)

South Australia:

Firearms Act 1977 (SA)

Firearms Regulations 1993 (SA)

Firearms (Compensation) Regulations 1996 (SA)

Firearms (Exemption for Certain Exhibitors) Regulations 2003 (SA)

Western Australia:

Firearms Act 1973 (WA)

Firearms Regulations 1974 (WA)

Tasmania:

Firearms Act No 23 of 1996 (Tas)

Firearms Regulations 1996 (Tas)

Australian Capital Territory:

Firearms Act 1996 (ACT)

Firearms Regulation 1997(ACT)

Northern Territory:

Firearms Act (NT)

Firearms Regulations (NT)

Legislative Review

1. Prohibition on specific types of firearms

Resolution

1.1 Prohibited firearms

The first resolution of the APMC Special Firearms Meeting in May 1996 required all jurisdictions to ban the sale, resale, transfer, ownership, possession, manufacture and use of all automatic and semi-automatic weapons, except in exceptional circumstances such as military or police purposes, or occupational shooters specially licensed for specified purposes.¹ The Australian Government agreed to restrict 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 to control the importation of those firearms included in licence category C.² The states and territories were further required to ban competitive shooting involving banned firearms or those firearms proposed to be banned from import.³ However, an exemption was made at the 15 November 1996 meeting to allow the use of semi-automatic and pump action shotguns in clay target shooting competitions in accordance with international rules of clay target shooting.⁴

1.2 Prohibited Handguns

In 2002 further resolutions were made to restrict the classes of handguns that can be imported or possessed for sporting purposes to those meeting recognised sporting shooter classifications in the Olympic and Commonwealth Games and other international events.⁵ Handguns were to be limited to a maximum of .38" calibre (except for specially accredited sporting events where handguns up to .45" calibre will be permitted). Semi-automatic handguns with a barrel length of less than 120mm were to be prohibited, as were revolvers and single shot handguns with a barrel length of less than 100mm. It was decided that highly specialised target pistols, revolvers and semi-automatic firearms, some of which will have a barrel length of less than 120mm, will be allowed in restricted circumstances.

1.3 Possession of a prohibited firearm

In 2002 it was agreed that all jurisdictions were to ensure that the offence of possession of a prohibited firearm or a handgun will attract substantial penalties.⁶ Further, all states and territories were to ensure a charge of illegal possession can be made in circumstances where an illegal firearm is found in premises with a person or persons, even where there is no actual physical possession of the gun by any person.⁷

Jurisdictional Compliance

All jurisdictions appear to comply with the restriction on automatic and semi-automatic firearms by restricting or prohibiting the use and possession of these weapons. While not all jurisdictions expressly ban competitive shooting involving these firearms, they do not authorise the granting of category C or D firearms for this purpose (with the exemption of clay target shooting as envisaged by the resolution). The Northern Territory legislation allows category C firearms for 'sports shooting', but the Northern Territory Police have advised that 'sports shooting' is further restricted to clay target shooting under the policy and licence conditions.

With regard to handgun restrictions, all jurisdictions have either prohibited or restricted handguns in accordance with the resolution. Handgun licences permitted for the reason of recreational or sports shooting are restricted in all jurisdictions to firearms which comply with

¹ APMC Special Firearms Meeting May 1996, Resolution 1a

² APMC Special Firearms Meeting May 1996, Action Plan 3

³ APMC Special Firearms Meeting May 1996, Resolution 1b

⁴ APMC Meeting November 1996, Agenda item 3d

⁵ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 1

⁶ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 6, Action Plan 10, see also APMC Firearms (Handguns) Nov 2002, Resolution 26

⁷ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 10, Action Plan 14

the specifications stated in the resolution and such licences do not authorise the licensee to possess a prohibited pistol. Exemptions to the restrictions have been made for highly specialised target pistols for the purpose of participating in specialised shooting competitions, such as Metallic Silhouette or Single Action events.

In relation to Australian Government compliance, in 1996 the Customs (Prohibited Imports) Regulations 1956 were amended to increase controls on the importation of rimfire self-loading rifles and self-loading or pump action shotguns.⁸ Later that year, regulations were made establishing a new structure for the control of firearm importation, which were later amended by the Customs (Prohibited Imports) Regulations (Amendment) 1998 (No. 228) (Cth). The *Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 2000 (Cth)* established an offence to illegally import prohibited firearms into Australia and made an offender liable to a maximum penalty of 10 years imprisonment or a fine of \$250,000, or both. Further, in 2002 the Customs (Prohibited Imports) Amendment Regulations 2002 (No. 4) (Cth) introduced new regulations and procedures for the legal importation of handguns into Australia. The Customs (Prohibited Imports) Regulations 1956 (Cth) were amended to prevent the illegal importation of prohibited handguns and handgun parts as envisaged by the resolution. Currently, under the *Customs Act 1901 (Cth)*, the penalty for non-compliance with Australia's import or export controls on prohibited firearms is a fine not exceeding \$275,000 or imprisonment for 10 years, or both.⁹

All states and territories have established an offence to possess or use a prohibited firearm or pistol unless authorised to do so by licence or permit. The penalties for illegal possession are detailed in the table below. Some jurisdictions have additional penalties for the illegal possession of multiple weapons, possession of unregistered firearms or illegal possession by a prohibited or prescribed person, which are not included in the table.

Table 1. Penalties for unauthorised possession of a firearm by jurisdiction

<i>Jurisdiction</i>	<i>Maximum penalty</i>
ACT	Prohibited firearm - 200 penalty units (\$20,000), imprisonment for 2 years, or both. Firearm generally - 100 penalty units (\$100,000) or imprisonment for 12 months or both.
NSW	Prohibited firearm or pistol - imprisonment for 14 years. Firearm generally - imprisonment for 5 years.
NT	Category A or B firearm - 200 penalty units (\$22,000) or imprisonment for 12 months. Other firearms - 400 penalty units (\$44,000) or imprisonment for 2 years.
Qld	Category D, H or R weapon - 300 penalty units (\$22,500) or imprisonment for 7 years. Category C or E weapon - 200 penalty units (\$15,000) or imprisonment 4 years. Category A, B or M weapon - 100 penalty units (\$7,500) or imprisonment for 2 years.
SA	Prescribed firearm - \$50,000 or imprisonment for 10 years. Class C, D or H firearm - \$35,000 or imprisonment for 7 years. Any other firearm - \$20,000 or imprisonment for 4 years.
Tas	Any firearm - fine not exceeding 50 penalty units (\$50,000) or imprisonment for a term not exceeding 2 years, or both.
Vic	Category A or B longarm - 120 penalty units (\$12,000) or 2 years imprisonment. Category C or D longarm - 240 penalty units (\$24,000) or 4 years imprisonment. Category E longarm - 600 penalty units (\$60,000) or 7 years imprisonment. Longarm not category A, B, C, D or E - 240 penalty units (\$24,000) or 4 years imprisonment.

⁸ *Customs (Prohibited Imports) Regulations (Amendment) 1996 (No. 59) (Cth)*

⁹ *Customs Act 1901* ss 233BAB(5), 233BAB(6)

	General category handgun - 240 penalty units (\$24,000) or 4 years imprisonment. Category E handgun - 600 penalty units (\$60,000) or 7 years imprisonment.
WA	Handgun or a prescribed firearm - imprisonment for 7 years. Any other firearm - imprisonment for 5 years.

Source: see identified legislation on p 8-9 of this report

From the above table it can be seen that the maximum penalties for illegal possession of a firearm vary across jurisdictions, ranging from two to 14 years imprisonment. It should also be noted that in some jurisdictions, the maximum penalty may be reduced on summary conviction.

All states and territories have provided for an extended definition of the meaning of the term 'possession'. Although not all jurisdictions have used the exact language as envisaged by the Council, it would appear that a charge of illegal possession can be made in all jurisdictions where an illegal firearm is found in premises with a person or persons, even where there is no actual physical possession of the gun by any person.

2. Border protection

Resolution

As part of the National Firearms Trafficking Policy Agreement (2002), all jurisdictions agreed that effective Customs barrier controls to prevent the illegal importation of firearms are an essential part of the management of illegal firearms in Australia. Jurisdictions were to consider amendment to the Customs (Prohibited Imports) Regulations 1956 (Cth) to include a public interest test for importation of firearms by individuals and dealers and to support significant penalties for illegal importation and trafficking of firearms.

Jurisdictional Compliance

It appears that all jurisdictions, including the Australian Government, have complied with the substantive aspects of the resolution regarding border protection.

The *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004 (Cth)* inserted provisions into the *Customs Act 1901 (Cth)* which allow the Minister to order the detention or regulate the flow of certain imported goods, or allow the re-export of the goods when the Minister considers it is in the public interest to do so.¹⁰

3. Nationwide registration

Resolution

At the May 1996 meeting of the APMC, it was resolved that all jurisdictions were to establish an integrated licence and firearms registration system, with databases to be linked through the National Exchange of Police Information (NEPI).¹¹

Jurisdictional Compliance

All states and territories have since established a licensing scheme for persons to possess/use firearms and a registration scheme for firearms in their jurisdiction. Note that the Western Australian regulations provide for a register of licences, permits and approvals, as opposed to a register of firearms. Instead, in Western Australia the licence names and identifies the firearm in the licence, which is then recorded in the register. While the 1996 Agreement did not elaborate on the registration of firearm parts and accessories, some jurisdictions also require the registration of firearm parts, although the definition of what constitutes a firearm part varies between jurisdictions.

¹⁰ 46th APMC Meeting 30 June 2004, Agenda Item 7E, *Implementation Report of the National Firearm Trafficking Policy Agreement*: 3

¹¹ APMC Special Firearms Meeting May 1996, Resolution 2

In Queensland, South Australia, Victoria and Western Australia there is no express legislative provision requiring the linking of the registration scheme to the NEPI. Three of these jurisdictions do however provide for access to registration information by interstate licensing authorities through other legislative means.

The Queensland legislation allows the Commissioner to make information in the register available to another entity, within or outside the state, only if the Commissioner is satisfied that to do so would assist in achieving the objectives of the Act (see s 49(4) *Weapons Act 1990 (Qld)*). Similarly, in South Australia the Registrar may permit a person to inspect the register where satisfied that the person has a proper interest in the contents (s 27(2) *Firearms Act 1977 (SA)*). In Victoria, s 181 *Firearms Act 1996 (Vic)* outlines the conditions of disclosure of information gained through the administration of the Act. While the NEPI is not specifically mentioned in this section, information may be released to any person or body of another jurisdiction who performs tasks which correspond to duties performed by the Chief Commissioner under the Act, or any body formed between the jurisdictions if the disclosure is approved by the Chief Commissioner. In contrast, in Western Australia there is no legislative basis enabling the exchange of information to facilitate the cross-jurisdictional sharing of police intelligence.

Despite this, in practical terms all jurisdictions, including Western Australia, have established links to the NEPI scheme and to other state and territory registration systems through either legislative provisions or administrative mechanisms.¹² The National Firearms Licensing and Registration System (NFLRS), managed by the CrimTrac Agency, was developed to facilitate effective information exchange between jurisdictions. In 2004 the Australian Government assisted the states and territories in funding a scoping study for the development of a new National Firearms Management System (NFMS).¹³ The proposed system will incorporate an integrated national firearm licensing and registration system, allowing the details of firearms to be electronically transferred from one state to another. It is envisaged the system will enable law enforcement agencies to track firearms more easily throughout Australia, in addition to streamlining many of the existing processes for sporting shooters.

4. Licensing requirements

Resolution

4.1 Basic licensing requirements

At the May 1996 meeting the APMC decided on minimum standards for the granting of firearm licences across all jurisdictions. These minimum standards required an applicant, in addition to having a genuine reason for possession of a firearm, to:¹⁴

- (i) be aged 18 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, i.e. a 100 point identity system
- (iv) undertake adequate safety training

Furthermore, it was required that the licence itself:¹⁵

- (i) bear a photograph of the licensee
- (ii) be endorsed with the category of the firearm
- (iii) be endorsed with the holder's address [this was varied by the 17 July meeting which agreed that this would not be mandatory if that detail is included in the firearms register]
- (iv) be issued after a waiting period of not less than 28 days

¹² AIC Executive Summary, *Firearms Legislation in Australia*, April 1997, p 1

¹³ Senator the Hon Chris Ellison, Minister for Justice and Customs, media release 30 June 2004 [http://www.ag.gov.au/agd/WWW/ncphome.nsf/Page/Media_Releases_Media_Releases_2004_30_June_2004_-_New_streamlined_system_for_National_Firearms_Management]

¹⁴ APMC Special Firearms Meeting May 1996, Resolution 4a

¹⁵ APMC Special Firearms Meeting May 1996, Resolution 4b

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- (v) be issued for a period of not more than 5 years
 - (vi) contain a reminder of safe storage responsibilities
 - (vii) be issued subject to certain undertakings as to safe storage, to provide details of proposed storage and to submit to inspection of storage facilities
 - (viii) be subject to immediate withdrawal of licence and confiscation in certain circumstances.

It was also agreed that jurisdictions may wish to consider appropriate penalties for failure to comply with storage conditions.

Jurisdictional Compliance

The minimum age requirement of 18 years to obtain a firearm licence has been imposed by all jurisdictions. However, all jurisdictions have established an exception to allow a minor to obtain a firearm permit or licence in certain circumstances. The minimum age for obtaining a permit or licence is 11 years in Queensland, with most other jurisdictions permitting junior licences or permits for those over 12 years of age. Some jurisdictions, such as New South Wales, Tasmania and the Australian Capital Territory, require the consent of a parent or guardian. Some jurisdictions require safety training to have been completed and most only authorise use of the firearm in primary production or at an approved shooting range under the supervision of a licence holder. The APMC resolutions make no reference to possession and use of firearms by minors.

It appears that all jurisdictions have complied with the fit and proper person requirement as envisaged by the APMC. While all jurisdictions require some proof of identity when applying for a firearms licence, some do not specify the method of proof as stated in the resolution (a system similar to that required to open a bank account). Most jurisdictions have implemented this aspect by referencing the requirements under the *Financial Transactions Reports Act 1988* that apply in respect of opening a bank account. However, in Queensland, an applicant is only required to prove their identity to the satisfaction of the authorised officer. In Western Australia, the Commissioner may require the applicant to provide proof of identity in a manner approved by the Commissioner.

Legislation in all jurisdictions but South Australia and Western Australia requires mandatory safety training for first time licence applicants. In South Australia the Registrar may require an applicant to undertake an accredited course of training. In Western Australia, the *Firearms Act 1973 (WA)* states that the regulations may require safety training, although it appears that no such regulations have been enacted. In practice, all jurisdictions advise that, by policy or practice, completion of an approved course of safety training is a standard requirement for an applicant to obtain a firearm licence. For more information on safety training requirements, refer to section 8 of this report.

All jurisdictions require photo identification and the category of the licence to appear on the physical licence itself. In all states and territories the address of the licence holder is either on the licence itself or the relevant details are recorded on the register by the licensing authority. A reminder of safe storage responsibilities also appears on the licence itself (usually storage requirements printed on the rear of the licence), although this is not a legislative requirement in every jurisdiction.

All jurisdictions comply with the mandatory 28 day waiting period, although in the Northern Territory the licence application may be expedited where the applicant is already a licence holder. Similarly, in Western Australia the waiting period applies to first time applicants only. All jurisdictions comply with the maximum 5 year period for the issue of a firearm licence.

In all jurisdictions the licensing authority must be satisfied of the applicant's ability to comply with safe storage provisions before granting a licence. For example, in South Australia, the Registrar may require the applicant to furnish further information or verify by statutory declaration any information in relation to the licence application. Western Australia may require an applicant to prove to the satisfaction of the Commissioner he/she is capable of complying with the prescribed safety standards and tests applicable thereto, and the details of proposed storage arrangements may be requested by the Commissioner and verified by statutory declaration (see Schedule 1 Form 17A of the Regulations). While some jurisdictions may not have an express legislative requirement for an applicant to disclose proposed

storage arrangements, in practice these details are required to be detailed by the applicant on the firearm licence application form.

All jurisdictions require licensees to submit to inspections of storage arrangements, with associated penalties for failure to comply with safe storage requirements. All jurisdictions have additionally ensured that safe storage is a condition of the firearms licence. Failure to store firearms properly is an offence which results in the cancellation of the licence and firearm confiscation.

All jurisdictions have provided for cancellation or suspension of a firearm licence and confiscation of firearms in certain circumstances. The types of circumstances in which licences were to be immediately withdrawn were not specified in this particular resolution. For more detail on revocation and confiscation, refer to section 13 of this report dealing with grounds for refusal, cancellation or suspension of licences.

Resolution

4.2 Interstate recognition of licences

In May 1996 the Council resolved that all states and territories are to recognise, for visiting gun owners, licences issued in other Australian jurisdictions in order to facilitate the lawful pursuit of sporting and other purposes.¹⁶ The mutual recognition of licences aims to allow bona fide competition shooters to pursue their sport in jurisdictions other than that in which they hold a licence.¹⁷

It was also agreed in May 1996 that jurisdictions are to recognise, for a period of no longer than three months, a category A or B firearm licence issued in another jurisdiction to an individual who moves permanently to a new jurisdiction. For such an individual with a licence category C, D or H, it was agreed the period of recognition will not exceed 7 days.¹⁸

With regards to interstate hunting, it was decided at the July 1996 meeting that a hunter will require permission from a land owner in another jurisdiction in order to shoot in that jurisdiction and that such permission will enable the hunter to shoot only on the land described in the permit and owned by the land owner.¹⁹

Jurisdictional Compliance

All jurisdictions apart from Western Australia have introduced legislative provisions to recognise bona fide competition shooters whose licences have been issued in other jurisdictions. Western Australia does not automatically recognise licences from other jurisdictions, and instead requires interstate shooting club members to apply for a temporary permit in order to participate in shooting activities within Western Australia.

In most jurisdictions, recognition of corresponding licences is not limited to competition shooting. This aspect was not discussed in the APMC resolutions. In Victoria, corresponding licences issued for the reason of sport or target shooting, hunting, or primary production are also recognised. In South Australia interstate licences are recognised for any purposes listed in the regulations and the Australian Capital Territory, the Northern Territory and Tasmania recognise equivalent interstate licences for a prescribed or approved purpose. Queensland allows for temporary recognition of interstate licences for recreational shooting, occupational requirement, military re-enactment, or any activity that is a reason for possession under the legislation. New South Wales exempts interstate licence holders from the requirement to possess a licence, but only for the purposes of recreational hunting/vermin control, pest animal control, an approved shooting competition or taking fish. It appears some jurisdictions, such as Queensland and South Australia do not distinguish between categories of firearms in interstate recognition, while other jurisdictions, for example Tasmania, only recognise category A, B and H licences.

Western Australia is the only jurisdiction not to automatically recognise firearm licences issued in other jurisdictions when an interstate individual moves within its jurisdiction. Under ss 17 and 17A of the *Firearms Act 1973 (WA)*, persons coming into the state must apply for a

¹⁶ APMC Special Firearms Meeting May 1996, Resolution 4c

¹⁷ APMC Special Firearms Meeting July 1996, Agenda item 1.7

¹⁸ APMC Special Firearms Meeting May 1996, Resolution 4d

¹⁹ APMC Special Firearms Meeting July 1996, Agenda item 1.7

temporary permit in order to lawfully possess firearms registered elsewhere. All other jurisdictions comply with the resolution to recognise categories of interstate licences for no longer than the prescribed period. However, note that in some circumstances interstate category C, D or H licences may be recognised for longer than 7 days whilst a person's licence application is being processed. In South Australia, interstate class C, D and H firearms licences are recognised only for the possession, and not use, of the firearm.

Victoria is the only jurisdiction to have express legislation on the requirement for interstate hunters to produce permission from a Victorian land owner. While the Australian Capital Territory, Queensland, Western Australia and the Northern Territory do not have express provisions relating to interstate hunters, there are legislative offence provisions prohibiting persons from discharging a firearm on land without the written consent of the owner/occupier of the land. It is assumed these provisions would apply to interstate persons whilst in the jurisdiction and prevent hunting on land without permission.

New South Wales exempts interstate licence holders from the requirement to hold a licence for the purposes of recreational hunting with category A or B firearms.²⁰ Thus there appears to be no requirement for interstate hunters using category A or B firearms to obtain permission from a landowner in order to shoot in New South Wales. South Australia exempts licensed persons from outside the state from the requirement to have a South Australian firearm licence, although similar to New South Wales, only category A and B firearms are recognised for the purpose of hunting. However, hunting permits are issued under the *National Parks and Wildlife Act 1972 (SA)*, which states that hunting is not permitted on land without a permit or without permission from the land owner. Tasmania recognises interstate licences for purposes approved by the Commissioner. It is assumed that the Commissioner would require permission from a landowner in order to approve an interstate licensee application to hunt on Tasmanian land, as Tasmanian licence holders are only permitted to hunt on private property where permission has been granted.

Resolution

4.3 Genuine reason

The APMC decided in May 1996 that all applicants for a firearm licence must have a genuine reason for owning, possessing or using a firearm. It was agreed that the following classifications would be used so as to implement a uniform definition of "genuine reason":²¹

- 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 who produce proof of permission from a landowner
- persons with an occupational requirement, e.g. primary producers, other rural purposes, security employees and professional shooters for nominated purposes
- bona fide collectors of lawful firearms
- persons having other limited purposes authorised by legislation or ministerial approval in writing, e.g. firearms used in film production.

Furthermore, it was expressly stated that personal protection would not be regarded as a genuine reason for the purposes of owning, possessing or using a firearm.²²

Jurisdictional Compliance

All of the jurisdictions have implemented the requirement for a genuine reason to own, possess or use a firearm. However, the implementation of a uniform definition of "genuine reason" does not appear to have been achieved. While most of the jurisdictions have implemented the definition as envisaged by the resolution, some jurisdictions have included additional genuine reasons. Tasmania includes 'show or exhibition' as a genuine reason, the Northern Territory includes 'museum display' and 'inheritance' and Western Australia includes a broad reason of 'use as a member of an approved organisation'.²³ The Australian Capital

²⁰ *Firearms (General) Regulation 1997 (NSW)* s 23

²¹ APMC Special Firearms Meeting May 1996, Resolution 3b

²² APMC Special Firearms Meeting May 1996, Resolution 3a

²³ *Firearms Act 1973 (WA)* s 11A(2)(b)

Territory includes the additional category of ‘composite entity’ to cover security organisations, approved clubs and appropriate government agencies. However, arguably most of these additional reasons fall under the ‘limited purposes’ section of the resolution.

Other additional reasons included by some jurisdictions appear to be contrary to the spirit of the resolution. For example, in South Australia and Western Australia, paintball shooting is included as a genuine reason for using a firearm. It may be questioned whether paintball shooting activities were envisaged within the spirit of the 1996 resolution, which attempts to limit shooting sports to major sporting events or competitions such as the Olympic Games. Note that the *Firearms (Further Amendment) Act 2005 (No 78)* has recently been passed by the Victorian Parliament. It creates a new licensing regime for paintball activities. In particular, it creates a new paintball marker licence only for those wishing to acquire a paintball marker. Those persons wishing to participate in paintball activities at approved locations are still exempt from the requirement to hold a firearm licence. Most jurisdictions now contain provisions which allow paintball activities to be conducted in at approved locations in certain circumstances.

The Council also agreed that personal protection would not be regarded as a genuine reason for the purposes of owning, possessing or using a firearm. While no jurisdiction expressly provides that personal protection is a genuine reason, four of the jurisdictions (Victoria, the Northern Territory, South Australia and Queensland) do not provide express legislative statements that personal protection is *not* a genuine reason. In Victoria the prohibition of self defence as a genuine reason is implied in the purpose of the Act. The Northern Territory legislation does not state that personal protection is not a genuine reason, but nor is it listed as a genuine reason for possessing a firearm. In South Australia and Queensland the legislation allows for a genuine reason to be any such purpose as approved by the Registrar or any other reason prescribed under regulation. While personal protection is not currently a genuine reason for owning, possessing or using a firearm in these jurisdictions, there is nothing in the legislation which would prohibit personal protection from being considered a genuine reason if so approved.

The APMC agreed that recreational shooters should be required to produce proof of permission from a landowner as evidence of a genuine reason. All jurisdictions apart from South Australia provide for this requirement in the relevant firearm legislation. However, in South Australia hunting permits are required under the *National Parks and Wildlife Act 1972 (SA)*. This legislation states that hunting is not permitted on land without a permit or without permission from the land owner.²⁴

Further, it may be noted that in New South Wales the legislation provides that current membership of a hunting club establishes a genuine reason for recreational shooters (as an alternative to permission from a landowner). However, if a person uses hunting club membership to prove genuine reason, the person may only hunt on land for which he/she has been given permission to shoot – either through the club or individually.²⁵

Resolution

4.4 Genuine need

It was further agreed at the May 1996 meeting that over and above satisfaction of the “genuine reason” test, a “genuine need” must be established by an applicant for a category B, C, D or H licence.²⁶

Jurisdictional Compliance

It appears that most jurisdictions have implemented the requirement for a genuine need (in addition to a genuine reason) for a category B, C, D or H firearms licence. Most jurisdictions have complied by requiring evidence of a genuine need, which cannot be satisfied by a lesser category of firearm. While not all jurisdictions use the express language of a “genuine need” in their legislation, it appears they do comply with the spirit of the resolution. For example, although the Queensland legislation does not refer to a “genuine need”, it does require an equivalent statement as to why the applicant needs the firearm and why the need cannot be

²⁴ *National Parks and Wildlife Act 1972 (SA)* ss 68A, 68B

²⁵ *Firearms (General) Regulation 1997* s 28

²⁶ APMC Special Firearms Meeting May 1996, Resolution 3c

satisfied in another way. The Victorian legislation requires a genuine need for category C licences and additional evidence that the licence is required for the intended purpose for category D licences, although for category B firearms this requirement is only necessary if the genuine reason is an official, commercial or prescribed purpose. However, a genuine need is required for a Victorian permit to acquire a category B longarm, general category handgun or category H handgun.²⁷

Contrary to the resolution, South Australia and the Northern Territory do not require a genuine need (in addition to a genuine reason) for a category B firearm licence. While South Australia requires a genuine need (or equivalent) for a permit to acquire a category C, D or H firearm, there is no such legislative requirement for acquisition of a category B firearm. Similarly, s 11 of the *Firearms Act (NT)* only requires a genuine need, in addition to a genuine reason, for the possession and use of category C, D or H firearms.

Resolution

4.5 Licence categories

It was resolved at the May 1996 APMC meeting that all jurisdictions would adopt the following categories in the licensing of firearms.²⁸

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.

Jurisdictional Compliance

All jurisdictions have introduced legislative provisions which substantially comply with the agreed categories except for minor variations. South Australia includes paintball firearms in category A and there is an additional category of prescribed firearms. Queensland has

²⁷ *Firearms Act 1996 (Vic)* s 104

²⁸ APMC Special Firearms Meeting May 1996, Resolution 4e

created additional categories E (bullet proof vests) and category R (machine guns, sub machine guns and firearms capable of firing 50 calibre cartridge ammunition), and category A also includes miniature cannons, power heads, blank fire rifles and conversion units. However, it appears that all jurisdictions have substantially complied with the resolution to adopt the stated categories of firearms for licensing purposes.

5. Category C firearms

Resolution

5.1 Basic requirements

The third resolution arising from the APMC May 1996 meeting resolved to restrict the use and possession of category C firearms, including self-loading rifles and self-loading or pump action shotguns. It was agreed that category C firearms licences shall be available for the genuine reason of primary production²⁹ (although an exemption for clay target shooters was decided at the November 1996 meeting).

It was initially decided that, in addition to a genuine need pertaining to the occupation of being a primary producer, the applicant will be required to show that the need cannot be satisfied by any other means, including the use of a category A or B firearm. Further restrictions limited the applicant to one rifle and one shotgun from category C. An exemption to this restriction was agreed at the July 1996 APMC meeting, allowing applicants to apply for more than one category C licence for use on very large rural properties.³⁰

Jurisdictional Compliance

The resolution of 10 May 1996 limited the availability of category C firearms for reasons of primary production and occupational purposes only. All jurisdictions have complied by restricting the possession and use of category C firearms for the genuine reason of primary production or occupational purposes (excluding those available under the exemptions for clay target shooters). In addition to primary producers, the Northern Territory allows access to category C firearms for the genuine reason of animal welfare, firearms collection, museum display or instruction in firearms safety. In Victoria, category C firearms are additionally permitted for professional hunting and official/commercial/prescribed purposes, and South Australia allows access to category C firearms for professional shooters to destroy animals in course of professional shooting and the Royal Zoological Society of South Australia Incorporated. It should be noted that Queensland includes occupational fishing in its definition of primary production.

All jurisdictions comply with the requirement to demonstrate evidence of a genuine need which cannot be achieved by some other means, including the use of a Category A or B firearm. While the resolution limits the number of category C firearms a primary producer may be licensed to possess and use to one rifle and one shotgun, in Western Australia and the Northern Territory there appear to be no such express legislative restrictions. However, the Western Australian legislation does make reference to only 'a rifle or shotgun', implying such a restriction. Northern Territory Police advises that this requirement is dealt with administratively. Applications for more than one rifle and one shotgun would need to apply under a corporate firearm licence and each application would be considered on its merits on a case-by-case basis. Generally, applications for more than one rifle or shotgun would be refused.

All jurisdictions appear to have implemented provisions to allow for multiple licences for use on very large rural properties. In general, the legislation authorises employees of the licensee who are eligible for a licence and who are authorised by the licensing authority to use a category C firearm, but only for carrying out the duties in connection with the licensee's farming or grazing activities. The Northern Territory allows for a corporate firearm licence under which employees obtain a firearm licence, provided they meet the relevant criteria.

²⁹ APMC Special Firearms Meeting May 1996, Resolution 3

³⁰ APMC Special Firearms Meeting July 1996, Agenda item 1.12

Resolution

5.2 Exemptions for clay target shooters

Further exemptions for clay target shooters were agreed at the meeting of 15 November 1996. It was resolved that a restricted class of clay target shooters be permitted access to certain Category C firearms under certain conditions.³¹ Persons who already possessed a semi-automatic or pump action shotgun at this time for use in clay target competition and were an existing member of a club affiliated with the Australian Clay Target Association (ACTA) would be permitted to continue possession and use of a category C firearm. It was agreed that all new applications 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 such as lack of strength and dexterity, which requires a semi-automatic or pump action shotgun in order to participate in clay target events).

Further conditions on the licence were imposed, including a minimum participation rate of four club competitions per year, with cancellation of membership for failure to comply. It was agreed that the licence would only authorise use of the firearm on an authorised shooting range, with criminal penalties for misuse. The firearm, when not in use, will be required to be stored in a locked steel safe, of a thickness to ensure it is not easily penetrable, which is bolted to the structure of the building.

Jurisdictional Compliance

The Tasmanian legislation contains no express provisions relating to clay target shooters, however a clay target shooter could apply under s 155 of the *Firearms Act 1996 (Tas)*, which allows the Commissioner to exempt a person or class of person from any provision of the Act for use at an approved rifle club, approved pistol shooting club or approved range, subject to any conditions the Commissioner sees fit to impose. Theoretically, a clay target shooter could be exempted under s 155 subject to the conditions as stated in the resolution. Tasmania Police has advised that such exemptions have been applied for and granted under this section.

The Northern Territory legislation allows category C weapons for sports shooting without expressly restricting it to clay target shooting, however the applicant must satisfy the Commissioner that he/she is a member of an approved club which engages in approved target shooting disciplines. Although there is no related legislative provision, the 'Policy and Conditions of Licence' in the Northern Territory restricts approved target shooting disciplines to clay target shooting, as envisaged by the resolution. Northern Territory Police advises that new licence applicants are required to have application supported by affiliated club and are required to demonstrate a physical need for the firearm.

All jurisdictions apart from Victoria and Tasmania appear to have complied with the requirement for all new applications to be supported in writing by a club official, whether by administrative or legislative means. In Tasmania there are no express provisions for clay target shooters, however Tasmania Police advises that applicants are required to provide medical evidence of a physical need. Although Victoria similarly requires the applicant to satisfy the Commissioner that he/she is physically unable to compete unless a category C semi-automatic or pump action shotgun is used, there is no legislative requirement for the club to endorse the application. However, all jurisdictions do require proof of club membership, in the form of a membership card, or similar.

In the Northern Territory, the requirement for club endorsement and evidence of a physical need (in the form of a medical report) is stated in the 'Policy and Conditions of Licence', but not included in the legislation. In Western Australia, there is no legislative requirement for club endorsement and no legislative provision to require evidence of a physical need. Western Australia Police has advised that the physical need requirement forms part of the criteria addressed within the licence application and is considered in the licensing process. Similarly, the authorisation for use only on an approved range and criminal penalties for misuse requirement is not expressly legislated for in Western Australia, but this condition is noted in a letter to the licensee from Western Australia Police explaining conditions of use. All other

³¹ APMC Special Firearms Meeting Nov 1996, Agenda item 3(d)

jurisdictions have express provisions in relation to conditions of use of category C firearms for clay target shooters, with associated criminal penalties for misuse.

It should also be noted that Queensland, Western Australia and the Northern Territory appear to have made licences available to members of approved clay target clubs regardless of whether they are affiliated with the ACTA. The Queensland legislation requires the shooting club to be affiliated with a body that takes part in national and international clay target shooting competition. Similarly, in the Northern Territory, the applicant must satisfy the Commissioner that they are a member of an approved firearms club that competes in target shooting disciplines for shotguns conducted by the Olympic Games or the Commonwealth Games or at national, international or world championships. In Western Australia, an applicant must be a member of an approved shooting club for the purposes of training or participating in approved national or international shooting disciplines.

With relation to minimum participation rates, South Australia, Queensland and Tasmania do not comply with minimum participation rates as stated in the resolution. A minimum number of competition shoots is not specified by these jurisdictions, perhaps as participation rates are considered a matter for the shooting clubs themselves to determine.

Although some jurisdictions do not contain storage provisions specific to clay target shooters, it is assumed that the usual safekeeping provisions relating to category C firearms would apply in order to satisfy the requirements of the resolution.

6. Category D firearms

Resolution

At the 17 July 1996 APMC meeting 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.³² The licence would only be issued where there is a demonstrated need for a Category D firearm, for example, where a Government authority requires the undertaking of specific culling within the relevant area.

In order to obtain the licence it was decided that 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. Applicants must also meet accredited professional shooter's qualifications, including safety training requirements, and a licence may only be issued for a nominated period in accordance with the demonstrated need, which must not exceed twelve months. Upon expiry of the nominated period, the firearm is to be returned to the authorities or stored as approved.

It was agreed that only one category D firearm may be issued to each applicant, and the licence shall only authorise use of the firearm within a prescribed geographical location, (normally the licensee's property). It was agreed that approval from the Civil Aviation Safety Authority (CASA) will be required in order to shoot from a helicopter, and the use of Category D firearm for ground culling will only be allowed where airborne culling is not practicable.

Jurisdictional Compliance

Western Australia, South Australia, Tasmania, Victoria and the Australian Capital Territory do not have express legislative provisions for access to category D firearms for primary producers as envisaged by the resolution. In Western Australia, category D weapons are only issued for State or Australian Government purposes, while in South Australia access is limited to applicants who gain their livelihood from professional shooting. Tasmanian category D licences are restricted to those whose genuine reason is animal population control or firearms collection. In the Australian Capital Territory, access to category D firearms for primary producers could be provided for, but only with the written authority of the Minister.³³

Queensland, New South Wales and the Northern Territory have legislated for a limited class of primary producers to have access to category D firearms, generally for the culling of large feral animals. Applicants in these jurisdictions are required to demonstrate a need for a category D firearm and the maximum duration of a licence is 12 months. All three jurisdictions require the applicant to demonstrate that there is no other practicable means available of

³² APMC Special Firearms Meeting July 1996, Agenda item 1.13

³³ *Firearms Act 1996 (ACT)* s 216(1)

dealing with the problem. In accordance with the resolution, these jurisdictions have legislative provisions that limit use of the weapon to a prescribed geographical location and require the return or approved storage of the weapon upon expiry of the licence. However, the Northern Territory legislation does not appear to limit the number of category D firearms that may be issued to each applicant. Northern Territory Police advises that each application is considered on its merits on a case-by-case basis. As such, applications for more than one category D firearm would generally be refused.

While the Northern Territory legislation expressly requires the licensee to obtain approval from CASA in order to shoot from a helicopter and restricts ground culling only where airborne culling is not practicable, these requirements are not explicitly stated in the legislation in New South Wales and Queensland. However, under s 14 of the *Weapons Act 1990*, Queensland Police may require additional information or inquiries before deciding upon an application. Queensland Police advises that such information is requested in the licensing application process for a category D firearm licence. In New South Wales, the Commissioner is authorised to impose any conditions on the licence (as seen fit) (see s 19(1) *Firearms Act 1996 No 46 (NSW)*). This method could theoretically be used to restrict the activities of a category D licence holder in order to meet the requirements of the resolution, although it is unknown if this actually occurs in practice.

While all jurisdictions require applicants to complete an adequate safety training program prior to obtaining a category D firearm licence, there appear to be no existing 'accredited professional shooter's qualifications' as described in the resolution.

7. Handguns

Resolution

7.1 *Graduated access*

In November 2002 the Council resolved that all jurisdictions shall develop a system for graduated access to handguns for legitimate sporting shooters based on training, experience and event participation. Specifically, it was decided that a person will be required to obtain a police check and submit this with their application to join a shooting club.³⁴ During the first six months of a category H licence, a person will not be permitted to own a handgun, must satisfactorily complete a firearm safety training course and must meet minimum participation rates.³⁵ If a club certifies that a person has satisfactorily complied with the conditions attached to the first six months probation, then during the second six months a person will only be permitted to own one .22" calibre pistol and .177" air pistol or one centrefire pistol and .177" calibre air pistol.³⁶ After the initial period of 12 months, the acquisition of additional handguns will be subject to demonstration of genuine need and confirmation that the licensee has adequate storage arrangements in place and specification of the competition shooting discipline for which the handgun is required.

7.2 *Membership requirements*

The Council resolved that all jurisdictions shall confirm that a sporting shooter must be a member of a club in order to obtain a licence. An application to acquire a handgun must be endorsed by the shooting club of which the applicant is a member. In endorsing the application clubs should confirm that the licensee has adequate storage arrangements in place and specify for which competition shooting discipline the handgun is required.³⁷

A person applying to join a shooting club must provide the club with at least two character references from people they have known for at least 2 years.³⁸ It was decided that clubs shall be empowered to request a police check on a person prior to accepting them as a member of a club.³⁹ To prevent "club shopping", jurisdictions shall introduce requirements that a person wishing to join a club must provide details of any other shooting clubs to which they belong

³⁴ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 8a

³⁵ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 8b

³⁶ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 8c

³⁷ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 12

³⁸ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 11

³⁹ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 9

and any firearms they own. Clubs shall also be empowered to request information from licensing authorities on a member or applicant's ownership of handguns and any membership of other clubs.⁴⁰

It was also agreed that members of approved shooting clubs will be required to attend a minimum number of shooting events offered by the club. Failure to meet the minimum participation level will make a person liable to have their licence revoked.⁴¹ Specifically, shooters will be required to meet minimum annual participation rates:

- A sports shooter must participate in a minimum number of six club organised competitive shooting matches⁴²
- For each different type of handgun owned for different events the sporting shooter must undertake at least four club organised shoots.⁴³

Jurisdictional Compliance

It appears that most jurisdictions have substantially complied with the handgun restrictions and graduated access scheme as agreed by the Council. Only New South Wales, the Australian Capital Territory and the Northern Territory appear to fully comply with all aspects of the relevant resolutions.

All jurisdictions have appropriate restrictions on the type and number of firearms permitted during and after probation. All jurisdictions advise that a police or criminal history check is conducted on all applicants as part of the licensing process. South Australia, Victoria, Tasmania, Western Australia and the Northern Territory have no express legislative requirement for shooting clubs to certify that a person has satisfactorily completed the probationary period. However, South Australia Police advises that a permit to acquire a handgun for club purposes will not be approved unless the club provides a certificate in support of the acquisition (i.e. to certify that probation has been complied with). In the Northern Territory, the 'Policy and Conditions of Licence' requires applicants to produce an attendance record which must be certified by the club. Western Australia similarly advises that this requirement is dealt with administratively. In Victoria, an applicant must have their application endorsed by a club official, however the requirement to certify that probation has been satisfactorily completed is not expressly stated in the legislation.

All jurisdictions have required that a sporting shooter must be a member of a club in order to obtain a licence, and all have agreed that a shooting club must endorse an application to acquire a handgun. These requirements have been dealt with through legislative or administrative means. Queensland, Tasmania, Western Australia and South Australia do not require the club to confirm adequate storage arrangements when endorsing an application.

The resolution contained several restrictions on club membership, including application conditions. All jurisdictions except Western Australia require a person applying to join a shooting club to provide the club with at least two character references from people they have known for at least two years. It appears that all jurisdictions require a police check on an applicant prior to accepting them as a member of a shooting club. This information is able to be disclosed to shooting clubs in all jurisdictions.

The resolution also attempted to prevent "club shopping" by applicants. While most jurisdictions have complied with requirements for applicants to provide details of any other shooting clubs to which they belong and any firearms they own, South Australia has no such provisions. In all jurisdictions there are provisions or procedures in place empowering clubs to request information from licensing authorities (or alternatively allowing licensing authorities to disclose such information) so as to check on an applicant's firearm ownership or membership of other clubs. Such details are assumed to be checked by the licensing authority as part of the licensing application process.

Lastly, the Council resolved that jurisdictions were to require members of approved handgun shooting clubs to meet minimum participation rates. All jurisdictions have complied and made provision for cancellation of the licence due to failure to satisfy minimum participation rates.

⁴⁰ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 10

⁴¹ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 14

⁴² APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 14a

⁴³ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 14b

The Northern Territory specifies slightly different participation rates, although these are comparable to the rates described in the resolution.

8. Safety training

Resolution

The Council resolved in May 1996 that all jurisdictions shall require the completion of an accredited course in safety training in firearms for all new licence applicants.⁴⁴ The aim of the resolution was to establish a comprehensive and standardised safety training system across Australia for all licence categories. It was further agreed that a specialised course for the training of persons employed in the security industry shall be introduced in each jurisdiction.

Jurisdictional Compliance

All jurisdictions require first time applicants to complete an approved course of safety training. In most jurisdictions this is enshrined in legislation and is a mandatory requirement. In South Australia, the Registrar may require completion of a course in safe handling, a written examination in safe handling, or a practical examination in safe handling. In Western Australia, a safety course may be prescribed by regulation (although it appears that no such regulation currently exists).

With regards to the training of persons employed in the security industry, it appears that the all jurisdictions have implemented safety training requirements, either under existing firearms legislation or via specific instruments relating to the security industry (for example, the *Security and Related Activities Control Act 1994 (WA)*, and the *Training Standards for the Licensing and Use of Firearms and for the Possession and Use of Other Authorised Defensive Equipment for the South Australia Security Industry 2000 (SA)*).

9. Firearm Collectors

Resolution

On 17 July 1996 it was agreed to replace the regulatory scheme for collectors agreed on 10 May with the following uniform system for regulating firearms collectors. The Council resolved that collectors must be *bona fide* collectors with a collection of obvious and significant commemorative, historical, thematic or investment value.⁴⁵ Category D firearms will be permitted in the collection only if rendered inoperable (deactivated) and all other firearms manufactured after 1900 held in a collection must be rendered temporarily inoperable. In addition, individual jurisdictions may also require Category C firearms to be rendered permanently inoperable, but this is not compulsory. APMC agreed in November 2002 that collectors may acquire all handguns, but all newly prohibited handguns must be temporarily deactivated.⁴⁶ In order to collect modern handguns manufactured after 1946, collectors will be required to display a commitment as a 'student of arms'.⁴⁷ All handguns in the collection, other than pre-percussion handguns, must be registered.⁴⁸

In July 1996 the jurisdictions were asked to consider requiring that a firearms collector be a member of an approved firearms collector's club or association, however at the APMC meeting on handguns in November 2002 it was agreed that a genuine historical collector *must* be a member of an accredited historical firearm collectors' society.⁴⁹

The APMC also agreed that the jurisdictions shall accredit historical firearms collectors' societies.⁵⁰ An application for a collector's licence must be endorsed by an accredited historical society.⁵¹ Accredited historical societies shall be required to notify the police of a member's expulsion and the reasons for the expulsion.⁵² They shall be indemnified from civil

⁴⁴ APMC Special Firearms Meeting May 1996, Resolution 5a

⁴⁵ APMC Special Firearms Meeting July 1996, Agenda item 1.10

⁴⁶ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 3

⁴⁷ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 5d

⁴⁸ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 6

⁴⁹ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 5a

⁵⁰ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 4a

⁵¹ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 5b

⁵² APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 4b

or legal liability where they notify police in good faith of their belief that a person is unfit to hold a collector's licence.⁵³

The Council resolved that there will be prescribed standards for the secure storage for firearms collections.⁵⁴ In general, the possession of ammunition by collectors will not be permitted unless an ammunition collector's licence or a separate licence permitting use of a firearm which takes that ammunition is held. A collector's licence will not permit the discharge of any collection firearm unless authorised by special permit in prescribed circumstances. It was also decided that sales or transfers of Category C and Category D firearms held in a collection will not be permitted except between bona fide collectors with approval of the appropriate authority and through the agency of a registered dealer.

As a non-mandatory resolution, it was agreed that each jurisdiction will consider whether the licensing and registration of collection firearms manufactured before 1900, for which ammunition is not commercially available, is necessary.

Jurisdictional Compliance

The Council agreed on a series of restrictions relating to firearms collectors, with all jurisdictions except Western Australia in full compliance with all aspects of the resolution.

The APMC agreed that a genuine collector must be bona fide collector with a collection of obvious and significant commemorative, historical, thematic or investment value. All jurisdictions have complied with this requirement by including express provisions to this effect.

The Council also agreed that a genuine historical collector must be a member of an accredited historical firearm collectors' society in order to obtain a collector's licence. All states and territories except Western Australia have complied. Similarly, Western Australia has not adopted the requirement for collector's licence application to be endorsed by an accredited society. Note that Queensland legislation only requires collectors to be members of a historical firearm society in order to possess category H firearms, and only requires endorsement if the application is for a category H licence. However it is assumed the resolution was only made in relation to handguns as part of the National Handgun Control Agreement (2002) and as such only applies to category H firearms. All jurisdictions comply with the Council's requirement to accredit or approve historical firearms collectors' societies.

The restriction on category D firearms to be rendered inoperable has been complied with by all jurisdictions except Western Australia. However, in any case category D licences are only issued in Western Australia for government purposes.

The Council also resolved that sales or transfers of category C or D firearms would only be permitted between bona fide collectors through the agency of a licensed dealer. It appears that most jurisdictions have not introduced specific restrictions relating to sales or transfers between collectors, although it is assumed the usual sales provisions would apply. As such, all legal sales of any category of firearm are restricted to those conducted by or through the agency of a licensed dealer.

In relation to handgun restrictions for firearms collectors, the Council agreed that newly prohibited handguns must be temporarily deactivated in order to form part of a collection. All jurisdictions have complied with this requirement and all states and territories require collectors to display a commitment as a 'student of arms' (in some form) in order to collect modern handguns manufactured after 1946. All jurisdictions require all handguns, other than pre-percussion handguns, in a collection to be registered.

The Council also decided that accredited historical collector's societies shall be required to notify the licensing authority in the event of a member's expulsion, and the reasons for the expulsion. It was further agreed that societies shall be indemnified from liability if they notify police in good faith of a belief that a member is unfit to have possession of firearms. All jurisdictions have complied with the requirement to notify in the case of expulsion and all jurisdictions have provided indemnity provisions for collector's societies when notifying in good faith.

⁵³ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 4c

⁵⁴ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 5c

With regards to prescribed standards of secure storage, all but Western Australia and Tasmania provide for specific storage provisions in relation to collectors. However it is assumed that the usual storage provisions in each jurisdiction would apply.

Contrary to the resolution, Western Australia has no express restrictions on the possession of ammunition by firearm collectors. However, s 16(b) *Firearms Act 1973 (WA)* states that a firearm collector's licence entitles the holder to possess, but not to carry or use, the firearm named and identified in that licence. The collection of ammunition is regulated under s 16(1)(h) of the Act. The Northern Territory has no express statement that collectors are not permitted to possess ammunition, however this restriction is implied by other provisions in the Act that state a person must not possess ammunition unless the person is the holder of a licence or permit for a category of firearm that takes that ammunition, or is an ammunition collector authorised by the Commissioner to collect ammunition. While most jurisdictions have express legislative provisions stating that a collector's licence does not permit the discharge of any collection firearm unless authorised by special permit, in some jurisdictions, such as Victoria and New South Wales, this requirement is only implied (as a collector's licence only authorises possession, but not use, of a firearm). In any case, where a firearm has been rendered temporarily inoperable, it is assumed it would be unable to be discharged.

Lastly, it was agreed that each jurisdiction will consider whether the licensing and registration of collection firearms manufactured before 1900, for which ammunition is not commercially available, is necessary. All jurisdictions apart from New South Wales, Victoria and South Australia have agreed that licensing and registration will be required for pre-1900 firearms. In New South Wales, pre-1900 firearms are exempted from registration requirements and the requirements to hold a licence if the firearm is a pre-percussion pistol, or is not capable of discharging breech-loaded metallic cartridges, or is a firearm for which ammunition is not commercially available. Similarly, Victoria exempts firearms manufactured before 1900 if they do not take cartridge ammunition or the ammunition is not commercially available. In South Australia, some pre-1900 firearms considered to be "antique firearms" and as such are not considered firearms under the legislation.

10. Ammunition collectors

Resolution

In July 1996 the APMC agreed that all jurisdictions will consider requiring ammunition collectors to have a licence or permit for the purchase or possession of ammunition (unless this is covered by an appropriate shooter's licence).⁵⁵ The purchase or sale of such ammunition will only be permitted from or to another licensed collector or firearms dealer. All ammunition in a collection must be rendered inert, except for sporting ammunition and military ammunition of UN Hazard classification code 1.4s up to 20 mm calibre, and must not contain high explosive, smoke, chemical or lachrymatory agents. It was agreed that a condition for the issue of an ammunition collector's licence shall be the provision of secure storage facilities which comply with explosives regulations in each jurisdiction.

Jurisdictional Compliance

It appears that all jurisdictions have enacted a regulatory scheme in relation to ammunition collectors. Both Western Australia and Victoria have introduced an ammunition collector's licence. Queensland similarly regulates ammunition collection by licensing under the *Explosives Act 1999 (QLD)* and Explosives Regulations 2003. The Australian Capital Territory allows for persons to apply for approval to collect ammunition, which exempts authorised collectors of ammunition from the offence of possession of ammunition. New South Wales provides for an ammunition collection permit, while South Australia and the Northern Territory allow for a permit to acquire ammunition. Tasmania requires ammunition collectors to apply for an authority to buy, acquire and possess ammunition.

However the Australian Capital Territory does not appear to have banned ammunition collections containing high explosive, smoke, chemical or lachrymatory agents as agreed in the resolution. This restriction was attempted to be implemented in the Registrars Guidelines, although the legislative application of these guidelines is unclear. Similarly, the Australian

⁵⁵ APMC Special Firearms Meeting July 1996, Agenda item 1.10

Capital Territory and Western Australia do not appear to require all ammunition in a collection to be rendered inert.

While not all jurisdictions have included secure storage facilities as a condition of an ammunition collector's licence, it is assumed that the general storage provisions relating to ammunition would apply. Most of the jurisdictions appear to have restricted the sale or purchase of ammunition from/to other licensed collectors or licensed firearm dealers, although it should be noted that the Australian Capital Territory allows authorised members of shooting clubs to sell ammunition at club premises.

It is also noted that each jurisdiction has also enacted separate legislation governing dangerous goods and explosives, which is not examined in detail in this review.

11. Museums

Resolution

The Council resolved at the July 1996 meeting that official and approved museums (those being operated by the Australian, state or territory government and authorities, including the military) will not be subject to the requirements agreed upon for private collectors. Instead, official and approved museums shall be regulated by prescribed conditions in each jurisdiction. However it was agreed that non-approved or private museums shall be subject to the same requirements as apply to private collectors.⁵⁶

Jurisdictional Compliance

The Northern Territory and Tasmania have provided for a firearm museums licence, with requirements to comply with storage and safe keeping arrangements. New South Wales has similarly provided for a firearm museum permit which may only be issued to public museums and is subject to certain storage and safety restrictions. Victoria allows for an exemption to be granted to publicly funded and not-for-profit museums, which are subject to any conditions specified in the exemption. Queensland also exempts government service entities, including museums under the control of the Australian Government, with prescribed conditions as to the storage of weapons, possession of weapons, keeping of registers and safety training for employees.

The South Australian legislation appears to have no such provisions relating to official or approved museums and in any case the Crown is not bound by the South Australian firearms legislation. In the Australian Capital Territory, the Australian War Memorial and the National Museum of Australia are exempted from the operation of the *Firearms Act 1996 (ACT)*. The Western Australian Museum is similarly excluded from the *Firearms Act 1973 (WA)*.

Where jurisdictions have excluded official and approved museums from the operation of the Act, the absence of prescribed conditions means that official and approved museums are not regulated under firearms legislation. In all jurisdictions it appears that private or non-approved museums would be considered private collectors and would be subject to the same requirements as apply to private collectors, as envisaged by the resolution.

12. Heirloom firearms

Resolution

It was resolved at the July 1996 APMC meeting that a very limited special category of licence may be considered for owners of heirloom firearms who are unable to establish a 'genuine reason' for continued possession of such a firearm or who do not qualify for a collector's licence.⁵⁷ Owners of heirloom firearms must provide proof of inheritance and have them rendered permanently inoperable. The heirloom licence will only apply to a single firearm or to a matched pair or set, and will not permit the discharge of the heirloom firearm(s) in any circumstance.

⁵⁶ APMC Special Firearms Meeting July 1996, Agenda item 1.9

⁵⁷ APMC Special Firearms Meeting July 1996, Agenda item 1.11

Jurisdictional Compliance

All jurisdictions except South Australia have provisions for heirloom licences which substantially comply with the resolution. In South Australia, persons wishing to possess heirloom firearms must satisfy the normal requirements for a collector's licence or a shooter's licence. However, the Australian Capital Territory, Tasmania, and the Northern Territory do not contain express legislative provisions prohibiting the discharge of an heirloom firearm. This restriction is implied in Tasmania and the Northern Territory, as heirloom licences only authorise possession, and not use, of an heirloom firearm. In any case, heirloom firearms are required to be rendered permanently inoperable in all jurisdictions (and hence should not be able to be discharged).

The Queensland legislation does not expressly specify that an heirloom licence will only apply to a single firearm or a matched pair or set. Western Australia does not provide for a separate heirloom licence but instead includes them under collector's licences. Under the Western Australian collector's licence, there is no limitation on the number of firearms permitted and no express requirement to provide proof of inheritance.

13. Grounds for refusal, cancellation or suspension

Resolution

At the May 1996 APMC meeting, the Council resolved that all jurisdictions set out in legislation the circumstances in which licence applications are to be refused or licences are to be cancelled or suspended. The following minimum standards were agreed:⁵⁸

- For general reasons: (i) not of good character, (ii) conviction for an offence involving violence within the last 5 years; (iii) contravene a firearms law; (iv) unsafe storage, (v) no longer genuine reason; (vi) not in public interest due to defined circumstances; (vii) not notifying change of address; (viii) licence obtained by deception.
- For specific reasons: where the applicant/holder has been the subject of an Apprehended Violence Order/Domestic Violence Order/Personal Violence Order or conviction for assault with a weapon/aggravated assault within the last five years.
- Mental or physical fitness: reliable evidence of mental or physical condition which would render the applicant unsuitable for owning, possessing or using a firearm.

It was also resolved that there shall be an appeals process available from a refusal/cancellation of a licence.⁵⁹

Later, at the November 2002 AMPC meeting, the Council agreed to the national adoption of laws allowing the Commissioner to refuse and revoke handgun licences and applications on the basis of criminal intelligence or any other relevant information.⁶⁰ It was further agreed that the operation of the "fit and proper person" test shall continue throughout the life of the licence, allowing for the licensing authorities' revocation of a person's handgun licence and seizure of handguns on grounds of not being a fit and proper person at any time.⁶¹

The Council resolved that all jurisdictions shall require the suspension/cancellation of licences and seizure of firearms immediately upon the issue of a DVO or AVO to a firearm licence holder.⁶²

It was also decided that jurisdictions should cancel a licence where it can be shown that the loss or theft of a firearm was due to negligence or fraud on the part of the licensee.⁶³

Jurisdictional Compliance

It appears that all jurisdictions have dealt comprehensively with the grounds for refusal, cancellation and suspension of firearms licences. All jurisdictions comply with the minimum standards relating to the circumstances in which licence applications are to be refused or

⁵⁸ APMC Special Firearms Meeting May 1996, Resolution 6a

⁵⁹ APMC Special Firearms Meeting May 1996 Resolution 6d

⁶⁰ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 13

⁶¹ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 16

⁶² APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 17

⁶³ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 18

licences are to be cancelled or suspended, including general and specific reasons as described in the resolution and those based on physical or mental fitness.

While all jurisdictions have legislative provisions for the cancellation/suspension of a firearm licence on the issue of a domestic violence order or an apprehended violence order to a firearm licence holder, not all jurisdictions have express provisions in the firearms legislation stating that cancellation is automatic. The Australian Capital Territory allows for immediate cancellation of a firearm licence on a court order under relevant domestic violence legislation (see s 38 of the *Domestic Violence and Protection Orders Act 2001*). In South Australia the cancellation or suspension is not automatic, rather the person *may* be taken not to be a fit and proper person if subject to a domestic violence or similar order. However, confiscation of the firearm is automatic under s 32 *Firearms Act 1977 (SA)*. All jurisdictions support the operation of the fit and proper person test throughout the life of the licence, by allowing revocation of a person's handgun licence and seizure of handguns on grounds of not being a fit and proper person at any time.

It appears that the Australian Capital Territory has no provisions for the refusal or revocation of licences on the basis of criminal intelligence. All other jurisdictions comply with this aspect of the resolution. Only South Australia, Western Australia and the Northern Territory have not implemented specific provisions for the cancellation of a firearm licence where it can be shown that the loss or theft of a firearm was due to negligence or fraud on the part of the licensee. While South Australia, Western Australia and the Northern Territory have no express fraud or negligence provisions, there are offences in these jurisdictions for failing to take all reasonable precautions to ensure the safe keeping of a firearm or failing to safeguard the firearm from loss or improper use. As conviction of an offence under the relevant legislation would result in cancellation of the firearm licence, all jurisdictions have satisfied this requirement of the resolution.

With regards to the appeals process, all jurisdictions have processes in place for persons to appeal against decisions to refuse an application or cancellation or suspension of a firearms licence. However, in the Northern Territory there is no appeal available for certain decisions, including refusal or revocation of the licence or permit on the basis of criminal intelligence. Similarly in Tasmania, appeals are not available if the licence is automatically cancelled under s 51(1) of the *Firearms Act 1996 (Tas)*, where the holder becomes subject to a firearm prohibition order or a restraining order relating to personal injury or family violence.

14. Permits to acquire

Resolution

At the May 1996 APMC meeting, the Council resolved that a separate permit will be required for the acquisition of every firearm.⁶⁴ It was agreed 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 issue 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.⁶⁵

Jurisdictional Compliance

All jurisdictions have implemented the requirement of a permit to acquire a firearm. Victoria and South Australia do not expressly state that a separate permit is required for each firearm acquisition, although this is implied by the legislation. All jurisdictions have established an offence to acquire a firearm without a permit.

All jurisdictions comply with the 28 day waiting period for a first firearm, however some jurisdictions provide for expedited approval in certain circumstances. Western Australia applies the waiting period to first time licence applicants only (permits to acquire are not included – instead a new licence must be sought for each firearm). An application for expedited approval can be made for an additional firearms licence of the same kind. The Northern Territory allows the waiting period to be waived where a person already owns a firearm (provided certain conditions are met, such as a genuine need). In Victoria, licences

⁶⁴ APMC Special Firearms Meeting May 1996, Resolution 7a

⁶⁵ APMC Special Firearms Meeting May 1996, Resolution 7b

are generally subject to a 28 day waiting period but the requirement only applies to permits to acquire for those who do not already possess a registered firearm under a licence. South Australia generally applies the 28 day waiting period to all licences and permits to acquire, although the Commissioner may waive the waiting period for special reasons where safe to do so.⁶⁶ In Queensland the waiting period to acquire a firearm does not apply to existing licence holders who already have one registered firearm of that particular category.

In New South Wales, Tasmania and the Australian Capital Territory, *any* licence or permit to acquire a firearm is not to be issued until 28 days after the application was made.

15. Security and storage

Resolution

At the APMC meeting in May 1996, the Council resolved that all jurisdictions shall indicate in their legislation the minimum basic standards required for the secure storage of firearms and ammunition.⁶⁷ The following minimum requirements were agreed:

- 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
- 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, it was decided that he/she would have the burden of persuading the firearms regulatory authority that he/she can provide the level of security not less than that required by the relevant approved practices.

The Council further decided that it should be a precondition to the issuing of a new firearms licence (and on each renewal of licence in respect of existing licence holders) that the licensing authority be satisfied as to the proposed storage and security arrangements. All jurisdictions shall ensure that legislation will 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.

In order to govern safekeeping when firearms are temporarily away from their usual place of storage, it was agreed that legislation should also include a statement 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 Council also resolved that a firearms safety booklet shall be distributed to all new licence applicants, featuring clear and precise information on the obligations regarding safe storage of firearms. A reminder of safe storage responsibilities should also appear on the licence itself. Firearms dealer premises will require the dealer meeting such additional requirements as the firearms regulatory authority deems appropriate and where approval has been given for the possession or use of a firearm for a limited purpose, such as film production, 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.

Jurisdictional Compliance

All states and territories comply with the requirement for licensing authorities to be satisfied as to the proposed storage and security arrangements as a precondition to licensing applications and renewals. All jurisdictions have established an offence for failure to store firearms appropriately as well as provisions for cancellation of the licence and confiscation of firearms.

⁶⁶ *Firearms Act 1977 (SA)* ss 15(3), 15(4)

⁶⁷ APMC Special Firearms Meeting May 1996, Resolution 8

All jurisdictions have substantially complied with the minimum requirements for safe storage as agreed by the Council, although in South Australia class A or B firearms do not need to be locked in a receptacle if securely attached and locked to a part of the building. In Queensland category C weapons are not subject to the same restrictions placed on D and H weapons, rather they are treated in same way as category A and B weapons.

Ammunition is required to be stored separately from firearms in all jurisdictions. Where the licensee wishes to take alternative measures for the storage of firearms, in all jurisdictions there is an express or implied provision which places the burden on the licensee to satisfy the licensing authority that the level of security provided is not less than that required by the relevant approved practices. In South Australia and Western Australia, the legislation provides for any manner of storage so approved by the Registrar or Commissioner.

All jurisdictions have legislated for a general requirement to take reasonable care to ensure that a firearm is not stolen, lost or come into the possession of an unauthorised person. While the requirement of a safety booklet as described in the resolution is not a legislative requirement in most jurisdictions, but all states and territories advise that safety booklets are distributed to applicants as part of the safety training course requirements.

An additional requirement agreed by the Council was a reminder of safe storage responsibilities on the physical licence itself. All jurisdictions have complied with this requirement, whether through legislative or administrative means.

All jurisdictions have provided for additional safety and storage requirements relating to licensed firearm dealers. All of the states and territories have also provided for permits or exemptions to be granted for such limited purposes as stage, film, or television production with conditions as deemed appropriate by the licensing authority.

16. Reporting obligations

Resolution

16.1 Clubs

In 2002 it was agreed that all jurisdictions will require sporting shooting clubs to report to police their concerns that a person may pose a danger if in possession of a handgun (firearm).⁶⁸ Sporting shooting clubs will also be required to notify police of a club member's expulsion and the reasons for expulsion.⁶⁹ All jurisdictions must introduce legislation so as to indemnify sporting shooting clubs from civil or legal liability if they notify police in good faith of the matters identified above.⁷⁰ Sporting shooting clubs will also be required to ensure that a person whose licence has been revoked or suspended does not use a handgun at the sporting club.⁷¹ It was further agreed that shooting clubs are to provide licensing authorities with an audited annual report providing member details, firearms owned, and participation rates.⁷²

16.2 Medical profession

It was similarly decided that medical authorities shall be indemnified from civil or criminal liability for reporting in good faith to police their concerns that a person may pose a danger if in possession of a firearm or applying for a firearm licence.⁷³ It was further specified that the legislative definition of 'medical authorities' is to include medical practitioners, nurses, social workers, psychologists and professional counsellors.⁷⁴

Jurisdictional Compliance

Victoria, the Northern Territory and the Australian Capital Territory have complied in full with the reporting requirements relating to shooting clubs and medical authorities as envisaged in the resolution.

⁶⁸ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 15a

⁶⁹ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 15b

⁷⁰ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 15c

⁷¹ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 15d

⁷² APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 21

⁷³ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 19a

⁷⁴ APMC Special Meeting on Firearms (Handguns) Nov 2002, Resolution 19b

In relation to shooting clubs, all jurisdictions require sporting clubs to notify police of concerns that a person may pose a danger and secondly to notify police of a member's expulsion and the reason(s) for the expulsion. All jurisdictions have indemnified clubs for reporting such information to police, if they do so in good faith.

Some jurisdictions do not have specific legislative requirements for sporting shooting clubs to ensure that a person whose licence is suspended or revoked does not use a handgun at the sporting club. However, this requirement is enforced in all jurisdictions by other legislative or administrative means. For example, in Queensland, a range officer is required to take all reasonable steps to ensure a person attending the range does not contravene the Act. In South Australia, a person who has had a firearm licence cancelled, suspended or revoked is prohibited from using the grounds of a recognised firearm club. In other jurisdictions this is enforced via a letter of condition to clubs. All jurisdictions advise that club officials are informed by the relevant firearm registry service when a member's firearm licence is revoked, suspended or cancelled.

With regards to annual reporting, all jurisdictions require clubs to provide annual reports to the relevant firearm registry service. This is achieved through legislation or enforced through administrative processes, such as a letter of condition to clubs. However, not all jurisdictions require the annual report to include details of the firearms owned or participation rates of members. For example, the regulations in New South Wales require clubs to submit an annual return relating to club membership, including member participation rates, but there is no explicit requirement to report the firearms owned by each member according to club records. Details of firearms owned should already be recorded in the firearm registry records. In South Australia there is no requirement for shooting clubs to provide licensing authorities with an audited annual report, although the regulations require clubs to inform the Registrar with information in relation to the affairs and activities of the club on request, and to permit inspection of club premises and range at any reasonable time.

With regards to the reporting requirements of the medical profession, all jurisdictions have complied with the resolution to indemnify medical authorities from civil or criminal liability for reporting in good faith to police their concerns that a person may pose a danger if in possession of a firearm or applying for a firearm licence. All jurisdictions have implemented legislation so as to include medical practitioners, nurses, social workers, psychologists and professional counsellors in the definition of 'medical authorities'.

17. Record keeping

Resolution

17.1 Records

At the May 1996 APMC meeting, the Council resolved that firearms sales are to be conducted only by or through licensed firearms dealers.⁷⁵ The Council agreed that firearms dealers should continue to be obliged under penalty to ensure that purchasers are appropriately licensed for the firearm to be purchased. Dealers should be required to record and maintain details (such as type, make, calibre and serial number) of each weapon purchased or sold against the identity (including name, address and licence number) of the seller or the purchaser. Dealers are to provide records to 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. It was decided that 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 to certify sales/purchases. In such circumstances it was agreed that it may be possible to authorise local police officers to witness sales/purchases.

17.2 Ammunition and firearm parts

With regards to ammunition sales and purchases, the Council agreed that jurisdictions shall legislate to allow the sale of ammunition only for those firearms for which the purchaser is

⁷⁵ APMC Special Firearms Meeting May 1996, Resolution 9a

licensed and that there be limits on the quantity of ammunition that may be purchased in a given period.⁷⁶ On the purchase of ammunition, the relevant licence must be produced.⁷⁷

At the July 2002 APMC meeting, the Council provided for increased recording, reporting, and inspection of firearm parts transactions. It was resolved that jurisdictions are to ensure all transactions and dealings concerning major component firearm parts (at a minimum the major component parts shall be firearm frames/receivers) are recorded and each record is sent to a licensing authority.⁷⁸

17.3 *Production and inspection*

The Council also resolved that jurisdictions are to ensure legislative requirements that dealers must, on demand by a police officer at any time:⁷⁹

- (a) produce those records and permit inspection and copies of the record to be taken
- (b) produce all major component firearm parts in possession
- (c) furnish any information in possession in relation to any major component firearm part that has been manufactured, purchased or received under the authority of the person's firearm dealer licence, or that the person has in possession or has sold or otherwise transferred or repaired under the authority of the licence.

It was also agreed that jurisdictions shall establish an offence of a firearms dealer, with intent to deceive, making a false or misleading entry in, or altering a record required to be made in relation to transactions and dealings concerning firearms or firearm parts.⁸⁰ Further, it was agreed that jurisdictions are to establish an offence of *any* person, with intent to deceive, making a false or misleading entry in, or altering, any record required by law to be made in relation to a firearm.⁸¹

Jurisdictional Compliance

All jurisdictions appear to require firearm sales to be conducted by or through the agency of a licensed dealer, although South Australia, in addition to dealers, allows the transfer of possession to be witnessed by certain authorised officers of recognised firearm clubs. All jurisdictions have ensured that firearm dealers are obliged under penalty to check that purchasers are appropriately licensed for the firearm to be purchased. Further, all jurisdictions have complied with the requirement for dealers to record and maintain the details of sales and purchases as agreed in the resolution. These records are then required to be sent to the licensing authority in each state or territory for inclusion in the register. In all jurisdictions, the police are able to inspect these records without giving notice to the dealer.

The Council also stated that jurisdictions were to ensure all transactions and dealings concerning major component firearm parts (meaning firearm frames or receivers at a minimum) are recorded and sent to a licensing authority. All jurisdictions appear to have complied, although in Victoria, frames are the only major components subject to recording and reporting requirements. The other states and territories either expressly include firearm parts under the recording requirements or include major component parts under the definition of a firearm.

In addition to allowing police to inspect dealers' records, the Council later resolved that dealers, on demand from a police officer at any time, should be required to produce records, permit inspection, and allow copies of the records to be taken. The legislation in South Australia, Victoria and Western Australia does not expressly mention allowing copies of records to be taken, although this occurs in practice. The Council also agreed that dealers shall be required to produce all major component firearms parts and furnish any information in relation to any major component firearm part that has been manufactured, purchased or received under the authority of the person's firearm dealer licence, or that the person has in possession or has sold or otherwise transferred or repaired under the authority of the licence.

⁷⁶ APMC Special Firearms Meeting May 1996, Resolution 9c

⁷⁷ APMC Special Firearms Meeting May 1996, Resolution 9d

⁷⁸ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 13, Action Plan 22

⁷⁹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 13, Action Plan 23

⁸⁰ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 16, Action Plan 36

⁸¹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 16, Action Plan 37

South Australia and Western Australia have not implemented express provisions requiring the production of stock as envisaged in the resolution, although police are empowered to inspect.

With regards to remote locations, New South Wales, Queensland, South Australia and the Northern Territory are the only jurisdictions to have enabled members of the police force to witness sales or transfers of possession of firearms, but only in prescribed circumstances (usually where a licensed dealer is not readily available). Note that this requirement was not mandatory under the APMC resolution.

All jurisdictions appear to have restricted the sale of ammunition only for those firearms for which the purchaser is licensed or authorised to possess. Note that in Western Australia, ammunition sales are also permitted to agents of persons authorised to possess ammunition. The relevant licence is required to be produced for inspection in all jurisdictions apart from Queensland and South Australia, although it is an offence in these jurisdictions to knowingly sell to an unauthorised person.

No jurisdiction appears to have prescribed actual limits on the quantity of ammunition that can be purchased in a given period. In South Australia the amount must not exceed the reasonable needs of the person for 12 months, and in Tasmania the regulations allow the Commissioner to determine the amount. While the legislation in some jurisdictions provides for a limit to be prescribed in the relevant regulations, it appears that no such regulations have been enacted. Queensland and Victoria do not include legislation which restricts the amount of ammunition available to be purchased in a given period.

Finally, with regards to record falsification, all jurisdictions apart from the Australian Capital Territory have established a general offence of any person providing false or misleading information under the respective Act. While the Australian Capital Territory has no such provisions under the firearms legislation establishing an offence of record falsification, offences under the ACT Criminal Code 2002 (see ss 337, 338 and 339) may apply depending on the circumstances of the case. Only New South Wales, Queensland and Western Australia have also established a specific offence for a firearm dealer making a false or misleading entry or altering a record in the dealer's register.

18. Mail order control

Resolution

At the May 1996 AMPC meeting, the Council resolved that all jurisdictions must 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.⁸² Any advertisement of firearms for sale will be prohibited unless the sale is to be conducted by or through a licensed gun dealer. It was agreed the movement of firearms covered by licence categories C, D and H must be in accordance with prescribed safety requirements and the commercial transport of ammunition with firearms will be prohibited. However, the July 1996 meeting agreed that the commercial transport of firearms and ammunition shall be permitted, but only under closely regulated secure conditions.

As stated previously, jurisdictions were asked 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.

Under the National Firearms Trafficking Policy Agreement (2002), the APMC proposed to ensure that nothing in the *Australian Postal Corporation Act 1989* renders invalid any state and territory firearms legislation on the posting of firearms.⁸³

Jurisdictional Compliance

All jurisdictions have complied with the requirement to restrict mail order sales of firearms to licensed gun dealers. Generally this has been achieved under the provisions regulating sale and purchase of firearms, which require all sales and purchases, including mail order arrangements, to be conducted by or through the agency of a licensed dealer. However, most jurisdictions have also expressly prohibited the sending of firearms through the mail to an

⁸² APMC Special Firearms Meeting May 1996, Resolution 10

⁸³ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 5, Action Plan 9

address within the jurisdiction, and only permit the sending of firearms through the mail outside the jurisdiction if addressed to a licensed dealer.

It appears in Queensland that any person may dispatch a weapon by registered post to a licensed dealer, while in Western Australia the sending of firearms through the mail is not regulated as long as it is within the state. Any person may receive a firearm by post as long as they hold a licence or permit to hold that firearm, but persons within Western Australia sending a firearm by post outside of the state may only do so to a licensed dealer. In South Australia it appears that private individuals are not regulated in sending firearms by mail. South Australian dealers may only use the post to send a firearm to another licensed dealer or to return a repaired firearm to its owner, but not in the sale, lending, giving or hiring a firearm to a non-dealer.

With regards to advertisement of firearms for sale, Queensland and Western Australia do not have express legislative provisions that restrict advertisement of firearms for sale to those sales conducted by or through licensed firearm dealers. Similarly, the Northern Territory only requires that an advertisement must contain the serial number of the firearm. However, these jurisdictions do limit all sales and purchases of firearms to those transactions conducted by or through a licensed dealer. As such, while the advertisement for sale is not prohibited, actual sales of firearms, including mail orders, are restricted to those involving licensed dealers.

Victoria and Western Australia have not implemented specific safety provisions relating to the movement of category C, D or H firearms. However, the general safety provisions relating to the movement of all firearms would be applicable. Most jurisdictions regulate the commercial transport of firearms according to prescribed safety requirements, with some jurisdictions not permitting the commercial transfer of firearms together with ammunition.

However it appears that Victoria and Western Australia have not implemented provisions regulating the commercial transport of firearms. The legislation in Western Australia envisages the sending or conveyance of firearms to be a matter for the regulations, although no regulations appear to have been enacted (see s 34(2)(ga)). There appear to be no explicit provisions regulating the commercial transport of firearms or prescribed safety standards, although Western Australia Police advise that “approved couriers” (persons in the business of transporting firearms) must be approved by the Commissioner.

Jurisdictions were also asked to consider the introduction of provisions for a police officer to authorise firearm sales in remote locations. As stated previously, Tasmania, Victoria, Western Australia and the Australian Capital Territory have not implemented such provisions. Note that such provisions are probably not necessary in the smaller jurisdictions. Further, some jurisdictions advise that this is not considered an appropriate function to be performed, under any circumstances, by a police officer. The inclusion of remote location provisions was a discretionary, and not a mandatory, requirement of the resolution.

With regards to possible conflict with the *Australian Postal Corporation Act 1989*, the Australian Government Attorney General’s Department sought advice from the Australian Government Solicitor (AGS) on this issue. The AGS advice indicated that the federal legislation does not render state/territory legislation invalid.⁸⁴

19. Manufacture of firearms

Resolution

In July 2002 the APMC resolved that all jurisdictions were to ensure the introduction of nationally consistent regulation on the manufacture of firearms, encompassing the commercial manufacture of whole firearms, small volume whole firearms manufacture, and the manufacture of firearm parts.⁸⁵ The offence of illegal manufacture was to be established, and all jurisdictions were to ensure substantial maximum penalties.⁸⁶

⁸⁴ 46th APMC Meeting 30 June 2004, Agenda Item 7E, *Implementation Report of the National Firearm Trafficking Policy Agreement*: 4

⁸⁵ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 7, Action Plan 11

⁸⁶ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 7, Action Plan 12

The introduction of offences relating to the defacing of serial numbers, including the offence to remove or deface a serial number and the offence of possession of a firearm on which the serial number has been defaced or removed.

Jurisdictional Compliance

Western Australia is the only jurisdiction to have introduced a manufacturer's licence. The other states and territories regulate the legal manufacture of firearms through permits and dealer's or armourer's licences. Although some jurisdictions, such as Tasmania and South Australia, do not specifically deal with manufacturing, it is included under the definition of dealing or under the activities of a dealer. It appears that South Australia regulates the legal manufacture of firearms on a commercial basis, but does not regulate private licensed individuals manufacturing a firearm from legal firearm parts for personal use. Although the legislation in Western Australia does not expressly regulate the manufacture of firearm parts, this is probably implied as part of the activities of manufacturing firearms.

Victoria, Queensland, New South Wales, Western Australia, the Northern Territory and the Australian Capital Territory have complied with the resolution to establish both the illegal offences of defacing a serial number and possession of a firearm on which the serial number has been defaced. In Tasmania and South Australia, while it is an offence to remove or deface a serial number, it is not yet an offence to possess a firearm on which the serial number has been removed or defaced.

Although outside the scope of the resolutions, the table below summarizes the maximum penalties in each jurisdiction associated with the offence of manufacture of a firearm without authority, the offence of removing or defacing a serial number and the offence of possession of a firearm on which the serial number has been removed or defaced. There is considerable variation between jurisdictions in the maximum penalties available for persons convicted of these offences.

Table 2. Penalties on conviction of certain firearm offences, by jurisdiction

<i>Jurisdiction</i>	<i>Maximum penalty for manufacture of firearm without authority</i>	<i>Maximum penalty for removing/defacing a serial number from a firearm</i>	<i>Maximum penalty for possession of firearm on which serial number has been defaced/removed</i>
ACT	Firearm generally - 1,000 penalty units (\$100,000), imprisonment for 10 years, or both. Prohibited firearm/pistol - 1,500 penalty units (\$150,000), imprisonment for 20 years, or both.	100 penalty units (\$10,000), imprisonment for 1 year, or both.	100 penalty units (\$10,000), imprisonment for 1 year, or both.
NSW	Firearm generally - imprisonment for 10 years. Prohibited firearm - imprisonment for 20 years.	Imprisonment for 5 years.	Imprisonment for 5 years.
NT	Prohibited firearm or pistol - 3,000 penalty units (\$330,000) or imprisonment for 15 years. Category A or B firearm - 1,000 penalty units (\$110,000), or imprisonment for 5 years. Any other firearm - 2,000 penalty units (\$220,000), or imprisonment for 10 years.	1,000 penalty units (\$110,000), or imprisonment for 5 years.	1,000 penalty units (\$110,000), or imprisonment for 5 years.
Qld	Category D, H or R weapon - 500 penalty units (\$37,500), or imprisonment	100 penalty units (\$7,500), or imprisonment for 2	100 penalty units (\$7,500), or imprisonment for 2

	for 10 years. Category C or E weapon - 300 penalty units (\$22,500), or imprisonment for 7 years. Category A, B or M weapon - 200 penalty units (\$15,000), or imprisonment for 4 years.	years.	years.
SA	\$10,000 or imprisonment for 2 years.	Prescribed firearm or class C, D or H firearm - \$10,000 or imprisonment for 2 years. Any other firearm - \$5,000 or imprisonment for 1 year.	-
Tas	Fine not exceeding 50 penalty units (\$5,000), or imprisonment for a term not exceeding 2 years, or both.	Fine not exceeding 50 penalty units (\$5,000), or imprisonment for a term not exceeding 2 years, or both.	-
Vic	Category A or B longarm - 120 penalty units (\$12,000), or imprisonment for 2 years. Category C, D or E longarm or handgun or any other firearm - 240 penalty units (\$24,000), or imprisonment for 4 years.	600 penalty units (\$60,000), or imprisonment for 7 years.	240 penalty units (\$24,000), or imprisonment for 4 years.
WA	Handgun - imprisonment for 14 years. Any other firearm - imprisonment for 5 years.	Handgun - imprisonment for 7 years. Any other firearm - fine \$16,000 or imprisonment for 4 years.	Handgun - imprisonment for 7 years. Any other firearm - fine \$16,000 or imprisonment for 4 years.

20. Firearms dealers

Resolution

20.1 Close associates

In July 2002 it was agreed by the Council to introduce close associate provisions for firearm dealers. Specifically, the Council agreed to mandatory refusal of a firearm dealer licence where a person who is or will be a close associate of the applicant for the licence is not considered by the licensing authority to be a fit and proper person to be a close associate of the holder of a firearms dealer licence.⁸⁷ An application for a dealer's licence shall also be refused if the applicant is not the person primarily responsible for the management of the business to be carried on under the authority of the licence.⁸⁸

It was agreed that the following legislative definitions shall be introduced by each jurisdiction:

- A person is considered to be a 'close associate' of an applicant if he/she:
 - (i) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in own right or on behalf of any other person), in the business of the applicant or licence holder, and by virtue of that interest or power is or will be able to exercise a significant influence over or with respect to the conduct of the business, or

⁸⁷ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 15a

⁸⁸ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 15b

(ii) holds or will hold any relevant position, whether in own right or on behalf of another person, in the business of the licence applicant or licence holder.⁸⁹

- A '*relevant financial interest*' in the dealership is defined as
 - (i) any interest in the capital or assets of the business, or
 - (ii) any entitlement to receive any income derived from the business, whether it arises in law, equity or otherwise.⁹⁰
- A '*relevant position*' in the dealership is defined as a position whose holder participates in the management of the business (whether in capacity as a director, manager or secretary or in any other capacity).⁹¹
- A '*relevant power*' defined as any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others: (i) to participate in any managerial or executive decision; or (ii) to elect or appoint any person to a relevant position.⁹²

It was agreed that new or renewing firearms dealer licensees shall be required to provide the name and address of each person who is a close associate and the particulars of the nature of each person's association with the applicant.⁹³ The Commissioner must be notified of changes to any particulars of close associates within 7 days of becoming aware of the change.⁹⁴

Current firearm dealer licence holders are to, upon request by a licensing authority, submit:⁹⁵

- (a) a declaration that the firearms dealer is the only person primarily responsible for the management of the business (or state persons who are primarily responsible);⁹⁶ and
- (b) either a declaration that the close associates of the dealer have not changed since the most recent application or declaration was submitted; or the name and address of each close associate and particulars of the nature of the association with the dealer.⁹⁷

20.2 *Employment of proscribed persons*

In July 2002 the APMC agreed to introduce the proscription of certain persons from employment in firearms dealerships. Specifically it was agreed that firearm dealers are to be prohibited from employing a person in a position with access to firearms if that person:

- (a) has, within the preceding 10 years, had a firearm dealer licence revoked, or
- (b) has, within the preceding 10 years, had an application for a firearm licence or permit refused or revoked, on the grounds of being not fit and proper and not to be trusted of having possession of firearm without danger to public safety or peace; or that issue of the licence of permit would be contrary to the public interest, or
- (c) is subject to an apprehended, domestic or family violence order (or similar), or
- (d) is the subject of a good behaviour bond relating to an offence of violence, or
- (e) is subject to a firearm prohibition order.⁹⁸

It was decided that if a licensed firearm dealer employs a proscribed person in the business authorised by the licence, or permits a proscribed person to act as an agent for, or participate in the management of that business, then both the dealer and the proscribed person are each guilty of an offence, and liable to a substantial penalty.⁹⁹ The Council agreed that a defence may be rendered if the dealer proves that he/she did not know, and could not reasonably be expected to have known, that the person was in fact a proscribed person.¹⁰⁰

⁸⁹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 15.1

⁹⁰ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 15.2

⁹¹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 15.3

⁹² APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 15.4

⁹³ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 16

⁹⁴ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 17

⁹⁵ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 18

⁹⁶ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 18a

⁹⁷ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 11, Action Plan 18b

⁹⁸ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 12, Action Plan 19

⁹⁹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 12, Action Plan 20

¹⁰⁰ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 12, Action Plan 22

Jurisdictional Compliance

South Australia, the Australian Capital Territory and Tasmania have not implemented any close associate provisions for licensed dealers as envisaged in the resolution. All other jurisdictions have substantially complied with the close associate requirements.

It appears that while the resolution requires dealers to notify licensing authorities of any changes to close associates within 7 days of becoming aware of the change, in Queensland licensees are allowed 14 days in which to notify police. Western Australia has no mandatory legislative requirement for dealers to notify of a change in circumstances, however this requirement may be imposed as a condition of the licence. The Victorian legislation, although it does require new or renewing firearm dealers to provide the name and address of each person who is a close associate, does not appear to contain an express requirement to state the particulars of the nature of each person's association with the dealer (although this could be implied from other information supplied under the application).

The Council agreed that current firearm dealer licence holders shall be required to, upon request by a licensing authority, submit a declaration that the firearm dealer is the only person primarily responsible for the management of the business (or state persons who are primarily responsible), and either a declaration that the close associates of the dealer have not changed or provide the particulars of each new close associate. The Victorian legislation requires current dealers to submit a declaration when renewing a dealer's licence, however there appears to be no express provisions requiring current dealers to provide this information upon request from the licensing authority.

With regards to the employment of proscribed persons by licensed dealers, the same jurisdictions that have not implemented close associate provisions have not introduced proscribed persons legislation, being South Australia, the Australian Capital Territory and Tasmania. New South Wales, Western Australia and the Northern Territory have introduced the prohibition on the employment of proscribed persons by licensed dealers, with an offence established for both the dealer and the proscribed person for non-compliance. A defence may be rendered if the dealer proves they did not know, and could not reasonably be expected to have known, that the person was in fact a proscribed person.

Queensland has legislated to restrict dealers from employing a person who will have access to weapons unless the person is a 'qualified weapons employee', meaning a person who is 18 years or over and holds a firearm licence. This scheme substantially complies with the requirements not to employ proscribed persons, as the persons specified in the resolution as proscribed persons would also be disqualified from obtaining a licence. However, the restrictions on obtaining a licence in Queensland only refer to the past 5 years, and not 10 years as specified in the resolution.

In Victoria it is an offence for a licensed dealer to employ a prohibited person, however the legislative definition of 'prohibited person' is less stringent than that specified in the resolution. There is no corresponding offence for the employee and a defence for dealers is not mentioned in the legislation.

21. Sale and purchase of firearms

Resolution

At the July 2002 APMC meeting the Council agreed, under the National Firearm Trafficking Policy Agreement, to the introduction of laws designed to restrict the illegal supply of firearms.

21.1 Definitions

The Council agreed that the following legislative definitions shall be introduced in each jurisdiction:

- Definition of 'sell' is to include sell by wholesale, retail, auction or tender; dispose by barter or exchange; sell for profit; offer for sale, receive for sale, have in possession for sale or expose or exhibit for sale; conduct negotiations for sale; consign or deliver for sale; cause or allow anything referred to above.¹⁰¹

¹⁰¹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 25

- Definition of ‘*purchase*’ is to include purchase by wholesale, retail, auction or tender; obtain by barter or exchange; and cause or allow anything referred to above.¹⁰²
- A person is to be defined as ‘*taking part*’ in the sale of firearm if:
 - (i) The person takes, or participates in, any step, or causes any step to be taken, in the process of that sale, or
 - (ii) The person provides or arranges finance for any step in that process, or
 - (iii) The person provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in any premises of which the person is the owner, lessee or occupier or of which the person has care, control or management.¹⁰³

21.2 Offences

It was further agreed to introduce the following offences:

- The offence of selling or knowingly taking part in the sale of a firearm to another person unless:
 - (i) the purchaser is authorised to possess the firearm by a licence or a permit, and
 - (ii) the following documents have been produced to, and inspected by the seller: the purchaser’s licence or permit, and if the purchaser is not a dealer, the purchaser’s permit to acquire;¹⁰⁴
- The offence of a person other than a licensed firearms dealer selling, or knowingly taking part in the sale of, a firearm to a person who is not a licensed firearms dealer, unless:
 - (i) the sale has been arranged through a licensed firearms dealer, or
 - (ii) where a licensed dealer is not reasonably available – the sale is witnessed by a police officer.¹⁰⁵
- The offence of purchasing a firearm, unless:
 - (i) the seller is authorised to possess the firearm by a licence or permit, and
 - (ii) the seller’s licence or permit has been produced to, and inspected by, the purchaser.¹⁰⁶
- The offence of a person other than a licensed firearms dealer purchasing a firearm from another person who is not a licensed firearms dealer, unless:¹⁰⁷
 - (i) the sale has been arranged through a licensed firearms dealer, or
 - (ii) where a licensed dealer is not reasonably available - the sale is witnessed by a police officer.
- The offence of illegally selling a firearm on multiple occasions, which attracts a substantial imprisonment penalty and provides for asset confiscation where legislation for asset confiscation exists within that jurisdiction. (The new offence should not apply retrospectively in respect of sales that took place before the commencement of the new offence).¹⁰⁸
- It was also resolved that a person who carries on the business of unlawfully trafficking in an illegal firearm shall be guilty of a crime.¹⁰⁹

¹⁰² APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 26

¹⁰³ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 29

¹⁰⁴ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 27

¹⁰⁵ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 28

¹⁰⁶ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 30

¹⁰⁷ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 31

¹⁰⁸ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 14, Action Plan 32

¹⁰⁹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 17, Action Plan 35

Jurisdictional Compliance

It appears that New South Wales is the only jurisdiction to have fully complied with the requirements relating to the sale and purchase of firearms. While most jurisdictions have implemented definitions of selling and purchasing a firearm, they do not use the exact language as envisaged by the resolution. The legislation in Western Australia and the Australian Capital Territory does not include any definitions of 'sell', 'purchase' or 'taking part'. Only New South Wales and South Australia have implemented the definition of 'taking part' in the sale of a firearm as agreed in the resolution.

With regards to sales offences, all jurisdictions have complied with the creation of an offence to sell a firearm unless the purchaser is authorised. In the Australian Capital Territory and Tasmania it appears that only licensed dealers are required to inspect a person's licence/permit when selling or purchasing firearms to/from a person who is not a licensed dealer. In Victoria and Western Australia, while it is an offence to sell a firearm to an unauthorised person, there is no explicit requirement for the seller to physically inspect the licence and permit of the purchaser.

In relation to purchase offences, all jurisdictions have created an offence for a person, other than a dealer, to purchase a firearm from a person other than a licensed dealer, unless the transaction has been arranged by a licensed dealer. The purchaser is required to physically inspect the licence/permit of the seller in all jurisdictions but the Northern Territory, Queensland, Victoria and Western Australia. The Northern Territory has not established the specific offence of purchasing a firearm unless the seller is licensed to possess the firearm, although all sales and purchases are restricted to those conducted by or through licensed dealers.

As stated previously, the Australian Capital Territory, Tasmania, Victoria and Western Australia have not implemented provisions for firearm sales and purchases to be witnessed by a police officer if a licensed dealer is not readily available. Note that South Australia also allows sales and purchases to be witnessed by an authorised officer of a recognised firearm club.

The Australian Capital Territory, South Australia and Tasmania have not established an offence of firearm trafficking. However, in Tasmania this requirement has been included in the recent review of legislation (see s 35 of the *Firearms Amendment Act 2006* which refers to the offence of unlawful trafficking in firearms on one or more occasions, with associated penalties. The remaining jurisdictions have imposed stricter penalties for an offence of trafficking or the illegal sale of firearms on three or more separate occasions. While none of the jurisdictions appear to have made provisions for asset confiscation in firearm legislation, most jurisdictions do allow for asset confiscation on conviction of an indictable offence.

22. Interstate firearm offence

Resolution

The APMC resolved in July 2002 that the Australian Government shall establish the offence of firearm trafficking across state and territory borders.

Further, it was agreed that all jurisdictions would establish an offence of conspiring to commit an interstate firearm offence. This offence would include conspiring to commit an offence in any place outside the home jurisdiction¹¹⁰ or aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence in any place outside the home jurisdiction¹¹¹ (being an offence punishable under the provisions of a law in force in the foreign jurisdiction that corresponds to a provision of the home jurisdiction's law). It was agreed that the maximum penalty shall be the same punishment that the person would be subject to if the offence had been committed within the home jurisdiction.

Jurisdictional Compliance

The firearms provisions of the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002* amended the *Criminal Code Act 1995* and commenced on 16 January 2003. The changes to the Act established a criminal offence, in

¹¹⁰ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 17, Action Plan 34a

¹¹¹ APMC National Firearms Trafficking Policy Agreement 2002, Resolution 17, Action Plan 34b

the course of trade or commerce between any states and territories, to illegally dispose of or acquire a firearm, or to take or send a firearm from one state or territory to another, intending that the firearm will be disposed of illegally.¹¹²

Only four jurisdictions, being Victoria, Queensland, the Northern Territory and New South Wales, have complied with the resolution to establish an offence to conspire to commit an interstate firearm offence. In these jurisdictions, the offender is subject to the same penalty that the offender would be subject to had the offence been committed within the jurisdiction.

There are no current interstate firearm offence provisions in Tasmania, although this requirement has been included in the recently finalised review of legislation. Section 39 of the *Firearms Amendment Act 2006 (Tas)* inserts s 120A, which refers to conspiracy to commit a firearm offence in another jurisdiction. This new legislation will state that a person is guilty of an offence if, in Tasmania, the person conspires with another person, who is in Tasmania or elsewhere, to commit an offence against a foreign firearms law. However, the specified penalty is not the same penalty had the offence been committed within the home jurisdiction.

The Australian Capital Territory, South Australia and Western Australia have no such provisions. While some jurisdictions do have offences relating to conspiracy to commit an offence and aiding or abetting in the commission of an offence, such as the Australian Capital Territory's *Criminal Code 2002*, these extensions of criminal responsibility relate only to offences against the jurisdiction's laws and not to an interstate offence as intended by the resolution.

23. Compensation/Incentive issues

Resolution

As part of the National Firearms Agreement (1996), the Council resolved that a common basis for fair and proper compensation, based on the value of each firearm as at March 1996, should be agreed between jurisdictions.¹¹³ A 12 month national amnesty was to 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. After the amnesty had concluded, each jurisdiction was to impose severe penalties, which to the extent practicable should be uniform, for breaches of the firearms control laws.

Jurisdictional Compliance

The resolution for a compensation buyback scheme, including a 12 month national amnesty, has been complied with by all states and territories. Arrangements were also made to compensate firearms dealers for loss of business relating to prohibited firearms.

The gun buyback scheme commenced in most jurisdictions on 1 October 1996 and ended on 30 September 1997, securing the surrender of approximately 640,000 prohibited firearms nationwide.¹¹⁴ Compensation for gun owners was funded by the Australian Government through a one-off increase in the Medicare levy by 0.2% to raise about \$500 million.¹¹⁵ The compensation provided through the buyback scheme was authorised by the *National Firearms Program Implementation Act 1996* and was subsequently supplemented by the *National Firearms Program Implementation Act 1997*. As well, a national public education campaign was undertaken in support of the gun buy-back scheme, which included both public relations and advertising campaigns.

At the COAG meeting on 6 December 2002, it was agreed that a buyback scheme specifically for handguns would be conducted for 6 months, during which sporting shooters, dealers, importers and collectors would be compensated for the surrender of certain handguns, parts and accessories. An amnesty period for the surrender of illegally-held handguns was also agreed. The handgun amnesty and buyback scheme commenced in most jurisdictions on 1 July 2003 and concluded 31 December 2003. The *National Handgun Buyback Act 2003*

¹¹² See Division 360 Part 9.4 *Criminal Code Act 1995* (Cth)

¹¹³ APMC Special Firearms Meeting May 1996, Resolution 11

¹¹⁴ Auditor-General 1997. *The Gun Buy-Back Scheme*. Audit Report No. 25. Canberra: Australian National Audit Office

¹¹⁵ Auditor-General 1997. *The Gun Buy-Back Scheme*. Audit Report No. 25. Canberra: Australian National Audit Office

enabled the Australian Government to appropriate funds for the purpose of providing financial assistance to the states and territories for the handgun buyback scheme.

Implications

The objectives of the National Firearms Agreement (1996), the National Firearms Trafficking Agreement (2002) and the Council of Australian Governments Agreement on Handguns (2002) were to collectively develop effective national control of firearms in Australia. The proposed standards in the firearms agreements represented minimum levels that were intended to be uniform across the nation, but jurisdictions were free to implement stricter regulations as necessary. However, where the minimum standards are not met, the national control of firearms is significantly undermined if laws can be circumvented by the traffic of firearms across borders into states and territories with less stringent firearm legislation. Effective nationwide regulation of firearms is only possible where substantial commonality exists between key areas of firearms legislation across the states and territories.

Broadly speaking, the various legislative regimes passed by each state and territory since 1996 have established a national uniform scheme for the regulation of firearms in Australia. However, during the course of this review a number of potential areas of divergence between jurisdictions have emerged. While some of these differences are a matter of administrative practice rather than underlying principle, there are some inconsistencies between jurisdictions that indicate potential legislative loopholes for firearm regulation at a national level. The following is a discussion of the salient points of divergence from the firearms agreements and resulting implications for firearm policy across Australia.

1. Prohibition on specific types of firearms

Under the National Firearm Trafficking Policy Agreement (2002), all jurisdictions agreed to ensure that the offence of illegal possession of a prohibited firearm attracts a substantial maximum imprisonment penalty. While all states and territories have established an offence of unauthorised possession of a prohibited firearm, the penalties associated with this offence vary significantly across jurisdictions. For example, the maximum imprisonment penalty for illegal possession of a prohibited firearm in the Australian Capital Territory, the Northern Territory and Tasmania is only two years. In contrast, the same offence in New South Wales is punishable by a maximum penalty of 14 years imprisonment. The lack of substantial and consistent penalties for the illegal possession of a prohibited firearm may reduce the desired deterrent effect to discourage potential offenders in all jurisdictions.

3. Nationwide registration

Part of the National Firearms Agreement (1996) resolved that all jurisdictions were to establish an integrated system for the registration of firearms. All states and territories have complied, however variations in the legislative definition of a firearm means that some inconsistencies arise between jurisdictions in relation to the associated issues of registration of deactivated firearms and firearm parts.

The legislation in the Australian Capital Territory and New South Wales describes a firearm as a gun or other weapon that is (or at any time was) capable of propelling a projectile by means of an explosive. Thus deactivated or inoperable firearms are included in the definition of a firearm. Similarly, in Tasmania, Victoria, and the Northern Territory, the definition of a firearm is broad enough to include deactivated or inoperable firearms. Western Australia includes any firearm which, by any alteration, may be made capable of discharge, whereas Queensland only includes those firearms that are capable of discharge. Deactivated category H firearms in Queensland are still considered a firearm, although not deactivated longarms. In South Australia, a firearm is defined as a device that fires shot and includes devices which, if in working order would be considered a firearm. However, a firearm that has been rendered unusable in a manner stipulated by the Registrar is not considered to be a firearm. It therefore appears that deactivated firearms are not considered firearms in Western Australia, Queensland (longarms only) and South Australia (where deactivated according to SAPOL policy), and as such deactivated firearms are not subject to registration requirements. This poses a problem where deactivation standards are not uniform or verified by the licensing authority. These firearms could later be reactivated and subsequently diverted into the illegal firearms market, which raises issues of accountability for the deactivation of firearms.

The second issue with regards to registration relates to the registration of firearm parts, although this was not considered by the National Firearms Agreement (1996). While the sale, transfer and manufacture of firearm parts are regulated in some jurisdictions, it appears that not all States and Territories require the registration of firearm parts. In the Australian Capital Territory, Tasmania and Victoria, legislative reference is made to the registration of firearms only. Similarly, in Western Australia, a register of licences, permits and approvals is kept by the Commissioner, which includes details of the firearm authorised under the licence, but no provision is made for firearm parts.

Queensland legislation requires the Commissioner to maintain a register of all firearms, the definition of which includes major components of a firearm, such as the receiver, body, barrel, breechbolt, frame or topslide. South Australia requires the registration of all firearms including receivers, and New South Wales requires registration of firearm frames and receivers in the same way as applies to a firearm. In the Northern Territory, all firearms must be registered, the definition of which includes a firearm part. A firearm part is further defined as a rifle or shotgun action, or a pistol or revolver frame. Victoria Police advise that the only handgun frames and longarm receivers require registration in Victoria.

It appears that firearm parts, such as frames and receivers, are only subject to registration in Victoria, Queensland, South Australia, New South Wales and the Northern Territory. Exactly what constitutes a 'firearm part' varies between these jurisdictions. It is acknowledged that there would be considerable difficulties in requiring registration of all firearm parts. However, ensuring the mandatory registration of major component firearm parts (frames and receivers) in all jurisdictions would enable police to more easily trace the ownership history and movements of firearms constructed illegally from firearm parts.

4. Licensing requirements

4.1 Basic licensing requirements

A significant divergence from the resolutions of the National Firearms Agreement (1996) is the failure of South Australia and Western Australia to clearly require mandatory safety training before issuing a firearms licence. Please refer to section eight below for a more detailed discussion of safety training requirements.

While all jurisdictions in practice comply with the requirement for a reminder of safe storage responsibilities to appear on the licence itself, this is not required by legislation in some jurisdictions. The rationale for including a safe storage reminder is to promote the on-going education for firearms owners as to the importance of securing firearms and ultimately reducing the risk of theft of unsecured firearms.

All jurisdictions require the licensing authority to be satisfied of the applicant's ability to comply with safe storage provisions before granting a licence. Similarly, the requirement to provide details of proposed storage arrangements has been included in the firearm legislation or administrative processes of each jurisdiction. A legislative basis requiring the disclosure of proposed storage arrangements promotes the security of firearms and enables licensing authorities to better assess the applicant's ability to meet those standards. In most jurisdictions, a false or misleading statement as to storage arrangements is an offence under the existing firearm legislation, thus holding firearms owners accountable for the security of their firearms.

The National Firearms Agreement (1996) did not contemplate the issuance of firearm licences or permits to minors. All jurisdictions have established a minimum age of 18 years for firearm licence applicants, but all jurisdictions also allow an exception for minors to obtain a licence or permit in certain circumstances. It has been argued that resolution requiring applicants to be aged 18 years or over does not preclude the use of firearms by a junior or trainee shooter in a supervised situation. On 21 June 1996 the Hon. Daryl Williams MP, Attorney-General and (then) Minister for Justice, wrote to the NSW Minister for Police to clarify the position with respect to minors, and stated "I consider that all jurisdictions may continue to allow persons under the age of 18 (but above a specified minimum age) to use lawful firearms in supervised situations." The practice of issuing permits or licences for minors has continued in all jurisdictions, but in accordance with the clarifications, the minor's permit/licence has a specified minimum age and only authorises supervised use of a firearm in approved settings. While Western Australia does not appear to make provision for the issue of licences or

permits to persons under the age of 18 years, a minor may use a firearm (not being a handgun) under the supervision of a person who holds a licence or permit under the Act.¹¹⁶ No minimum age is specified in this exemption.

4.2 *Interstate recognition of licences*

Western Australia is the only jurisdiction not to recognise bona fide competition shooters who are licensed in other jurisdictions. The resolution was intended to allow licensed gun owners to lawfully pursue approved sporting purposes whilst visiting other jurisdictions. Western Australia does not automatically recognise interstate licences and requires the visitor to apply for a temporary permit in order to possess firearms that are registered outside of the jurisdiction. Such a requirement hampers the lawful pursuit of sports shooting and may place undue burden on interstate competition shooters wishing to compete in Western Australia.

Secondly, interstate licensed hunters are exempted from licensing requirements when using category A or B firearms for hunting purposes within New South Wales. Thus, an interstate hunter whose category A or B licence was issued in another jurisdiction will not be required to produce proof of permission to hunt on New South Wales land. It may be argued that such a requirement for permission will already be required by the licence of the home jurisdiction. However, the lack of a legislative requirement to have permission to hunt on land is contrary to the resolutions of the National Firearms Agreement (1996) which specifically requires proof of permission from a landowner in order to establish the reason of recreational shooting as a genuine reason for owning a firearm.

4.3 *Genuine reason*

It was agreed by the APMC that personal protection should not be regarded as a genuine reason for owning, possessing or using a firearm. Four of the jurisdictions have complied by expressly stating in their legislation that protection of person or property is not a genuine reason. However, in Victoria the prohibition on self-defence as a genuine reason is only implied and the Northern Territory legislation is silent as to the personal protection issue. While Queensland and South Australia do not include personal protection as a genuine reason for possessing a firearm, the legislation allows for a genuine reason to be any other reason prescribed under regulation or such other purposes as approved by the Registrar. While this is not likely, the absence of a self-defence prohibition means there is nothing in the legislation to prevent personal protection being approved by the Regulations/Registrar as a genuine reason at some point in the future.

As stated previously, the genuine reason of hunting does not require proof of permission from a landowner under the South Australian firearms legislation. While the Registrar may require the applicant to furnish such further information as may be necessary to determine the application¹¹⁷, there is no legislative requirement under the firearms legislation to produce proof of permission from a landowner in order to establish the genuine reason of hunting. However, in order to physically hunt, a hunting permit is required under other legislation. South Australian hunting permits are issued under the *National Parks and Wildlife Act 1972 (SA)*, which states that hunting in general is not permitted on land without a permit or without permission from the land owner. The lack of a proof of permission requirement is a divergence from the resolutions of the National Firearms Agreement (1996), as a prospective hunter needs only to show proof of permission in order to hunt but not to obtain a firearm licence. It may be prudent to include the proof of permission requirement under the South Australian firearm legislation as a prerequisite to establishing the genuine reason of hunting, so as to clarify the requirements for hunters and to ensure that persons applying for a firearms licence for the genuine reason of hunting do in fact have a genuine reason for possessing a firearm.

4.4 *Genuine need*

From the review it appears that South Australia and the Northern Territory do not require a genuine need in addition to a genuine reason for possessing a category B firearm. Thus muzzle-loading firearms, centrefire rifles and centrefire rifle combinations are available in these jurisdictions by merely showing a genuine reason. The genuine need requirement was

¹¹⁶ See s 8 (1)(n) *Firearms Act 1973 (WA)*

¹¹⁷ *Firearms Act 1977 (SA)* s 15(2)(a)

intended to restrict particular types of firearms to those persons with a legitimate need to use them. The lack of a genuine need requirement is a potential loophole for those persons wishing to obtain a category B firearm without a genuine need, particularly so in South Australia, where the genuine reason of hunting does not require proof of permission from a landowner. This poses particular problems for law enforcement in that legally held firearms may not be used for the legitimate purposes as intended by the APMC.

4.5 *Licence categories*

All jurisdictions have adopted legislative provisions that substantially complies with the agreed firearms licence categories, although minor variations have been noted. Some jurisdictions have included additional firearms and/or weapons within the agreed categories or have created additional categories, however these variations are not contrary to the spirit of the resolution.

5. **Category C firearms**

5.2 *Exemptions for clay target shooters*

The APMC agreed to restrict the use and possession of category C firearms to primary producers and certain clay target shooters. Persons who already possessed a category C firearm for use in competition clay target shooting were permitted to continue to do so, but new applicants were required to meet certain conditions. One of these conditions was the requirement for all new applicants to be supported in writing by an officer of an Australian Clay Target Association (ACTA) affiliated club, sufficient to satisfy the licensing authority that the applicant has a physical need for a category C firearm. Tasmania has no express provisions relating to clay target shooters, but an exemption may be granted by the Commissioner. Such an exemption could be subject to conditions, so as to meet the requirements for a physical need and club endorsement, although it is unknown if this occurs in practice.

While most states and territories have complied with the requirements, some jurisdictions have not included these conditions as a legislative requirement. For example, in Victoria it appears that new applicants do not need their application to be endorsed by an affiliated club. All jurisdictions do however require an applicant to provide proof of membership of a shooting club, and all jurisdictions advise that a physical need is required, whether through legislative or administrative means. The purpose of requiring club support and evidence of a physical need was to satisfy the licensing authority of the authenticity of the applicant's reason for obtaining a category C firearm. Where these requirements are not included in the legislation, the regulatory scheme as envisaged by the APMC is significantly weakened.

Secondly, it was agreed by the APMC to impose a minimum participation rate for clay target shooters, with cancellation of membership for failure to comply. South Australia, Tasmania and Queensland have not enforced these requirements as stated in the resolution. Such participation rates may be better left to the discretion of the clubs themselves. However, the absence of compulsory participation rates in the firearm legislation means that jurisdictions cannot ensure that members of an approved club are real and active members rather than just financial members in order to obtain a firearm licence. Potentially, an applicant may obtain a self-loading or pump action shotgun by joining a clay target shooting club, without attending a minimum number of competition shoots. Inclusion of minimum participation rates encourages active participation of members so that clubs can assist licensing authorities in assessing the safety and suitability of licensees for the possession of firearms.

6. **Category D firearms**

Only New South Wales, the Northern Territory and Queensland have made category D firearms available to primary producers as envisaged by the APMC. Use of these weapons is restricted to a limited geographical area and only available on demonstration of a genuine need for the firearm, such as the culling of large feral animals. Most other jurisdictions have restricted category D firearms to official, government or commercial purposes, with these weapons only available in the Australian Capital Territory upon written approval by the Minister.

In jurisdictions where category D weapons are available to primary producers (New South Wales, Northern Territory and Queensland), applicants are required to meet safety training requirements for that category of firearm, but there are no express requirements for the applicant to meet 'accredited professional shooters qualifications'. It appears that no such accredited qualifications exist for this type of firearm. Information obtained from the National Training Information Service (NTIS) indicates that there is a competency standard relating to the process of destroying animals humanely by shooting (see RTD2125A: Use firearms to humanely destroy animals, available at <http://www.ntis.gov.au/>), which perhaps could become an appropriate accredited qualification as envisaged by the Council.

The Northern Territory does not expressly limit the number of category D firearms available under the licence, although appears to deal administratively with this requirement. New South Wales does not expressly require approval from the Civil Aviation Safety Authority (CASA) in order to shoot from a helicopter and does not restrict ground culling to situations where airborne culling is not practicable. These restrictions could be attached as a condition of the licence, although it is not apparent whether this actually occurs in practice. The lack of explicit requirements regarding the appropriate use of category D weapons may provide opportunity for misuse of these firearms.

7. Handguns

7.1 *Graduated access*

Part of the graduated access scheme for handguns as envisaged by the APMC included the requirement for firearm clubs to certify that an applicant has successfully passed the six month probation period. Under the scheme, applicants are only able to own a handgun once the conditions attached to the first six months of membership have been complied with. While all jurisdictions have substantially complied with the graduated access scheme, Victoria and Tasmania have not included the requirement for clubs to certify that the applicant has satisfied the probationary period in their legislation. Other jurisdictions, such as South Australia and Western Australia, advise that the requirement for clubs to certify that the probation has been completed is dealt with administratively. For example, in South Australia, a permit to acquire a handgun for club purposes will not be approved unless the club provides a certificate in support of the acquisition (i.e. to certify that probation has been complied with). Without such certification, it is unclear how licensing authorities are meant to ensure that applicants have complied with the probation conditions, such as meeting minimum participation rates.

7.2 *Membership requirements*

All jurisdictions require that a handgun target shooter must be a member of a club in order to obtain a licence, and all jurisdictions confirm that club endorsement is required to acquire a handgun, either through legislative or administrative means. However, on endorsing the application, the APMC resolution required shooting clubs to confirm that the licensee has adequate storage arrangements in place. Queensland, South Australia, Tasmania and Western Australia do not require shooting clubs to confirm storage arrangements. In these jurisdictions, safe storage compliance is a function of the relevant police force, rather than shooting club officials.

When joining a target shooting club, all jurisdictions apart from Western Australia and Tasmania currently require a person to provide at least two character references from people they have known for at least two years. Note that clubs in Tasmania have been notified of this requirement and it will be included in the "Certificate of Club Approval" which is to be drawn up in consultation with club officials. While character references are sometimes unreliable, they at least provide some assurance as to the character of the applicant and support the agreement objectives of ensuring potential firearm licensees are fit and proper persons to possess firearms.

The APMC also sought to ensure that information was able to be shared between firearm clubs and the licensing authority in proper circumstances. For example, where the applicant is a member of more than one club or has been expelled from a firearm club. The exchange of information is facilitated by legislative provisions which expressly allow the licensing authority to disclose criminal history or club shopping information to firearm shooting clubs, and those which require club members to disclose the number of firearms owned and any other club

memberships. While legislative provisions regarding club shopping restrictions do not exist in all jurisdictions, it appears that administrative measures satisfy the requirements of the resolution in all jurisdictions except South Australia. For example, in Tasmania, club members are required to sign an authorisation allowing for the exchange of information between their club and Tasmania Police. The inclusion of club shopping restrictions was intended to prevent applicants from joining several shooting clubs in order to circumvent restrictions placed on handgun target shooters. By enforcing disclosure of information, clubs are able to ascertain membership of other shooting clubs. Without such information, clubs are unable to ensure that applicants are not “club shopping” and thus unable to properly assess membership applications.

8. Safety training

Firearms safety training is recognised as essential to the reduction of deaths and injuries related to the use of firearms. To achieve effective national controls, the APMC considered it important that safety training be mandatory and standardised across Australia. Currently South Australia and Western Australia have no express legislative provisions requiring mandatory safety training for firearm licence applicants. In South Australia the Registrar may require an applicant to complete a safety course, and in Western Australia the Act provides that regulations may be made requiring the completion of a course, although no such regulations appear to have been enacted. It is however understood that in practical terms, all jurisdictions, including South Australia and Western Australia, require the completion of a safety training course for first time applicants. Proper instruction in firearm safety and operation is vital for the safe handling and use of firearms, the absence of which represents a significant risk to the shooter and the community in general. The introduction of mandatory safety training in all jurisdictions would ensure that shooters receive appropriate training in the handling and operation of their weapons.

9. Firearm Collectors

Firearm collectors are subject to a series of restrictions under the resolutions of the APMC from 17 July 1996. In most jurisdictions the requirements have been fully implemented, although in Western Australia only one weapon may constitute a ‘collection’ and there is no requirement to be a member of a collector’s club. This lack of regulation means that persons may be able to retain or obtain firearm(s) and ammunition under the pretence of being a firearm collector.

In some jurisdictions there are no prescribed storage standards in relation to collectors, although it is assumed the usual storage provisions relating to all firearms would apply. The lack of safe storage standards specifically for firearm collections poses a significant risk for accidental injury or theft of firearms due to insecure storage.

10. Ammunition Collectors

The APMC agreed that all jurisdictions will consider requiring a licence or permit for the collection of ammunition, but this was not a mandatory requirement. All jurisdictions have enacted a regulatory scheme in relation to the collection of ammunition, usually requiring collectors to apply for a licence, permit or approval to collect. It appears that Western Australia, the Australian Capital Territory and the Northern Territory do not require ammunition in a collection to be rendered inert. Furthermore, the Australian Capital Territory and the Northern Territory do not appear to have banned ammunition collections from containing high explosive, smoke, chemical or lachrymatory agents in their firearms legislation. The restrictions agreed to by the APMC aimed to ensure the safety of ammunition collectors as well as the general public by limiting the type of ammunition available for collection purposes and ensuring the safe storage of such collections. Without such restrictions there may be a risk of ammunition stockpiling and injury from accidental or deliberate misuse of collection ammunition.

11. Museums

The APMC resolved that official and approved museums would be subject to prescribed requirements rather than those which apply to private collectors. While all jurisdictions have ensured that private museums are subject to the same conditions as those which apply to private collectors, some jurisdictions have included exemptions for government or official

museums. For example, South Australia, Western Australia and the Australian Capital Territory have excluded approved museums from the operation of the relevant firearms legislation and as such they appear not to be regulated under the firearm legislative regime.

12. Heirloom firearms

South Australia appears to be the only jurisdiction that does not provide for heirloom firearm licences. In South Australia, all normal provisions for a shooter's licence or a collector's licence would apply to a person wishing to possess an heirloom firearm. In Queensland and Western Australia there is no restriction on the number of heirloom firearms permitted. While other jurisdictions expressly state that an heirloom firearm licence will only relate to a single firearm or a matched pair set, the Queensland legislation does not state this restriction. Western Australia incorporates heirloom licences under firearms collector's licences and as such does not limit the number of firearms permitted. The potential for abuse is increased as Western Australia has no express requirement to provide proof of inheritance and no requirement for weapons in a collection manufactured after 1900 to be rendered inoperable. Furthermore, collectors in Western Australia do not have to be members of an accredited historical society and there are no restrictions on the possession of ammunition.

13. Grounds for refusal, cancellation or suspension

While most jurisdictions have dealt comprehensively with the grounds for refusal, cancellation and suspension of firearms licences, it appears that the Australian Capital Territory has no provisions allowing such action on the basis of criminal intelligence. The lack of such provisions hampers the ability of police services to utilise intelligence information and reduces the capacity of the licensing authority to effectively regulate firearms licences in their jurisdiction.

Clear legislative provisions requiring the automatic refusal and/or cancellation of a firearms licence upon conviction for aggravated assault or the imposition of a domestic violence order are not currently provided in all jurisdictions. For example, in South Australia, a domestic violence order or a conviction for aggravated assault does not automatically result in refusal or revocation of a firearm licence (although the firearm is subject to automatic confiscation). While these may be grounds for justifying refusal, cancellation or revocation, clear legislative provisions requiring automatic cancellation or revocation in these circumstances would restrict firearms to fit and proper persons as envisaged by the resolution.

14. Permits to acquire

While all jurisdictions have established a 28 day 'cooling-off' period to acquire a first firearm, some jurisdictions (Victoria, Western Australia and the Northern Territory) have provided for expedited approval of permit applications in certain circumstances. Usually the waiting period may only be waived where the application is for an additional firearm of the same category of the firearm already registered. However, such legislation seems to defeat the purpose of the resolution, which was to require a mandatory 28 day waiting period prior to the acquiring of a firearm to enable the appropriate checks to be made on the licensees. Such checks will still need to be undertaken even if the applicant already owns a firearm, especially where a significant time period has elapsed since the last application to acquire. The establishment of the NFLRS via CrimTrac perhaps overcomes the need for a 28 day waiting period, as police may gain immediate access to relevant information held in other jurisdictions.

15. Security and storage

A key issue in the control of firearms is their safe storage. As part of the National Firearms Agreement (1996), the APMC resolved that category C firearms should be subject to the same storage restrictions as category D and H weapons, namely a solid steel container bolted to the floor or structure of the building. While most jurisdictions have complied with the resolutions of the APMC regarding the security and safe storage of firearms, in Queensland category C firearms are not subject to the minimum storage standards as prescribed by the APMC. Instead, category C firearms, such as self-loading and pump action shotguns, are treated in the same way as category A or B firearms. This deviation from the National Firearms Agreement (1996) represents a significant risk as to the security of category C firearms in Queensland, where such semi-automatic weapons may be stored in a timber structure which is not necessarily required to be bolted to the building. This poses an increased

risk of theft and allows easier access to firearms. Contrary to the resolution, South Australia does not require category A and B firearms to be in a receptacle if they are secured to the building. The lack of appropriate safe storage standards may provide an avenue for criminals to obtain weapons through the theft of legally owned firearms.

A firearms safety booklet produced by the Australian Government Attorney-General's Department is distributed in all states and territories, usually as part of the firearm safety training program, although this is not a legislative requirement in most jurisdictions. The distribution of firearm safety information and the ongoing reminder on the licence itself serve to educate firearm owners as to the importance of secure storage of firearms. The availability of such information promotes safe handling of firearms and secure storage practices, which may decrease the risk for accidental injury or firearms theft as a result of insecure storage.

16. Reporting

16.1 Clubs

The reporting requirements of clubs as agreed by the APMC have been substantially complied with in all jurisdictions. Of course, clubs may only meet their reporting requirements if they are informed of cancellation, revocation or suspension of member's firearm licences. For example, in Tasmania, shooting clubs are advised in writing if a member is no longer authorised to possess firearms due to a cancellation or suspension of licence. In order to meet the APMC requirements, there needs to be ongoing and effective communication between the police and shooting clubs.

Secondly, in relation to club reporting requirements, all jurisdictions require clubs to provide annual reports to the relevant firearm registry service. While New South Wales and Tasmania do require clubs to lodge an annual report, there is no requirement for the report to include details of the firearms owned by club members, nor to include annual participation rates in Tasmania. The annual reporting provides police and licensing authorities an opportunity to confirm details with regards to firearm licence holders and monitor levels of compliance with requirements, such as participation rates. While it is in the interests for approved clubs and shooters to provide this information so as to demonstrate their compliance with the minimum participation requirements, it is preferable that licensing authorities have the ability to require the provision of this information. The absence of mandatory reporting requirements hampers the ability of police to ensure that club members, as well as clubs themselves, are complying with the relevant firearms legislation in their jurisdiction. Note also the absence of specific penalties in some jurisdictions for failure by an approved club to lodge the required annual report. Generally, the only sanction that may be applied is the withdrawal of a club's approval under the relevant legislation.

17. Record Keeping

17.1 Records

As part of the restrictions on the availability of firearms and ammunition, it was agreed by the APMC that all firearm sales are to be conducted by or through the agency of licensed firearm dealers. In South Australia, such transactions are allowed to be witnessed by certain authorised officers of recognised firearms clubs. This may pose a potential risk as firearm club officers are not subject to the same scrutiny as licensed firearm dealers, although they are required to be licensed persons.

17.2 Ammunition and firearms parts

While all jurisdictions have legislated to restrict the sale of ammunition only for those firearms for which the purchaser is licensed, no jurisdictions appear to have actually prescribed quantitative limits on the amount of ammunition able to be purchased in a given period. The legislation in most jurisdictions allows for the regulations or the Registrar/Commissioner to prescribe maximum amounts of ammunition, but no such limitations appear to have been enacted. Queensland and Victorian legislation does not allow for maximum limits on quantities of ammunition.

This omission is mainly due to practical problems in implementation, such as the need for some shooters to purchase ammunition in bulk and the different rates that different types of

shooters will use ammunition. Competition shooters may use large amounts of ammunition over a short period, for example, at a competition match. It is also the practice of primary producers in remote areas to only purchase supplies on a monthly or quarterly basis, which would necessitate the purchase of a larger than average quantity of ammunition. It can be argued that there is no real benefit to prescribing a maximum that can be purchased at any one time, if there is no limit set on the amount which can be possessed. This simply denies shooters the benefits of purchasing in bulk without preventing persons from making a number of different purchases in a short period to obtain the same amount of ammunition.¹¹⁸

17.3 Production and inspection

The offence of a firearm dealer making a false entry in their records was intended to deter dealers from making wilful false entries in order to divert legal firearms into the illegal firearms market. Such dealers facilitate the supply of firearms likely to be used in illegal activities such as trafficking and organised crime. All jurisdictions have established a general offence for any person making a false or misleading entry in or altering any record required by law to be made in relation to a firearm. In some jurisdictions this is implemented under the relevant Criminal Code rather than the firearms legislation (e.g. the Australian Capital Territory). However, only New South Wales, Queensland and Western Australia have established a specific offence for a firearm dealer to make a false/misleading entry. The maximum penalty for the general offence is thought to be an inadequate deterrent for a firearm dealer who deliberately attempts to undermine the objectives of the national firearms agreements. A specific offence in relation to dealers, with substantial penalties, would ensure that dealers who are engaged in the criminal trade of firearms and firearm parts are dealt with appropriately.

18. Mail order control

Mail order restrictions were considered important by the APMC as mail order sales were seen as an easy way to circumvent firearms controls. It was thus decided to restrict all firearms mail order arrangements on a licensed gun dealer to licensed gun dealer basis. All sales and purchases of firearms are already restricted to those involving a licensed dealer under the National Firearms Agreement (1996). However, it appears the APMC was seeking to regulate the sending of firearms through the mail by restricting mail orders to those between licensed gun dealers only. While most jurisdictions have prohibited absolutely the sending of firearms through the mail within their jurisdiction, Western Australia and South Australia do not regulate the mailing of firearms within the state. Most other jurisdictions only allow the posting of firearms to an interstate firearm dealer. In Queensland, any person may dispatch a firearm by registered post within or outside the state but only to a licensed dealer, armourer or police officer. However, licensed dealers in Queensland may only dispatch firearms to licensed individuals.

These variations in mail order control allow persons who are not dealers to send firearms through the mail. The sending of firearms by mail, even within the jurisdiction, represents a significant risk for diversion of firearms to occur. Some jurisdictions have attempted to reduce this risk by applying restrictions when dispatching a firearm by post, such as requiring a sturdy, securely closed container that does not suggest the presence of a weapon.

The advertisement of firearms for sale unless the sale is conducted through or by a licensed dealer has been prohibited by all jurisdictions except Queensland, the Northern Territory and Western Australia. While it is an offence in these jurisdictions for an actual sale to take place unless conducted through or by a licensed firearm dealer, the advertisement for sale is not regulated (except to require the serial number of the firearm). While the lack of advertisement regulation would appear to undermine the objective of the firearms agreements, the legislative measures taken to restrict all sales, including mail orders, to only those involving licensed dealers, meets the primary objectives of the resolution.

Safety requirements for the movement of category C, D or H weapons are prescribed in all jurisdictions, apart from Victoria and Western Australia. However, it is assumed that the usual safety provisions would apply. For example, requirements to carry and store firearms in a secure manner and to take all reasonable precautions to ensure firearms are not lost or

¹¹⁸ Tree L 2000. *Review of the Firearms Act 1996*: Sydney: NSW Ministry for Police: 232

stolen. Victoria and Western Australia have also failed to prohibit or regulate the commercial transport of firearms with ammunition.

19. Manufacture of firearms

One of the intentions of the National Firearms Trafficking Policy Agreement (2002) was to introduce nationally consistent regulation of the manufacture of firearms. It appears that all jurisdictions regulate the manufacture of firearms within their jurisdiction, including the manufacture of major firearm parts. This is either implied in the legislation, or manufacturing is explicitly defined to include assembling a firearm from firearm parts, or the definition of a firearm includes a firearm part.

It appears that South Australia regulates the legal manufacture of firearms on a commercial basis, but does not regulate private licensed individuals manufacturing a firearm from legal firearm parts for personal use. This is of concern where such parts are not subject to the same regulation as firearms themselves, particularly registration and recording of transactions requirements.

Tasmania and South Australia have not yet established the offence of possessing a firearm on which the serial number has been removed or defaced. While it is an offence to remove or deface a serial number, the lack of an associated offence for possession reduces the effectiveness of such measures. Where jurisdictions have established the offence of possession, the penalties across the states and territories range from two to seven years and are generally the same penalty the offender would be subject to had he/she defaced or altered the serial number him/herself. Such penalties generally serve as a sufficient deterrent but could be strengthened in some jurisdictions with regard to the availability of more substantial penalties elsewhere.

20. Firearm Dealers

20.1 Close associates

The APMC agreed that firearm dealer's licences are to be refused where a close associate of the applicant is not considered to be a fit and proper person. The resolution would allow licensing authorities to refuse an application for a dealer's licence based on the associations of the applicant, in response to concerns over the ability of close associates of outlaw motor cycle gangs to obtain firearm dealer licences. Secondly, close associate provisions prevent ineligible persons from using eligible persons to 'front' a firearm dealership. Such close associate provisions are currently available in all jurisdictions, apart from South Australia, Tasmania and the Australian Capital Territory. This is of particular concern because the nature of a firearm dealer's licence allows the dealer and employees to have access to a large number of firearms. It is therefore vital that firearm dealer's licences are not exposed to manipulation by persons for criminal ends.

20.2 Employment of proscribed persons

The APMC also agreed that firearm dealers would be prohibited from employing certain persons in firearm dealerships. Again South Australia, Tasmania and the Australian Capital Territory have not implemented any such provisions. Most other jurisdictions have complied, although in Victoria the definition of a proscribed person is less stringent than the APMC envisaged. Only New South Wales, Western Australia, Queensland and the Northern Territory have introduced proscribed persons legislation with an offence established for both the dealer *and* the employee for non-compliance. Similar to the close associate resolution, the aim of prohibiting proscribed persons from firearm dealership employment was to prevent ineligible persons from gaining access to firearms. Without such restrictions, persons with a criminal history which would render them ineligible to obtain a firearm licence, would still be able to gain access to large number of firearms via employment at a firearm dealership.

21. Sale and purchase of firearms

21.1 Definitions

The APMC definitions of 'sell', 'purchase' and 'taking part' have not been implemented by most jurisdictions. Only New South Wales and South Australia have included a definition for 'taking part' in a transaction as envisaged by the APMC. Only New South Wales has

implemented the APMC definitions of 'sell' and 'purchase', resulting in significant variation across the jurisdictions as to the meaning of these terms. While most states and territories have relied on the ordinary meanings of the words or used broad definitions that would encompass the APMC definitions, the apparent lack of uniformity highlights the need for consistency at even the most basic level of firearm regulation.

21.2 Offences

All states and territories have established an offence to sell a firearm unless the purchaser is authorised. However, Victoria and Western Australia do not require the seller to physically inspect the licence/permit of the purchaser, although the dealer is required to notify the relevant firearms registry of the details of the transaction (which can be assumed to include the licence/permit number of the purchaser). The requirement for the seller to actually inspect the relevant documents means that the seller cannot rely on ignorance or wilful blindness as to the licensing status of the purchaser.

The APMC further required the establishment of an offence to purchase a firearm unless the seller is authorised. The Northern Territory has not complied, as a dealer may purchase a firearm from a person who is not licensed. This is meant to encourage unregistered firearms to enter the registration process. Anonymous sales/purchases are prohibited and records of the transaction are still required to be forwarded to the relevant registry.

Under the APMC resolution, the purchaser was also required to inspect the licence/permit of the seller, but only New South Wales, the Australian Capital Territory, South Australia and Tasmania have complied with an express legislative requirement to physically inspect the documentation. In this way, the seller is obliged to ensure that the buyer is appropriately licensed and the buyer is obliged to ensure that the seller is appropriately licensed. Such checks ensure that only authorised persons engage in legitimate firearm transactions. The police are also enabled to prosecute both the purchaser and the seller where an illegal firearm transaction has occurred.

Only four of the jurisdictions have implemented the APMC's resolution to allow police officers to witness transactions where a dealer is not available. Some jurisdictions such as Victoria, do not consider it appropriate for this function to be performed, under any circumstances, by a police officer. Other jurisdictions, such as Tasmania and the Australian Capital Territory, do not find such provisions necessary, as the small size of the jurisdiction makes it unlikely that a dealer will not be available.

Tasmania and the Australian Capital Territory have not established an offence of trafficking in firearms. These offences were recommended by the APMC in order to restrict the ongoing supply of illegal firearms. The effectiveness of these offences is diminished when not implemented on a national basis.

22. Interstate firearm offence

As part of the national approach to the control of firearms in Australia, the APMC agreed to establish an offence of trafficking in firearms across state and territory borders. This resolution was met after amendments to the *Criminal Code Act 1995* established a criminal offence of illegally disposing, acquiring, taking or sending of a firearm from one state or territory to another.

It was further agreed that the jurisdictions should establish an offence of conspiring to commit a firearm offence in another jurisdiction or aiding and abetting the commission of an offence in another jurisdiction. The offender would then be subject to the same penalty as the offender would be subject to if the offence had been committed within the jurisdiction. Only four jurisdictions, Victoria, Queensland, the Northern Territory and New South Wales, have clearly established an offence to conspire to commit an interstate firearm offence. The lack of a similar offence in the remaining jurisdictions substantially reduces the effectiveness of firearm controls in a cross-jurisdictional context.

Conclusion

The departures from the resolutions of the firearms agreements identified in this review are detrimental to the integrity of the scheme developed by the APMC. While there has been some standardisation across the states and territories, there are noticeable dissimilarities and

inconsistencies between jurisdictions in various areas of firearm regulation. This review highlights areas of divergence requiring legislative attention in order to give full effect to the national principles of firearm control as envisaged by the APMC.

The main areas of divergence from the consolidated resolutions and the relevant discrepancies between the jurisdictions relate to the following:

- penalties for the possession of prohibited firearms
- registration of firearm parts, including frames and receivers
- genuine need required for category B firearms
- restrictions relating to clay target shooters, including minimum participation rates
- handgun restrictions, including probation requirements and requirements to acquire a handgun
- restrictions relating to firearm collectors, including club membership requirements, heirloom firearms and ammunition collectors
- waiver of the mandatory 28 day waiting period to acquire a firearm
- minimum standards for security and storage provisions
- annual reporting requirements for shooting clubs
- limits on possession/purchase of ammunition (quantity)
- offences relating to false entries in firearm transaction records, particularly dealers
- regulation for sending firearms via mail/post
- possession of firearms on which serial numbers have been defaced/removed
- close associate provisions for firearm dealers
- prohibition on the employment of proscribed persons in firearm dealerships
- offences relating to the sale and purchase of firearms, including inspection of relevant licences, and trafficking offences
- interstate firearm offences.