Public Health Association of Australia
submission on Proposed Firearms Law Reforms (Tasmania)

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia.

The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.
Introduction

PHAA welcomes the opportunity to provide input to firearms law in Tasmania. As a public health organisation, PHAA has a strong interest in reducing injuries and deaths from firearms. Reductions can be achieved through combined strategies including regulatory frameworks and enforcement, education, comprehensive suicide prevention programs, accessible social and health services, and targeted crime reduction efforts. The National Firearms Agreement (NFA) has a key role to play in this, and consistent application of firearm legislation across all states and territories is required to ensure that there is a strong consistent response to firearms in Australia. The NFA specifically states in Section 2 that it “sets out the minimum requirements in relation to the regulation of firearms”. Therefore, any regulations which are less stringent than those contained within the NFA mean that the NFA is not being fully complied with. PHAA strongly opposes any regulatory changes which do not meet the standards of the NFA.

It is difficult to confirm a causal relationship between the NFA and changes in rates of injury and death because of the complexities of the Agreement, and changes in societal factors. However, the correlations are clear. In contrast to many other developed nations, in Australia there have been zero mass shooting death incidents with five or more fatalities since 1996. The annual rate of gun deaths reduced from 2.9 per 100,000 in 1996 to 0.9 per 100,000 in 2016. Although the rates had already been declining prior to the NFA, the rate of decline was more rapid between 1997 and 2013 compared with before 1997. In particular, the rate of firearm suicide after the NFA was less than would have been expected given the rate prior to the NFA.

PHAA is concerned that the proposed reforms will undermine the NFA, weakening firearm safety and increasing the risk of injury and death. The placement of the policy on the Tasmanian Liberals’ website provides an indication of the framing of this issue – it is listed under ‘delivering a stronger economy and more jobs’ rather than under ‘keeping Tasmanians safe’. This is inconsistent with the 2017 NFA which states in Section 1 that “...firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety...”. Firearm regulation must be considered a health and safety issue first and foremost, with all proposals viewed through that lens as the highest priority.

PHAA Response to the Inquiry Terms of Reference

1. Current and future firearms licensing regimes, including training and testing, licence renewal, licence infringements and licence categories

Licensing arrangements must be consistent with the fundamental principles of the NFA: that firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety; and the requirement for a genuine reason for possessing or using a firearm, and a genuine need for higher category firearms.

Existing regulations in Tasmania, like in other jurisdictions in Australia, are non-compliant with the NFA:

- Licensing resolutions of 2002 to regulate pistol club members not implemented
- Use of prohibited firearms for competitive shooting
- Some Category D prohibited firearms conditions
- Allowance for a minor’s permit for 12-18 year olds
- No specialised training for the security industry
PHAA submission on proposed firearms law reforms (Tasmania)

- Second and subsequent firearms are exempt from the 28-day waiting period for a permit to acquire
- Paintball added as genuine reason
- Failure to notify a change of address not listed as grounds for cancellation of a firearm licence

Changes are required to bring Tasmania into full compliance with the NFA. Unfortunately, the proposed changes do the opposite.

Length of licence
Licensing changes proposed include extending the “active period of licensing of firearms to include options for up to 10 years for Category A and B for all licence holders, and 2 years for Category C agent of a primary producer (currently every year) in order to stagger the annual renewal process and remove red tape”.

This proposal is in direct contravention of the NFA which in section 34 part (d) states that “a licence must be issued for a period of no more than 5 years”. PHAA is concerned with the reference to removal of ‘red tape’. While regulations and the administration of them should always be sensible and minimise unnecessary paperwork and delays, whatever their subject matter, reference to ‘red tape’ suggests that administration is a higher priority than safety. This is in contravention of Section 1 of the NFA, which clearly prioritises public safety.

Storage laws
The proposals would “amend the Regulations so that where a lawful firearms owner (including a dealer) has been found in contravention of storage laws for relatively minor reasons, an infringement notice may be issued rather than a summons, and no firearms will be removed as a result, if the contravention is rectified without delay”.

This proposal is in direct contravention of the NFA which in section 38 part (c) states that “jurisdictions may impose appropriate penalties, in addition to licence cancellation or seizure of firearms, for failure to comply with security and storage conditions”. Key to this section are the words “in addition to”. The proposed change would be instead of, not in addition to.

PHAA is particularly concerned that adoption of this proposal would result in reduced penalties for contravention of storage laws by dealers. Firearms dealers have particular responsibilities in safe storage of firearms as well as good modelling of safe storage. Dealers are in a position where they may be asked for storage and safety advice from the public. There is a significant risk that dealers who do not take safety and storage seriously enough to comply with the laws may not provide accurate advice to others. The NFA highlights the safety and storage practices of dealers, in section 44 part (g) which allows for “such additional requirements as the firearms regulatory authority deems appropriate having regard to the type of activity of the dealer”. This specifically refers to additional storage requirements for dealers, not less stringent requirements.

The NFA also states in section 45 “jurisdictions should consider imposing greater storage requirements where multiple firearms are kept on the same property”. The inclusion of dealers in the proposed amendment clearly indicates that it is to apply to properties with multiple firearms. Imposing less stringent penalties for non-compliance with the storage requirements is inconsistent with this provision for greater storage requirements.

New licence category
A change to the licence categories is proposed with a referral to the new Tasmanian Firearms Owners Council (TFOC) for the “creation of a new Category E to encompass all ‘prohibited firearms’ as most of these are not prohibited to all citizens, and certain specialists have lawful reasons to possess them”.

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Without details of what firearms are being proposed to be included in the new Category E, and which ‘specialists’ might have what ‘lawful reasons’ to possess them, it is difficult to comment on this proposal. However, it should be noted that under the Firearms Act 1996 (Tas), the prohibited firearms listed are high-powered automatic and self-loading firearms. Further, the Act currently makes provisions for the limited use of some prohibited firearms such as for competitive shooting. It is not clear how the proposed new licence category would further assist Tasmania in compliance with the NFA.

**Military appearance**

The proposed reforms also include the TFOC being referred “the entire matter of ‘military appearance’ laws for a full review”.

This proposal seems to refer to NFA section 28 part (a) which describes Licence Category D “semi-automatic centrefire rifles designed or adapted for military purposes or a firearm which substantially duplicates those rifles in design, function or appearance”. Without details of the purpose of a review, it is difficult to comment on this proposal.

**Reason to own Category C**

Finally, the proposals would refer to the Council of Police Ministers “the possibility to expand the ‘reason to own’ a Category C firearm to include competition shooting as occurs for clay target shooters, for recognised competition shooting events in Australia”.

The provisions in the NFA allow for a phasing out of access to semi-automatic firearms for clay target shooting, over time. Expanding this provision to include recognised competition shooting events in Australia is inconsistent with the aim of reducing the availability of semi-automatic firearms in Australia. If this proposal were to be introduced, it should exactly mirror the language in the NFA for clay target shooting, such that the exceptions would be only for medical need due to lack of strength or dexterity, or individuals who were registered shooters on 15 November 1996 with the relevant competition shooting event, and at that time possessed a semi-automatic shotgun or pump action repeating shotgun for use in competition shooting events.

**2. Compliance with the provisions of the National Firearms Agreement**

As noted under 1, there are already numerous examples in Tasmanian regulations of non-compliance with the NFA. The proposed reforms would further distance Tasmania from full compliance.

The proposal specifically includes reference to the Council of Police Ministers for “the need for sound, sustainable, safe and non-political amendments to the National Firearms Agreement to reduce the frustrations of differing standards and the need for harmonisation of firearms laws across jurisdictions”.

PHAA opposes this proposal. The ‘frustrations of differing standards and the need for harmonisation of firearms laws across jurisdictions’ can be addressed through full compliance with the NFA by all jurisdictions. Full compliance would ensure standards and firearms laws would align removing the need for further amendments. The fact that no jurisdiction has ever fully complied with the Agreement, with resulting differences in standards across jurisdictions does not mean that the Agreement itself needs amending. It means that the jurisdictions need to amend their regulations to comply.

Many of the proposed reforms are in direct contravention of the NFA. The length of licence and storage laws proposed changes clearly contravene the Agreement. Further, the proposal to develop an MoU suggests non-compliance with the NFA. An MoU would not be required if the provisions to be contained within it did not contravene the NFA. This is exemplified in the proposal to allow sound suppressors.
3. The roles of Tasmania Police, Firearms Services (FAS), and the proposed Tasmanian Firearms Owners Council (TFOC)

Re-development of FAS

Proposed changes to FAS include the re-development of FAS into a civilian led regulatory body offering online services, and clarity of legal responsibilities for all firearms owners. A “digital platform where every firearm owner in Tasmania can manage their own licence and registration arrangements in a secure and timely manner and maintain a high level of communication with Firearms Services on all changes, updates or latest advice”.

PHAA supports all firearms owners being able to easily access information to clarify their legal responsibilities and provide updates and current advice. Digital platforms may be sensibly utilised for efficiency in administration of firearms licences and registration. However, care should be taken to ensure that online services do not reduce the face-to-face interactions between applicants and FAS to such an extent that an unintended consequence is a decrease in the ability of the Tasmanian Police and FAS to adhere to the ‘fit and proper person’ element of the NFA. Gun ownership is a sensitive and serious undertaking and while small transactions may not provide full and complete assessments of the ‘fit and proper person’ requirement, they may provide important incidental opportunities for concerns to be identified. Face-to-face interactions generate these opportunities in a way that online interactions cannot.

Tasmanian Firearms Owners Council

The proposed TFOC is described as a ‘truly representative peak body’ Statutory Council to provide advice to the Minister for Police, and State Government on regulation and use of firearms in Tasmania. It is proposed be a 9-member Council of paid positions, with ‘nominations open to major stakeholder bodies’.

There are 2 major concerns with this proposal. Firstly, the Council would consist only of firearm owners, without any representation from other sectors of the community. Advice provided to the Minister for Police and State Government on the important issue of the regulation and use of firearms in Tasmania would come only from those with a vested interest in having access to firearms, through this TFOC. The proposal does not clearly stipulate that groups with conflicts of interest, such as gun manufacturers and dealers would be ineligible to hold a position on the Council. This must be a minimum requirement of any such peak body to ensure that there is no conflict of interest between obligations to shareholders to maximise profits, and obligations to provide advice which complies with the NFA with public safety being prioritised.

Any Statutory Council formed to provide advice to the Minister for Police and State Government on regulation and use of firearms in Tasmania must have compliance with the NFA as the primary interest, and include representatives of peak organisations which recognise not only the lawful uses of firearms, but also their harms. Public health and safety, victims of crime, mental health and suicide prevention sectors would need to be represented at a minimum.

Secondly, the proposal to have the positions on the Council be paid is unnecessary and would represent a disgraceful waste of public resources in a jurisdiction where public resources are scarce, and contrary to previous efforts to remove such payments. Impartiality is crucial for any advice provided to Government, and this would be compromised through the positions being paid.
4. **The role of the proposed Memorandum of Understanding (MoU) between the Government, Tasmania Police and the Tasmanian Farmers and Graziers Association (TFGA)**

The proposed MoU would provide “recognition that firearms are tools-of-trade and need to be available, and carried, in the best form and function for primary producers to discharge their responsibilities as safe, efficient and humane practitioners in their industry”.

It is not clear exactly why this proposal is being made, what current restrictions may be alleviated through an MoU nor how this MoU would be operationalised within existing legislation. No definition is provided of which ‘firearms’ are being described as ‘tools-of-trade’ for primary producers.

PHAA is concerned that this MoU would be used to attempt to remove the need for active primary producers to demonstrate a genuine need to own and use certain categories of firearm. Not all primary producers are faced with the same circumstances which may constitute genuine need. Even in a jurisdiction as small as Tasmania, there will be differences in the level of pest control required, the protections in place, other methods of crop protection and pest control utilised, and genuine need for firearms of various types. Removing the requirement to demonstrate genuine need is in direct contravention of one of the fundamental principles of the NFA. Further, the NFA does not recognise tools-of-trade as a genuine reason for owning and using a firearm.

However, an MoU would not be legally binding, and would therefore not override Tasmanian legislation or the NFA. The need for, and purpose and legal validity of the proposed MoU is unclear. How this MoU would assist Tasmania to fully comply with the NFA is not clear.

5. **The ownership and use of sound suppressors by Category C licence holders**

The proposed MoU would also “acknowledge that an active primary producer in Tasmania has a genuine reason for owning a firearm by reason of that fact...for workplace health and safety reasons, permits Category C holders or crop protection permit holders to own and use sound suppressors in the course of the use of their firearms for primary production purposes, but ensure that stringent storage requirements are applied”.

If this proposal was consistent with the NFA, there would be no need for a special MoU to implement it. The request for an MoU seems to implicitly acknowledge that the proposed changes included in it would contravene the NFA.

Workplace health and safety is important for primary producers using firearms. The need for hearing protection must be balanced against public health and safety. PHAA believes that sound suppressors carry an inherent risk to bystanders in the surrounding area through limiting the warning provided by firearm noise. Further, should the sound suppressors be stolen, they increase the risk of serious injury and death from a firearm attack, through masking the source of a fired weapon. Assessments of appropriate hearing protection should prioritise personal protective equipment hearing protection over firearm sound suppressors.
Conclusion

PHAA supports the broad directions of the Inquiry into the proposed firearms law reforms in Tasmania. This submission emphasises full compliance with the NFA. We are particularly keen that the following points are highlighted:

- The fundamental principles of the NFA are that firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety; and the requirement for a genuine reason for possessing or using a firearm, and a genuine need for higher category firearms.
- Tasmania is already non-compliant with several sections of the NFA
- No reforms should be passed which further erode compliance with the NFA.

The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to a healthier and safer Tasmania.

Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

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PHAA

3 August 2018
References


