



LAW REFORM COMMISSION
of
WESTERN AUSTRALIA

REVIEW OF THE *FIREARMS ACT* *1973 (WA)*

PROJECT 105 FINAL REPORT

OCTOBER 2016

THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA

COMMISSIONERS

CHAIRMAN:

Dr D Cox BSc (Hons), PhD (UWA), LLB (Hons) (Murd)

MEMBERS:

Dr A Zimmermann LLB, LLM (PUC-Rio), PhD (Monash)

Ms F Seaward BComm, LLB (Hons) (UWA)

© Government of Western Australia

ALL RIGHTS RESERVED

Law Reform Commission of Western Australia
Level 23 David Malcolm Justice Centre
28 Barrack Street
Perth WA 6000
Australia

Telephone: +61 8 9264 1340

Facsimile: +61 8 9264 6114

ISBN: 978-1-74035-021-1

Printed by Quality Press, Western Australia

Portions of text in this Final Report may be reproduced with due acknowledgement.

Except for the purposes of research – and subject to the provisions of the *Copyright Act 1968* (Cth) – all other forms of graphic or textual reproduction or transmission by any means requires the written permission of the Law Reform Commission of Western Australia.

This document can be provided in alternative formats for people with disabilities.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	7
ABBREVIATIONS	8
FOREWORD	9
CHAPTER ONE: THE COMMISSION'S APPROACH TO REFORMING FIREARMS LAW	11
1.1 Terms of Reference	11
1.1.1 Background to Reference	11
1.1.2 Scope of Reference	11
1.2 Methodology.....	11
1.2.1 Pre-Discussion Paper	11
1.2.2 Post-Discussion Paper	12
1.2.3 About this Report	12
1.2.4 Recommendations	12
1.3 Key themes for reform.....	12
CHAPTER TWO: PURPOSE AND STRUCTURE	14
2.1 Overall structure of the Legislation.....	14
2.2 The purpose of the Legislation	14
2.3 Regulation 3BA of the Firearms Regulations	15
2.4 Improvement to wording in section 30B.....	15
CHAPTER THREE: DEFINITION OF FIREARMS, FIREARM PARTS AND EXCLUSIONS	16
3.1 The current definition of firearms.....	16
3.2 Replace the word 'includes' with the word 'means'.....	16
3.3 Unintended items captured by the current definition.....	16
3.4 Firearms Act and Weapons Act.....	17
3.5 Major firearm parts.....	18
3.5.1 Current position	18
3.5.2 Firearm parts in the definition of firearm.....	18
3.5.3 Should the definition of firearm include all major firearm parts?.....	19
3.5.4 Should the definition of firearm include any specific firearm part?.....	19
3.5.5 Major firearm parts outside the definition of firearm.....	19
3.5.6 The application of a definition of major firearm parts.....	20
3.5.7 The recommended definition of a major firearm part	22
3.6 The sale of firearm parts, accessories and prohibition on alterations.....	24
3.7 The use of silencers.....	25
3.8 The definition of antique firearms	26
3.9 The extent to which antique firearms should be excluded from the firearms administration regime.....	27
3.10 Working replicas of antique firearms.....	28
3.11 Captive bolts.....	28
3.12 Spud guns, industrial tools and promotional type implements.....	29
3.13 Air pistols and rifles	30
3.14 Changes in firearms technology	30

CHAPTER FOUR: INOPERABLE AND IMITATION FIREARMS	31
4.1 Inoperable and imitation firearms.....	31
4.1.1 Permanently inoperable.....	31
4.1.2 Temporarily inoperable	31
CHAPTER FIVE: AMMUNITION	32
5.1 Definition of ammunition	32
5.2 Ammunition sales	33
5.3 Storage and carriage of ammunition	33
CHAPTER SIX: THE APPLICATION PROCESS AND LICENSING SYSTEM	34
6.1 The new Licensing and Registry system	34
6.2 The application process	34
6.2.1 Administering applications	34
6.2.2 Fees	36
6.2.3 Serviceability certificates.....	36
6.3 Alternative card systems.....	39
6.4 Prescribed forms.....	40
6.5 Delegations.....	40
6.6 Collection of firearm after approval	41
6.7 Training.....	41
6.8 The use of hand guns in shooting competitions	43
6.9 Replacement firearms.....	43
CHAPTER SEVEN: THE RENEWAL PROCESS	45
7.1 Duration and licence renewals.....	45
7.1.1 Purpose of renewals	45
7.1.2 Duration of a licence.....	46
7.1.3 Process of renewals.....	46
7.1.4 Payment of multiple licences	47
7.2 Renewal notices	47
7.3 Returned payments.....	47
7.4 Renewals and issue of infringement notices	48
7.4.1 The grace period	48
7.4.2 Expansion of infringements for failure to renew.....	48
7.4.3 Infringements and 'fit and proper' considerations.....	49
CHAPTER EIGHT: FIT AND PROPER PERSON TEST	50
8.1 Fit and proper person test.....	50
8.1.1 The 100-point check	50
8.1.2 Previous convictions.....	50
8.1.3 Continuous fit and proper checking.....	51
8.1.4 Mental fitness.....	51
8.2 Fit and proper test for additional firearms	51
CHAPTER NINE: GENUINE REASON	52
9.1 Who has a genuine reason?	53
9.2 The 'reasonable justification' test as part of the 'genuine reason test'	53
9.2.1 Other Australian jurisdictions	53
9.2.2 The policy behind the reasonable justification test.....	53

9.3	'Reasonable justification' test and multiple firearms.....	54
9.4	Upper limit for number of firearms.....	55
9.5	Expediting applications for additional firearms.....	55
9.6	Recreational hunting and shooting and property size	56
9.7	Recreational hunting and shooting and property letters.....	57
9.7.1	Recreational hunting and shooting on multiple properties with one property letter	57
9.7.2	Placing conditions on approval.....	58
9.7.3	Changes to improve the legislation.....	59
9.7.4	Recreational hunting and shooting on own land.....	59
9.7.5	Owners who provide multiple property letters	59
9.7.6	The use of antique and collection firearms for hunting.....	61
9.8	Genuine reasons and structure of the Legislation	61
9.9	The genuine reason of vertebrate pest animal control	62
9.10	The genuine reason of animal welfare	63
9.11	The genuine reason of primary producer	64
9.12	The genuine reason of 'in the course of occupation' and security employees	64
9.13	Applications with multiple genuine reasons	64
9.14	Automatic multiple purposes without the need to apply	64
9.15	Genuine reason – combat style war games	65
9.16	The genuine reason and use of firearms by Aboriginal people for traditional hunting.....	68
9.16.1	Crown Land and Native Title.....	68
9.16.3	Traditional hunting and the firearms legislation.....	70
CHAPTER TEN: CATEGORISATION OF FIREARMS AND THE GENUINE NEED TEST		73
10.1	Current categories and the National Firearms Agreement	73
10.1.1	Distinguishing between Category D and prohibited firearms	73
10.1.2	The categorisation of air rifles.....	73
10.2	Firearms categories and the 'genuine need' requirement	74
10.3	Use of the phrase 'genuine need'	74
10.4	Factors taken into account in determining genuine need.....	75
10.5	Genuine need and genuine firearms collections.....	75
10.5.1	Rendering of collection firearms which are manufactured after 1 January 1946	75
10.5.2	The carrying and use of firearms held under a Collector's Licence	76
10.6	Limitations on genuine need for firearms in particular categories	77
10.6.1	Category C.....	77
10.6.2	Category H.....	77
10.6.3	Category D firearm for pest control.....	77
10.7	Genuine need and membership of approved shooting clubs	78
CHAPTER ELEVEN: CATEGORISATION OF FIREARMS - APPEARANCE, DESIGN AND FUNCTION		80
11.1	Regulation 26B(2)(a): Firearms which 'closely resemble' prohibited firearms.....	80
11.2	Category D firearms: Firearms which substantially duplicates certain other firearms in design, function or appearance.....	81
11.3	Other Australian jurisdictions	81
11.4	The purpose of the prohibition of a firearm based on its appearance	81
11.5	Determining whether a firearm that is ordinarily in one Category substantially duplicates a firearm in another Category in design or function.....	85

CHAPTER TWELVE: CORPORATE LICENCES	89
12.1 The application of Corporate Licences	89
12.2 Changes to the Corporate Licence structure	89
12.2.1 The link between a Corporate Licence and a genuine reason	90
12.2.2 Conditions of use and Nominated Person application.....	90
12.2.3 Data base of Nominated Persons.....	91
12.2.4 Co-licensees in respect to Corporate Licences	91
12.2.5 Corporate Licences and firearm categories.....	91
12.2.6 Maintaining proficiency	92
12.2.7 Authorisation Card	92
CHAPTER THIRTEEN: DEALERS, REPAIRERS AND MANUFACTURERS	94
13.1 The structure of the legislation relating to dealers, repairers and manufacturers	94
13.2 Reporting under regulation 18(1)(b)	94
13.3 Use of the Nominated Persons Authorisation	95
13.3.1 Nominated Person application	95
13.3.2 Authorisation Card	96
13.4 Nominated Persons and permissible activities.....	96
13.4.1 Permissible activities	97
13.4.2 Apprenticeships.....	97
13.4.3 Submission of forms.....	97
13.5 Restrictions relating to prohibited persons and organisations	98
13.6 Abandoned firearms.....	98
13.7 Unserviceable firearms	98
13.8 Major firearm parts in relation to dealers, repairers and manufacturers	99
13.9 Deemed dealers	99
CHAPTER FOURTEEN: APPROVED SHOOTING CLUBS AND ORGANISATIONS	100
14.1 Role of approved shooting clubs and organisations	100
14.1.1 Should section 23BA be retained?.....	100
14.1.2 Clarifying the operation of section 23BA.....	101
14.1.3 Additional provisions relating to approved shooting clubs and organisations	101
CHAPTER FIFTEEN: NEW LICENCE CATEGORIES	104
15.1 Heirloom licence.....	104
15.2 Warehousemen and commercial carriers.....	104
15.2.1 Different types of carriers	104
15.2.2 Current obligations under the firearms legislation.....	105
15.2.3 Dealers' obligations that do not apply to Warehousemen and Commercial carriers.....	106
15.2.4 Areas for improvement	106
15.2.5 Automatic approval to warehouse	107
15.3 Theatrical licences	109
15.4 Junior licences	110
15.4.1 Minimum age	110
15.4.2 The Commission's recommended age restrictions	112
15.4.3 Junior Competition Permit.....	112
15.4.4 Use of a firearm by a minor – primary production.....	113
15.5 Shooting Gallery Licences and the lack of shooting range licences.....	114
15.5.1 Shooting Gallery Licences.....	114
15.5.2 Shooting range licences.....	114
15.6 Court employees and firearms exhibits.....	115

CHAPTER SIXTEEN: STORAGE OF FIREARMS	116
16.1 The rationale for strict storage requirements	116
16.2 Current storage requirements	116
16.3 Storage and safe keeping.....	116
16.3.1 Storage in a secure storage facility.....	117
16.3.2 Safe keeping when not in a secure storage facility.....	118
16.3.3 Guidelines.....	119
16.3.4 Who is responsible for storage?.....	119
16.4 Storage by issuers of property letters	120
16.5 Storing a firearm for somebody else	120
16.5.1 Temporary sharing of secure facilities.....	121
16.5.2 Sharing of storage.....	122
16.6 Storage requirements in remote and regional areas	122
16.7 Different storage requirements for different types of firearms.....	122
16.8 Different storage requirements for different quantity of firearms.....	121
CHAPTER SEVENTEEN: LENDING FIREARMS	126
17.1 Lending to licence holders	126
17.2 Lending to non-licence holders	127
17.3 Allowing the use of firearms while under supervision	128
CHAPTER EIGHTEEN: REVIEW OF DECISIONS	129
18.1 An internal review process	129
CHAPTER NINETEEN: RECOGNITION OF LICENCES FROM OTHER JURISDICTIONS	131
19.1 The recognition of interstate licences.....	131
19.2 International permits.....	132
CHAPTER TWENTY: LAW ENFORCEMENT	133
20.1 Offences by corporations	133
20.2 Whistle-blower provisions.....	133
20.3 Firearms prohibition orders.....	134
20.3.1 Firearms prohibition orders in other jurisdictions.....	134
20.3.2 Western Australia and firearms prohibition orders	136
20.4 Family violence and firearms licences.....	138
20.4.1 Usual order prohibiting possession of a firearm	138
20.4.2 Variation of order to use a firearm.....	138
20.4.3 Suspension of licence duration period	139
20.5 Automatic temporary suspension on a charge of a violent offence.....	139
20.6 Seizure of firearms	140
20.7 Disposal.....	141
20.8 Definition of possession	141
20.8.1 Deemed possession and major firearm parts	141
20.8.2 Definition of possession	141
20.9 Forfeiture of firearms upon conviction	142
20.10 Disqualification under the Sentencing Act	142
20.11 Infringements.....	143
20.12 Amnesty.....	143
20.13 Indictable offences and <i>The Criminal Code</i>	144

20.14	Similar offences in <i>The Criminal Code</i> and the Firearms Act.....	144
20.15	Interstate firearm offences	145
20.16	Offences and penalties under the Firearms Act	145
20.16.1	Trafficking.....	145
20.16.2	Offences with few number of firearms.....	146
20.16.3	Manufacturing	146
20.16.4	Storage and safekeeping.....	146
20.16.5	Other specific areas for consideration.....	146
20.16.6	Graduated penalties	146
20.16.7	Improvement of wording in section 23(1).....	146
20.16.8	Offence of theft of a firearm.....	146
APPENDIX 1 – SUBMISSIONS		148
APPENDIX 2 – LIST OF RECOMMENDATIONS		154

TABLES

Table 1: Summary of some of the key areas where firearm parts are specifically referred to in other Australian jurisdictions	21
Table 2: Australian examples for the definition of firearm parts	23
Table 3: Minors permissions to use firearms under different types of regimes across Australian jurisdictions	110

ACKNOWLEDGEMENTS

AUTHOR:

Dominic Fernandes BA, LLB (UCT)

RESEARCH ASSISTANTS:

Dave Major

Leah Brown

ABBREVIATIONS

1996 National Firearms Agreement	Agreement reached at the Police Ministers' Council, Special Firearms Meeting, Canberra 10 May 1996
2008 Police Review	The review of the <i>Firearms Act 1973</i> (WA) conducted by the Western Australia Police in 2008
Commission	The Law Reform Commission of Western Australia
Discussion Paper	Discussion Paper for the 'Review of the <i>Firearms Act 1973</i> (WA)' published by the Commission in October 2015
DoT	Department of Transport
Firearms Act	<i>Firearms Act 1973</i> (WA)
Firearms Legislation	<i>Firearms Act 1973</i> (WA) and <i>Firearms Regulations 1974</i> (WA)
Firearms Regulations	<i>Firearms Regulations 1974</i> (WA)
Licensing Authority	Western Australia Police Licensing Enforcement Division
National Firearms Agreements	1996 National Firearms Agreement, 2002 National Firearms Trafficking Policy Agreement and the National Handgun Agreement 2002
National Firearms Trafficking Policy Agreement	Agreement reached by the Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council on 17 July 2002
National Handgun Agreement 2002	Agreement reached by the Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council Special Meeting on Firearms (handguns) November 2002, Sydney
Police Commissioner	The Commissioner of Police, Western Australia
SAT	State Administrative Tribunal in Western Australia
WA Police	Western Australia Police

FOREWORD

On 24 February 2014 the Attorney General requested that the Commission report on the Firearms Act. The Reference in substance amounted to a review of the existing firearms registration regime and legislation in Western Australia taking into account specific reviews and/or reports on firearms licensing and legislation, as well as other relevant contemporary reviews and reports.

Prior to the release of the Discussion Paper the Commission consulted widely, particularly with members of the WA Police Firearms Working Committee, and received pre-submissions and correspondence from 25 people or entities including government departments and private interest groups. The Discussion Paper was published for public comment on 30 October 2015. It contained 46 proposals for consideration and a further 44 questions to elicit comment. The Commission requested submissions by 1 February 2016. By the close of the public consultation period the Commission had received an unprecedented response to its call for submissions. That response included 1244 written submissions; and it was one of the largest, if not the largest, response that the Commission has ever received on one of its referrals. The Commission has also engaged in additional consultations where the Commission sought to clarify matters raised in the submissions or where matters were not fully canvassed in submissions.

It was clear to the Commission that the organisations and individuals preparing them had gone to considerable lengths to consider and respond to the Questions and Proposals put by the Commission in its Discussion Paper.

The Commission acknowledges and thanks all those who put in the time to share their experience and knowledge during consultations and in the preparation of submissions. It has been said many times before, and remains true, that the process of law reform is dependent on the willingness of people who are affected by the laws to make their voices heard and I can certainly attest to the fact that for this reference the voices were many and loud. The Commission heard the comments and concerns and, where possible, has sought to integrate them into this final report in a balanced way.

Special thanks go out to Carl Fisher and Detective Inspector Dale Davies of WA Police's Licensing Enforcement Division, Ron Bryant the president of the Sporting Shooters' Association Australia (WA), Barrister Ross Williamson, Yamatji Marlpa Aboriginal Corporation, Central Desert Native Title Services, the South West Aboriginal Land and Sea Council, Government agencies and Members of Parliament.

They provided insight and experiences that we could not possibly have read in a book.

Firearms have continued to be at the forefront of community attention, particularly as a result of reports of tragic mass shootings elsewhere in the world as well as reports of criminal activities in our own backyard. Scarcely a day goes past without firearms being mentioned in daily news bulletins. These events have driven a push for legislative change. At a national level, the Commonwealth continue to drive discussions on a new National Firearms Agreement, possibly with harsher trafficking laws and a further nationwide general amnesty to remove unlawfully held firearms from circulation. Victoria and Tasmania have recently amended their Firearms Acts, and last year the South Australian Firearms Act was completely re-written.

Notwithstanding the tragic events highlighted in the media, the Commission has taken great care not to overreact. An often repeated theme of the submissions made to the Commission was that the Firearms Legislation is for the administration and regulation of the lawfully held firearms whereas many of the news reports concern unlawfully held firearms. The Commission agrees; the vast majority of firearms users in Western Australia are law-abiding and the Commission certainly has no intention of recommending legislative change that could make it more difficult for firearms users to abide by the law while having no practical purpose to meet the objects of the Firearms Act.

The 'property letter' proposals that were outlined in the Discussion Paper caused substantial debate. The current requirement for a 'property letter' to accompany an application for a firearm licence appeared to have limited utility due to the fact that once a recreational firearms licence is issued in Western Australia, the licence holder is not restricted to using their firearm on any particular property. Despite this, and noting that the production of a property letter is one of the factors that can be used to establish that an applicant has a genuine reason to possess and use a firearm (agreed as part of the 1996 National Firearms Agreement), the Commission sought to identify the utility of property letters in Western Australia and to tailor a regime that reasonably justified the production of property letters as part of the licensing application process. Ultimately after having regard to voluminous submissions on this matter, the Commission came to a consensus view that property letters should be retained and not extended, although in taking this view it is not able to reach a clear understanding on the utility of the property letters once genuine reason has been established.

The Commission's hope is that a new Act with clearly articulated objects and principles would drive home the point that this legislation is about community safety. The reforms proposed in this Report will not eliminate firearm violence; but the Commission trusts that it will facilitate the management and administration of firearms in Western Australia while also allowing for integration into a national framework.

It is appropriate that I briefly address the issue of a national framework. It is noteworthy that Australian jurisdictions, including Western Australia, have not implemented every item in the National Firearms Agreements. It is clearly not enough therefore to say that a particular item ought to be in the Firearms Act because it is in each of the National Firearms Agreements. Accordingly the Commission has tried to provide further justification for any recommendation that is also contained within one of the National Firearms Agreements such as the written permission requirement for recreational shooting. The Commission is of the view that there need to be further efforts to reach national consistency, especially in regard to the categorisation and definition of firearms by States and Territories and the interrelationship between those categorisations and the enforcement of them by Commonwealth Customs and other Australian agencies. Negotiations are continuing on a new National Firearms Agreement and the Commission supports this process and urges careful attention to areas where consistency can be achieved.

Turning to the format of this Report, I concur with the view expressed by the Honourable Wayne Martin, Chief Justice of Western Australia, and former chair of the Commission, when in his foreword to the Commission's 1999 Final Report on the Review of the criminal and civil justice system in Western Australia, his Honour stated, '[w]e hope that some day all rules, statutes and communications concerning legal proceedings will be capable of being understood by the average person.'

In fact, I also agree with the Honourable Michael Kirby, former Justice of the High Court of Australia and President of the Australian Law Reform Commission, when writing extra-judicially he said that '[l]aw reform and respect for basic rights are not luxuries graciously granted by rulers to their subjects. They are the precious rights of citizens who are entitled to demand them and to enjoy their fruits' (Alberta Law Review, Forty Years of the Alberta Law Reform Institute – Past, Present, Future – 2 June 2008).

In order to facilitate those objectives it follows that this Final Report and recommendations should be published in a form that can be readily understood, and if necessary debated, by all stakeholders. With this in mind the Report has been written with no footnotes and very few citations to cases and other

legal authorities. This approach has been followed in order to maintain the overall flow of the document.

While the Discussion Paper comprehensively compares the legislation in Western Australia and that of other Australian jurisdictions, this Final Report has been drafted on the understanding that the Discussion Paper will continue to provide a reference to the reader of this Report. The Commission has thus not repeated much of the information contained within the Discussion Paper but where necessary has referred to the relevant sections of the Discussion Paper instead. I hope that this approach makes this Report easier to read and provides succinct reasoning for the recommendations.

This referral was undertaken following substantial changes to the Commission. In 2014, the Commission, which had previously maintained separate offices from those of the Department of the Attorney General and a separate workforce, relocated to be embedded within the Department and its workforce was reduced to part time staffing allocated from the resources of the Department on an 'as needs' basis. These changes could have impacted on the independence and productivity of the Commission were it not for the marvellous work and professionalism of the staff of the Department and in particular Sarah Burnside, Dominic Fernandes, Ruth Brennan, Dave Major and Leah Brown who at various times have provided hands on assistance to the Commission.

The Commission is grateful for the continuing support of the Attorney General Michael Mischin and the Acting Director General of the Department of the Attorney General, Pauline Bagdonavicius.

It is noteworthy that this reference requires the Commission to consider both "legislative and/or procedural changes". It can certainly be argued that the Attorney General is a proponent of the view that not all legal reform is necessarily achieved through the passage of legislation through Parliament. This follows the on-going developments in institutional legal reform to move away from an attempt to provide a draft statute to a more holistic approach which considers a non-legislative result for reform where appropriate.

The Commission trusts that the recommendations set out in this Report will assist with procedural and operational improvements, enhance community safety, provide impetus to on-going inter-governmental discussions on firearms issues and inform the drafting of a new Act which strikes a balance between the need for regulation of firearms while reducing red tape for those law-abiding users of firearms.

Dr David Cox
Chairman

CHAPTER ONE: THE COMMISSION'S APPROACH TO REFORMING FIREARMS LEGISLATION

1.1 Terms of Reference

On 24 February 2014 the Attorney General requested that the Commission report on the Firearms Act. In particular, the Commission was asked to:

1. provide advice on and recommend appropriate legislative and/or procedural changes with regard to the licensing and storage of firearms, definitions and categorisation of firearms, and effects of changes in firearm technology incorporating national initiatives where appropriate.
2. provide advice on and recommend appropriate legislative changes regarding penalties for firearm offences and, in so doing, consider consistency with penalties in other Australian states and territories.
3. review any relevant issues arising from the recent 'Operation Unification', the Auditor General's Reports on firearms licensing, Joint Standing Committee on Delegated Legislation Report 68, Explanatory Report in relation to the Firearms Amendment Regulations 2013 and any other relevant Parliamentary Inquiry.
4. provide advice on any other relevant matters.

1.1.1 Background to Reference

The Firearms Act has come under sustained criticism in recent years by firearms owners, dealers and their representative bodies. The need for a review of the Act is manifest and has been raised in several different contexts. Recommendations for change appear in the context of the 2008 Police Review, Report 68 of the Joint Standing Committee on Delegated Legislation in relation to the *Firearms Amendment Regulations 2013* dated October 2013, and a sequence of reports from the Western Australian Auditor General on the firearms licensing system used by WA Police.

The Police Minister, the Hon Liza Harvey MLA and the Attorney General, the Hon Michael Misichin MLC, acknowledged the need for the Western Australian Firearms Legislation to be reviewed. In this context the referral was made to the Commission.

1.1.2 Scope of Reference

The Commission interpreted the Terms of Reference as requiring a complete review of the Firearms Legislation and licensing scheme, including a comparison where necessary with other jurisdictions

and with reference to any issues that were raised through a number of relevant reports.

Amongst the reports and projects that the Commission specifically considered were:

- 'Operation Unification' (a two-week national campaign against unlicensed firearms, which took place in Western Australia in June 2013 and June 2014);
- the Auditor General's Reports on the firearms licensing system used by WA Police;
- Report 68 of the Joint Standing Committee on Delegated Legislation – 'Explanatory Report in relation to the *Firearms Amendment Regulations 2013*';
- the Inquiry conducted by the Western Australian Standing Committee on Public Administration, *Report on Recreational Hunting Systems*, Report No. 23, 10 March 2015; and
- the Inquiry conducted by the Senate Legal and Constitutional Affairs References Committee, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, 9 April 2015.

The Discussion Paper considered each of these reports and inquiries as well as relevant aspects of the Joint Commonwealth–New South Wales review of the tragic Martin Place siege which took place in December 2014.

In exploring proposed changes to the Firearms Act raised by the Terms of Reference, the Commission has given due weight to the status of all the National Agreements but has where considered desirable, made recommendations that depart from them or recommended that relevant agencies negotiate for certain amendments to be made to them.

The Commission also considered procedure and policy where necessary and made relevant recommendations in that regard.

1.2 Methodology

1.2.1 Pre-Discussion Paper

While there was no formal call for submissions at the pre-Discussion Paper stage, the Commission conducted targeted consultations to flesh out the

issues raised by the Terms of Reference and also received submissions from a number of interested parties. The consultations began on 30 June 2014 and continued throughout the preparation of the Discussion Paper.

The Discussion Paper was published for public comment on 30 October 2015 and contained 46 proposals for consideration and 44 questions to elicit comment. The Commission requested submissions by 1 February 2016. By the close of the public consultation period the Commission had received 1244 written submissions.

1.2.2 Post-Discussion Paper

The Commission collated and summarised all submissions and cross-referenced them to the Proposals and Questions raised in the Discussion Paper. The Commission engaged in additional consultations to clarify matters raised in the submissions as well as to obtain more information on the interaction between the law and practice in certain instances. In particular the consultations with the Licensing Authority and with the Sporting Shooters Association of Australia (WA) proved particularly fruitful.

As a result of the substantial amount of additional research and consultation that took place subsequent to the publication of the Discussion Paper, as well as the many well-reasoned submissions, the Commission has altered proposals made in the Discussion Paper where appropriate to take on board this input, including where appropriate, comments made prior to publication of the Discussion Paper.

A full list of all those who made submissions is included in Appendix 1. The Commission decided that since many of the people who made submissions are likely to be the holders of firearms licences and owners of firearms, it would be prudent not to fully identify those who made submissions since doing so may make those people at risk of being burgled by persons looking to unlawfully obtain firearms. Accordingly for the sake of security of the individuals who made submissions, the Commission refers to these individuals by way of first name with surname initial rather than surnames.

1.2.3 About this Report

The Chapters of this Report do not follow those of the Discussion Paper but every Proposal and Question is specifically cited.

Substantial portions of the Firearms Legislation are administrative in nature. In order to try and distinguish between the administrative provisions and those relating specifically to offences, the Commission has separated out, as far as was possible, the law enforcement type issues into a separate chapter.

Reference has been made to the Discussion Paper throughout this Report where it is felt that greater detail would prove helpful.

The Commission has in most instances referred only to 'firearms' to make the Report easier to read; in many cases however this includes 'ammunition' but it will be clear from the context.

The Commission has made many references to the *Firearms Act 2015* (SA). It has done so because this is the most recent enactment of an entire Act that deals with firearms in Australia. The Commission is aware that this new Act is yet to come into operation and all reference to this Act is made on that understanding.

1.2.4 Recommendations

The Commission has made a total of 143 recommendations and as this was a review of the entire Firearms Act and Regulations many of these are interrelated with one having an effect on another. Recommendations and Chapters are cross-referenced to reflect this interrelationship. The different parts of the Report are referred to by reference to 3 levels, Chapter, Section or Subsection. A full list of the recommendations is included in Appendix 2.

Recommendations that seek to change the legislation are worded as amendments to current legislation; this is for ease of reference. However, the Commission is firmly of the view that the legislation should be redrafted.

The implementation of the recommendations in this Report will result in many changes in the administration and enforcement of the Firearms Legislation. The Commission recommends that after any new firearms legislation has been operating for a period of five years, there should be a review to assess whether the changes to the laws are operating as intended.

Recommendation 1:

The Western Australia Government should review the practical operation of the firearm laws after any new firearms legislation has been operating for a period of five years.

1.3 Key themes for reform

The extensive consultations undertaken and submissions scrutinised were essential to ensure that the Commission was fully informed before making its final recommendations. It was important to obtain the views of ordinary law-abiding firearms owners, the views of those who wished for greater restrictions on firearms, and finally the views of WA Police as the agency responsible for the Firearms Legislation.

Through the consultations and submissions received before and after the publication of the Discussion Paper a number of key themes emerged:

- the need for a strong regulatory framework for the registration and control of firearms and ammunition in order to enhance community safety;
- an understanding that most crimes involving firearms are carried out by people who are not licensed to carry the firearms;
- a streamlined firearms registration process and reduction of unnecessary red tape;
- improved data capturing and sharing of information; and
- acknowledgment of the national aspect to firearms control and the existence of the National Firearms Agreements.

These themes remained in the foreground of the Commission's thoughts when contemplating the recommended areas for reform.

CHAPTER TWO: PURPOSE AND STRUCTURE

2.1 Overall structure of the Legislation

It was already noted in the Discussion Paper at page 43 that some sections of the Firearms Act are unclear and in other areas the language used is convoluted or ambiguous. Some specific recommendations for restructure and improvements are made throughout this Report.

It became clear during the work on this reference that the Firearms Act will require substantial reformulation and, rather than to introduce numerous amendments to the Act, a redraft of the Firearms Act would be preferable.

One of the concerns of stakeholders was that the enforcement of the Firearms Legislation is not always directed to community safety. The Commission has formed the view that where too broad a discretion is allowed this often results in an overemphasis on regulation in cases that has no bearing on safety. In order to ensure Parliamentary scrutiny and limit broad discretion in the implementation of legislation the Commission is of the view that a skeletal Act, with most of the substance of the regime being in the regulations, is not appropriate. While regulations are a convenient way to provide for areas of regular change or areas of operation the Commission considers that certain key provisions ought to be included in the Act.

The Commission is of the view that where obligations are created under the Act, these must be clearly identifiable. The Commission recommends positive statements of obligation in the legislation (which may then be subject to an offence if not complied with), as opposed to the creation of an offence in isolation which must then be assumed to create the obligation. By framing obligations as a positive statement it provides clarity for all users of the legislation, including the judiciary when required.

As noted in the section of the Report dealing with the Commission's methodology, all recommendations are necessarily worded as if they suggest an amendment to current legislation; this is for ease of reference and does not detract from the Commission's recommendation that the Firearms Legislation should be redrafted.

Recommendation 2:

- 2.1 The Firearms Legislation should be redrafted from the ground up and be re-enacted.
- 2.2 Any new firearms legislation should be restructured in order to improve clarity of parts such as the administration and licensing process, law enforcement, police powers and offences, and taking into account other structural recommendations in the Report.
- 2.3 Provisions in any new firearms legislation should be worded to provide greater clarity than is provided under the current *Firearms Act 1973* (WA) and *Firearms Regulations 1974* (WA).

2.2 The purpose of the Legislation

The Commission takes the view that the primary aim of firearms regulation is to prevent the harm that firearms may cause as dangerous items. The Firearms Legislation aims to reduce the risk to the community that could result should firearms be used by those not authorised to do so. An underlying principle is therefore that the possession and use of firearms is a privilege that is always conditional on that need to ensure public safety.

A subsidiary purpose of the Firearms Legislation is to create a regulatory regime which facilitates the achievement of the primary aim. This is accomplished through various means most notably through requiring licensing of firearms, appropriate storage and carriage, and working towards a nationally consistent approach to controlling firearms. The Commission acknowledges that there are a number of purposes under the Act but where there is a conflict then the greater weight should always be given to the community safety imperative.

The Commission's view is that the Firearms Legislation should place no greater burden on firearms owners and users than is reasonably necessary in order to achieve the primary aim.

The Commission reiterates its view, expressed on page 19 of the Discussion Paper, that the legislation 'must cast out a regulatory net wide enough to catch behaviours that pose a danger to the community while not unduly impacting on innocent actions that do not pose a threat.'

Recommendation 3:

- 3.1 The *Firearms Act 1973* (WA) should contain a statement as to the purpose of the Firearms Legislation that confirms:
- the primary principle is the need to ensure public safety;
 - the possession and use of firearms is a privilege that is always conditional on that need to ensure public safety; and
 - public safety can be improved by requiring strict controls on the possession, use, dealing and manufacturing of firearms and requiring the safe and secure storage and carriage of firearms.
- 3.2 The Western Australia Government should consider introducing an objects clause to the *Weapons Act 1999* (WA) to better differentiate between the purposes of the *Firearms Act 1973* (WA) and the *Weapons Act 1999* (WA).

Recommendation 5:

Sections 30B(1) and (2) of the *Firearms Act 1973* (WA) should be amended to replace 'is required to' with 'must'.

2.3 Regulation 3BA of the Firearms Regulations

The Commission has noted that the alternative application procedure under regulation 3BA of the Firearms Regulations is no longer required and recommends that this regulation and the related forms be deleted.

Recommendation 4:

The alternative application procedure under regulation 3BA of the *Firearms Regulations 1974* (WA) and the related forms should be deleted.

2.4 Improvement to wording in section 30B

At Proposal 25, dot point 2, the Commission suggested that the wording in section 30B of the Firearms Act be clarified to confirm that the reporting requirements mentioned in the section are obligations, and in doing so, remove uncertainty. Some stakeholders were of the opinion that the current terminology already clearly indicates an obligation.

The Commission is satisfied that an improvement to the wording is desirable and recommends that sections 30B(1) and (2) of the Firearms Act be amended to replace 'is required to' with 'must'.

CHAPTER THREE: DEFINITION OF FIREARMS, FIREARM PARTS AND EXCLUSIONS

3.1 The current definition of firearms

The Discussion Paper raised the general question (at Question 3 on page 61) as to whether any changes should be made to the definition of 'firearm'.

The current definition, as set out in section 4 of the Firearms Act, is:

Includes any lethal firearm and any other weapon of any description from which any shot, bullet, or other missile can be discharged or propelled or which, by any alteration in the construction or fabric thereof, can be made capable of discharging or propelling any shot, bullet or other missile, but does not include anything that is prescribed in regulations under the Weapons Act 1999 (WA) to be a prohibited weapon or a controlled weapon.

Section 3 of the *Weapons Act 1999* (WA) defines 'controlled weapon' as (a) an article prescribed by regulations to be a controlled weapon; or (b) any other article, not being a firearm or a prohibited weapon, made or modified to be used to injure or disable a person; to cause a person to fear that someone will be injured or disabled by that use; or for attack or defence in the practice of a martial sport, art or similar discipline.

As soon as an item is excluded from the definition of a firearm then it may potentially fall within the definition of controlled weapon.

3.2 Replace the word 'includes' with the word 'means'

The Commission was referred to the case of *Carlson v Karlovsky* [1988] WAR 59, in which Burt CJ, in considering the definition of firearm at [35], concluded that the only way to make sense of the definition is to read it as firearm 'means any lethal firearm and includes any other weapon of any description ...'.

The Commission respectfully concurs with this view and recommends that the definition of firearm be amended accordingly.

3.3 Unintended items captured by the current definition

Given the broad definition of 'firearm' in the Firearms Act stakeholders have submitted that it could in theory cover toys, collectables and non-lethal items. There are two ways in which a particular item could

fall outside of the ambit of the Firearms Legislation, either because it falls outside of the definition, or if the legislation allows for items to be exempt from the operation of the Firearms Act.

The definition

Some stakeholders were of the view that the definition was adequate while others expressed the opinion that it was too broad. The Commission considered whether the definition could be amended to reduce the number of unintended inclusions within its scope.

Some stakeholders suggested that the definition be amended to one similar to that in Schedule 2 of the *Weapons Act 1990* (Qld), that is, with the first part of the definition referring only to a gun or other device ordinarily described as a firearm and a second part that captures any thing that, if used in the way for which it was designed or adapted, is capable of being aimed at a target and causing death or significant injury by discharging a projectile or other specified substances. A stakeholder suggested that the use of the modifier 'significant' would remove certain devices from the ambit of the Firearms Act where they do not pose any threat to community safety, without the need for a specific exemption.

The first part of the suggested new definition, 'gun or other device ordinarily described as a firearm', is similar to the first part of the current definition, 'lethal firearm', in that it relies on the ordinary meaning of the word firearm, although it does not include the word 'lethal'. It is the Commission's view that the use of 'lethal' alongside the ordinary meaning of the word 'firearm' adds little to the provision and on one view may be tautologous.

In the context of the suggested second part of the definition of firearm it would mean that a device that is capable of being aimed at a target and causing death or significant injury would be a firearm, while a similar device that is not capable of causing significant injury but could still injure a person could be a controlled weapon.

The Commission is of the view that there is merit in this suggestion. A toy or a novelty, such as gas artillery mounted on radio-controlled ships for imitation naval battles, which poses no threat of significant injury, would then correctly fall outside of the definition of firearm.

The definition must be clear to include a temporarily inoperable firearm but not one that has been permanently rendered inoperable.

All the parts that make up an operational firearm are together in the same place

The Commission also considered whether the definition should include a firearm that has been stripped to its component parts. An example of this type of definition is in section 3(1) of the *Firearms Act 1996* (Vic) which provides, amongst other portions of the definition, that a firearm means any device, whether or not assembled or in parts, which is designed to discharge a bullet.

The Commission is of the view that incorporating a similar element into the definition of firearm will complement section 25(2) of the *Firearms Act* which states that 'Where any firearm is carried in parts by, or is otherwise in the possession of, 2 or more persons each and every one of those persons is deemed to be in possession of the firearm.' The suggested amendment is that the definition of firearm should include the circumstances where the device is in parts which, if assembled and in working order, would be a firearm within the meaning of the definition. The reference to 'working order' is to exclude inoperable firearms (which is discussed at Chapter 4).

In the Supreme Court of WA appeal of *Harris v Porritt* 1985 (Appeal No. 163 of 1985, Reasons for Judgment), Burt CJ concluded that the purchase of a .20 calibre rifle with an additional .30 calibre barrel that could be interchanged with the .20 calibre barrel was, in accordance with the *Firearms Act*, a purchase of two firearms. Although they cannot at the same time each satisfy the definition of a firearm, taking possession of all the components together was held to represent two firearms. The court found that two firearms licences were required in those circumstances. The Commission agrees with the principle behind *Harris v Porritt* and the reference to 'in parts' in the suggested new definition is intended to accord with that decision (the issue of 'firearm parts' is discussed separately below).

Exemptions

A number of stakeholders suggested that the Act provide for the exclusion of certain items from the definition of firearms by prescribing such items in the regulations. An example is section 3 of the *Firearms Act 1996* (Tas) which has the following exclusion: '...but does not include any device declared by the regulations not to be a firearm'; this will allow the legislation to cater for the potential of new forms of devices that may in future unwittingly come within the scope of the definition.

The Commission agrees with this common sense approach. Specific cases that may need to be exempt are discussed below.

Recommendation 6:

- 6.1 The definition of 'firearm' should be amended to mean:
 - a. a gun or other device ordinarily described as a firearm; or
 - b. a device that, if used in the way for which it was designed or adapted, is capable of being aimed at a target and causing death or significant injury by discharging a projectile or other specified substance;
 - c. including if the device is in parts which if assembled and in working order would be a firearm within the meaning of this definition; or where such device has been temporarily rendered inoperable;
 - d. but excluding anything that is prescribed in regulations under the *Weapons Act 1999* (WA) to be a prohibited weapon or a controlled weapon; or any device declared by the regulations not to be a firearm.
- 6.2 The *Firearms Act 1973* (WA) should provide that items may be excluded from the definition of firearm by prescribing them in the *Firearms Regulations 1974* (WA).

3.4 Firearms Act and Weapons Act

The Commission reviewed the interaction between the *Weapons Act 1999* (WA) and the firearm legislation as well as the stakeholder submissions in that regard (also discussed at 7.3 on page 62, of the Discussion Paper and Question 4).

Most stakeholders supported the continued separation of the two Acts finding that the items regulated by these Acts were sufficiently clear. The Commission was not provided any examples of circumstances where the existence of the two Acts had caused difficulty or confusion. In fact, many stakeholders were of the view that an amalgamation of these Acts would only serve to complicate the administration of firearms and make the legislation less understandable.

As stated in the Discussion Paper (at page 63) the two pieces of legislation have different aims, with the *Firearms Act* establishing a licensing regime, while the *Weapons Act 1999* (WA) simply provides that some weapons are controlled and others prohibited. A

stakeholder suggested that the use of explicit objects and purposes sections in each of the Acts would assist in distinguishing between them and the Commission supports this suggestion (see recommendation 3). The Commission is satisfied that the Firearms Act and Weapons Act 1999 (WA) should remain separate.

The question as to whether imitation firearms ought to be dealt with under the Firearms Legislation and not the *Weapons Act 1999* (WA) is considered at Chapter 4.

Recommendation 7:

The *Firearms Act 1973* (WA) and *Weapons Act 1999* (WA) should remain separate.

3.5 Major firearm parts

The issues surrounding major firearm parts were considered in the Discussion Paper at page 182 and the Commission's Proposal 43.

Where the various parts of a firearm together can form a working firearm then all the parts are together to be regarded as a firearm and should be licensed as such. The Commission supports this view and it is consistent with the Commission's recommended new firearm definition.

In regards to the possibility of using the term 'major firearm parts' in the Firearms Act, the Commission considered the various contexts in which this could be applied:

- Which parts of a firearm, if any, ought to be recorded, licensed and stored, that is, should any separate part of a firearm be deemed to be a firearm for the purposes of the whole of the Act?
- Which parts of a firearm, if any, ought to be regulated in the legislation in respect of particular aspects only, such as possession, sale or purchase?
- Are provisions relating to firearm parts sufficient in respect of the responsibilities of dealers, repairers and manufacturers?

3.5.1 Current position

Section 25(2) of the Firearms Act states that 'Where any firearm is carried in parts by, or is otherwise in the possession of, 2 or more persons each and every one of those persons is deemed to be in possession of the firearm' (recommendations relating to 'possession' are contained under Chapter 20 dealing with law enforcement). A number of stakeholders have submitted that there is no need to amend the definition of firearm to cater for firearm parts as possession of sufficient components to make up a working firearm is already deemed possession of a firearm.

Section 25(2) refers to deemed possession and has no relation to requirements that may exist under the Firearms Act or Firearms Regulations in respect to firearms. In addition, the Commission's view is that this provision does not extend to firearm parts that together do not make up a working firearm.

So, for example, where section 30A of the Firearms Act requires a firearm advertisement to include details of the type, make, serial number, and calibre of the firearm, this does not apply to the sale of firearm parts. Where section 30B requires a person to report a lost or stolen firearm to the Police Commissioner, it does not include the loss or theft of only a part of a firearm.

It is current practice in Western Australia that 'firearm barrels' and 'conversion kits' are licensed under the Firearms Act although there is no clear legislative authority for this requirement. A conversion kit is an accessory to change the calibre of the firearm to another calibre.

3.5.2 Firearm parts in the definition of firearm

If a firearm part requires licensing, storage and compliance with every area of the legislation that refers to a firearm then it would make sense to include that part in the definition of firearm.

WA Police (submission dated 9 February 2016, page 33) has indicated that in their view a definition for major firearm parts (the definition is discussed below) should be included in the Firearms Act to ensure certainty as to what constitutes a firearm or which parts need to be recorded and licensed (see Discussion Paper at page 183).

Other Australian jurisdictions

Some jurisdictions include particular components into their definition of a firearm while others refer to all components necessary for the operation of a firearm.

Some definitions

The receiver is the part of a firearm that houses the operating parts. It is the body of a firearm and the part that carries the serial number. The barrel and the magazine (if applicable) are attached to the receiver. On handguns, the receiver is often referred to as the frame. In the remainder of this Report the term 'Receiver' includes reference to a 'frame'.

The action is the combination of the receiver or frame and breech bolt together with the other parts of the mechanism by which a firearm is loaded, fired and unloaded.

The barrel is the part of a firearm through which a projectile travels. The barrel may be rifled (with spiral grooves on the interior of the barrel) or smooth bore (a smooth interior barrel with no grooves).

Section 5 of the *Firearms Act 1977* (SA) refers to a *receiver* in the definition of firearm. This is the only component included in the definition. The Northern Territory *Firearms Act* (NT), through s3(1A) incorporates a rifle or shotgun *action* and a pistol or revolver *frame* into the definition of a firearm.

Tasmania, in section 3 of the *Firearms Act 1996* (Tas) defines firearm as including 'any thing that would be a firearm under paragraph (a), (b), (c) or (d) if it did not have something missing from it ...'. This appears to include major firearm parts.

Weapons Act 1990 (Qld) schedule 2 includes a 'major component part of a firearm' as part of the definition of firearm. 'Major component part of a firearm' is defined to include a part such as the receiver, body, barrel, breechbolt, frame or top slide without which the firearm would be considered inoperative or incomplete.

In the *Firearms Act 1996* (Vic) firearm means 'any device, whether or not assembled or in parts ... which is designed or adapted, or is capable of being modified, to discharge shot or a bullet ... and ... whether or not operable ...'. This definition appears to include firearm parts when together they are capable of being assembled as a firearm.

The *Firearms Act 1996* (NSW) defines 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, and includes a blank fire firearm, or an air gun, but does not include anything declared by the regulations not to be a firearm.' New South Wales has a separate definition for firearm part therefore the phrase 'or at any time was' appears not to refer to parts but rather to a complete firearm that is no longer operational.

It is evident that there is no uniformity as to the manner in which firearm parts are dealt with in Australian firearms legislation.

3.5.3 Should the definition of firearm include all major firearm parts?

Having reviewed the legislation in other Australian jurisdictions and having considered the views of stakeholders, it appears to the Commission that it cannot be said that a major firearm part ought to be treated as a firearm in every circumstance. For this reason the Commission will not recommend that the definition of firearm include all major firearm parts.

In coming to this conclusion the Commission has taken into account the current practice in Western Australia referred to above, the fact that in Western Australia an inoperable firearm is not regarded as a firearm for the purposes of the legislation, and that no evidence has been presented to suggest that every major firearm part ought to be treated as a firearm in every way together with licence and storage obligations.

3.5.4 Should the definition of firearm include any specific firearm part?

Are there any parts of a firearm that are so significant as to require it to be regarded as a firearm in its own right? If so, then such a part should be included in the definition of firearm. As mentioned above, this is the approach taken in South Australia and the Northern Territory where they refer to receivers, actions and frames.

The Commission is of the view that the *Receiver* ought to be separately licensed in all cases when not a part of the firearm under an existing Firearm Licence. These parts have their own identification number and are required for the assembly of any new firearm. These parts are also not commonly privately traded. The Commission recommends that this outcome is best achieved by including these parts in the definition of firearm. This approach provides clarity to all stakeholders as to how to deal with these specific firearm parts.

3.5.5 Major firearm parts outside the definition of firearm

With regard to major firearm parts other than the *Receiver*, the Commission is of the view that some regulation is required and that a person must not possess a major firearm part unless the person is authorised by a licence to possess a firearm of the category to which the firearm part relates. For example a person should not have a firearm barrel or a magazine that does not match the firearm category to which the licence relates. The Commission recommends that the legislation is drafted to clarify this and section 107 of the *Firearms Act 1996* (Tas) is an example of this kind of provision (the definition of

a major firearm part is discussed in the next section), that is, a person 'must not possess a firearm part unless the person is authorised by a licence or permit to possess a firearm of the category to which the firearm part relates'.

The Commission has also considered whether a licence holder should be able to retain spare parts for the licensed firearm and if so, whether those spare parts should be licensed in their own right. The recommended Tasmanian approach referred to allows for any spare parts to be retained where it is in respect of the same category to which the existing firearm licence relates. New South Wales follows the same approach (*Firearm Act 1996* (NSW), s50AA).

Stakeholders have alerted the Commission to the fact that major firearm parts are routinely bought and sold across Australia. The concern raised is that if major firearm parts need to be separately licensed then this would have a detrimental effect on this trade at an individual level and would require dealer and licensing involvement in each transaction. The suggestion is that this could lead to the doubling of the volume of applications through the Licensing Authority for no public benefit.

The Commission agrees that there is no clear public benefit to licensing every major firearm part. Where a person buys and sells parts as a business this would be captured under the dealer provisions.

The Commission is satisfied that the approach followed in Tasmania and New South Wales is sensible and recommends that a person must not acquire a major firearm part unless the person is the holder of a licence for the kind of firearm to which the firearm part relates (that is, the same category), or is authorised by a license to acquire the major firearm part.

In this way the potential of reassembling a firearm with spare parts to form a firearm of a different category is regulated. In addition it will allow for the Licensing Authority to retain a record of these parts. In order to ensure that major firearm parts are not used to form a firearm of a different category the Commission recommends that the public be provided guidance as to when an unlawful alteration is taken to occur. This needs to be read together with Section 3.6 dealing with the prohibition against certain alterations.

Recommendation 8:

- 8.1 Any firearm receiver or frame that is not a part of the firearm under an existing firearm licence should fall under the definition of a firearm.

- 8.2 A person should not be able to acquire a 'major firearm part' unless authorised by a licence to possess a firearm to which that firearm part relates, or by a licence to possess that part.

- 8.3 A major firearm part is taken to 'relate' to a firearm when its replacement or incorporation into the firearm will not fall foul of the prohibition against alterations (see recommendation 13).

3.5.6 The application of a definition of major firearm parts

In light of the Commission's recommendation that a person must not acquire a major firearm part unless the person is authorised by a licence, it is necessary to define a major firearm part.

There are some parts that while clearly not an operational firearm still require some oversight. Over and above the context of the previous recommendations, the Commission is of the view that there are areas of compliance in Firearms Legislation which ought to extend to major firearm parts. Major firearm parts can be used to improve the performance of a firearm, to change the calibre, and to identify a firearm. Major firearm parts can be used to replace a similar part in an existing firearm or, together with other parts, used to create a new firearm. It is also possible that an existing firearm could be broken down into parts, hidden in parts, and be bought and sold in parts.

Before settling on which parts ought to be included in the definition the Commission will first consider the purpose for which the definition could be used.

The term 'major firearm part' or 'firearm part' is used in various Australian jurisdictions in different contexts. The table below sets out a short summary of some of the key areas where firearm parts are specifically referred to in other Australian jurisdictions.

TABLE 1

Context	State/Territory
Dealing in firearm parts	<i>Firearm Act 1996 (NSW) s45, s47</i> <i>Firearms Act 1996 (Tas) s3 s89, s90</i> <i>Firearm Act (NT) s18</i>
Manufacture of firearm parts	<i>Firearm Act 1996 (NSW) s50A</i> <i>Firearms Act 1977 (SA) s27</i> <i>Firearms Act 2015 (SA) s37</i> <i>Firearms Act 1996 (Tas) s3</i> <i>Firearm Act (NT) s61</i>
Surrender and seizure of firearm parts and disposal	<i>Firearm Act 1996 (NSW) s80</i>
Power of police to inspect or seize	<i>Firearms Act 2015 (SA) s57</i> <i>Firearms Act 1977 (SA) s34, 34A,35</i> <i>Firearms Act 2015 (SA) s21</i> <i>Firearms Act 1996 (Tas) s108</i>
Suspension of licence - surrender firearm parts	<i>Firearms Act 1996 (Tas) s53</i>
Seizure of firearm parts in possession of person with no licence	<i>Firearms Act 1996 (Tas) s88</i>
Advertising supply/sale	<i>Firearm Act 1996 (NSW) s54</i> <i>Firearms Act 1996 (Tas) s106</i>
Police obtaining information re parts	<i>Firearms Act 1977 (SA) s30</i> <i>Firearms Act 2015 (SA) s55</i>
Commissioner can require info re firearm parts	<i>Firearms Act 1996 (Vic) s119</i>
Acquisition of firearm parts only with licence.	<i>Firearm Act 1996 (NSW) s50AA</i>
Firearm part and firearms prohibition order	<i>Firearms Act 1977 (SA) s10C</i> <i>Firearms Act 2015 (SA) s45</i>
General amnesty	<i>Firearms Act 1977 (SA) s37 - Firearms Act 2015 (SA) s64 the new amnesty provision is now very different</i>
Stolen firearm parts	<i>Firearm Act 1996 (NSW) s51H</i>
Possession of parts	<i>Firearms Act 2015 (SA) s6 (evidentiary)</i> <i>Firearms Act 2015 (SA) s39</i>
Possession of firearm part only if authorised by licence for firearm of related cat	<i>Firearms Act 1996 (Tas) s107</i>
Rendering firearm part inoperable in unapproved manner	<i>Firearms Act 1996 (Vic) s134</i>
Transportation	<i>Firearms Act 1996 (Tas) s103</i>
Pawning	<i>Firearms Act 1996 (Tas) s121</i>
Deface identification mark	<i>Firearms Act 1996 (Tas) s124</i>

The Commission recommended (at Recommendation 8) that a person must not acquire a major firearm part unless the person is authorised by a licence to possess a firearm that relates to that firearm part, or by a licence to possess that part. In line with that recommendation and after consideration of the legislation in other Australian jurisdictions and stakeholder submissions, the Commission recommends that the following areas of the Firearms Legislation include reference to major firearm parts:

- A person must not give possession of a major firearm part to an unauthorised person.
- The definition of dealer must include a person who in the ordinary course of business buys, sells or trades in major firearm parts.
- Where section 30B of the Firearms Act requires a person to report a lost or stolen firearm to the Police Commissioner, it must include the loss or theft of a major firearm part.

- Section 30A of the Firearms Act requires that a person include certain details of the firearm such as serial number and calibre in an advertisement or posting of the item. This provision should be extended to encompass major firearm parts, with the appropriate adjustment for the type of information that may be available for the part.
- A person against whom a firearms prohibition order is in force (see Section 20.3 for recommendations relating to firearms prohibition orders) must not acquire, possess or use a firearm or a major firearm part (see for an example section 10C(3) of the *Firearms Act 1977 (SA)* which was retained in section 45(2) of the *Firearms Act 2015 (SA)*).
- The definition of major firearm parts should also be used in respect of the surrender and seizure of firearms and in respect of police powers. These matters are discussed under Chapter 20 which deals with law enforcement matters.
- Major firearm parts should also be subject to general amnesty provisions.

The above matters are not exclusive and the Commission recommends that the Government consider all areas of the Firearms Legislation to consider if any other sections ought to refer to major firearm parts.

Further matters relating to major firearm parts and dealers, repairers and manufacturers are discussed in Chapter 13.

Recommendation 9:

A term 'major firearm part' should be included in the *Firearms Act 1973 (WA)* in respect of the following:

- a) A person should not give possession of a major firearm part to an unauthorised person.
- b) The definition of dealer should include a person who in the ordinary course of business buys, sells or trades in major firearm parts.
- c) Where section 30B of the *Firearms Act 1973 (WA)* requires a person to report a lost or stolen firearm to the Police Commissioner, it should include the loss or theft of a major firearm part.
- d) Section 30A of the *Firearms Act 1973 (WA)* which requires that a person include certain details in an advertisement or posting of the item should be extended to encompass major firearm parts, with the appropriate adjustment for the type of information that may be available for the part.

- e) A person against whom a firearms prohibition order is in force should not acquire, possess or use a major firearm part.
- f) The definition of major firearm parts should be used in the context of surrender and seizure, in respect of police powers and the general amnesty.

Recommendation 10:

The Western Australia Government should consider whether any other areas of the Firearms Legislation are appropriate to include reference to 'major firearm parts'.

3.5.7 The recommended definition of a major firearm part

The *Receiver* is to be included in the definition of firearm and it is thus unnecessary for these to be included in the definition of a major firearm part.

Australian examples for the definition of firearm parts are set out in the table below.

TABLE 2

State/Territory	Definition
<i>Firearms Act 1996</i> (Tas) s3 - firearm part	a barrel, breech, trigger mechanism, operating mechanism or magazine.
<i>Firearm Act 1996</i> (Vic)	No definition
<i>Firearms Act</i> (NT) s3(1A) - firearm part	a rifle or shotgun action; or a pistol or revolver frame.
<i>Firearm Act 1996</i> (NSW) s4 - firearm part	a 'barrel, breech, pistol slide, frame, receiver, cylinder, trigger mechanism, operating mechanism or magazine designed as, or reasonably capable of forming, part of a firearm'.
<i>Firearm Act 1977</i> (SA) s5 - firearm part	a barrel, trigger mechanism, magazine, cylinder, hammer, bolt, breech block or slide designed as, or reasonably capable of forming, part of the firearm.'
<i>Weapons Act 1990</i> (Qld) schedule 2 'Major component part of a firearm'	include a part such as the receiver, body, barrel, breechbolt, frame or top slide without which the firearm would be considered inoperative or incomplete.
<i>Customs (Prohibited Imports) Regulations 1956</i> (Cth)	(a) a gas piston, friction ring, action bar, breech bolt or breech block; (b) a firearm barrel; (c) a trigger mechanism; (d) a frame or receiver; (e) a slide; (f) an upper receiver; (g) a lower receiver; (h) a revolving cylinder; (i) a bolt carrier; (j) an adjustable, detachable or folding stock; (k) something, other than a complete firearm, that includes one or more of the items mentioned in paragraphs (a) to (j).

In Western Australia 'major firearm part' is defined in regulation 18(1a) of the Firearms Regulations as 'any slide, barrel, revolving chamber, frame, receiver, trigger assembly or magazine.' This provision deals with dealers' and repairers' reporting functions.

It is worth considering whether the current regulation 18(1a) definition of a major firearm part could be used in the context of the recommendations in the previous section, thus providing a uniform and less complex approach to the definition.

Of those stakeholders who were in favour of using a definition for major firearm parts the submissions reflected different views on what parts should be included, for example, parts that already have serial numbers; only the action; or the barrel, breech block or bolt; or the receiver (body).

WA Police (as indicated in the Discussion Paper at page 183) suggested that the following components be included in the definition:

- a gas piston, friction assembly, action bar, breech bolt or breech block;
- a firearm barrel;
- an assembled trigger mechanism;
- a magazine designed or intended for use with a firearm; and
- something, other than a complete firearm, that includes one or more of these items.

This suggestion essentially adds the first dot point, 'gas piston, friction assembly, action bar, breech bolt or breech block' to the current regulation 18(1a) definition. Some of these components are included in firearm parts definitions in other Australian jurisdictions (see Table 2).

Under the Commission's Recommendation 8 not every major firearm part will need to be licensed separately but only if it's not covered under the licence category for the existing licence.

The Commission is of the view that the provisions that will specifically cover major firearm parts, such as possession, reporting of stolen components and prohibition orders, require a definition that is broader than that of regulation 18(1a), as is the case of the definitions in other Australian jurisdictions. Several stakeholders indicated that any modification to the definition should not unnecessarily add to the reporting obligations of dealers and repairers.

The conclusion that the Commission has reached is that the definition in regulation 18(1a) ought to be retained for the purposes of that regulation only and be renamed to refer to 'firearm parts'.

The Commission is satisfied that the WA Police suggestion for the definition of a major firearm part is suitable and recommends that it be implemented.

The Commission has noted that in Western Australia current licensing practice suggests that firearm barrels and conversion kits are significant parts. The Commission is of the view that it is sufficient to include a firearm barrel in the definition of major firearm part.

The Commission also recommends that the definition be qualified so as to limit an item from falling under the definition unless it is designed as, or reasonably capable of forming, part of a working firearm. In this way harmless items are not unintentionally brought within the ambit of the legislation (see for example the definition of firearm part in the *Firearm Act 1977* (SA) section 5).

Recommendation 11:

11.1 'Major firearm part' should be defined as:

- a. a gas piston, friction assembly, action bar, breech bolt or breech block;
- b. a firearm barrel;
- c. an assembled trigger mechanism;
- d. a magazine designed or intended for use with a firearm; and
- e. something, other than a complete firearm, that includes one or more of these items.

11.2 The definition of 'major firearm part' should be qualified so as to limit an item from falling under the definition unless it is designed as, or reasonably capable of forming, part of a working firearm.

11.3 The term 'major firearm part' should be replaced with 'firearm part' in the definition in regulation 18(1a) of the *Firearms Regulations 1974* (WA) with the rest of the definition being retained.

3.6 The sale of firearm parts, accessories and prohibition on alterations

As mentioned in the Discussion Paper at page 183, WA Police has expressed concern that there are no restrictions on the sale of parts such as collapsible stocks, pistol grips and muzzle brakes. The Commission is satisfied that the restrictions placed on the sale of firearms and major firearm parts, as defined in the recommendation of this Report, provide sufficient security to the community. The Commission's views on the appearance of a firearm are set out in Chapter 11.

In addition the Commission is satisfied that the prohibition against altering a firearm as contained in section 23(5)(c) of the Firearms Act, provides the extra safeguards in respect of attempts to alter a firearm from the design or characteristics of its

original manufacture or 'so that its calibre, character or kind differs from what it was when any current licence or permit relating to it was issued. This would for example prohibit the use of a collapsible stock on a rifle.

This prohibition needs to be read in the context of the Commission's recommendations that a person may, without a licence, possess spare parts if those parts relate to the firearm that is licensed. The incorporation of such parts into the firearm should not be regarded as an alteration for the purposes of this offence and the Commission recommends that any section based on section 23(5)(c) should be worded accordingly.

The Commission is of the view that the legislation need not address cosmetic alterations and replacement of old parts for matching new parts. The Commission is in favour of the approach in section 38(2) of the *Firearms Act 2015* (SA) which refers to an alteration to a firearm '... so that, as a result of the alteration, the firearm becomes a firearm of a different category (whether temporarily or permanently)'.

The wording in section 23(5)(c) of the Firearms Act should be amended to prohibit:

- an alteration that affects the design or characteristics of the original manufacture of a firearm; and
- an alteration to a firearm will be taken to affect the design or characteristics of the original manufacture of the firearm if the alteration results in the firearm becoming a firearm of a different Category (whether temporarily or permanently) or is an alteration that may be prescribed by the Police Commissioner.

As discussed elsewhere in this Report, the Commission recommends the retention of the current categorisation approach. These categories contain firearms of different characteristics and design; a prohibition against altering a firearm's design or characteristics (not appearance) without authority is reasonable in the context of the administration of firearms in the State.

The Commission is of the view that certain firearm accessories may be such that they ought to be prohibited due to the especial potentially dangerous nature of the accessory and the need to exercise special precautions in relation thereto; and/or the purpose for which the particular accessory is designed. An example of such an accessory would be a silencer (discussed in the next section) These prohibitions could be set out in the Firearms Regulations. A person who acquires, owns or has possession of a prohibited firearm accessory without lawful authority should be guilty of an offence (see section 40 of the *Firearms Act 2015* (SA)).

Recommendation 12:

- 12.1 The *Firearms Act 1973* (WA) should provide that prohibited firearm accessories may be declared in the *Firearms Regulations 1974* (WA) due to the especial potentially dangerous nature of the accessory and the need to exercise special precautions in relation thereto; and/or the purpose for which the particular accessory is designed.
- 12.2 There should be no restrictions on the sale of parts or accessories such as pistol grips and muzzle brakes unless listed in the *Firearms Regulations 1974* (WA) as a prohibited firearm accessory.
- 12.3 A person who acquires, owns or has possession of a prohibited firearm accessory without lawful authority should be guilty of an offence.

Recommendation 13:

The prohibition against altering a firearm in s23(5)(c) of the *Firearms Act 1973* (WA) should be amended to prohibit:

an alteration that affects the design or characteristics of the original manufacture of a firearm, being an alteration which results in the firearm becoming a firearm of a different Category (whether temporarily or permanently); or such other alteration that may be prescribed by the Police Commissioner.

3.7 The use of silencers

The question as to the manner and circumstances under which a person should be able to use a silencer (also known as a sound suppressor) was the subject of Question 35 of the Discussion Paper. A number of stakeholders questioned the use of the word 'silencer' and the stigma that surrounded its use. The Commission understands that within the firearms industry these items are known as sound suppressors or sound moderators due to the fact that they do not completely silence the firearm. Despite this the Commission has seen some uniformity across jurisdictions in the use of the word 'silencer' and as a consequence considers that the terms 'silencer' is best used in legislation.

Section 17B of the Firearms Act provides that the Minister may grant authority in writing to an approved agriculture inspector to possess and carry a silencer and to use it in conjunction with a .22 calibre rifle during the period specified in that authority. The

section also sets out the manner in which a silencer can be used.

The following advantages for the use of silencers were referred to on page 158 of the Discussion Paper:

- plays a functional occupational health and safety role for shooter, bystanders, pets, farm animals and gundogs;
- reduces recoil;
- reduces potential for hearing damage;
- increases the efficiency of culling activities; and
- improves accuracy.

WA Police is of the view that the current restrictions should be retained although suggesting that the Police Commissioner grant approval and not the Minister (submission dated 9 February 2016, page 29).

The fact that section 17B permits the use of silencers for shooting pest birds by an approved agricultural inspector under a Corporate Licence acknowledges the usefulness of this device for legitimate purposes.

The Commission noted the recent decision in *Commissioner of Police, NSW Police Force v Allen* [2016] NSWCATAP 148 delivered on 29 June 2016, which dismissed an appeal by the Commissioner of Police to a decision by the Civil and Administrative Tribunal in *Allen v Commissioner of Police, NSW Police Force* [2015] NSWCATAD 224. These cases confirmed that, in the context of the case, the use of a silencer by Mr Allen who is a sheep grazer and who uses a firearm to shoot pest animals on rural land, was necessary in the conduct of his business (under the *Weapons Prohibition Act 1998* (NSW) the applicant had to demonstrate that it was necessary in the conduct of the applicant's business or employment to possess or use the prohibited weapon for which the permit is sought).

The Commission is of the view that strict control is required in regard to silencers due to their ability to suppress sound and create confusion as to the location of the shooter. However the Commission's view is that, as a firearm is permitted under the Firearms Act for certain purposes it is not logical for the use of a silencer in similar lawful circumstances to be prohibited. The Commission does not consider that the wider use of silencers as proposed in this section will increase the risk to community safety to any great extent.

The Commission recommends that section 17B of the Firearms Act be amended to permit wider use of silencers subject to the following requirements:

- a silencer be classed as a prohibited accessory (see Recommendation 12);
- a permit be required to possess and use a silencer;

- permission may be granted by the Police Commissioner or his or her delegate;
- permission may only be granted to an applicant who can demonstrate that it is necessary in the conduct of the applicant's business or employment to possess or use the silencer;
- there be no restriction on the type of firearm with which a silencer may be used as long as it is only that firearm indicated on the permit;
- permission granted under this section is not to be restricted in regard to its own time period but should endure for the period of operation of the licence for the relevant firearm; and
- the Firearms Regulations may contain set regulations regarding the use and storage of silencers.

Recommendation 14:

Section 17B of the *Firearms Act 1973* (WA) should be amended to permit wider use of silencers subject to the following requirements:

- a silencer be classed as a prohibited accessory;
- a permit be required to possess and use a silencer;
- permission may be granted by the Police Commissioner or his or her delegate;
- permission may only be granted to an applicant who can demonstrate that it is necessary in the conduct of the applicant's business or employment to possess or use the silencer;
- there be no restriction on the type of firearm with which a silencer may be used as long as it is only that firearm indicated on the permit;
- permission granted under this section is not to be restricted in regard to its own time period but should endure for the period of operation of the licence for the relevant firearm; and
- the *Firearms Regulations 1974* (WA) may contain set regulations regarding the use and storage of silencers.

3.8 The definition of antique firearms

Matters surrounding antique firearms were discussed from page 72 of the Discussion Paper. The 1900 cut-off year appears to be rather arbitrary as it does not coincide with any significant technological advancements. The general reason appears to be that from around that time there was certainly an explosion of the number of firearms in circulation

as well as the types of firearms. Breech loading rifles and hand guns, which used metal cartridges, were common by the late 1800's.

Section 8(1)(mc) of the Firearms Act states that no licence is required by a person who is in possession of, or carries, but does not use, an antique mechanism firearm. 'Antique mechanism firearm' is defined in section 8(2) as a muzzle loading firearm (including a percussion lock handgun that is muzzle loading) manufactured before 1900 that uses black powder to propel a shot, bullet, or other missile except that it does not include a breech loading firearm, a firearm with revolving chambers or barrels, or a cannon.

The Discussion Paper at Question 7 asked for stakeholder comment on whether the lack of commercially available ammunition should be included as part of the definition of an antique firearm. Stakeholders who are firearms users and collectors were supportive of extending the definition in this way. The counter-argument to this extension of the definition is that it is difficult to say whether ammunition is commercially available or not, and even if it is not, the question would still be whether it can easily be manufactured or obtained.

A solution to this is for the legislation to provide that the Police Commissioner must make the determination of the ammunition which is regarded to be no longer commercially available and to gazette the list. In this way the Police Commissioner can take into account any evidence that the relevant ammunition can be readily acquired and used. A stakeholder suggested that this consideration should be about the availability of the ammunition in Australia and not worldwide (as contained in section 5(2) of the new *Firearms Act 2015* (SA)). The Commission does not propose to limit the determination in this way and prefers the approach where the Police Commissioner can consider all relevant evidence of which unavailability in Australia may well be a relevant matter.

The Commission considered maintaining the exclusion of 'cannon'. Essentially this is regarded as a large piece of artillery that fires a heavy spherical projectile and is usually mounted on a carriage. A cannon is commonly regarded as having a far range, but cannons are also available in small sizes which fire small round balls. They can be breech- or muzzle-loaded. The Commission recommends that the current position in respect of a cannon be retained and that it be excluded from the definition of antique mechanism firearm due to its large calibre and range potential.

WA Police has suggested that the definition of antique mechanism firearms remain unaltered while other stakeholders, particularly those that deal in antique and obsolete firearms are of the view that a change is needed. The current definition in the Firearms Act only includes muzzle loading firearms. Some

stakeholders have indicated that a pre-1900 breech loading firearm, for which there is no commercially available ammunition, should also be captured under the definition. The Commission is satisfied that this is a reasonable approach and that it will not add to community risk, particularly as the use of these firearms is not permitted.

Some jurisdictions have certain exceptions to the definition which need to be considered. One of the exceptions in the Firearms Act is a firearm with revolving chambers or barrels. The Commission's view is that this exclusion must remain due to the firearm's capacity to fire multiple rounds.

The Commission also considered whether there ought to be any specific attention given to handguns in the context of antique firearms. There is less inter-jurisdictional uniformity in this case. The definition in the *Firearm Act 1996* (NSW) section 6A(7) excludes a handgun that is capable of discharging breech-loaded metallic cartridges (and the *Firearms Regulation 2008* (ACT) regulation 6(1)(a) follows a similar approach). In section 5 of the *Firearms Act 1977* (SA) the definition includes a handgun which is designed or altered to fire by means of a flintlock, matchlock, wheel-lock or other system used prior to the use of percussion caps as a means of ignition.

The *Firearms Act 1996* (Vic) does not apply to a handgun that was manufactured before 1900, if it is a black powder handgun that is capable of firing one shot only before requiring reloading and is not capable of being loaded with or discharging breech-loaded metallic cartridges; or is not a handgun of a type that uses percussion, or methods developed during or after the development of percussion, as a means of ignition.

Due to the concealability of a handgun, the Commission recommends a cautious approach to the incorporation of handguns in the definition. Taking into account all of the factors mentioned above, the Commission recommends the following alternative definition for an 'antique firearm':

'Any firearm manufactured before 1 January 1900 that is:

- a handgun not capable of discharging breech-loaded metallic cartridges or is not a handgun of a type that uses percussion, or methods developed during or after the development of percussion, as a means of ignition; or
- in the case of a firearm other than a handgun, a breech loading firearm which is a firearm the ammunition for which is determined by the Police Commissioner not to be commercially available or is not capable of discharging breech-loaded metallic cartridges;
- but excludes a firearm with revolving chambers or barrels and a cannon.'

The Commission recommends that the phrase 'antique firearm' be used rather than 'antique mechanism firearm' in line with other Australian jurisdictions.

The legislation must make it clear that a person in possession of an antique firearm may not be in possession of any propellant such as black powder or ammunition manufactured for the purposes of propelling a projectile from an antique firearm. Possession of this type of material is appropriate under an Ammunition Collector's Licence.

As a Receiver will be included in the definition of a firearm the Commission recommends that the definition of antique firearm also includes a receiver or frame of such antique firearm.

Recommendation 15:

- 15.1 An 'antique firearm' should be defined as any firearm manufactured before 1 January 1900 that is:
 - a. a handgun not capable of discharging breech-loaded metallic cartridges or is not a handgun of a type that uses percussion, or methods developed during or after the development of percussion, as a means of ignition; or
 - b. in the case of a firearm other than a handgun, a breech loading firearm which is a firearm the ammunition for which is determined by the Police Commissioner not to be commercially available or is not capable of discharging breech-loaded metallic cartridges;
 - c. but excluding a firearm with revolving chambers or barrels and a cannon.
- 15.2 The definition of antique firearm should also include a receiver or frame of such antique firearm.
- 15.3 The phrase 'antique firearm' should be used rather than 'antique mechanism firearm'.
- 15.4 A person in possession of an antique firearm should not be in possession of any propellant such as black powder or ammunition manufactured for the purposes of propelling a projectile from an antique firearm.

3.9 The extent to which antique firearms should be excluded from the firearms administration regime

Section 8(1)(mc) exempts an antique mechanism firearm from the licensing requirements of the Firearms Act but because an antique firearm still

falls within the definition of firearm in the Act, it is subject to the same storage requirements as any other firearm. As mentioned in the Discussion Paper at page 72, WA Police considers that there is a need to secure such firearms as they can still fire a shot or missile, are therefore still regarded as dangerous and need to be secured.

On the basis that an antique firearm may not be used, the person who owns or possesses an antique firearm may not possess ammunition for such firearm. The Commission has recommended (at Recommendation 15.4) that this be clarified in the legislation.

Taking this into account, it can be argued, and many stakeholders have taken the view, that the antique firearm does not pose any risk at all and should be excluded from the definition of a firearm altogether and thus be excluded from the administration regime including the storage requirements.

The Commission has some sympathy for this view but needs to also bear in mind that these antique firearms are fully operational and can fire a projectile when in the wrong hands. Although this may be difficult or even unlikely, as ammunition would not be easily obtainable, the Commission advocates a cautious approach and recommends that the current position remain in place where antique firearms fall under the definition of a firearm.

Recommendation 16:

An antique firearm should continue to fall under the definition of a firearm.

3.10 Working replicas of antique firearms

The issue of working replicas of antique firearms was dealt with at 7.6.2 on page 75 of the Discussion Paper and stakeholders were asked to make submission in that regard. Most firearms users and collectors were of the view that exact working replicas of antique firearms ought logically to be defined as antique firearms. Stakeholders argued that, as with original antiques, these replicas are no threat to society and of no practical use to criminals. By including working replicas into the definition of antique firearm it would also remove any difficulties for WA Police to have to tell the difference between replicas and originals.

WA Police has taken a contrary view on the basis that with modern metallurgy and machining techniques a functioning replica is not necessarily the same as that of a true antique. They would most likely have enhanced capabilities. In addition there is the possibility that more replicas could ultimately be in circulation than original antiques.

The Commission notes that antique firearms are in a finite quantity and, as genuine antiques, have value

as collector's items. On a balance it is more likely that a replica antique would be owned for the novelty of using it, in which case it would need to be licensed in any event. The Commission also notes that the current position is that working replicas of antique firearms must be licensed and there has been no suggestion that this is causing an undue burden on the Licensing Authority. The Commission recommends that working replicas of antique firearms continue to be subject to the licensing provisions of the Firearms Legislation.

Recommendation 17:

Working replicas of antique firearms should continue to be subject to the licensing provisions of the Firearms Legislation.

3.11 Captive bolts

This issue was discussed at page 58 of the Discussion Paper and formed part of Proposal 6. The Commission noted that captive bolts are excluded from the definition of firearm in Queensland, Victoria, New South Wales, South Australia, ACT and probably also the Northern Territory. Regulation 3B of the *Firearms Regulations 2006* (Tas) (effective from 4 November 2015) has recently prescribed a captive bolt device as being outside of the definition of firearms.

Stakeholders involved in animal welfare were supportive of removing captive bolts from the definition of firearms and submissions in favour of that suggestion were received before and after the publication of the Discussion Paper. These included submissions from the Pastoralists & Graziers Association of WA, Western Australian Pork Producers Association, Royal Society for the Protection of Cruelty to Animals, Department of Agriculture and Food and the Western Australian Meat Industry Authority.

Although some jurisdictions define the captive bolt with reference to an abattoir, its use is not restricted to such businesses only. It is in that regard that the exemption in section 8(1)(h) of the Firearms Act, which refers specifically to slaughtering, departs from the general exclusion of captive bolts in other Australian jurisdictions.

The Commission accepts that the use of a captive bolt would be in the interest of improved animal welfare standards and that its removal from the definition of firearms would bring Western Australian in line with other Australian jurisdictions. However, the Commission must also consider the potential risk to community safety. The term captive bolt in fact refers to a wide range of devices, where the projectile can be propelled by compressed air or by the discharge of a blank round. In some variations the projectile is not retractable. Some bolts are penetrating while others not. In most models the bolt penetrates a short distance, about 55 mm, until a recuperating system

of springs or rubber washers causes the bolt to recoil back into the barrel. In one model, the Schermer KR, the bolt penetrates up to 85 mm and the bolt must be manually pushed back into the barrel.

It could be argued that where the projectile is not discharged from the device it does not fall within the definition of a firearm, whether under the current or suggested definition. In order to avoid uncertainty the Commission advises that a captive bolt be specifically defined and excluded from the definition of a firearm.

The Commission favours a narrow definition of captive bolt and recommends that it be defined as a device designed for use in the humane killing or stunning of livestock by means of a retractable bolt. In view of the fact that the bolt is retractable and as such does not entirely leave the barrel, the Commission does not recommend including the added Tasmanian restriction (at regulation 3 of the *Firearms Regulations 2006* (Tas)) against captive bolts that are operated by the use of blank ammunition. The Commission is satisfied that the method of propulsion is not an issue where the bolt is retractable.

The Commission has also considered whether captive bolt should be defined as a controlled weapon under the *Weapons Act 1999* (WA). It would seem to be appropriate to do so when looking at the other items on the list of controlled weapons. Having said that, it must be clear that it is a lawful excuse to use or possess a captive bolt for the purposes of animal welfare.

WA Police has indicated that it intends progressing legislative changes to exclude captive bolts from the definition of a firearm. The Commission sets out its recommendation for this change below.

Recommendation 18:

- 18.1 A captive bolt should be defined in the *Firearms Act 1973* (WA) as a device designed for use in the humane killing or stunning of livestock by means of a retractable bolt.
- 18.2 A captive bolt should be excluded from the definition of 'firearm'.
- 18.3 A captive bolt should be defined as a controlled weapon under the *Weapons Act 1999* (WA) and that it be a lawful excuse to use or possess a captive bolt for the purposes of animal welfare.

3.12 Spud guns, industrial tools and promotional type implements

In Question 3 of the Discussion Paper the Commission asked how spud guns ought to be dealt with. Most stakeholders indicated that they should fall outside the operation of the Firearms Legislation. The Commission is of the view it is not appropriate for spud guns to fall under the Firearms Act. The Firearms Act's administrative regime is not suitable for these kinds of devices and existing community standards would suggest that they should not be regarded as firearms. Spud guns can certainly be dangerous so the Commission is of the view that they should be defined and controlled under the *Weapons Act 1999* (WA).

The Commission has also considered submissions on Discussion Paper Proposal 6 in relation to the other items listed there, that is, industrial tools such as nail guns, promotional type implements such as pneumatic t-shirt launchers, line throwers (currently under Category E3 of the Firearms Legislation) and certain gas-powered devices of low calibre and muzzle velocity.

Unlike captive bolts, the additional matter to be considered in regard to these items is that the devices discharge projectiles.

Stakeholders were supportive of these devices being excluded from the definition of a firearm. The points raised in favour of exemption were that the items are tools of trade, are not generally concealable, and the licencing of these tools would have significant issues with licensing services, industry, general public and government. An additional factor for pneumatic t-shirt launchers is that they are non-lethal (and as such would probably fall outside of the suggested new definition for firearm).

The Commission supports this view and recommends that the Firearms Legislation exclude industrial tools, pneumatic t-shirt launchers, and other similar devices from the definition of firearm. The most recent Australian legislation to deal with this issue is regulation 3B of the *Firearms Regulations 2006* (Tas) which prescribed the following items as falling outside of the definition of a firearm: line thrower, nail gun, net thrower and phasor.

Recommendation 19:

- 19.1 Industrial tools like nail guns, line throwers and other similar devices should be excluded from the definition of firearm.
- 19.2 In considering the list of items to exclude, due regard should be given to exclusion in other Australian jurisdictions, unless captured by the recommended new definition of a firearm.

Recommendation 20:

Spud guns should be excluded from the definition of firearm in the *Firearms Act 1973* (WA) and should be defined as a controlled weapon under the *Weapons Act 1999* (WA).

3.13 Air pistols and rifles

There was a submission from a stakeholder to exempt low powered single shot air powered pistols and rifles from the definition of firearm to increase participation in the sport and on the basis that the exemption would not be detrimental to public safety.

The Commission is satisfied that these types of firearms are correctly classified as Category A firearms. Within the context of a shooting club, these firearms may be used by members without an individual licence under section 8(1)(m) of the *Firearms Act*, and the Commission does not see the classification as a barrier to participation in the sport. For those participants who take the sport more seriously and desire their own firearm, the normal licencing procedures are available for members of approved shooting clubs.

Recommendation 21:

Single shot air powered pistols and rifles should remain part of the definition of a firearm.

3.14 Changes in firearms technology

Proposal 37 received support from the majority of stakeholders. The Commission notes that the *Firearms Act* is broad enough to cover any unlawful manufacturing or possession of a firearm. The addition of the 'major firearm parts' definition in the Act as recommended at 11 will further strengthen the *Firearms Act* with regard to unlawful manufacturing of parts. It is most likely that any technological advancements in firearms manufacture would thus be captured by the legislation.

The Commission nevertheless recommends that WA Police continue to monitor developments in firearm technology as it is reasonable to infer that technological developments will in time challenge certain portions of the legislation.

Recommendation 22:

WA Police should continue to monitor developments in firearm technology, including the manufacture of 3D printed firearms, raise related issues at an inter-jurisdictional level where appropriate and ensures that state legislation is updated as appropriate.

CHAPTER FOUR: INOPERABLE AND IMITATION FIREARMS

4.1 Inoperable and imitation firearms

At page 75 of the Discussion Paper the Commission discussed the treatment of inoperable firearms and at Proposal 9 and Questions 9(a), 9(b) and 9(c) sought stakeholder views on a number of issues in that regard.

Firearms that are inoperable are not regarded as firearms for the purposes of the Firearms Legislation and are classed as imitation firearms under Schedule 2, item 10 of the *Weapons Regulations 1999*, that is, an article, not being an article that is clearly a toy, that has the appearance of being a firearm but is not capable of discharging a missile.

4.1.1 Permanently inoperable

Most stakeholders were of the view that a permanently inoperable firearm should remain outside of the definition of firearms under the Firearms Legislation. Some stakeholders suggested that the Firearms Act should contain a definition for a 'permanently inoperable firearm'. This suggestion is prudent, particularly to clarify the rights and obligations of the licence holder in circumstances where a firearm that has previously been licensed but has subsequently been rendered inoperable. In order to ensure clarity in the Firearms Legislation it's the Commission's view that the definition should focus on the permanency of the rendering.

The Firearms Legislation should provide that for a firearm to be removed from the registry on the basis of being permanently inoperable, a licensed dealer, manufacturer or repairer must first provide a certificate to that effect to the Licensing Authority.

The Firearms Regulations should also provide for the manner in which a firearm is to be rendered permanently inoperable.

A number of stakeholders also supported the creation of an offence for rendering operable a firearm that has previously been rendered inoperable, unless with prior approval of the Police Commissioner, and the Commission is of the view that this is sensible. Unlawful manufacturing or repairing is dealt with under section 19(4) of the Firearms Act, and the Commission recommends that in relation to a firearm that has been rendered inoperable, making that firearm capable of again being fired (operable) should be deemed to be manufacturing.

4.1.2 Temporarily inoperable

The Commission's view is that a temporarily inoperable firearm ought to remain a firearm under the Firearms Legislation, and the recommended new definition of 'firearm' at Chapter 3 retains a temporarily inoperable firearm within the terms of the definition.

This will allow for the extended use of various safety devices for the safe keeping and storage of firearms. The Commission considered whether some form of temporary rendering should be available to retain the historical significance of a firearm but is of the view that this circumstance is already satisfactorily dealt with in the Firearms Legislation.

Recommendation 23:

- 23.1 The term 'permanently inoperable firearm' should be defined in the *Firearms Act 1973 (WA)*.
- 23.2 For a firearm to be removed from the registry on the basis of being permanently inoperable, a licensed dealer, manufacturer or repairer should first provide a certificate to that effect to the Licensing Authority.
- 23.3 The manner in which a firearm can be rendered permanently inoperable should be prescribed in the *Firearms Regulations 1974 (WA)*, but the prescribed methods should not be exhaustive.
- 23.4 The *Firearms Act 1973 (WA)* should state that it is an offence to render operable a firearm that had been rendered inoperable, unless with prior approval of the Police Commissioner.
- 23.5 In relation to a firearm that has been rendered inoperable, making that firearm capable of being fired (operable) should be deemed to be manufacturing.
- 23.6 A temporarily inoperable firearm should remain a firearm under the *Firearms Act 1973 (WA)*.

CHAPTER FIVE: AMMUNITION

5.1 Definition of ammunition

The definition of 'ammunition' and the storage thereof is discussed from page 131 of the Discussion Paper.

Section 4 of the Firearms Act provides that ammunition includes anything manufactured specifically as a component of ammunition designed for discharge from a firearm and also includes any primer or propellant manufactured specifically for use in making ammunition designed for discharge from a firearm but does not include ammunition rendered inoperative for the purpose of a collector's item.

Some stakeholders have suggested that the definition is overly broad as it appears to include empty cases, with the result that a person possessing empty cases for a firearm in respect of which they are not licensed, or who is in possession of spent or empty cases not stored in accordance with the Firearms Regulations, could be charged with an offence.

The Commission has also been advised that while propellant may be dangerous even when not used in a firearm, due to its explosive properties, spent primers in and of themselves are not harmful and ought to be excluded from the definition.

The Commission understands that it is not uncommon for firearms owners to reuse empty cases (where this is possible) to make new ammunition, but notes that in any event while a case is empty, it is not capable of causing any harm. The Commission notes that other jurisdictions have addressed this in their definitions of ammunition by specifying that it is only cartridge cases which are fitted with a primer and a projectile that are defined as 'ammunition' (see the Discussion Paper at page 131 for a jurisdictional comparison).

Proposal 30 of the Discussion Paper proposed amendments to the definition to cater for some of the concerns raised and most stakeholders were in favour of the suggested changes. Some stakeholders are of the view that an unusable empty case and a spent primer already fall outside of the definition of 'ammunition'. Irrespective of whether this view is the correct one the Commission considered that there was sufficient uncertainty to necessitate legislative attention and clarification of intent.

Some stakeholders suggested that inert ammunition components should not be subject to the ammunition storage requirements, for example, a projectile or any empty case. One example provided was that of reloadable centrefire cartridge cases which, under Proposal 30 would continue to be classified as ammunition. These can unwittingly escape collection and be left on a range or in a vehicle and

the 'offender' could be guilty of an offence. The Commission received anecdotal reports of children collecting spent ammunition components and firearm's owners mistakenly picking up ammunition components belonging to a different firearm. In both cases it could be said there was a breach of the Firearms Act, albeit unintentionally and without impact on community safety. During the course of the review the Commission has been informed that not all spent cases can be refilled, for example, some cases for smaller calibre firearms are single use only and it is also said that there are large calibre shell casings used decoratively in homes, often to store umbrellas. Stakeholders have suggested that all spent cases fall outside of the definition even if reusable.

The Commission acknowledges that some know-how and access to specialised equipment would be required to create live ammunition out of the various components. The Commission also notes the approach in other Australian jurisdictions and the comments from stakeholders with regard to inert cases.

South Australia defined 'ammunition' as 'ammunition suitable for use in a firearm and includes primers and propellant' (*Firearms Act 1977 (SA)*). The new definition in section 4 of the *Firearms Act 2015 (SA)* is more detailed and defines ammunition as:

- ammunition suitable for use in a firearm, and includes—
- (a) an article consisting of a cartridge case fitted with a live primer and a projectile; and
 - (b) an article consisting of a cartridge case fitted with a live primer and containing a propelling charge and a projectile; and
 - (c) live primers, propellants and blank cartridges; and
 - (d) an article of a kind declared by the regulations to be ammunition, but does not include—
 - (e) inert blank cartridges; or
 - (f) inert drill rounds; or
 - (g) snap caps or other item designed to fit in the breech or chamber for the purpose of preventing damage to the firing pin; or
 - (h) paint-balls; or
 - (i) an article of a kind declared by the regulations not to be ammunition;

In the same section of their Act a 'cartridge case' is defined as 'a container made of brass, plastic or other material that is designed to contain propellant, house a primer at the rear, hold 1 or more projectiles at the front and function as a gas seal during firing'.

The case is thus one part of the cartridge with the other parts generally being the primer, propellant and projectile. The Commission is of the view that, while ammunition components should remain subject to the Firearms Legislation storage requirements, it is reasonable for inert cartridges (called a dummy round or drill round that contains no primer, propellant, or explosive charge), spent casings (whether reusable or not), paintball pellets and spent primers to be excluded from the definition.

The Commission also recommends that the Firearms Act provide that the Firearms Regulations may prescribe specific items that form part of, or are excluded from, the definition of 'ammunition'.

These recommendations are consistent with the changes to the definition of 'firearm' which aims to remove items that are not capable of causing harm from the ambit of the Firearms Legislation.

Recommendation 24:

24.1 The definition of 'ammunition' in the *Firearms Act 1973* (WA) should be amended so as to specifically exclude:

- a. inert cartridges/dummy round/drill round (that is, does not contain primer, propellant, or explosive charge);
- b. paintball pellets;
- c. spent primers; and
- d. spent casings whether reusable or not.

24.2 The *Firearms Act 1973* (WA) should provide that the *Firearms Regulations 1974* (WA) may prescribe specific items that form part of, or are excluded from, the definition of 'ammunition'.

5.2 Ammunition sales

Proposal 46 on page 194 of the Discussion Paper suggested that Form 19 of the Firearms Regulations be amended to remove the address column on the ammunition sales book maintained by suppliers of ammunition.

WA Police (submission dated 9 February 2016, page 34) was of the view that the address detail assisted with inquiries and that any risk could be mitigated by the dealer's practices in regard to the manner of form completion. Some stakeholders requested that Form 19 be removed completely.

The Commission considers the information on Form 19 important but that importance is outweighed by the need to ensure information of the existence and location of firearms does not get into the wrong

hands. Since other information collected on the form can be matched with the licence details on the records of the Licensing Authority the Commission is of the view that the address column can be removed, with minimal overall impact on the quality of the records kept by the ammunition supplier.

Recommendation 25:

Form 19 in Schedule 1 of the *Firearms Regulations 1974* (WA) should be amended by removing the 'address' column.

5.3 Storage and carriage of ammunition

Regulation 11A(2) of the Firearms Regulations provides that, like firearms, ammunition is to be stored in a locked cabinet or container that at least meets the specifications in Schedule 4 or in such other way as is approved (this regulation does not apply to propellant unless it is incorporated in a cartridge). Regulation 11A also provides that a magazine is not to contain any ammunition when stored; and ammunition is not to be stored in a cabinet or container in which a firearm is stored unless the ammunition is in another locked metal container in which no firearm is stored and which is securely affixed so as to prevent its removal from the cabinet or container.

Since July 2015, the Firearms Act no longer has storage requirements for propellant and black powder; the *Dangerous Goods Safety Act 2004* (WA) and the *Dangerous Goods Safety (Explosives) Regulations 2007* determines the requirements for safe storage, use, handling and transport of propellant and black powder.

A transport licence (for road carriage) under the *Dangerous Goods Safety Act 2004* (WA) is not required for any person carrying ammunition of any quantity; or for propellant or black powder if in a vehicle where the net explosive quantity of propellant is not more than 50kg or there is not more than 4kg of black powder (see regulation 97(3)(a), 104(2)(e) and schedule 7 of the *Dangerous Goods Safety (Explosives) Regulations 2007*).

Australia Post prohibits the carriage of ammunition on their postal service (*Australia Post Dangerous and prohibited goods and packaging guide* – November 2015; Australia Post accepts very small consignments of some dangerous goods under contract conditions). Where transportation is required by sea, rail or air, other legislation as well as various National and International codes would apply.

The Commission does not propose making any changes to the storage and carriage regime for ammunition.

CHAPTER SIX: THE APPLICATION PROCESS AND LICENSING SYSTEM

6.1 The new Licensing and Registry system

A series of reports by the Auditor General since 2000, most recently the 2013 *Information Systems Audit Report*, Report 11, June 2013, raised concerns about the completeness and accuracy of the Licensing Authority's records created through the licensing process. The Commission had regard to these reports during its consideration of the Licensing and Registry system. These reports were considered in the Discussion Paper at 6.2 on page 47.

The Firearms Registry system in operation at the time of the Discussion Paper has been replaced with a Licensing and Registry system effective from 29 April 2016. The Commission understands that there has only been a partial implementation of the system with further capabilities such as the Dealer's Portal, set to come on line later in 2016.

The extent to which the new system addresses the Auditor General's concerns will only become evident over time, and certainly only after the Licensing and Registry system is fully implemented.

The Commission considers the following features particularly important:

- the accurate recording of applications;
- the ability to identify deceased persons, expired licences, court orders and so forth, through links with other Western Australian databases, including links between the Licensing and Registry system and the Incident Management System;
- the ability to retain images of firearms and applicants;
- the ability to record and track authorised Nominated Persons;
- the ability to track B709 Customs permits for firearms being brought into Western Australia;
- the ability to report on firearm numbers, licences, individual firearms, types and classes;
- recording information on instances where licences have been cancelled or licence applications have been refused, and on what grounds; and
- the ability to report on the total number of approved applications, lapsed applications, pending applications, withdrawn applications, and refused applications.

In these circumstances where the Commission is unable to review the efficacy of the recently implemented Licensing and Registry system, the Commission recommends that WA Police conduct and publish a review of the Licensing and Registry system after its first full year of operation to verify that it is functioning as intended.

Recommendation 26:

- 26.1 All components of the Licensing and Registry system should be made fully operational as soon as is practicable but nevertheless within six months of the tabling of this Report.
- 26.2 WA Police should conduct a review of the Licensing and Registry system after its first full year of operation to verify that it is functioning as intended.
- 26.3 The review of the Licensing and Registry system should be made publicly available.
- 26.4 Any deficiencies in the Licensing and Registry system revealed by the review should be addressed as a matter of priority.

6.2 The application process

The firearm's administration process and licensing system is discussed from page 44 of the Discussion Paper. It is administered by WA Police, in particular the Licensing Authority. In terms of licensing, applications are completed online, printed and submitted through Australia Post with the supporting documentation including a Serviceability Certificate (discussed below). The Licensing Authority processes applications and makes the decision. Hard copy forms may also be obtained from WA Police.

6.2.1 Administering applications

The Commission considered whether the risk factors involved necessitate the ongoing participation of the WA Police in the application and approval process or whether the entire process should be taken over by an agency such as the Department of Transport (DoT). The Commission is of the view that although the Firearms Act is for the most part administrative in nature, there is a sufficient link between the firearm's regime, and other areas of WA Police's responsibilities such as the access to court information and court orders, inter-jurisdictional cooperation and Police

powers under the Firearms Legislation, to warrant the involvement of WA Police. Consequently, the Commission considers that the Licensing Authority should remain under WA Police.

Question 1 of the Discussion Paper called for comment on the role of Australia Post in the licensing process. On the one hand the contract with Australia Post is said to free up WA Police staff to perform more critical frontline functions and is an efficient way to provide access to more areas of the State, while on the other hand it is said to create a 'middle-man' which increases costs and time to process applications and is an added risk factor in the process.

Some stakeholders were satisfied with the service at Australia Post but many said they would prefer an alternative system. Stakeholders suggested the following alternatives to using Australia Post:

- the Department of Transport (Driver and Vehicle Services);
- dealers;
- police stations; or
- direct on-line applications to the Licensing Authority.

There are two factors which prevent a fully automated application process, the applicant's identity must be confirmed (100 points identification and photograph) and the firearm needs to be verified. These relevantly form part of the basic requirements for a licence application as agreed in the 1996 National Firearms Agreement. Currently the former takes place at Australia Post and the latter usually at a dealer.

The Commission considers that the most suitable options for firearms verification are currently being utilised, that is, it may be conducted by the holder of a Dealer, Repairer or Manufacturer Licence, an officer of an approved shooting club or other approved organisation or a member of the Police Force (under regulation 25A of the Firearms Regulations). Although a police officer is seldom used for issuing a serviceability certificate the Commission considers it reasonable that this remain as an option to cover cases where there is limited or no access to a licensed dealer or an approved organisation, particularly in cases where an application is made in a remote or regional area. The question as to whether a formal serviceability certificate is required in all cases is considered below.

The Commission also considered the utility of conducting the entire licencing process at a police station. Although identity and firearm verification could be conducted at a police station, this would be subject to availability of appropriate staff, who may not always be at station, particularly in remote areas. In addition, this could pull police officers away from community policing duties. In any event, irrespective

of whether identity and firearm verification could all be done at a police station, current infrastructure provides for the photographing functions to be conducted at DoT and Australia Post and were this responsibility to be transferred to police stations there would be substantial budgetary consequences.

Improvements have been made to the current system. In particular, the process as described on page 54 of the Discussion Paper reflects two trips to Australia Post, and this has been reduced to one, that is, the photograph can be taken and submitted along with the application form and proof of payment at the first visit to Australia Post (email from Licensing Authority dated 29 September 2016).

Driver licence numbers on firearms licences are no longer used. Notwithstanding this, the Licensing Authority and DoT Driver and Vehicle Services share information for probity purposes only; the Licensing Authority may not use the information and photographs.

The Department of Transport (submission dated 22 December 2015) is of the view that, subject to resourcing, 'there are potential efficiencies in amending governing legislation so that driver licensing records could be used as the basis for photographic and biographic information for licences, such as the firearms extract of licence card'.

The Commission considers that it would be efficient for a firearms applicant who has a driver's licence to be able to apply at DoT Driver and Vehicle Services for a firearms licence without having to go through the 100-point check and photographing. The Commission recommends that this procedure be considered through collaboration between the Licensing Authority and DoT Driver and Vehicle Services. This would allow for electronic transfer of information through an integrated system which would increase efficiency and reduce application time frames.

As not every person has a driver's licence, provision should also be made for a fresh application to be made at DoT Driver and Vehicle Services, similar to the current process at Australia Post.

The arrangement between Australia Post and the Licensing Authority should nonetheless be retained particularly to cater for those applicants who do not have ready access to DoT Driver and Vehicle Services.

Recommendation 27:

- 27.1 The Department of Transport and Western Australia Police should collaborate to implement a system for the receipt of firearms applications, conducting the 100-point check and taking photographs at Department of Transport Driver and Vehicle Services.

- 27.2 A firearms applicant who has a driver's licence should be able to apply at Department of Transport Driver and Vehicle Services for a firearms licence without having to go through the 100-point check and photographing.
- 27.3 Arrangements between Australia Post and the Licensing Authority should be retained as an option for applicants.

6.2.2 Fees

Many stakeholders were of the view that the fees for applications and renewals in Western Australia are far higher than that in other Australian jurisdictions (see the comparison at Annexure 2 of the Discussion Paper). The current fee structure (from 1 July 2016) for an ordinary Firearm Licence is \$255 for a first application, \$53 for a renewal and \$178 for an additional Firearm Licence. Renewals are currently annual.

The Commission's recommendations in regard to the longer duration of licences (at Chapter 7) will in effect be a substantial reduction in fees payable by licence holders and brings the fees more in line with other jurisdictions.

The Commission recognises that currently fees are charged on a cost-recovery basis for all firearms applications in Western Australia. While it appears that other Australian jurisdictions have lower fees this may be due to off-setting recovery of costs through alternative means; consequently it may not be appropriate to solely compare fees without taking into account costs that firearms users face in other jurisdictions but do not face in Western Australia.

Question 2 of the Discussion Paper asked whether there should be discounts offered to certain categories of applicants such as pensioners. While many were in favour of this, they were, at the same time, dissatisfied as to the current fee levels. Due to the fact that any discount to one party would mean that the shortfall would need to be covered by another, the Commission does not recommend a fee discount structure.

Recommendation 28:

A fee discount structure should not be implemented.

6.2.3 Serviceability certificates

Regulation 7(3)(a) of the Firearms Regulations provides that an application for a licence is to be accompanied by a current firearm serviceability certificate for the firearm in respect of which the application is made.

Under regulation 25A the holder of a Dealer, Repairer or Manufacturer Licence, an officer of an approved shooting club or other approved organisation or a member of the Police Force can provide serviceability certificates, which remain current for three months after issue.

Regulation 7(4) provides that after receiving an application the Police Commissioner may, in writing, direct the applicant to arrange for the firearm to which the application relates to be produced for inspection at a police station specified in the direction. Regulation 7(4) is seldom utilised as a serviceability certificate is normally sufficient. Many stakeholders are of the view that the serviceability certificate is merely additional red tape and that the information is already available on the application form.

The term 'serviceability' does not accurately reflect the full purpose of the certificate and may in fact have given rise to misunderstanding of the utility of these certificates. The certificate not only serves to confirm that the firearm meets licensing requirements but also fulfils an equally important identification role. Under the new Licensing & Registry system a serviceability certificate will also be used to confirm identification against the National Firearms Identification Database and the National Firearms Licensing and Registration System prior to it proceeding to licensing. In the light of this dual purpose WA Police contend the 'Serviceability Certificate' could be renamed the Firearm Identification and Serviceability Certificate to better reflect its purpose (submission dated 9 February 2016, page 16).

Firearm details

The Commission notes that a serviceability certificate contains more information than that required on an application form. In addition the information on the serviceability certificate can be automatically data-captured into the current system used by the Licensing Authority.

Form 3 of the Firearms Regulations provides the template for the serviceability certificate. The firearms details required are as follows:

Firearm details			
Manufacturer			
Model			
Firearm type		Firearm category	
Ammunition type		Calibre	
Loading method			
Primary Serial No.		Secondary Serial No.	
Magazine type		Magazine capacity	
Is the firearm a handgun		Barrel length (handguns only)	

An application for a firearm licence is set out at Form 1 of the Firearms Regulations. It is self-evident that the required information on a serviceability certificate could be included on the application form.

Accuracy

A further purpose of the serviceability certificate is to ensure that the firearm details are verified by a person who is not the applicant and in this way the accuracy of the data is said to be improved thereby reducing the necessity for returned applications that have been incorrectly completed.

While a dealer may perhaps more accurately complete the firearm details on a form than the applicant, ultimately the applicant is responsible for the accurate completion of an application. The Commission is of the view that ensuring accuracy of data while important, is not, in of itself, a sufficient reason for the serviceability certificate requirement.

Checking that the firearm is safe

The serviceability certificate also provides confirmation that the firearm has been checked and is safe. Form 3 requires the following certification:

"I certify that I have examined the firearm described above and confirm that (please mark each relevant box).

- the details of the firearm are correctly described
- the firearm is fitted with an effective trigger guard
- the firearm is in complete condition without missing parts or components
- the firearm has no visible flaws or defects that could effect its operation
- the firearm is fitted with stocks/grips that are serviceable

- the firearm has a trigger mechanism that does not operate when a force of one kg is exerted on the mechanism
- the firearm is fitted with an appropriate safety mechanism"

The Firearms Act does not make possession of an unsafe or unserviceable firearm an offence and, as recommended at Section 13.7, the Commission is of the view that such an offence should not be inserted in the legislation.

Section 12(1) of the Firearms Act provides that except as allowed by that section, a licence or permit cannot be issued under the Firearms Act to any person in respect of any firearm which in the opinion of the Commissioner is unsafe or unserviceable. The Licensing Authority relies on serviceability certificates to be able to form an opinion.

The Commission considers that for the safety of the community and the firearm user it is important that the section 12(1) requirement remain in the Firearms Legislation. The Commission favours the current serviceability certificate mechanism which requires a safety check by the holder of a Dealer, Repairer or Manufacturer Licence, an officer of an approved shooting club or other approved organisation or a member of the Police Force. In remote and regional areas a member of the WA Police may be the only viable option for an applicant to obtain a serviceability certificate. Consequently the Commission recommends that WA Police ensure that sufficient suitably qualified staff are posted in remote and regional areas to issue serviceability certificates.

Some stakeholders were of the view that it did not make sense for there to be a safety check on a new firearm, although they conceded that such a check is important for a used firearm. The Commission considers that most, if not all, new firearms brought into Western Australia, would go through a dealer. As such a dealer would be in a position to issue a serviceability certificate for a new firearm

with minimum effort. In addition, to facilitate understanding of the process and avoid uncertainty as to whether an item is new or not, the Commission recommends that all firearms be certified as safe prior to licensing.

Serviceability certificate minus the serial number

Many stakeholders are of the view that the requirement for a serial number on serviceability certificate ought to be removed so that a potential firearms owner can apply for a licence without having to purchase the firearm prior to approval. This is an issue in cases where the firearm that is being purchased is not already in the dealer's stock. This will allow for the application process to commence without the dealer having to order the specific firearm.

At recommendation 85 the Commission proposed a pre-approval process in respect of a particular firearm (to determine whether it was appropriately categorised). This would be an assessment of the firearm type only. At Proposal 4 of the Discussion Paper the Commission considered whether there are further ways in which an applicant can avoid purchasing items before his or her application has been approved.

WA Police opposed the suggestion that a serviceability certificate be provided without the serial number. WA Police submitted (submission dated 9 February 2016, page 2) that it would be unable to match the firearm with the National Firearms Identification Database.

Taking this view into account it appears that there would be no risk if an applicant is able to make a pre-approval (as with the 'firearm type' pre-approval process), and if pre-approved, the applicant then proceed with the principal application together with the serviceability certificate and serial number.

This process would of necessity involve double-handling and add substantial time onto an application and most likely an additional fee, but ultimately could be done at the election of the applicant with no risk to the community.

The Commission recommends that a pre-approval process of this kind be incorporated into the Firearms Legislation. This pre-approval process should be in respect of the applicant (fit and proper test), and include the genuine reason and genuine need test (where applicable), but be subject to the firearm being of the same type as that identified in the application and subject to a serviceability certificate and any other relevant conditions. In addition the pre-approval would need to include a reasonable time limit for the transaction to be concluded, after which it would lapse.

An adverse pre-approval decision should be reviewable.

Use of photographs as proof of storage availability

As mentioned in the Discussion Paper at page 55, in the case of additional applications, WA Police has advised that in the second half of 2014 a process was implemented whereby photographs of security cabinets are only requested where the firearm assessor notes that there has been a change of address since the previous application, or where a concern is raised by the application.

Form 22 of the Firearms Regulations requires applicants to attach the following documentary evidence:

- Proof of purchase/fitting of the storage facilities is attached.
- Photographs of the storage facilities including the anchor points of the cabinet or container are attached.

In line with current practice, the Commission recommends that Form 22 be amended to reflect that in the case of an application for an additional firearm the documentary evidence in respect of available storage facilities only needs to be submitted upon the Licensing Authority's request.

Recommendation 29:

- 29.1 A serviceability certificate should be provided in respect of each firearm that is the subject of a Firearm Licence application.
- 29.2 A serviceability certificate should be renamed a Firearm Identification and Serviceability Certificate to better reflect its purpose.
- 29.3 Form 1 of the *Firearms Regulations 1974* (WA) should be amended to include the same required firearm details as in Form 3 to ensure consistency between the 2 forms and to allow for a potential pre-approval without a serviceability certificate.

Recommendation 30:

- 30.1 A pre-approval process should be incorporated into the Firearms Legislation in terms of which an application can be made without a serviceability certificate in respect of the applicant (fit and proper test), the genuine reason and the genuine need test, but be subject to the firearm being of the same type as that identified in the application and subject to a serviceability certificate and any other relevant conditions being provided in the principle application.

30.2 The pre-approval process should include a reasonable time limit for the transaction for the purchase of the firearm to be concluded, after which it would lapse.

30.3 A pre-approval decision should be reviewable.

Recommendation 31:

Form 22 in the *Firearms Regulations 1974* (WA) should be amended to reflect that in the case of an application for an additional firearm, the documentary evidence in respect of available storage facilities only needs to be submitted upon the Licensing Authority's request.

6.3 Alternative card systems

At Proposal 21 on page 114 of the Discussion Paper the Commission proposed the development of a new smart card system to replace the current paper licence and extract of licence. Most stakeholders welcomed this proposal, including WA Police who supported the proposal subject to adequate funding (submission dated 9 February 2016, page 17).

A smart card

A 'smart card' system could include 'chip' technology in order to store important data without the need to print all the information on the card itself. The Commission recommends that a smart card system be implemented as soon as possible. The Commission is aware that some licence holders have a sizable quantity of firearms, including Corporate Licence holders, and a smart card system would better cater for these situations as it would allow all relevant data to be stored in one easily accessible place.

This system will require dealers, repairers and manufacturers to have compatible computer infrastructure but it would have the added benefit of being able to link into the new Licensing and Registry system. While there is general support for this, many stakeholders were concerned about the cost of upgrading, suggesting that efforts should be made to keep this to a minimum. The Commission recommends that the development of the smart card system be done in consultation with DoT, licensed dealers, repairers and manufacturers with a view to keeping computer upgrade costs to a minimum while at the same time utilising existing infrastructure.

A single authorisation card

The Commission is aware of potential budgetary constraints that may delay the introduction of smart cards and recommends that until sufficient

resources have been secured for the roll out of the smart card system a single authorisation card be introduced. While the inventories of dealers, repairers and manufacturers could be substantial and thus would not be suitable to print on a single card, any introduction of an interim 'non smart card' authorisation card should retain the existing paper system to cater for these large numbers of firearms.

Stakeholders have pointed out that the current paper licence contains a full list of approved firearms and that this is in itself a theft risk. In order to reduce this risk (although some risk will remain until a smart card system is implemented) and to rationalise the documentary evidence required to prove licensing, the Commission recommends the introduction of a single plastic licence card which will serve as identification (photograph) and confirm the licensing approvals.

The authorisation card should on the face of it reflect:

- the identity of the Nominated Person/licence holder (without storage and residential address); and
- for each firearm in simple code, the Category, type, action and configuration of the firearm and purpose for which the person is entitled to possess and use it.

The annotation should be in a code referring to the Category, genuine reason and any specific purpose under the genuine reason, if applicable. Multiple firearms can be noted on the card in this way. The card should have sufficient information for the purposes of purchasing ammunition and providing evidence of entitlement to authorities.

As an example, South Australia has the following codes for 'purposes of use' under regulation 11 of the *Firearms Regulations 2008* (SA):

- use as a member of a shooting club—1;
- target shooting—2;
- hunting—3;
- paint-ball shooting—4;
- use in relation to carrying on the business of primary production or in the course of employment by a person who carries on such a business—5;
- use in the course of carrying on the business of guarding property or use in guarding property in the course of employment by a person who carries on that business—6;
- collecting and displaying firearms [sic];
- such other purpose as is approved by the Registrar—7.

Victoria Police (see Part 4 of their Application form for a Permit to Acquire a Longarm – VP Form 0337A) uses codes for firearm description such as:

- Type: AR for air rifle;
- Action: BA for bolt action; and
- Configuration: SB for single barrel.

The Commission recommends that annotation codes similar to these be used.

The Commission has recommended that Nominated Persons receive an authorisation card (see Recommendations 86 and 90). This authorisation card should follow the same format as the recommended card for licences, permits and approvals.

The Commission recommends that all references to the 'Firearms Act Extract of Licence' be removed from the Firearms Legislation and replaced with a reference to a single authorisation card.

Recommendation 32:

- 32.1 The current paper licence and extract of licence should be replaced with a single plastic authorisation card to be issued to holders of firearms licences/ permits/ approvals and to Nominated Persons.
- 32.2 All reference to the 'Firearms Act Extract of Licence' should be removed from the Firearms Legislation and replaced with a reference to a single authorisation card.
- 32.3 The authorisation card should on the face of it reflect:
 - a. the identity of the Nominated Person/ licence holder (without storage and residential address); and
 - b. for each firearm, the Category, type, action and configuration of the firearm and purpose for which the person is entitled to possess and use it.
- 32.4 The annotation on the authorisation card should be in a simple code referring to the Category, type, action and configuration of the firearm and the purpose for which the person is entitled to possess and use it.
- 32.5 WA Police, in consultation with the Department of Transport and licensed dealers, repairers and manufacturers should develop a 'smart card' licence system.
- 32.6 Dealers, repairers and manufacturers should be required to operate on compatible computer infrastructure to accommodate the introduction of a 'smart card' system.

6.4 Prescribed forms

Section 34(2)(e) of the Firearms Act provides that the Governor may make regulations in respect to the forms to be used for the purposes of the Firearms Act, and the manner of, and the time for, their completion, including a requirement that information supplied be verified by statutory declaration.

At Question 44 of the Discussion Paper the Commission asked whether the Police Commissioner should be empowered to approve forms instead of them being prescribed in the Firearms Regulations. WA Police (submission dated 9 February 2016, page 35) was in favour of an amendment of this nature and went further to suggest that this function be delegable.

Other stakeholders were of the view that forms are an important part of the administration of firearms and there needs to be checks and balances that only Parliament can provide.

The Commission is of the view that the ability for Parliament to consider amendments to, or the addition of, forms is an important oversight function and should carry more weight than the objective to reduce administration. The Commission recommends that the Firearms Act be amended so that forms may be prescribed in the Firearms Regulations and gazetted by the Minister.

Recommendation 33:

The Minister should be empowered to prescribe Forms in the *Firearms Regulations 1974 (WA)* and gazette them.

6.5 Delegations

Section 5A of the Firearms Act empowers the Police Commissioner to delegate certain functions such as the granting of licences, approvals and permits.

The 2008 Police Review (at page 28) considered section 5A and observed that this provision was 'very specific in regard to the delegation being to a member of the Western Australia Police' which was 'very limiting and doesn't allow for future arrangements that the Commissioner may put in place in respect to the operation and administration of the Firearms Act'.

Most stakeholders were in favour of Proposal 2 which suggested more flexibility in delegations while some stakeholders were concerned that an increase in delegation could also increase the number of individual interpretations of the legislation.

The Commission considers that flexibility in delegation may assist to increase efficiencies within the Licensing Authority and thereby create a more cost effective system. It would also free up sworn officers to undertake other policing duties. Many

recommendations in this Report should have the effect of reducing incorrect interpretations of the Firearms Legislation.

The Commission recommends that, unless expressly recommended in this Report that a power should not be delegable, the Firearms Act provides more flexibility for the Police Commissioner to delegate functions, including where appropriate to unsworn police staff.

Recommendation 34:

Section 5A of the *Firearms Act 1973* (WA) should be amended to provide more flexibility to the Police Commissioner in delegating functions under the Act, including where appropriate to unsworn police staff.

6.6 Collection of firearm after approval

At Proposal 5 the Commission proposed the introduction of a requirement to collect his or her firearm from a dealer as soon as is practicable once a licence application is accepted.

Most stakeholders did not support this proposal on the basis that arrangements regarding collection and warehousing are between the dealer and the customer. This commercial arrangement should not require enforcement by WA Police. The Commission has considered the points raised in submissions and does not recommend that Proposal 5 be pursued.

Recommendation 35:

There should be no legislative requirements with regard to time periods for collection of firearms from dealers.

6.7 Training

The requirement of training for all first-time licence applicants was agreed to by jurisdictions as part of the 1996 National Firearms Agreement. It was further resolved that training would be standardised across all jurisdictions. This has not yet occurred.

Section 10A of the Firearms Act provides that the Firearms Regulations may require that, before a licence can be issued to an applicant, the applicant be required to have successfully completed a course of training accredited in accordance with the regulations.

Western Australian training requirements are set out under regulation 7(3)(c) of the Firearms Regulations which is a theoretical test requirement. Proposal 22 suggested that practical instruction be considered for first-time applicants.

The requirement for a completed firearms awareness certificate appears in the licence application Form 1 in the Firearms Regulations with Form 2 setting out the form of the certificate. There are no specific provisions dealing with training.

WA Police (submission dated 9 February 2016, page 17) does not support a practical training requirement and states that:

'Comprehensive training for a person who wants to join a club is a practical idea, but it should not hinder the primary producer and/or the licence holder who wants to recreational hunt and shoot. By enforcing training provided by an approved club or organisation would add costs to the applicant for a recreational hunting licence and could force quasi membership to these approved clubs and organisations. Handgun clubs are legislatively required to provide training to prospective members. Schedule 3 Firearm Regulations'.

Some stakeholders have raised concerns about practical training accessibility in rural areas, increased red tape and costs, and the lack of a demonstrated need for the proposed measure, while others were in favour of the introduction of a practical requirement at a very basic level. It is evident that stakeholders were divided on this issue, even between firearms users themselves.

While the topics of firearms laws and firearms safety can be learned theoretically, firearms competency requires some practical training. The question is whether there should be a required level of competency before being able to 'go out on your own'. The often used analogy is that of driver's licences where there is a period of required supervised driving.

The Commission recommends that the Firearms Regulations be amended to include specific provisions that set out all training requirements. The Commission recommends that these provisions include the following:

- An applicant be required to satisfactorily complete a 'firearms awareness certificate' module on firearms safety and a module on firearms laws, prior to being issued a licence, permit or approval for the first time.
- An applicant be required to satisfactorily complete all three modules of a 'firearms awareness certificate', that is a module on firearms safety, one on firearms laws and practical module on firearms competency:
 - prior to being issued a licence, permit or other approval for a Category H1 handgun for the first time; or

- prior to being issued a licence, permit or other approval for a Category D firearm for the first time; or
 - prior to being issued a licence, permit or other approval for a Category C firearm if such applicant has not at any time had an existing licence, permit or approval for another Category firearm for a period of at least 12 months.
- Where an applicant has already completed modules one and two, they will not need to be repeated.
 - Different training and competency levels may be required for different Categories of firearms.
 - Special regard be had to training for users of handguns for sporting shooters (discussed in the next section), in the security industry and for users of Category D firearms.
 - The training regulations also apply to applicants for approval as a Nominated Person under a licence such as a Corporate Licence.

The Firearms Regulations should empower the Police Commissioner to approve examiners, and certain deemed approvals should be specified, for example, experienced officers of approved clubs and Police Officers above a certain rank.

The Commission is of the view that some level of firearms awareness is necessary for minors who possess and use a firearm under the exemptions recommended at Section 15.4. The Commission recommends that:

- In respect of a minor from the age of 10 to 14, the minor's supervisor ensure that the minor has a satisfactory understanding of firearms safety prior to permitting the minor to use a firearm under exemption.
- In respect of a minor from the age of 14 years and under the age of 18 years, the minor's supervisor ensure that the minor has successfully completed a 'firearms awareness certificate' module on firearms safety and a module on firearms laws, prior to permitting the minor to use a firearm under exemption.
- In respect of a minor acting under an exemption in regard to paintball or at a shooting gallery, the minor's supervisor ensure that the minor has a satisfactory understanding of firearms safety prior to permitting the minor to use a firearm under exemption.
- In respect of a minor from the age of 10 acting under an exemption in regard to Primary Production (as discussed at Subsection 15.4.4), the relevant licence holder ensure that the minor has successfully completed all three modules of a 'firearms awareness certificate', that is a

module on firearms safety, one on firearms laws and practical module on firearms competency. The Commission has recommended the practical module in this case due to the fact that the minor will be using a firearm under this exemption without supervision.

Recommendation 36:

36.1 The *Firearms Regulations 1974 (WA)* should be amended to include specific provisions that set out all training requirements including:

- a. An applicant be required to satisfactorily complete a 'firearms awareness certificate' module on firearms safety and a module on firearms laws, prior to being issued a licence, permit or approval for the first time.
- b. An applicant be required to satisfactorily complete all three modules of a 'firearms awareness certificate', that is a module on firearms safety, one on firearms laws and practical module on firearms competency:
 - i. prior to being issued a licence, permit or other approval for a Category H1 handgun for the first time; or
 - ii. prior to being issued a licence, permit or other approval for a Category D firearm for the first time; or
 - iii. prior to being issued a licence, permit or other approval for a Category C firearm if such applicant has not at any time had an existing licence, permit or approval for another Category firearm for a period of at least 12 months.

36.2 Where an applicant has already completed modules one and two, they should not need to be repeated.

36.3 Different training and competency levels may be required for different Categories of firearms.

36.4 Special regard should be had to training for users of handguns for sporting shooters, in the security industry and for users of Category D firearms.

36.5 The training regulations should also apply to applicants for approval as a Nominated Person under a licence such as a Corporate Licence.

- 36.6 The *Firearms Regulations 1974* (WA) should provide for the approval of examiners by the Police Commissioner and certain deemed approvals should be specified, for example, experienced officers of approved clubs and Police Officers above a certain rank.
- 36.7 In respect of a minor from the age of 10 to 14, the minor's supervisor must ensure that the minor has a satisfactory understanding of firearms safety prior to permitting the minor to use a firearm under exemption.
- 36.8 In respect of a minor from the age of 14 years and under the age of 18 years, the minor's supervisor must ensure that the minor has successfully completed a 'firearms awareness certificate' module on firearms safety and a module on firearms laws, prior to permitting the minor to use a firearm under exemption.
- 36.9 In respect of a minor acting under an exemption in regard to paintball or at a shooting gallery, the minor's supervisor must ensure that the minor has a satisfactory understanding of firearms safety prior to permitting the minor to use a firearm under exemption.
- 36.10 In respect of a minor from the age of 10 acting under an exemption in regard to Primary Production, the relevant licence holder must ensure that the minor has successfully completed all three modules of a 'firearms awareness certificate', that is a module on firearms safety, one on firearms laws and a practical module on firearms competency.

6.8 The use of hand guns in shooting competitions

The restrictions set out in clause 12 of Schedule 3 of the *Firearms Regulations* for competition shooters, including the probationary periods linked to different types of handguns, are in line with the *National Handgun Agreement 2002*.

The restrictions in clause 12 also include a limitation on the number of firearms; if the person has been a member of the approved shooting club for less than 12 months, the approval, permit or licence cannot apply to more than two handguns and can only apply to:

- one .177 air pistol and one .22 calibre handgun; or
- one .177 air pistol and one centre fire handgun.

As discussed on page 118 of the Discussion Paper there have been suggestions that this restriction be relaxed and Question 23 called for submissions in that regard. WA Police does not support any change due to the restrictions being part of the *National Handgun Agreement 2002* (submission dated 9 February 2016, page 18).

A matter of practical consideration that was raised with the Commission is that, due to the time taken for membership application, training and first licencing after six months, it is often the case that there is only a short period remaining before the 12 months have expired. In essence this means that often two separate licence applications are required within a very short period of time.

With regard to competitions, the Commission has been advised of the following potential requirements for a competitor that are hampered by the current limitation on numbers:

A competitor may require handguns of the same calibre but with different specifications (for example where a competitor who wants to compete in 10M Air Pistol, Standard Pistol and 50M Pistol and has completed their first 6 months of membership requires a .177 Air Pistol, .22 semi auto and a .22 single shot.

The Commission notes that other Australian jurisdictions have similar provisions restricting the number of handguns during the 12 month probationary period: section 31(3B) *Firearms Act 1996* (NSW), section 15A (4b) (c) *Firearms Act 1977* (SA), section 61(c) *Firearms Act 1996* (Tas), section 104(1) (e) *Firearms Act 1996* (Vic), section 35B(1) *Firearms Act* (NT), section 75(3) *Firearms Act 1996* (ACT) and section 133 *Weapons Act 1990* (Qld).

While the Commission is of the view that some relaxation of the restriction on numbers can be considered without any risk to community safety, it does not recommend any immediate change but recommends that WA Police, in its interactions at a national level with regard to a new *National Firearms Agreement*, suggest changes in that regard with a view to facilitating genuine competition.

Recommendation 37:

WA Police, in its interactions at a national level with regard to a new *National Firearms Agreement*, should suggest relaxation of the restriction on the number of handguns during the 12 month probationary period, with a view to facilitating genuine competition.

6.9 Replacement firearms

Proposal 25 suggested that a licence for a firearm could also authorise the possession of a replacement firearm that has previously been approved as being in the same category as the original firearm, if exchanged at a licensed dealer.

At page 119 of the Discussion Paper the Commission discussed the WA Police warranty replacement policy which allows a six-month 'like for like' replacement. The Discussion Paper (at page 119) also pointed out similar warranty replacement policies in Queensland and Victoria, albeit in different terms. Some stakeholders were concerned that the six-month period was unreasonably short and the Commission was advised that manufacturers' warranties can be for up to five years.

Most stakeholders agreed with Proposal 25. Outside of the warranty period, firearms owners may wish to exchange an old firearm, which may be in need of repair, for a new firearm of the same make and model. As the Commission stated in the Discussion Paper, such a firearm owner has already been approved to possess the firearm.

In a further submission (9 February 2016, page 19) WA Police stated that over and above the warranty replacement policy,

'The further ability to exchange aged or unserviceable firearms of similar calibre should not be permitted without a thorough application being completed. Due to changes in technology and metallurgy, though it might be firearm for firearm in calibre, it could be higher performing i.e. a .22 calibre long rifle and a .22 calibre air rifle, as an air rifle can perform at a higher level. This may require further consideration of justification and genuine reason to license this higher performing firearm on the current licence approvals and supporting documents. This process will require administrative intervention and will be subject to a fee'.

The Commission notes the difficulty in being sure that an exchange is in fact 'like for like', particularly after the passing of many years and changes in manufacturing processes. However the Commission also notes that community safety is improved with the removal of potentially unsafe firearms from circulation.

The Commission recommends that the Firearms Legislation be amended to incorporate the WA Police warranty replacement policy as well as other possible exchanges. The Commission is of the view that the six-month period is too short and that a 'like for like' replacement should be permitted at any time where it can be shown to be under warranty.

Recommendation 38:

The Firearms Legislation should be amended to incorporate the WA Police warranty replacement policy, subject to a 'like for like' replacement being permitted at any time where it can be shown to be under warranty; or if outside of warranty it can be established, to the satisfaction of the Police Commissioner, that it is in fact a 'like for like' exchange.

CHAPTER SEVEN: THE RENEWAL PROCESS

7.1 Duration and licence renewals

The Commission discussed the matters of licence terms and renewals from page 110 of the Discussion Paper. The Discussion Paper contained an interjurisdictional analysis of the duration of licences and found that Western Australia was the only jurisdiction that had a 12-month validity period for most of its licence types.

Before recommending any changes on the duration of the licence it is necessary to first consider the purpose of having regular renewals.

7.1.1 Purpose of renewals

Genuine reason and genuine need

Although it appears that a renewal in the majority of cases simply involves the paying of a fee and not a re-application, regulation 3B(4) of the Firearms Regulations makes it clear that the Police Commissioner may treat an application for the renewal of a licence as an application for the grant of a licence. While the 2008 Police Review at page 23 recommended that firearm licence holders 'requalify' every five years to confirm their genuine reason and genuine need for using a firearm this is not WA Police's current position. In its submission of 9 February 2016 WA Police maintained that 'current reporting requirements on approved clubs and organisations adequately provide assurances of the continued genuine reason and genuine need test. Further requirements on licensed holders to provide these assurances would contribute to considerable administrative process and costs to the licence holder' (at page 15).

The Commission considered whether there is a need to clarify that renewals should require the licence holder to resubmit evidence of genuine reason and genuine need and Proposal 19, dot point 2 made the suggestion in that regard. Most stakeholders were not in favour of the renewal being a re-application by having to submit evidence to prove the genuine reason and genuine need.

The Licensing Authority will have up-to-date information on members of approved clubs and organisations and the recommendations at Chapter 14 have strengthened these reporting requirements. With regard to recreational shooting and hunting, the Commission has recommended that it not be necessary to renew a property letter (Recommendation 62) and as such has formed the view that it is not necessary for the genuine reason to be proved again after the original application.

Reporting requirements in respect of Corporate Licences, where firearms are used by people under section 16(2) of the Firearms Act, was the subject of recommendations at Chapter 12. The Licensing Authority will thus be aware when an organisation no longer has any people using firearms under that type of licence.

Under section 20 of the Firearms Act, the Police Commissioner is able to test the genuine reason at any time and, if necessary, may revoke or refuse to renew a licence if the circumstances in which the approval was given no longer prevail. Potential issues could be identified through the reporting mechanisms as well as through the regular interaction between the Licensing Authority and licence holders.

The Commission is in agreement with WA Police and the majority of other stakeholders that there are sufficient safeguards to ensure that the Licensing Authority receives timely knowledge of any licence holders who no longer have a genuine reason or genuine need. The Commission thus recommends that the current position be maintained and the Firearms Legislation clearly state that a renewal application should not be treated as an application for the grant of a licence. Regulation 3B(4) may need to be amended to reflect this.

The Commission recognises that there may be circumstances where the Police Commissioner has reason to believe that a licence holder no longer has a genuine reason or genuine need. The Police Commissioner should continue to have the power to require a licence holder to submit evidence of genuine reason and genuine need (or any other evidence as if it was a first application) under section 20(1a) of the Firearms Act, in order to make a determination.

Fit and Proper test

A further possible reason for renewal could be to re-check whether a licence holder is a fit and proper person. The question was raised in Question 11 on page 85 of the Discussion Paper.

The Commission is of the view that the Licensing Authority is already in a position to ascertain whether a licence holder is no longer a fit and proper person from a criminal perspective. The recommendations under Section 20.2 dealing with reporting of matters to the Police Commissioner would also assist in ensuring that the Licensing Authority has access to current information on other relevant information such as mental health. The Commission's view is that the Licensing Authority could, if it wished, do a

criminal check at the time of renewal without the fit and proper test having to be a formal requirement of renewal. The Licensing Authority may conduct a fit and proper test informally at any time, either routinely or if a potential issue comes to its attention.

The Commission does not recommend that the fit and proper test form part of the renewal process. However, see recommendation 49 on the application of the 'fit and proper' test.

Keeping licence holder details up-to-date

Under regulation 9 of the Firearms Regulations a holder of a licence, permit or approval must give the Police Commissioner written notice of any of the following events —

- (a) a change of the holder's name;
- (b) a change in the holder's place of residence;
- (c) a change in the storage arrangements for a firearm to which the licence, permit or approval relates;

no later than 21 days after the event occurs.

According to WA Police 'the current annual renewal process ensures public records of the location of firearms are maintained to an acceptable community safety standard. Licence holders are required to advise of changes of address and changes of storage address to ensure firearms are recorded and furthermore stored within the requirements of the Firearms Act. A five year renewal would result in the loss of real time data, firearms stored in locations that are not recorded or firearms stored in non-compliant storage facilities and locations' (submission dated 9 February 2016 page 15).

In other words the renewal process is currently being used to ensure that licence holders are keeping to their obligations under regulation 9. Due to the importance of this information, failure to comply with regulation 9 in a timely manner is an offence under regulation 23(1) and subject to a penalty not exceeding \$1,000.

The Commission has concluded that the primary purpose for the renewal process is to ensure that licence holder details remain current.

Recommendation 39:

The renewal process should not require a licence holder to reconfirm his or her genuine reason or genuine need or require a 'fit and proper' test.

7.1.2 Duration of a licence

In the previous section the Commission came to the conclusion that the renewal process is mainly required

for the purposes of keeping licence holder details up-to-date.

The longer the time period between renewals, the greater the risk that licence holder information will be out-of-date, which in turn could make it more difficult for the Licensing Authority to locate the licensee or his or her firearms. This is notwithstanding the reporting obligations of regulation 9.

The Commission has weighed this risk up against the clear advantage of having a uniform duration period for all licences. The general position across Australian jurisdictions is that a firearm licence for Categories A, B and C remain in force for a period of five years while Categories D and H are generally for one or two years (see page 110 of the Discussion Paper). In some cases the duration differs in accordance with the type of licence and not the category of firearm.

The Commission recommends that a Firearm Licence should endure for a period of five years, except for the following cases where the one year duration should be retained:

- all licences that authorise the possession or use of Category D or H (handgun) firearms, except for a Category H (handgun) held under a Firearm Collector's Licence;
- licenses that authorise the possession or use of Category C firearms by a primary producer or for vertebrate pest animal control (as the case may be); and
- where the licence holder (who may renew for five years) chooses to renew a licence for one year.

The Commission is of the view that some licence holders may only want to renew for a shorter period (and pay a lesser fee). The Commission recommends that the ability to renew for a one year period be retained for all licenses.

7.1.3 Process of renewals

The Commission is of the view that the renewal form should require the licence holder to confirm the following minimum matters under a statutory declaration:

- name of licence holder;
- occupation or primary business;
- address;
- firearms held under the licence;
- storage address;
- name of approved club or organisation (where relevant); and
- confirmation of physical and mental wellbeing.

The process should require submission of the signed form and payment of the fee.

7.1.4 Payment of multiple licences

Proposal 19, dot point 3 suggested that the terms of a licence be aligned where one person holds multiple licences. The Proposal found unanimous support.

The Commission recommends that where a licence holder holds multiple licences with the same duration period then the terms should be capable of alignment upon payment of the appropriate adjusted licensing fees.

Recommendation 40:

The term of licences should be increased to five years except for the following licences for which the one year term be retained:

- a. all licences that authorise the possession or use of Category D or H (handgun) firearms, except for a Category H (handgun) held under a Firearm Collector's Licence;
- b. Licences that authorise the possession or use of Category C firearms by a primary producer or for vertebrate pest animal control (as the case may be); and
- c. Where the licence holder (who may renew for five years) chooses to renew a licence for one year.

Recommendation 41:

41.1 The renewal process should require submission of a signed renewal form and payment of the fee.

41.2 The renewal form should be a signed Statutory Declaration and contain at least the following information:

- a. name of licence holder;
- b. occupation or primary business;
- c. address;
- d. firearms held under the licence;
- e. storage address;
- f. name of approved club or organisation (where relevant); and
- g. confirmation of physical and mental wellbeing.

Recommendation 42:

The terms of licences may be aligned where a licence holder has multiple licences with the same duration period and pays any adjusted licensing fee.

7.2 Renewal notices

At page 112 and Proposal 20 of the Discussion Paper the Commission considered whether the Licensing Authority should be obliged to send out reminder notices to licence holders.

The Licensing Authority currently sends out a renewal notice to a licence holder 28 days prior to expiry of the licence. The Commission is of the view that this is sufficient reminder to a licence holder and any further notices would be an unnecessary cost to the Licensing Authority.

The renewal notice is sent in accordance with regulation 4 of the Firearms Regulations and while it is not obligatory it is evident that a renewal notice has been sent to licence holders for many years. The Commission recommends that the Licensing Authority be required to send renewal notices to licence holders using the most recent address for that licence holder on the database. The Licensing Authority should have no further obligations to notify the licence holder of the need to renew their licence and this requirement should not absolve the responsibility of the licence holder to ensure timely renewal.

Recommendation 43:

43.1 The Licensing Authority should be required to send renewal notices to licence holders using the most recent address for that licence holder on the database and regulation 4 of the *Firearms Regulations 1974* (WA) should be amended accordingly.

43.2 The Licensing Authority should have no further obligations to notify the licence holder of the need to renew their licence.

7.3 Returned payments

Proposal 20 of the Discussion Paper also dealt with the issue of returned payments. Section 8(1) of the *Road Traffic (Vehicles) Act 2012* (WA) provides that where the fees or charges for the grant or renewal of a vehicle licence (the licence) are paid by a cheque which is not honoured by the financial institution on which it is drawn, the licence has no effect as from the time of grant or renewal, as is applicable in the case.

The Commission recommends that the Firearms Legislation include a similar provision.

Recommendation 44:

The Firearms Legislation should provide that where the fees or charges for a licence, or a licence renewal, is dishonoured by the relevant financial institution, the licence has no effect as from the time of grant or renewal.

7.4 Renewals and issue of infringement notices

This matter was discussed at page 155 of the Discussion Paper and the Commission made a number of suggestions under Proposal 39, dot point 1 and Question 33.

7.4.1 The grace period

Section 9A(6) of the Firearms Act provides that, where a person applies to renew their licence more than three months, but not more than 12 months, after its expiry, the renewal takes effect on the day when the licence is renewed but, for the purposes of determining the day when the renewed licence expires, it is deemed to have been renewed immediately after it previously expired. This provision gives the licence holder an effective 12-month grace period.

Many stakeholders submitted that the period should remain at 12 months; some of the reasons provided were that some licence holders live in remote areas and may not receive the renewal notice in time, that a non-renewal is seldom intentional, that non-renewal has no effect on public safety, and that the Licensing Authority should make every effort to first contact the licence holder.

WA Police has indicated its support for a reduction of the grace period from 12 months to three months (submission of 16 June 2015, page 26).

The Commission is of the view that the licence holder is responsible for the renewal of a Firearm Licence. As such it should not be the duty of the Licensing Authority to make contact with licence holders to remind them that renewals are due.

The Commission has considered the 12 month grace period and is of the view that it is too long a time for there to be uncertainty as to whether a renewal will take place or not. It also means that for that entire period, if there is no renewal, any seized firearms have to be kept in safe keeping by WA Police.

The Commission's view is that a three month grace period is reasonable, especially as the Licensing Authority sends out the renewal notice 28 days prior to expiry. The Commission recommends that sections 9A(6), 9A(7) and 19A of the Firearms Act be amended as required in order to remove the 12 month grace period and only keep the existing three month grace period.

After the three month period has elapsed a person would have to apply for a new Firearm Licence in accordance with section 18(1). Section 9A(7) should be amended to reflect this.

7.4.2 Expansion of infringements for failure to renew

The Firearms Act specifically provides for offences that are of a lesser severity, making allowances for technical offences that are committed as a result of a licence holder's oversight. Amongst these are offences relating to the failure to renew.

Under section 19A(2) of the Firearms Act if a person fails to renew a Firearm Licence, Firearm Collector's Licence, or Ammunition Collector's Licence within three months of the expiry date (but not more than 12 months after it), an infringement notice may be issued. If a person pays the amount prescribed by the notice by way of a penalty, he or she will avoid prosecution and obtain the renewal of the licence.

The 2008 Police Review recommended that:

- the penalty of the infringement notice should be based solely upon the fact of the licence expiring, rather than on the licensee's 'possession' of the firearms; and
- the infringement provisions be extended to apply to the non-renewal of a Dealer's Licence, Repairer's Licence, Manufacturer's Licence and Corporate Licence.

WA Police (submission dated 9 February 2016 at page 29) has confirmed that it supports Proposal 39, dot point 1 which takes into account the 2008 Police Review recommendations mentioned above.

The Licensing Authority currently automatically issues infringement notices in respect of a failure to renew where three months have passed since the expiry date (section 19A of the Firearms Act as read with regulation 27 of the Firearms Regulations). In addition, upon service of the infringement notice any firearms are seized and put in storage pending determination of the matter or renewal of the licence.

The Commission recommends that the status quo remain and the Firearms Legislation continue to allow for the issue of an infringement notice and seizure of firearms upon expiry of the three month grace period. The legislation should be clear that there is no offence for failure to renew where the Licensing Authority has been notified within the three month period that there is no intention to renew.

The infringement provisions under section 19A of the Firearms Act currently apply to the following licences only: Firearm Licence, Firearm Collector's Licence, and Ammunition Collector's Licence. The Commission recommends that it apply to all licence types.

Recommendation 45:

- 45.1 Sections 9A(6), 9A(7) and 19A of the *Firearms Act 1973* (WA) should be amended as required in order to remove the 12 month grace period and retain the three month grace period.
- 45.2 Section 9A(7) should be amended to reflect that after the three month period has elapsed, a person who has not renewed has to apply for a new Firearm Licence in accordance with section 18(1).
- 45.3 The Firearms Legislation should continue to allow for the issue of an infringement notice and seizure of firearms upon expiry of the three month grace period.
- 45.4 The Firearms Legislation should be clear that there is no offence for failure to renew where the Licensing Authority has been notified within the three month period that there is no intention to renew.
- 45.5 The infringement provisions under section 19A of the *Firearms Act 1973* (WA) should apply to all licence types.

Recommendation 46:

In addition to the matters in current section 19A(6), the *Firearms Act 1973* (WA) should provide that whenever a person pays an infringement in respect of failure to renew, that will not negatively impact on the fit and proper test and cannot be a reason for the revocation of a licence or refusal to grant a new licence.

7.4.3 Infringements and 'fit and proper' considerations

Stakeholders have sought confirmation that for any minor offence where an infringement is paid it will not affect the licence holder's status as a fit and proper person and should not be used as a reason to revoke a licence.

Section 19A(6) of the Firearms Act states that the payment of a penalty pursuant to this section shall not constitute a conviction of an offence against this Act and shall not be regarded as an admission of liability for the purpose of, or in any way affect or prejudice, any civil claim, action or proceeding. The Commission recommends that in addition to the matters in current section 19A(6) the Firearms Act provide that whenever a person pays an infringement in respect of failure to renew, that will not negatively impact on the fit and proper test and cannot be a reason for the revocation of a licence or refusal to grant a new licence. Obviously other offences could be a factor such as if a former licence holder continues to be in possession of firearms.

CHAPTER EIGHT: FIT AND PROPER PERSON TEST

8.1 Fit and proper person test

The application of the fit and proper test was discussed in Chapter 8 of the Discussion Paper.

Section 11(1) of the Firearms Act provides that the Police Commissioner cannot grant an approval or permit or issue a licence to a person if the Commissioner is of the opinion that the person is not a fit and proper person to hold the approval, permit, or licence or if it is not desirable in the interests of public safety to do so. All stakeholders support the principle behind the fit and proper test, that is, the desire to protect the community by ensuring that only fit and proper licence holders possess and use firearms.

8.1.1 The 100-point check

A 100-point check is done as part of a process to establish the bona fides of an applicant for a licence. Regulation 7 of the Firearms Regulations provides that an applicant may be required to provide evidence of identity in a manner approved by the Police Commissioner.

Proposal 11 of the Discussion Paper indicates that it is unclear whether the Police Commissioner has specifically approved the 100-point check in accordance with regulation 7.

The Commission recommends that the requirement to provide evidence of identity based on a 100-point check be formally approved by the Police Commissioner under regulation 7(3)(b) and 7B of the Firearms Regulations.

Recommendation 47:

The requirement to provide evidence of identity based on a 100-point check should be formally approved by the Police Commissioner under regulation 7(3)(b) and 7B of the *Firearms Regulations 1974* (WA).

8.1.2 Previous convictions

The fit and proper test in section 11(1) of the Firearms Act provides a general discretion to the Police Commissioner. Sections 11(2) and (3) go on to provide specific cases where this discretion may be applied to conclude that a person is not fit and proper:

- Under section 11(2) when the Police Commissioner is satisfied that a person has a history of, or a tendency towards, violent behaviour.
- Under section 11(3) when the Police Commissioner is satisfied that at any time within the period of five years before the person applied for the approval, permit or licence:
 - the person was convicted of an offence involving assault with a weapon;
 - the person was convicted of an offence involving violence;
 - the person was convicted of any offence against this Act; or
 - a violence restraining order was made against the person.
- Under section 11(3) when the Police Commissioner is satisfied that the person fails to meet standards of mental or physical fitness that the Commissioner considers to be necessary for the person to hold the approval, permit or licence; or suspects, on the basis of an intelligence report or other information held in relation to the person, that the person is a threat to public safety.

A number of stakeholders have indicated that these considerations amount to duplication and overlapping and do nothing to facilitate clear legislation. In particular it was suggested that the general discretion under section 11(1) would cover 11(2) and 11(3). The Commission's view is that section 11(2), although possibly covered by the more general section 11(1), highlights the importance of violent behaviour in the context of the Police Commissioner's considerations (also see Section 20.4 in respect to violence restraining orders).

Proposal 10 of the Discussion Paper suggested that a conviction for a serious sexual or a serious drug-related offence be included in the section 11(3) list.

The Commission's view is that section 11(3) is useful in that it provides for specific objective grounds upon which the Police Commissioner may find that a person is not fit and proper without having to consider any other factors. The Commission therefore recommends that section 11(3) be amended by the inclusion under section 11(3)(a) of a conviction for a serious sexual or a serious drug-related offence.

What is a serious sexual or a serious drug-related offence?

The Commission has decided not to recommend a definition for serious sexual or serious drug-related offences but suggests that the offences in schedule 2 of the *Bail Act 1982* (WA) be used as a guide in

respect to serious sexual offences and that serious drug offences should at least have an element of possession with intent to supply or trafficking.

8.1.3 Continuous fit and proper checking

The Office of the Sheriff of Western Australia (under submission from the Department of the Attorney General dated 12 February 2016) informed the Commission of cases where, in the course of the exercise of their duties, its staff have come across licence holders who were most probably not fit and proper yet retained a licence. Without going into the merits of any particular matter, the Commission recommends that WA Police review its policies to ensure that all licence holders have a regular criminal check on a rotational basis. This is especially necessary as the recommended licence duration periods are for the most part five years.

Recommendation 48:

Section 11(3) of the *Firearms Act 1973* (WA) should be amended by the inclusion under section 11(3)(a) of a conviction for a serious sexual or a serious drug-related offence.

Recommendation 49:

WA Police should review its policies to ensure that all licence holders have a regular criminal check on a rotational basis.

8.1.4 Mental fitness

The Commission has formed the view that the fit and proper test should not form part of the renewal process (see Recommendation 39). As suggested at Recommendation 41, a licence renewal form should contain a statement by the applicant as to his or her physical and mental wellbeing and ability to hold a licence.

As stated in the Discussion Paper at page 80, there is reliance on the applicants themselves declaring any relevant medical issues. The public reporting mechanism (recommended at Section 20.2), the provisions of section 23B of the *Firearms Act* and any warning indicators on the WA Police database all assist with identifying potential mental health issues.

Under section 18(4a)(b) of the *Firearms Act* if there is any apparently reliable indication that the person may not meet standards of mental or physical fitness, the Police Commissioner is to ensure that, for the purpose of forming an opinion as to whether the person is fit and proper, sufficient evidence has been provided to satisfy the Police Commissioner that the person does meet those standards.

Section 18(4b) and (4c) of the *Firearms Act* provides that the evidence the Police Commissioner may require in order to satisfy himself or herself that the person meets required standards of mental or physical fitness may include a medical certificate, or additional information, from a medical practitioner.

Section 23B of the *Firearms Act* provides the ability, but not an obligation, for a health professional to inform the Police Commissioner if on the opinion of that health professional, it is not in the person's interest or not in the public interest that the person possess any firearm or ammunition to which the patient is believed to have access. The provision permits a health professional to provide information notwithstanding any underlying duty of confidentiality. The Commission considered whether this provision should be obligatory but decided against doing so. The creation of an obligation could have a detrimental impact on the doctor-patient relationship. In addition it would be difficult to enforce compliance with mandatory reporting provisions.

An alternative would be for the legislation to provide that, in addition to the ability of the Police Commissioner to request a medical certificate under section 18(4b) or additional medical information under section 18(4c), the applicant must submit a medical competency certificate, either at specified intervals such as at renewals or after a certain age. An example of age-triggered assessment is that in Western Australia, once you reach the age of 80 you need to undergo an annual medical assessment before you can renew your driver's licence.

The Commission spent considerable time considering this matter but has not made a specific recommendation for change as the policy considerations surrounding mental health and access to firearms require detailed analysis and assessment.

Recommendation 50:

The Western Australia Government should initiate a detailed analysis and assessment of the policy surrounding mental health and access to firearms.

8.2 Fit and proper test for additional firearms

Most of the issues raised by stakeholders in the context of this Chapter relate to whether the fit and proper test ought to be repeated each time an additional firearm is applied for and/or on renewal of a licence.

The Commission formed the view that the fit and proper test should not form part of the renewal process (see Chapter 7) although the Licensing

Authority may do so of its own accord upon receipt of the renewal application or at any other time.

The Commission concluded that a full application should be made in the case of every application for an additional firearm and that there should be no provision for an expedited application process (see Section 9.5).

The Commission recommends that the fit and proper test be conducted on each application for an additional firearm. The Commission understands that to most stakeholders it appears obvious that the licence holder would still be fit and proper, in that such person currently holds another licence. However, if a genuine reason test needs to be applied in each case it does not add significantly to the processing time for a fit and proper test to be conducted as well. It causes no time or financial hardships on the applicant, is in accordance with the 1996 National Firearms Agreement and is applied by a number of other Australian jurisdictions as described on page 84 of the Discussion Paper.

Further, by requiring a person to be reassessed under the fit and proper test, the additional inconvenience to the licence holder, if any, is clearly outweighed by the community safety enhancement that inevitably would result from this measure.

Recommendation 51:

The 'fit and proper person' test should be applied each time a person seeks to license an additional firearm.

CHAPTER NINE: GENUINE REASON

9.1 Who has a genuine reason?

Section 11A of the Firearms Act sets out the list of applicants who could be regarded as having a genuine reason to acquire or possess a firearm:

- (a) if it is for use by the person as a member of an approved shooting club and the person is an active and financial member of the club; or
- (b) if it is for use by the person as a member of an organisation approved under this paragraph; or
- (c) if it is for use in hunting or shooting of a recreational nature on land the owner of which has given written permission for that hunting or shooting; or
- (d) if it is required by the person in the course of the person's occupation; or
- (da) if in the case of a prescribed paintball gun, it is required by the person to conduct or engage in paintball in accordance with this Act; or
- (e) if it is to form part of a genuine firearm collection or genuine ammunition collection; or
- (f) if it is for another approved purpose.

In order to pass the 'genuine reason' test the applicant must also show that the particular kind of firearm or ammunition can be reasonably justified.

9.2 The 'reasonable justification' test as part of the 'genuine reason test'

Section 11A(3) of the Firearms Act states that a person does not have a genuine reason for acquiring or possessing a firearm or ammunition of a particular kind unless the Police Commissioner is satisfied not only as to the person's reason for acquiring or possessing a firearm or ammunition but also that the particular kind of firearm or ammunition can be reasonably justified.

While a 'genuine reason' is why an applicant ought to be issued with approval to own, possess or use a firearm, the 'genuine need' is a statutory test applied to determine the need for the particular type of firearm which is the subject of the application.

The 'reasonable justification' test has been clarified in *Kashani v Commissioner of Police* [2011] WASC (*Kashani* case). It is a requirement that must be met to satisfy the genuine reason test; a consideration of whether the particular kind of firearm is reasonably justified for the purpose for which the applicant says it is required. This was discussed at page 86 of the Discussion Paper.

The Police Commissioner may take into account whether the applicant has a need for the particular firearm, in ordinary terms (not the genuine need test) (*Kashani* case at [34]). The test is 'whether objectively there are sensible, adequate grounds for the applicant to possess the particular kind of firearm the subject of the application' and '[m]atters personal to an applicant may be relevant to this test' (*Kashani* case at [42]). The Applicant does not have to prove an existing need (*Kashani* case at [63]).

In *Castaldini and Commissioner of Police* [2013] WASAT 150, the SAT stated at [31] that 'bearing in mind the appropriateness of considering whether or not the existing holding of firearms is sufficient for a person's reasonable firearm needs, and the imperative of section 11A(3) of the Act to demonstrate that any additional firearm be of a particular kind that can be reasonably justified, a cautious approach to a licensee's urgings for backup firearms is entirely appropriate.'

9.2.1 Other Australian jurisdictions

Most Australian jurisdictions have a general catch-all provision under which the licensing authority could refuse to issue a firearm licence.

Where Western Australia has the reasonable justification test, South Australia's new *Firearms Act 2015* (SA) at section 15(3) provides for matters which if they apply negates a genuine reason. Section 15(4) goes on to provide that 15(3) does not limit the reasons which the Registrar may be satisfied are not genuine reasons for the purpose of justifying the possession of a firearm. Licensing can also be refused in the public interest.

Under section 17 of the *Firearms Act 1996* (Vic) the Chief Commissioner must be satisfied that every licence is not against the public interest.

In Tasmania section 60(4) of the *Firearms Act 1996* (Tas) provides that the Commissioner must not grant an application for a permit to acquire a firearm unless the Commissioner is satisfied that there is a sufficient reason and need for the applicant to acquire the firearm.

9.2.2 The policy behind the reasonable justification test

The reasonable justification test is designed to plug the gap between the genuine reason and genuine need. It provides the opportunity for the Licensing Authority to take factors into account that would not be covered elsewhere.

The genuine need is a statutory test, that is, the test is specifically set out in the Act with reference to the Categories and exceptions, and the genuine reasons set out in section 11A of the Firearms Act is a list of applicants who could be regarded as having a genuine reason.

For example, the genuine need test for a Category C firearm is that an applicant must show that a firearm of Category A or B would be inadequate or unsuitable for the purpose for which the firearm is required and does not specifically relate to public policy issues such as the proliferation of firearms.

As noted above, other jurisdictions have different ways of dealing with what is the same policy consideration; that the Licensing Authority must be able to consider whether there is sufficient reason and need (not 'genuine need') for the applicant to acquire the firearm.

The Commission is satisfied that this is a sound policy and that the Licensing Authority must be able to take into account factors to ensure that the applicant has sensible, adequate grounds to possess the particular kind of firearm which is the subject of the application.

The reasonable justification test is most commonly applied when considering the number of firearms a person owns (which is discussed at Section 9.4), whether a firearm is reasonably required at all, and also the size of the property on which an applicant proposes shooting or hunting with reference to a property letter.

A major aspect of the issue for firearms owners is not simply the existence of a genuine reason (and reasonable justification) test per se, but dissatisfaction as to how the test is applied in practice. The question as to whether there should be an internal review process in the event of the rejection of an application on the basis of a failure to satisfy the genuine reason requirement is discussed at Chapter 18.

In the following sections the Commission will consider the interaction between the reasonable justification test and specific practical considerations that stakeholders raised.

9.3 'Reasonable justification' test and multiple firearms

The current position is that the 'genuine reason' test is applied in respect of each additional application to add a firearm to an existing licence. That is, a person may have been granted a licence for a firearm on the basis of their membership of an approved shooting club (for example), but future firearms that the person seeks to acquire will not be assumed to be encompassed by this reason and each purchase must be individually justified.

Some stakeholders have argued that once a person has been deemed fit to be granted a licence and has been found to have a genuine reason for possessing firearms, scrutiny of the exact reasons for each future firearm purchase is unnecessary and time-consuming. The 'fit and proper' test is discussed in more detail at Chapter 8.

Other issues that have been alleged in regard to multiple firearms are that in the application of the genuine reason test there is inadequate acknowledgment that multiple firearms may be required, owing to the variety of purposes they serve and that in general, applications for additional firearms are determined according to internal Licensing Authority policy which is not externally transparent.

It is important to bear in mind that most Australian jurisdictions require a separate assessment of justification in respect of applications for additional firearms. The fact that an applicant's 'genuine reason' is assessed with each application to add a new firearm to a licence in Western Australia therefore does not diverge from other Australian jurisdictions. The Commission has already indicated its support for the policy behind the 'reasonably justified' assessment.

The Commission acknowledges that a firearms owner may require multiple firearms for utilisation under the same genuine reason, each being required for slightly different purposes such as game size, travel mode, terrain, some firearms could be set up for different types of hunting such as for long range hunting or shorter range. The fact that an applicant already has a firearm or firearms similar to the firearm that is the subject of an application, must not of itself be a reason to assess the additional firearm as being unjustified.

Currently, the instructions to applicants provided via the Licensing Authority website simply state: 'You will require evidence of your genuine reason to possess the firearm such as a firearms club support letter, a property letter or a letter evidencing your occupation that supports possession and use', but does not state that information may be required about the reason for possessing the specific firearm, particularly in a context where the applicant already possesses a firearm or firearms.

Proposal 14 on page 95 of the Discussion Paper suggested WA Police provide guidance on the kind of information and evidence that applicants must supply to substantiate a genuine reason. This proposal did not gain much support but for different reasons. WA Police, in its submission of 9 February 2016 at page 12, was of the view that the onus is on the applicant to provide evidence of genuine reason and need where required and it is not the role of the Licensing Authority or the Government to justify the reasons or need for firearms.

Other stakeholders were concerned that an internal policy or even an information document may seek to limit the ambit of the legislation or may add additional red-tape or may fail to take into account the uniqueness of each application.

Taking all these views into account the Commission recommends that there should be no detailed public checklist for genuine reason determination. The Commission is of the view that the website should include a clear statement of the law in regard to the genuine reason test, with reference to the reasonable justification test, in particular in the context of applications for additional firearms.

Recommendation 52:

- 52.1 The 'reasonable justification' test should be retained.
- 52.2 The fact that an applicant already has a firearm or firearms similar to the firearm that is the subject of an application, should not of itself be a reason to assess the additional firearm as being unjustified.

Recommendation 53:

- 53.1 There should be no detailed public checklist for genuine reason determination.
- 53.2 The WA Police website should include a clear statement of the law in regard to the genuine reason test, with reference to the reasonable justification test, in the context of applications for additional firearms and should list some of the possible considerations that may be taken into account.

9.4 Upper limit for number of firearms

The consideration in the previous Section regarding additional firearms begs the broader questions about how many firearms a licensee ought to be able to own. As part of the 2008 Police Review, WA Police observed that, provided an applicant meets the genuine reason test (and, in the case of a Category B firearm, the genuine need test), there are no restrictions on the number of Category A, B or E firearms that a person is legally able to acquire. The WA Police Discussion and Submission Paper asked whether there should be a limit on the number of firearms that the holder of a firearms licence can have (specifically excluding holders of a Corporate, Collector's, Dealer's, Repairer's, Manufacturer's or Shooting Gallery Licence). This proposal met with clear opposition from stakeholders and ultimately, no recommendation was made on this issue.

The Commission raised this question on page 95 of the Discussion Paper (Question 15). Stakeholders were of the view that any limits were unnecessary in the light of the genuine reason test. WA Police were also of this view although they stated that they would consider supporting a scaled limitation on firearms numbers, acknowledging that it would be difficult to establish a definitive number (submission dated 9 February 2016 page 12). The Commission is satisfied that there are sufficient safeguards built into the genuine reason (including reasonable justification) and genuine need tests to prevent the unjustified stockpiling of firearms and recommends that there be no upper limit on firearms numbers (subject to some specific areas of limitation, for example, the Commission's recommendation for an upper limit of Category D firearms for Professional Shooters and Primary Producers at Subsection 10.6.3)

The Commission recognises the risk of having many firearms in a single location when it comes to the potential theft of firearms. This risk is dealt with under the storage recommendations at Section 16.7.

Recommendation 54:

There should be no upper limit on the number of firearms a single Firearm Licence holder may possess.

9.5 Expediting applications for additional firearms

In this Section the Commission considers the way that the legislation treats applications for additional firearms and whether there should be an expedited process in this regard.

Section 18(10) of the Firearms Act was discussed at page 82 of the Discussion Paper in relation to the noting of additional firearms. The section states that '[w]here a licence has been issued to any person and that person applies for an additional licence of the same kind in relation to a further firearm that additional licence may, on presentation of an application for expedited approval accompanied by the prescribed noting fee, be noted on the original licence in any case where the Commissioner is satisfied that the public interest does not require that the applicant should proceed by way of an originating application'.

The meaning of this section was clarified in *Jeffries and the Commissioner of Police* [2011] WASAT 116 at [4] where it was held that applications for further firearms are separate under 18(10) and do not rely on or depend on any existing licence for their effect. The Commission is satisfied that the provision does not detract from the section 11(1) genuine reason and other requirements of the Firearms Legislation.

Proposal 12 suggested that section 18(10) should be clarified and Question 10 raised some possibilities for amendment of section 18(10).

Some stakeholders suggested that section 18(10) provide that, on application, an additional firearm (in the circumstances of that subsection) must be noted on the original licence unless the Police Commissioner believes that the public interest requires that the applicant should proceed by way of an originating application. This suggestion would allow the Licensing Authority to dispense with the 'fit and proper' test in those cases.

Other stakeholders have indicated that an expedited application process should be applicable to an application for an additional firearm which is in the same category as an existing firearm licence (excluding Category D and H) or for certain types of applicants, for example those who are experienced shooters.

WA Police, in its submission of 9 February 2016, page 9, has suggested that section 18(10) be deleted as it does not serve any purpose and is unnecessarily open to interpretation. Its policy position in this regard is that every application for a firearm is treated as an original application which requires a 'fit and proper' test. As indicated at page 82 of the Discussion Paper, WA Police has stated that the process for additional licences has been streamlined with a modified probity check and that where a person was previously found fit and proper the assessor only does a criminal check.

An expedited process means that the Licensing Authority could dispense with the 'fit and proper' test; however they would still need to check whether the applicant qualifies for the expedited process in the first place, and they would still have to carry out the genuine reason and the genuine need test (if not for a Category A application). The Commission does not see how an expedited process would lead to any significant time saving.

In addition, even if the discretion to grant an application for expedited approval was extended to cover certain types of applicants, WA Police has already indicated their reluctance to exercise this discretion so such a new provision would continue to have little effect.

Application times could be reduced if a particular type of application had priority over others. WA Police are of the view that there is no reason to give a preference to one type of application over another. In its submission of 9 February 2016, page 9 it stated that 'any such preferential treatment would be discriminatory against all other classification of applicants, whether original or additional applicants'.

The Commission has not been presented with any evidence as to why any particular application should be able to 'jump the queue' and does not see that a case has been made out for the urgent treatment

of applications received from primary producers, club members, or mature and experienced shooters.

Taking all things into account, and consistent with the current interpretation of the provision by the courts and the Licensing Authority, the Commission is of the view that it is best that section 18(10) be deleted.

Recommendation 55:

- 55.1 There should be no expedited process for licence applications.
- 55.2 Section 18(10) of the *Firearms Act 1973* (WA) should be deleted.

9.6 Recreational hunting and shooting and property size

One of the genuine reasons for a Firearm Licence under section 11A(2) is if it is for use in hunting or shooting of a recreational nature on land the owner of which has given written permission for that hunting or shooting. This written permission is often referred to as a property letter. The decision-maker currently takes the link between the size of the property and the firearm used into account when considering the reasonable justification for a particular firearm under the genuine reason test for this type of licence.

Proposal 13 and Question 12 of the Discussion Paper dealt with the various issues in connection with property letters. Bullet point 4 of Proposal 13 suggested that the property size requirements be included on the Licensing Authority website to provide clarity.

Many stakeholders are of the view that the size of the property should not be a consideration as the size of a property fails to give an adequate indication; the topography and land features may prove that certain properties which are small in size are adequate for large calibre firearms. Stakeholders indicated that it is the responsibility of the shooter to ensure the shot is safe and that an administrator reviewing the application can never decide if a shot is safe no matter what size the property. The example tendered is that no matter how large the property, it will have a boundary with other properties or will have assets on the property and the shooter must take care with each and every shot.

The Commission is of the view that there is some relevance to comparing the size of a property and the firearm, especially in relation to whether certain firearms could be justified for very small properties. The Commission is satisfied that a high powered firearm on a small piece of land could pose a higher risk of harm. Although ultimate responsibility for the safe use of a firearm rests with the shooter, regulation does have a part to play in this regard.

Having said this, the Commission does not wish to overemphasize the relevance of the size of the land; there are other equally important factors such as the necessity of a certain calibre firearm to humanely kill certain size vermin (which is dealt with elsewhere in this Report) and the terrain. In addition, the sizes of the properties on which the recreational hunting or shooting takes place could in any event vary from that of the original property letter.

WA Police currently provides guidance on its website as follows. *There is no fixed property size requirement; however the application is considered and includes the calibre of the firearm being applied for. Other considerations are the size of the property and what the firearm is to be used for. For example, a high powered firearm would not be granted for an applicant wishing to shoot foxes on a 1 acre property bounded by residential areas.*

In considering whether a particular firearm is reasonably justified, the location of use is relevant and factors including safety to people and property and the possibility of creating fear are all important. While the Commission will not recommend that property size should be removed as a factor in the reasonable justification test, the Commission is of the view that there is currently an overemphasis on this factor which the Commission considers should not be elevated to a factor above any others.

The considerations during the reasonable justification test should be taken into account by the Licensing Authority in determining any conditions that need to be attached to a licence where possible, rather than as a reason to refuse an application. The use of conditions is discussed in Subsection 9.7.2 below.

Recommendation 56:

- 56.1 The WA Police website should include a clear statement in regard to the genuine reason test, with reference to the reasonable justification test, in the context of applications for recreational shooting and hunting.
- 56.2 The WA Police website should clarify that the size of the property is only one of a number of considerations when looking at whether there is a reasonable justification for a particular firearm and should list some of the other possible considerations that may be taken into account.
- 56.3 The size of the property should not carry greater weight than any other consideration when determining the reasonable justification for a particular firearm.

9.7 Recreational hunting and shooting and property letters

Under the recreational hunting or shooting genuine reason the production of a property letter will (if other elements of the application are satisfied) allow a person to possess and use a firearm. One of the classifications used to define a genuine reason under the 1996 National Firearms Agreement was 'recreational shooters/hunters who produce proof of permission from a landowner'. Following the 1996 National Firearms Agreement, property letters are a feature of firearms regimes in all Australian jurisdictions.

9.7.1 Recreational hunting and shooting on multiple properties with one property letter

In Tasmania 'an individual is restricted to shooting on the property for which they have produced the landowner's proof letter. The details of the letters are attached to the relevant licence and the address referenced within the [system]' (page 3 of letter from Minister of Police, Tasmania dated 16 June 2015). In Queensland (Queensland Police Service letter, undated, per Inspector Craig Rolls) and in Victoria (per letter from the Minister of Police Victoria dated 20 May 2015) the position is the same as in Western Australia in that the Firearm Licence does not restrict recreational shooting and hunting to the property stated on the property letter.

The use of property letters has been the subject of some concern and you can find the discussion around this topic at page 87 of the Discussion Paper. The Commission (at Question 12 of the Discussion Paper) considered the possibility of requiring a property letter in respect of every property on which the firearms would be used, in effect adopting a model similar to that operating in Tasmania. This approach would remove recreational hunters and shooters' present ability to use their firearms on land where they have the express or implied (verbal) consent of the owner of the land

This suggestion evoked substantial response from stakeholders and the Commission has engaged in additional consultations with stakeholders to clarify some of the issues raised in this part of the Discussion Paper. Submissions indicated that this would be a substantial imposition on users without imparting any benefit. Stakeholders pointed out that in addition to the crime of trespass, section 23(10) of the Firearms Act makes it an offence to use a firearm on land belonging to another person without the express or implied consent of the owner or occupier of that land. These stakeholders are of the view that these offences provide a sufficient deterrent to those who may be tempted to illegally hunt on someone's property.

It has also been pointed out that originally, section 11A(2)(c) of the Firearms Act did not include the word 'written'; this was inserted in 2004 by the *Firearms Amendment Act 2004 (WA)* – a stakeholder has suggested that verbal permission ought to be sufficient in line with the offences created under sections 23(10) and 23(10a) of the Firearms Act (in respect of using or carrying a firearm, without reasonable excuse, on certain land without express or implied consent).

The 2008 Police Review recommended that written permission from a landowner should primarily be required for first-time applications, unless the circumstances of a second or subsequent application differs significantly from the original application such that it dictates the applicant produce further proof from a landowner to enable police to determine the suitability of a property for a particular category of firearm.

WA Police (in their submission of 9 February 2016, page 11) although not against the ideas raised under Question 12, cautioned that there would be an increased burden on administration and enforcement capability if they were to be implemented.

The Commission considers it unsatisfactory that a letter used as a means to obtain a licence appears to be a mere formality which carries no on-going significance during the life of the licence. On the other hand the Commission acknowledges that no evidence has been provided to suggest that the current property letter system has been a threat to public safety.

Taking all submissions and factors into account the Commission is of the view that there should be no change to the current position which does not restrict recreational shooting and hunting to the property stated on the property letter.

Recommendation 57:

The place where a firearm may be used should not be restricted only to those properties that were the subject of the property letters.

The Commission is of the view that the manner in which recreational shooting and hunting is dealt with in the legislation could be improved upon. The property letter ought to have on-going significance as it is evidence of the applicant's intention for the use of the firearm; the property letter, together with the firearm itself, can and should be a material consideration when determining licence conditions, if any, as to property size, location and other relevant factors as discussed below.

9.7.2 Placing conditions on approval

Section 21(1) of the Firearms Act provides that a licence, permit or approval issued or granted under the Act may be made subject to restrictions, limitations or conditions. In the Discussion Paper at page 88 the Commission considered the possibility that the provisions allowing for conditions could potentially be used to limit the use of a firearm to the property that was the subject of the property letter only. As stated in the previous Section, the Commission does not recommend this course of action.

The Commission supports the imposition of conditions that are necessary to ensure safety of people and property, which is the underlying consideration when checking the details on the property letter and the type of firearm which is the subject of the application for a licence.

The Commission recommends that the Firearms Legislation explicitly enable the Police Commissioner to place conditions or restrictions on the licence for that firearm (see Proposal 13, bullet point 4 in the Discussion Paper). Care must be taken that there is not a proliferation of different permits with different conditions which will make both the policing and understanding by the community difficult.

The Commission's view is that the conditions must be broad (not overly prescriptive) and could cover one or more of the following:

- the purpose for which the firearm is used (which may be narrower than the genuine reason);
- minimum property sizes (particularly in town sites or the urban/rural fringes);
- shooting on rural property only;
- shooting in non-populous areas only;
- places of storage; or
- vermin-type.

In order to ensure that the conditions are consistent, the regulations should set out a pre-approved list of possible conditions which may be placed on a licence. To promote clear understanding of the conditions, the Commission recommends that a number of terms be defined in legislation, such as populous areas, rural, town site or other relevant terms.

In accordance with section 20 of the Firearms Act the Police Commissioner will continue to have the power to vary or review the conditions imposed on the licence.

The Commission's recommendations in regard to the list of conditions are not to be a restriction on the Police Commissioner's general powers under sections 20 and 21 of the Firearms Act.

Recommendation 58:

- 58.1 A firearm may be used on land other than that described in the property letter as long as it meets the conditions of the licence that was issued in respect of the particular Category A or B firearm, as the case may be.
- 58.2 The Firearms Legislation should explicitly enable the Police Commissioner to place conditions or restrictions on the licence for that firearm in respect of, for example, the purpose for which it is used, property size or location, place of storage or vermin-type.
- 58.3 The *Firearms Regulations 1973* (WA) should contain a list of pre-approved conditions which may be placed on a recreational shooting or hunting licence.
- 58.4 A number of terms should be defined in the Firearms Legislation that can be used to promote a clear understanding of the conditions, such as populous areas, rural, town site or other relevant terms.

9.7.3 Changes to improve the legislation

In order to improve clarity, the Commission recommends that the evidence required to prove the genuine reason from the definition of the genuine reason itself. The definition should thus merely state that an applicant will have a genuine reason if the firearm is required for use in hunting or shooting of a recreational nature.

The legislation must be clear that the applicant may only apply in respect of a Category A or B firearm for this purpose. See the discussion of 'Genuine reasons and structure of the legislation' below.

The regulations should set out the evidence required to demonstrate this genuine reason. The regulations should state that a property letter is required to prove the genuine reason of recreational shooting/hunting and should state the matters that are required to be addressed in the property letter such as the property size and the nature of the shooting that will take place, for example targets or vermin.

Property letters are sometimes provided by a manager or other occupier of the land without the owner's knowledge. Currently the legislation provides that only the owner of the property concerned may issue a property letter. This should be amended to refer to either an owner or occupier of the private property concerned. This makes this provision consistent with the current section 23(10) of the Firearms Act, which provides that a person may not use a firearm on land

belonging to another person without the express or implied consent of the owner or occupier of that land.

Recommendation 59:

- 59.1 The evidence required to prove the genuine reason, that is, the property letter, should be removed from the definition of the genuine reason and be inserted as one of the evidentiary requirements in the *Firearms Regulations 1973* (WA).
- 59.2 The regulations should state that a property letter is required to prove the genuine reason of recreational shooting/hunting and state the matters that are required to be addressed in the property letter.
- 59.3 Either an owner or occupier of the private property concerned should be allowed to issue a property letter. 'Occupier' should also include a manager of the property.

9.7.4 Recreational hunting and shooting on own land

In some instances, a person may wish to hunt or shoot recreationally on his or her 'own' property. Currently a property letter is required which, in these circumstances, is nonsensical.

Recommendation 60:

- 60.1 The legislation should specifically provide for the case where a person may wish to hunt or shoot recreationally on his or her own property and that the applicant is required to produce written evidence that he/she owns, occupies or manages the land.
- 60.2 The documentation provided should also capture all the information that would be required in a property letter in order to meet the genuine reason requirement.

9.7.5 Owners who provide multiple property letters

The Discussion Paper raised the concern about certain parties selling property letters. WA Police has advised that it would support a proposal to outlaw the sale of property letters 'as the current situation weakens the Act and could result in a proliferation of Firearm Licence holders in the community who don't genuinely have a reason for owning a firearm' (page 89 of the Discussion Paper). Proposal 13 and Question

12 of the Discussion Paper make some suggestions in this regard.

In Queensland under section 168A(1) and (2) of the *Weapons Act 1990* (Qld), a landowner who provides written permission to shoot on the landowner's rural land to a person or body for a fee or reward, or to more than fifty persons or bodies, must keep a register.

Some stakeholders have raised security concerns in regard to the creation of a list of firearms owners that is held at a farm. The Commission is satisfied that a list of this nature can reasonably be protected from theft. Other stakeholders have pointed to the excessive workload that a farmer would have in order to prepare and maintain a register, particularly in situations like the Red Card for Red Fox shoot where over a 100 shooters in teams of 4 cover many different properties.

The Commission's view is that the Queensland provisions are reasonable in that the register only need be kept by landowners who charge a fee (in which case they would keep documents of the transactions in any event) or who grant permission for a large number of people. In fact the Commission thinks it prudent that any landowner should keep some record of permissions given to shoot on the property.

The Commission is of the view that instead of prohibiting the sale of property letters there should be similar requirements placed on any landowner who provides property letters for a fee or reward or to a large number of persons or bodies (the Commission is of the view that the Queensland number of 50 is probably too high and a figure of around 20 to 30 may be more appropriate but does not make a specific recommendation on the number). Such landowner should be required to keep a register, stating the name and address of the person or body to whom permission was given, the date permission was given, and (if the permission was limited by time), the day the permission ends. The register must be submitted to the Licensing Authority upon request and at least once annually.

The Commission recommends that non-compliance with the obligations to keep a register be subject to penalty provisions.

This will essentially be a self-managed process which will not cause an administrative burden on the Licensing Authority. The register will assist both landowners and the Licensing Authority to monitor safety issues in relation to oversubscription in respect of a single property and to ensure that applicants using that property in their firearms applications have a genuine reason. This will also be of assistance to the Licensing Authority in assessing which landowners are running a recreational shooting or hunting business.

Recommendation 61:

- 61.1 A landowner, who provides written permission to shoot on his or her land to a person or body for a fee or reward, or to a large number (for example 20) of persons or bodies, should be required to keep a register.
- 61.2 The register should be submitted to the Licensing Authority on request and at least once annually.
- 61.3 The Regulations should set out the information required to be kept in the register.
- 61.4 There should be a penalty for non-compliance with the obligations to keep a register.

In Question 12 of the Discussion Paper the Commission also asked whether a property letter should have a limited validity period.

After consideration of submissions and taking into account the other recommendations in this chapter, the Commission's view is that the renewal of a property letter serves no purpose. The Commission's view is reinforced by its previous recommendation that the licence should contain conditions that represent the circumstances under which the particular firearm may be used.

The Commission considers that a property letter that supports a particular application must be sufficiently contemporaneous with the date of the application, but this issue can be addressed at the discretion of the Licensing Authority.

At page 90 of the Discussion Paper the Commission considered whether under section 11A(2)(c) a property letter should only be required with the first application and not for additional firearms. In line with the purpose of the property letter to satisfy the genuine reason test and to assist with the determination of appropriate conditions, the Commission is of the view that a property letter should be required for an application for an additional firearm for the purposes of recreational shooting or hunting even if that firearm is in a category for which the applicant already has a firearm registered for the same purpose.

Recommendation 62:

It should not be necessary to renew a property letter.

Recommendation 63:

A property letter should be required for an application for an additional firearm for the purposes of recreational shooting or hunting.

9.7.6 The use of antique and collection firearms for hunting

The Commission has commented elsewhere that if a person wants to regularly use their antique or collection firearm then they must get a conventional Firearm Licence (see 'The carrying and use of firearms held under a collector's licence' at Subsection 10.5.2). Some stakeholders indicated that it is problematic to get certain types of Firearm Licences for certain antique or collection firearms. An example provided was that applications for the licencing of muzzle loading firearms (which falls under Category B) for the purposes of recreational hunting are being refused.

The grounds of refusal relate to their alleged unsuitability for the purpose of hunting on the basis of their characteristics such as difficulty of loading, noise and smoke, inaccuracy, long barrel and difficulty in cleaning.

Category B1 refers to a muzzle loading firearm (except a handgun). In terms of the legislation a Firearm Licence may be issued in respect of this category for the purposes of hunting or shooting of a recreational nature. The Commission is of the view that each application must therefore be considered on its own merits and it would not be correct to decide on a blanket prohibition.

Recommendation 64:

There should be no blanket prohibition on the licencing of muzzle loading firearms for the purposes of recreational hunting.

9.8 Genuine reasons and structure of the Legislation

The Commission has considered the structure of the Firearms Act and the interaction of the genuine reason and the categories of firearms allowed in respect thereof. The Commission has found various drafting methods used across the Australian jurisdictions to deal with this interaction (for example, in Victoria, section 10 of the *Firearms Act 1996* (Vic) refers to each category of firearm and then states the genuine reasons that could qualify for that category.

In order to make the new legislation easier to follow the Commission has found that it would be more suitable to state the genuine reason and list the

categories of firearms that may be permitted for that genuine reason.

In addition the evidence that is to be submitted to demonstrate each genuine reason and the definition of the types of applicants that could qualify to use the specific genuine reason is to be dealt with in a separate section (see for example the recommendations regarding property letters at Recommendation 59).

The net effect of these recommendations will allow for applicants to go to the parts of the legislation that apply to their genuine reason and find the categories of firearms that may be permitted and the requirements to demonstrate the genuine reason.

By way of illustration the Act would have the genuine reasons listed such as:

Genuine Reasons

Primary Producer;
Vertebrate pest animal control;
...and so forth

The list of genuine reasons would be followed by each genuine reason and the applicable firearm categories and evidentiary requirements:

Primary Producer

Categories of firearms:

- Category A;
- Category B;
- Category C (only for a rifle or shotgun for the purpose of destroying vermin or stock as under Schedule 3, Division 4 of the Firearms Regulations);
- Category H (for commercial cattle grazing pastoralists where the firearm is required when mustering or yarding the cattle to deal with any animals (whether cattle or not) that are dangerous to people as under Schedule 3, Division 6 of the Firearms Regulations); and
- Category D (only for vertebrate pest animal control under certain circumstances; possible conditions would be additional safety training and marksmanship - see the recommendations in this regard at Subsection 10.6.3).

Evidence: the applicant must produce evidence that he or she is regularly engaged in the business of primary production as an owner, lessee or manager of land used for the primary production as required under the Firearms Regulations.

Recommendation 65:

65.1 The *Firearms Act 1973* (WA) should set out the genuine reasons under clear, separate sections for each genuine reason under which is listed the categories of firearms that may be permitted for that genuine reason and the types of applicants that could qualify in regard to that genuine reason.

65.2 The *Firearms Regulations 1974* (WA) should set out the evidence that is to be submitted to demonstrate the genuine reason.

In order to implement this structure it is important to clearly differentiate between the different genuine reasons available to an applicant. In the next few Sections the Commission recommends further 'genuine reasons' to be specified in the legislation.

9.9 The genuine reason of vertebrate pest animal control

Section 11A(2)(d) of the Firearms Act provides that a person will have a genuine reason for acquiring or possessing a firearm or ammunition if it is required by the person in the course of the person's occupation. Primary producers can currently apply for Firearm Licences under this genuine reason.

Primary producers must satisfy the Licensing Authority that there is a genuine need for the use of the firearm, which pertains to the applicant's occupation, and which cannot be achieved by some other means. A firearm licensed to a primary producer may be used for the purpose of destroying vermin or stock by the primary producer or by persons working for the primary producer, or who are family members of such primary producer under an exemption in terms of section 8(1)(i) of the Firearms Act.

Stakeholders have indicated that there may be circumstances where non primary producers require a firearm for pest control. Under section 30(2) of the *Biosecurity and Agriculture Management Act 2007* (WA) the owner or other person in control, in an area for which an organism is a declared pest, of an organism or thing infected or infested with the declared pest must take the prescribed control measures to control the declared pest, which can include shooting.

The Commission is of the view that for clarity there ought to be a separate genuine reason in respect of vertebrate pest animal control. The provisions of section 12 of the *Firearms Act 1996* (NSW) are appropriate in terms of which the applicant must be:

- (a) a professional contract shooter engaged or employed in controlling vertebrate pest animals; or
- (b) a person employed by or in, or authorised by, a government agency prescribed by the regulations that has functions relating to the control or suppression of vertebrate pest animals.

Recommendation 66:

66.1 The Firearms Legislation should provide for a genuine reason of vertebrate pest animal control.

66.2 To qualify the applicant should be a professional contract shooter engaged or employed in pest control or a person employed by or authorised by a government agency prescribed by the regulations that has functions relating to the control or suppression of pests.

9.10 The genuine reason of animal welfare

Section 8(1)(h) of the Firearms Act provides that no licence is required, in relation to an approved firearm or ammunition for that firearm, by a person who in the ordinary course of his or her practice, trade or business uses that firearm for the purpose of dealing a blow to any animal with intent to slaughter it or to render the animal insensible prior to slaughtering.

Some stakeholders have indicated that the exemption is too narrow. The use of the word 'slaughter' suggests that the exception applies to cases which relate to the killing of animals for food. It does not appear to cover situations (such as saleyards, shearing sheds, markets and during transit) where animals are not ordinarily required to be slaughtered but the need to humanely kill an animal may arise if, for instance, the animal becomes injured.

As recommended at Section 3.11, captive bolts should be removed from the definition of a firearm.

The Commission has considered whether, in the light of the captive bolt recommendation and the interpretation of the section 8(1)(h) exception just referred to, it is necessary that animal welfare be a genuine reason in of itself.

In the event that a person is a veterinary surgeon or an animal handler or transporter, such person may need to destroy animals to avoid their suffering. The Commission considered whether a captive bolt is adequate for this purpose or whether there could be examples where such person may require a firearm. The Commission had some discussion with Perth Zoo in this regard (and who, the Commission notes, appears very professional in the manner in which it operates under current Firearms Legislation).

Various Codes of Conduct such as the 'Code of Practice for the transportation of cattle in Western Australia' and the 'Abattoirs: Code of Practice for the Welfare of Animals Livestock at Slaughtering Establishments' refer to both captive bolts and firearms being used in the humane killing of animals. It appears that in general terms captive bolts are used to render the animal unconscious while a firearm will cause immediate death. It is apparent that some animal handlers may prefer to ensure an immediate killing of an animal as opposed to the ability to stun with a captive bolt.

It could be argued that section 11A(2)(d) of the Firearms Act, which provides that a person will have a genuine reason if the firearm is required by the person in the course of the person's occupation, would cover applicants who require a firearm for animal welfare. The Commission is of the view that this aspect should be clarified by providing a specific genuine reason in this regard, similar to that provided in section 12 of the *Firearms Act 1996* (NSW) and section 37(1)(e) of the *Firearms Act 1996* (Tas).

Recommendation 67:

- 67.1 The Firearms Legislation should provide for a genuine reason of animal welfare.
- 67.2 To qualify the applicant should be a veterinary surgeon, an officer of the RSPCA, a government official with responsibilities for animal welfare, or an owner, transporter, drover or other handler of animals who may need to destroy animals to avoid suffering.

The animal welfare genuine reason could also be applicable to an owner of an abattoir. It is not clear whether the section 8(1)(h) exemption would allow a person who works for the abattoir to use the owner's firearm for the purposes of rendering the animal insensible prior to slaughtering. The Commission recommends amending the exemption and clarifying this aspect in line with the manner in which the legislation treats people working for Primary Producers.

Recommendation 68:

Section 8(1)(h) of the *Firearms Act 1973* (WA) should be clarified to ensure that a firearm licensed to an abattoir may be used under an exemption:

- a. by persons working for the abattoir for the purpose of dealing a blow to any animal with intent to slaughter it;
- b. or to render the animal insensible prior to slaughtering;

- c. on land used by the abattoir for the purposes of its business; and
- d. if the use of the firearm and ammunition by that person is expressly authorised by the abattoir.

9.11 The genuine reason of primary producer

The Commission is of the view that there should be a separate genuine reason of a 'primary producer'. This will assist in clarifying the range of firearms that maybe permitted in respect of this genuine reason and will be in line with other Australian jurisdictions.

Amongst the Australian jurisdictions that have 'primary producer' as a separate genuine reason are: Victoria (*Firearms Act 1996* (Vic) - section 10); New South Wales (*Firearms Act 1996* (NSW) - section 12); Tasmania (*Firearms Act 1996* (Tas) - section 37) and South Australia (*Firearms Regulations 2008* (SA) - regulation 11).

A successful application under this genuine reason must permit the firearm owner to use the firearm for both vertebrate pest animal control and animal welfare under certain conditions that are contained in the legislation (also see the discussion on multiple genuine reasons below at Section 9.13).

As in all cases and as part of the genuine reason test, the applicant must demonstrate that a firearm is reasonably justified. The Firearms Legislation must be clear as to the categories of firearms for which an application may be made under this genuine reason.

The Commission recommends that the following categories should be permitted under this genuine reason subject to genuine need:

- Category A;
- Category B;
- Category C (only for a rifle or shotgun for the purpose of destroying vermin or stock as under Schedule 3, Division 4 of the Firearms Regulations);
- Category H (for commercial cattle grazing pastoralists where the firearm is required when mustering or yarding the cattle to deal with any animals (whether cattle or not) that are dangerous to people as under Schedule 3, Division 6 of the Firearms Regulations); and
- Category D (only for vertebrate pest animal control under certain circumstances; possible conditions would be additional safety training and marksmanship - see the recommendations in this regard at Subsection 10.6.3).

These restrictions are in addition to the 'genuine need' test, which requires that the applicant satisfy the Police Commissioner that a firearm of lesser Category would be inadequate or unsuitable for the purpose for which the firearm is required.

The current legislative exemptions under section 8(1) of the Firearms Act should continue to apply, that is, in respect to persons working for the primary producer, or who are family members of such primary producer.

Given the potential significance to primary producers of being able to possess and use appropriate firearms in connection with their work, it is desirable that the Firearms Legislation facilitate this with as much flexibility as possible, without compromising broader objectives relating to public safety. The Commission's recommendation that 'primary producer' ought to be a stand-alone genuine reason will assist in that regard.

Recommendation 69:

- 69.1 The Firearms Legislation should provide for a genuine reason of 'primary producer'.
- 69.2 A successful application under the 'primary producer' genuine reason allow the firearm owner to use the firearm for both vertebrate pest animal control and animal welfare.

9.12 The genuine reason of 'in the course of occupation' and security employees

The Commission's recommendations regarding the new genuine reason categories in respect of primary producers and professional shooters who require a licence for a specified purpose means that the 'in the course of occupation' reason will not be required by these groups of applicants.

The predominant other group of applicants (in respect of numbers of people) that could fall under this category would be security employees, but they are for the most part captured under the provisions of a Corporate Licence.

In this regard there is a close link between the 'in the course of occupation' genuine reason and the Corporate Licence issued under section 16(1)(c) of the Firearms Act which entitles the corporation, financial institution, Government department, State instrumentality or other organisation approved by the Commissioner to possess the firearms named and identified in that licence, together with ammunition.

This matter is therefore considered under Chapter 12 which deals with Corporate Licences.

9.13 Applications with multiple genuine reasons

The issue of using a firearm for multiple reasons was canvassed on page 91 of the Discussion Paper.

There is nothing in the Firearms Act that prevents an applicant from providing multiple reasons for the use of a firearm (unless where expressly excluded in the Act under certain circumstances). This can be done at the time of the application, where if approved, permission will be granted to use the firearm for those different purposes, for example, recreational hunting, club membership and/or animal welfare (a new genuine reason under one of the Commission's recommendations). An exception to this would be the Corporate Licence structure discussed at Subsection 12.2.1.

Recommendation 70:

- 70.1 The *Firearms Act 1973* (WA) should clearly specify that an application can be brought under multiple genuine reasons.
- 70.2 Firearms application forms should clearly cater for an application with multiple genuine reasons.

Where a person has only nominated one genuine reason on their licence application and subsequently decides that they wish to use their firearm for another purpose, such person can apply for a change in conditions under section 20(2) of the Firearms Act. This is not a separate application and does not attract a fee.

Recommendation 71:

Separate 'change in condition' application forms should be made available to the public.

9.14 Automatic multiple purposes without the need to apply

Some stakeholders submitted that the 'change in conditions' processes are time-consuming and unnecessarily difficult. There have been suggestions that the Firearms Act provide that if a firearm is licensed for one purpose under a genuine reason test then the firearm owner should be able to automatically use that firearm for certain other specified purposes.

Currently if a person nominates their membership of an approved shooting club under section 11A(2)(a) of the Firearms Act as their 'genuine reason' for a licence, they are only permitted to use that firearm for that reason. They are not able to shoot recreationally, for instance on the property of a person who consents to their doing so.

Some stakeholders have stated that central to the firearms licensing regime is the fitness test and that once the test is passed, use of the firearm should not be restricted to just the genuine reason that was the subject of the application. These stakeholders consider that a firearm that is licensed for approved club use should also be capable of being used for recreational hunting and shooting on the basis that a person who has passed the fit and proper test and who is a club member and thus proficient to use a firearm should be able to assist in pest control or hunting.

The Commission does not agree with that view. Although the fit and proper test is an important leg, the classification of firearms is another. The first question is whether the applicant is a fit and proper person but it is just as important to ask whether a firearm should be allowed at all and which type of firearm should be allowed based on genuine reason (and reasonable justification) and genuine need.

In its letter to the Commission of 16 June 2015, WA Police notes that the 'genuine reason' test was 'one of the primary requirements' of the 1996 National Firearms Agreement. It submitted further that it would be 'inconsistent with the purpose of a genuine reason test if applicants with a genuine reason for one purpose are automatically given a licence for another purpose without having to satisfy the other genuine reason test'.

The Commission notes that automatic multiple purposes have operated in Western Australia to some extent already. A primary producer can apply under the 'occupation' genuine reason and then use the firearm for multiple purposes such as pest control and animal welfare. Applicants who wish to participate in traditional hunting apply under the genuine reason of recreational hunting. There is an exemption under section 8(1)(h) of the Firearms Act where a licence is not required to use an approved firearm in cases of animal welfare if this is in the ordinary course of the users business. The Commission has recommended that these be included as separate genuine reasons.

As mentioned in the Discussion Paper at page 91, Victoria provides some flexibility in the use of firearms granted in respect of a particular genuine reason (*Firearms Act 1996* (Vic), Schedule 2, cl. 1). For example if one of the reasons given for a Category A or B longarm licence is sport or target shooting, the holder is also authorised to hunt on privately owned land with prior permission of the owner or occupier and hunt pest animals on Crown land, if such hunting is in accordance with any Act, regulations or other instrument regulating hunting on that land.

The Commission is of the view that having automated genuine reasons without application contradicts the intent of the 1996 National Firearms Agreement. The multiple genuine reason test (discussed in the previous

section) is not overly burdensome to applicants and the evidence required to be presented is not difficult to obtain for those who have the applicable genuine reasons to use the firearm for the requested purposes. Multiple genuine reason requirements can be processed on the same application. Any later genuine reason additions a firearms owners may wish to make is also not a complex procedure.

There are specific instances where the Commission is prepared to recommend that a single genuine reason may cover more than one purpose for the use of a firearm (see for example the primary producer genuine reason at Section 9.11), but these are exceptions.

Recommendation 72:

Applicants should be required to apply for each genuine reason for which the firearm is to be used.

9.15 Genuine reason – combat style war games

Combat style war games in the form of paintball have been permitted in Western Australia since the amendments introducing paintball into the Firearms Act came into operation on 1 January 2005. Section 11A(2)(da) of the Firearms Act provides that a genuine reason for acquiring and possessing a paintball gun is to conduct or engage in paintball in accordance with the Act. Paintball was discussed on page 59 of the Discussion Paper and the Commission made no proposals in that regard.

Paintball has recently become legal in Tasmania, with new laws coming into effect on 4 November 2015. Tasmanian adults are able to participate in paintball, as are those who are aged 16 and 17 as long as they have written consent from someone with parental responsibility. Paintball has essentially been removed from the definition of 'war games' which are prohibited under s119 of the *Firearms Act 1996* (Tas).

Some stakeholders have indicated that there appears to be reluctance across Australian jurisdictions to allow any other combat style war games that are similar to paintball, in particular one called Airsoft which uses similar technology to paintball but with a smaller projectile.

Airsoft is legal in many countries including New Zealand, Japan, China, USA, UK and across Europe. There are 2 types of game play, skirmish games similar to paintball and laser tag; and competition shooting called action air, under the auspices of the International Practical Shooters Confederation.

Community expectations and Government policy in Western Australia in this regard are unclear.

The current reasons expressed by Police in other Australian jurisdictions for not allowing Airsoft war games are not convincing and the fact that Tasmania has recently allowed paintball war games makes it unclear as to what community expectations are in regard to war games in that jurisdiction.

On the Queensland Police website they confirm that Airsoft is not legal in Queensland. There are no clear reasons provided except that these firearms do not meet required safety standards. Victoria Police state as their reasons for not allowing Airsoft firearms that there is no genuine reason to own them, there are no approved ranges and due to their militaristic appearance. South Australia Police refer to Airsoft projectiles as causing more injury than a paintball and that a paintball firearm cannot be mistaken for a lethal firearm due to the large 'hopper' on top of the firearm.

It may be that Government policy is that, other than paintball, no further combat style war games ought to be permitted. If that is indeed the case then this needs to be clearly stated.

Many stakeholders were of the view that Airsoft is similar to Paintball and that no reasonable explanation has been provided as to why it should be excluded. WA Police, in its submission of 9 February 2016 at page 4 stated that '[c]onsideration be given to defining 'Air Soft' firearms in a similar manner as paintball firearms. This would require amendments to the *Firearms Act* and *Regulations* to allow for 'war-game scenarios.' In a further submission of 2 February 2016 WA Police indicated that, although not in favour of this expansion, if the Commission was considering recommending its inclusion then 'specific requirements on venue safety, containment and management would need to be considered due to the hard pellet nature of the ammunition used and the environmental considerations of hard pellet waste.'

The Commission recommends that Airsoft be permitted under the Firearms Legislation. As with paintball the Commission recommends that the venue for participation in Airsoft be regulated, approved and properly constructed and maintained for the purpose of playing Airsoft.

The Firearms Legislation should make provision for approval of Airsoft shooting clubs, and all venues must be operated by an approved Airsoft shooting club. As in the UK, it is the view of the Commission that such clubs should have public liability insurance, although the Commission does not see the need for this to be legislated.

As with Paintball, an approved Airsoft club must be able to apply for a Corporate Licence for Airsoft firearms and ammunition.

A stakeholder has suggested there be an ability to obtain approval for the use of a venue on a temporary basis. Taking into account that skirmish games are better suited to larger pieces of land it may be useful for games to be arranged outside of urban areas. This could probably be done more successfully by allowing a landowner to give temporary permission for a fixed period for a game. The Commission is of the view that this suggestion has merit and recommends that such a temporary permit system be implemented. Approval will need to be obtained from the Licensing Authority who can consider all issues of safety, including whether the venue is close to a populated area, the number of participants, permission of the landowner and the identity and experience of the responsible manager for the game who should be an approved Nominated Person under the Corporate Licence.

As with paintball a person must not admit a minor under the age of 16 years to attend a venue where Airsoft is played unless the minor is accompanied by his or her parent or guardian (as per section 23(12) of the Firearms Act in respect of paintball).

Proliferation

Some stakeholders have expressed concern over the potential proliferation of Airsoft and paintball firearms. The Commission's view is that these firearms must be treated in the same way as a lethal firearm in regard to safety concerns, including storage conditions. It will remain an offence to use these firearms outside of a venue permitted by the Licensing Authority.

A solution to reduce the numbers of these types of firearms is to provide that they may only be owned by an approved club and used at an approved venue by club members. While this would be a departure from the current system in place for paintball which allows individual ownership of paintball firearms, it is in line with the most recent paintball legislation which was introduced by Tasmania; under the *Firearms Act 1996* (Tas) section 37(1)(fb), a genuine reason is conducting a paintball business and not merely the use of a paintball firearm to play the game.

The Commission recommends that Airsoft be operated in a similar way to paintball and that the legislation permit individual ownership and possession of the firearm. The Commission recommends that a person who wants to own or possess an Airsoft firearm must provide evidence that he or she is a member of an approved Airsoft club.

The Commission further recommends that an Airsoft club must send its membership list to the Licensing Authority on an annual basis.

The Commission also considered whether there should be any upper limit on the number of Airsoft firearms

that may be owned or possessed by any one person (other than an approved club). The genuine need test does not apply in respect to Category E firearms which include Paintball firearms. The Commission's view is that an upper limit may be arbitrary and it would be difficult to justify the number selected. The storage requirements are a suitable safety precaution (and potential improvements on storage requirements are discussed at Chapter 16)

Appearance

The Commission stated (in Chapter 11) that design and function and not appearance should determine the categorisation of a firearm. Pursuant to this recommendation a Paintball and Airsoft firearm will not be prohibited based on appearance only. This begs the question whether they should be.

A paintball firearm (without the hopper) or an Airsoft firearm can look identical to a lethal firearm of any of the firearm Categories, even a prohibited firearm. This could be regulated either through prohibiting certain imitations or by introducing a requirement to identify them as non-lethal.

The Commission has considered whether the firearm legislation should require that all firearms used for Airsoft be identified as non-lethal through the use of a specific colouration on the firearm. Manufacturers usually include an orange tip on the barrel of the airsoft gun and legislation could require that this be maintained. Some jurisdictions such as the UK require bright colours (see box 1).

There are arguments for and against colouration. Colouration could lead to a culture of complacency and an attitude that this kind of firearm is not dangerous and is a toy, when this is not the case. On the other hand it could be useful to policing that a non-lethal firearm can be easily identified. In the context of Airsoft firearms, the Commission feels that a more conservative approach is warranted and recommends that colouration be mandatory.

In Western Australia, air rifles are category A1 firearms and air pistols are in category H1. An Airsoft firearm would be a category E firearm as with paintball but with a specific upper limit on velocity and type of projectile. If it's an airgun that does not fall into the definition of an Airsoft firearm then it would fall into A1 or H1, as the case may be.

An Airsoft firearm could replicate the appearance of any category firearm. Some jurisdictions, such as New Zealand (see box 2) place certain restrictions in that regard. In the light of the recommendation regarding colouration, the Commission is of the view that there should be no other limitation on the appearance of a Airsoft firearm.

Box 1:

Airsoft in the UK

The Commission has considered the manner in which the *Firearms Act 1968* (UK) deals with Airsoft firearms. On 1 October 2007, a stricter regime was introduced for imitation firearms, in particular, restrictions on the manufacture and sale of realistic imitation firearms. Regulation 7 of the *Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007* provides that a firearm will not be regarded as realistic if it is of a certain colour as listed, such as bright blue. In practice this has meant at least 50% of the imitation firearm must be a listed colour. These imitation firearms may be used under certain circumstances.

The UK permits the playing of airsoft skirmishing with realistic imitation firearms (no colouration) as an exception and under strict registration conditions, in particular with club membership (regulation 3 the *Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007*).

Box 2:

Airsoft in NZ and restrictions on appearance

The New Zealand legislation has been cited as an example that should be examined in respect to Airsoft firearms. The Commission notes that section 2(1) of the *Arms Act 1983* (NZ) defines a 'restricted airgun' as, amongst other examples,

'an airgun that is designed for use in airsoft or paintball sports and,—

- (i) without any of the attachments with which it is customarily used, has the appearance of being a firearm capable of full automatic fire; or
- (ii) with some or all of the attachments with which it is customarily used, has the appearance of being a firearm capable of full automatic fire.'

In respect to a restricted airgun the Police Commissioner needs to be satisfied that there are special reasons why this firearm should be allowed into New Zealand (section 18 of the *Arms Act 1983* (NZ)).

Safety considerations while skirmishing

The Commission is satisfied that Airsoft projectiles do not appear to cause more injury than that of paintballs when participants wear protective gear. The Commission is further of the view that legislation can prescribe design and performance conditions

(such as muzzle velocity limits) and conditions relating to venues and the nature of the projectile to ensure that Airsoft is safe and managed appropriately.

The Commission recommends that Airsoft be subject to appropriate regulation to ensure public safety, including that the projectile must be non-metallic and there may no self-contained gas cartridge systems.

It should be an offence to modify the Airsoft firearm in any way that affects the velocity of the projectile or the type of projectile that can be fired, or to alter any identifying markings or colouration.

Recommendation 73:

- 73.1 Airsoft should be permitted under the Firearms Legislation, subject to appropriate regulation to ensure public safety, including the management of the venues, limitations on the performance of the firearms and conditions on the types of projectiles used.
- 73.2 The Firearms Legislation for Airsoft should be similar as that in place for Paintball including the same limitations with regard to age.
- 73.3 Airsoft projectiles should be non-metallic and there be no self-contained gas cartridge systems.
- 73.4 Airsoft firearms should have a mandatory colouration to distinguish them from lethal firearms.
- 73.5 Airsoft and Paintball clubs should be approved under the Firearms Legislation in the same way as a shooting club.
- 73.6 Airsoft venues should be regulated and be approved and properly constructed and maintained for the purpose of playing Airsoft.
- 73.7 There should be an ability to obtain approval for the use of a venue on a temporary basis.
- 73.8 Permanent or temporary venue approval may be obtained from the licensing authority who should consider all issues of safety, including whether the venue is close to a populated area, the number of participants, permission of the landowner and the identity and experience of the responsible operator.
- 73.9 The Firearms Legislation should allow individual ownership and possession of Airsoft firearms outside of a club venue only by Airsoft club members.

73.10 An approved Airsoft club should be able to apply for a Corporate Licence for Airsoft firearms and ammunition.

73.11 It should be an offence to modify the Airsoft firearm in any way that affects the velocity of the projectile or the type of projectile that can be fired, or to alter any identifying markings or colouration.

9.16 The genuine reason and use of firearms by Aboriginal people for traditional hunting

The Firearms Act regulates the use and possession of firearms in Western Australia, including for hunting purposes. There are also other sources of a right to hunt in Western Australia that are specific to Aboriginal people. An Aboriginal person may wish to practice traditional hunting on Crown land or private land. This section of the report investigates whether the Firearms Legislation requires amendment to cater for existing traditional hunting rights. These issues were discussed from page 189 of the Discussion Paper and the Commission had regard to submissions and, due to the particular complexity of the relevant legislation sought the views of a number of Aboriginal representative bodies.

The question as to whether hunting can still be regarded as traditional when modern methods are used was discussed under the 'Adaptation' heading on page 189 of the Discussion Paper. The Commission's view is that it is the purpose of the activity that should be considered rather than the method used and the Commission is satisfied that the use of a firearm would not of itself mean that hunting is not traditional.

9.16.1 Crown Land and Native Title

Commonwealth legislation

A native title right to hunt (among other traditional rights) can be claimed and recognised under the *Native Title Act 1993* (Cth). An Aboriginal person who is a native title holder as defined in section 224 of the *Native Title Act 1993* (Cth) may have the right to hunt on Crown land.

Section 224 defines the Native Title holder as either the Prescribed Body Corporate (section 224(a)) or an individual or persons (section 224(b)). Section 225 provides for whether native title exists or does not exist, including the nature and extent of the native title rights and interests which may include hunting.

Crown land includes all land except for land held in freehold and thus includes, state forest; timber reserves; national parks; conservation parks; nature reserves; reserved Crown land and unallocated Crown

land (see the definition of Crown Land as set out in section 3 of the *Land Administration Act 1997* (WA)).

Unallocated Crown land (as defined in section 3 of the *Land Administration Act 1997* (WA)) means Crown land in which no interest is known to exist, but in which native title within the meaning of the *Native Title Act 1993* (Cth) may or may not exist; and which is not reserved, declared or otherwise dedicated under any written law.

The traditional activity, such as hunting, must be conducted in accordance with section 211 of the *Native Title Act 1993* (Cth). That section provides, among other things, that if:

- the exercise or enjoyment of native title rights and interests in relation to land or waters includes carrying out hunting activities; and
- a Commonwealth, state or territory law prohibits or restricts persons from carrying on the class of activity other than in accordance with a licence, permit or other instrument granted or issued to them under law; and
- the law does not provide that such a licence, permit or other instrument is only to be granted or issued for research, environmental protection, public health or public safety purposes; and
- the law is not one that confers rights or interests only on, or for the benefit of, Aboriginal peoples or Torres Strait Islanders;

then, the law does not prohibit or restrict the native title holders from hunting, or from gaining access to the land or waters for the purpose of hunting, where they do so for the purpose of satisfying their personal, domestic or non-commercial communal needs and is an exercise or enjoyment of their native title rights and interests.

Section 211 of the *Native Title Act 1993* (Cth) also provides that, in so doing, the native title holders are subject to laws of general application. Therefore, an Aboriginal person who wishes to exercise a native title right to hunt within Western Australia, and to use a firearm for this purpose, will require a licence, permit or approval under the Firearms Act.

Section 211 under the *Native Title Act 1993* (Cth) preserves certain native title rights and interests where they may be otherwise prohibited other than with the permission of a permit or licence. The prohibition is removed if the native title activity, in the exercise of native title rights and interests, is for recreational, personal or non-commercial needs. The exercise of those native title rights and interests, including to hunt and use a firearm needs to occur in compliance with section 211.

If there is an allegation of an offence of contravening the *Wildlife Conservation Act 1950* (WA) and the

Conservation and Land Management Act 1984 (WA) then the available defences in respect of Aboriginal persons taking flora and fauna for customary purposes may apply. Where the area in which the alleged offence was committed is that in respect of which exclusive native title exists it must be shown that the accused took the flora and fauna in accordance with the exercise of his or her native title rights and interests as set out under section 103A(2)-(4) of the *Conservation and Land Management Act 1984* (WA).

Exclusive native title in this context refers to both determined and undetermined native title as defined in section 223 of the *Native Title Act 1993* (Cth). The use of the definition 'Exclusive native title holder' in the *Conservation and Land Management Act 1984* (WA) encompasses the key concept of the Native Title Holder as set out in accordance with section 224 of the *Native Title Act 1993* (Cth).

State legislation

At a State level the right of Aboriginal people to hunt is enshrined in legislation. For instance, section 104 of the *Land Administration Act 1997* (WA) provides that 'Aboriginal persons may at all times enter upon any unenclosed and unimproved parts of the land under a pastoral lease to seek their sustenance in their accustomed manner'.

Section 267(2)(h) of the *Land Administration Act 1997* (WA) makes it an offence, without either the permission of the Minister or reasonable excuse, to discharge any firearm or other weapon on Crown land. Pastoral leases are included as Crown land by virtue of its definition under section 3 of the *Land Administration Act 1997* (WA).

Section 23 of the *Wildlife Conservation Act 1950* (WA) and section 103A(3) of the *Conservation and Land Management Act 1984* (WA) provides that it is a defence to a charge of an offence against the Act of taking flora or fauna to prove amongst other things that the accused is an Aboriginal person and he/she took the fauna or flora for an Aboriginal customary purpose.

If the offence is alleged to have been committed on land other than CALM Act land (land, or land and waters, referred to in sections 5, 8C and 131 of the *Conservation and Land Management Act 1984* (WA)), it must be proven that the person who has control or management of the land consented to the taking of the fauna or flora.

Land where Native Title has been extinguished

The High Court decision in *Western Australia v Ward* (2002) 213 CLR makes it clear that native title is wholly extinguished in the case of vested nature reserves and national parks. Not all nature reserves or national parks are currently vested. Some have been

previously vested, but currently cover a different area from what they covered when they were vested. For example, Karijini national park was vested in 1969. The vesting was removed in 1973. The current extent of Karijini national park is not identical to what it was in 1969-1973. This means that while native title over most of the park has been extinguished, there are some areas of the park where native title survives (see *Banjima People v State of Western Australia* (No 2) [2013] FCA 868 at [1387]).

In cases where native title has or may have been extinguished it could be argued that section 23 of the *Wildlife Conservation Act 1950* (WA) and section 103A(3) of the *Conservation and Land Management Act 1984* (WA) reinstate the right to carry out customary activities.

Land under Indigenous Land Use Agreements

Indigenous Land Use Agreements (ILUA) most often apply in circumstances of an agreement between the rights holders of Native Title and users of the land such as pastoralists or mining companies.

In June 2015, Indigenous Land Use Agreements for the resolution of native title across the South West of Western Australia were executed. The Native Title rights, including hunting where applicable, are governed by the terms of a suite of agreements including the relevant ILUA for various areas, the Land Access Licence which provides access for Noongar people (Members of the Noongar Regional Corporations) to certain unallocated Crown land and unmanaged reserve land for 'customary activities', or land held by the Noongar Boodja Trust or the Department of Parks and Wildlife conservation estate.

Separate to the licence, as part of the South West Native Title Settlement, the Metropolitan Water Supply Sewerage and Drainage Amendment By-laws 2016, and the Country Areas Water Supply Amendment By-laws 2016 were gazetted in June 2016. The by-laws set out arrangements for Noongar people to access some water catchment areas for certain limited customary activities, and will allow Noongar people to access and maintain Aboriginal sites and to teach and learn on country.

9.16.3 Traditional hunting and the Firearms Legislation

Current position

The provisions discussed above do not deal specifically with the ability to use a firearm for traditional hunting. However, any user of a firearm must comply with the requirements of the Firearms Act. The section 267(2) 'reasonable excuse' provisions of the *Land Administration Act 1997* (WA) does not exclude the operation of the Firearms Act.

Current Firearms Legislation has not been designed to accommodate these circumstances. For instance, 'traditional hunting' or 'seeking sustenance' is not included in the list of 'genuine reasons' set out in section 11A(2) of the Firearms Act.

An Aboriginal person seeking to engage in traditional hunting would have to meet the requirements of an existing genuine reason, that is, he or she would seek a licence for recreational shooting or hunting using a property letter or perhaps rely on a Corporate Licence.

WA Police (in their submission of 9 February 2016, page 34) has advised that it considers that the current provisions of the Firearms Act are adequate in this context and that no amendment is required. In particular they are of the view that the 'genuine reason' provisions of recreational hunting are adequate and that in all cases of traditional hunting permission of the landowner/occupier or the Department of Parks and Wildlife (P&W) (as the case may be) ought to be obtained.

The submission of the Department of Lands to the Standing Committee on Public Administration: Inquiry into recreational hunting systems in Western Australia (at page 13) concluded that 'an Aboriginal person, provided the Governor has not suspended or restricted the taking of flora or fauna, will be able to use a firearm on Crown land, provided the firearm is licensed and the firearm is being used to take fauna for his or her own use'.

The Commission is of the view that it is contrary to the scheme of the Act that an Aboriginal person who wants to use a firearm for traditional hunting must apply for a Firearms Licence under the recreational hunting 'genuine reason'. Further, it has the potential to create confusion and uncertainty.

The Commission recommends that a genuine reason of 'Aboriginal traditional hunting' be added to the Firearms Legislation.

Summary of different land on which traditional hunting may take place

Traditional hunting may currently take place on the following land tenures:

- CALM Act land vested in or under the care, control and management of the Conservation and Parks Commission or the Executive Body or jointly with an Aboriginal body corporate (as set out in section 8AA of the CALM Act) or joint responsible body (as defined in section 3 of the CALM Act) or under a joint management plan (in accordance with section 56A of the CALM Act);
- land on which Native Title rights exist which is not CALM Act land, and which could be either determined or undetermined Native Title rights;

- land where Native Title rights have been extinguished but are subject to a ILUA;
- pastoralist lease land;
- other land under the management of the P&W CEO such as certain private land or unallocated Crown land or unmanaged reserves (in accordance with section 8A and 8C of the CALM Act); and
- private land.

Having regard to submissions received during the consultation phase, the Commission has reconsidered Proposal 45 point 3 and has concluded that there should always be some form of permission to enter property for the purposes of using a firearm. The Commission therefore does not recommend the 'reasonable excuse' suggested in the Discussion Paper under that proposal.

Written permission

The Commission recommends that written permission must be obtained for the purposes of the Aboriginal traditional hunting genuine reason and must accompany an application for a Firearm Licence made for that purpose.

CALM Act land (including land under the management of the P&W CEO such as certain private land or unallocated Crown land or unmanaged reserves (in accordance with section 8A and 8C of the CALM Act):

The P&W has a guideline (*Guide to Aboriginal customary activities on Parks and Wildlife managed lands and waters*, 2014) which provides general information on which firearms would be suitable for certain land:

- hunt animals with a Firearms Licence and a Category A firearm, such as an air rifle or a rim fire .22 rifle from areas that are more than 1.5km from car parks, sealed roads, designated camping sites and visitor areas, and not in urban land or a town site;
- hunt animals with a Firearms Licence and a Category B firearm, such as a centre fire .22 or .223 rifle from areas that are more than 3km from car parks, sealed roads, designated camping sites and visitor areas, and not in urban land or a town site.

The Commission is of the view that P&W should modify its existing written permission system if necessary to require written permissions, with or without conditions, in all cases where the applicant proposes to use a firearm. In addition, written permission in the case of the use of a firearm for hunting should only be provided to a single person and not to a group or family unit.

In all likelihood there will be a substantial number of applicants for such approvals and P&W should maintain a register of those licence holders for whom permission has been granted and Recommendations 61.1 – 61.3 should similarly be applicable.

In cases where there is a joint responsible body or joint vesting with an Aboriginal body corporate or any form of joint management of particular land, then P&W should liaise with such bodies for the purposes of setting up the appropriate written permission system. The written permission may be used as evidence in support of an Aboriginal traditional hunting firearm application. If there are areas of land for which, in the view of P&W, a deemed permission ought to apply then this should be specified in appropriate regulations.

Land with Native Title rights:

In the case of land on which Native Title rights exist but which is not CALM Act land, permission should be obtained from the prescribed Native Title body corporate under a land determination or a representative body in the case of a registered Native Title claim.

ILUA:

In respect to land where Native Title rights have been extinguished but the land is subject to a ILUA permission should be obtained from the relevant government agency or Aboriginal body corporate established under the ILUA.

Pastoralist lease land:

In the case of land which is the subject of a pastoral lease permission must be obtained from the pastoralist.

Private land:

For private land the usual 'property letter' will be suitable.

Conditions on the firearms licence

The Licensing Authority must be able to place conditions on the traditional hunting licence in the same way as recommended for recreational licences (see Subsection 9.7.2 above).

Restriction to hunting on the land referred to in the permission letter

The Commission does not recommend any restriction to use the firearm for traditional hunting only on the land which is the subject of the permission letter. Licence conditions should regulate restrictions.

At no time may anyone enter upon land for the purposes of Aboriginal traditional hunting with a firearm unless they have permission to do so from the appropriate body.

While the Firearm Licence may contain conditions in respect of the use of the firearm, the permission letter may also contain restrictions on the hunting activity on particular land (such as a minimum period of time for which the permission is valid, restrictions due to environmental sensitivity of a place or the risk to public safety). This is in keeping with the recommendation that a person must always have permission to enter upon land to use a firearm.

In this regard of relevance is Part 10 of the *Conservation and Land Management Regulations 2002*, regulation 131 of the *Forest Management Regulations 1993* and regulation 63 of the *Wildlife Conservation Regulations 1970* which can restrict and exclude certain activities where there are real and significant risks to public safety, the protection of flora and fauna and other values, uses or users of a reserve.

Recommendation 74:

- 74.1 The 'genuine reason' requirement in section 11A(1) of the *Firearms Act 1973* (WA) should be amended to include 'Aboriginal traditional hunting' as a separate genuine reason.
- 74.2 The Categories of firearms which may be the subject of an application under this genuine reason should be the same as that for recreational hunting.
- 74.3 The Licensing Authority should be able to place conditions on the traditional hunting licence in the same way as recommended for recreational licences.
- 74.4 Traditional hunting with a firearm should not be restricted only to the land which is the subject of the permission letter.
- 74.5 An Aboriginal licence holder who wishes to engage in traditional hunting activities with a firearm should always be required to obtain permission from a private property owner, prescribed Native Title body corporate, a representative body, the Department of Parks and Wildlife or a pastoralist (as is appropriate in the circumstances) prior to entering upon land for that purpose.
- 74.6 Where a person has nominated 'Aboriginal traditional hunting' as his or her genuine reason, the following evidence should be provided in support of the application:
 - a. Written permission from a private property owner, prescribed Native Title body corporate, a representative body, the Department of Parks and Wildlife or a pastoralist (as is appropriate in the circumstances).

- b. The letter of support and any other evidence should contain the following minimum information: confirmation of the applicant's identity as an Aboriginal person wishing to engage in traditional hunting, a description of the land in question and the nature of the fauna that the applicant intends to hunt.

- 74.7 The Department of Parks and Wildlife should modify its existing written permission system if necessary to require written permissions, with or without conditions, in all cases where the applicant proposes to use a firearm for Aboriginal traditional hunting on CALM Act land.
- 74.8 The Department of Parks and Wildlife should liaise with any other body where there is joint responsibility for the land in question if there is no pre-agreement on a permission system.
- 74.9 Written permission in the case of the use of a firearm for Aboriginal traditional hunting, should only be provided to a single person and not to a group or family unit.
- 74.10 The Department of Parks and Wildlife should be required to keep a register with the details of all written permissions that have been provided.
- 74.11 The register should be submitted to the Licensing Authority on request and at least once annually.
- 74.12 The Regulations should set out the information required to be kept in the register.
- 74.13 Where the Department of Parks and Wildlife is of the view a deemed permission ought to apply, such areas of land should be specified in appropriate regulations.
- 74.14 The *Land Administration Act 1997* (WA), in particular sections 104 and 267, should be amended to clarify the circumstances under which firearms may be used for Aboriginal traditional hunting on Crown land.

CHAPTER TEN: CATEGORISATION OF FIREARMS AND THE GENUINE NEED TEST

10.1 Current categories and the National Firearms Agreement

In general terms firearms are categorised in accordance with the resolutions that came out of the 1996 National Firearms Agreement. Australian jurisdictions have added to the categories or created different categories and sub-categories to cater for specific circumstances but for the most part the categories of firearms adopted in Western Australia align with those in other Australian jurisdictions.

The categorisation of firearms is the subject of continual national consultation to cater for change in technology and to enhance national uniformity.

The Commission is of the view that national uniformity is important, both with respect to the regulation of legal firearm's users such as those travelling interstate as well as to successfully target criminal activity.

In Western Australia, the Firearms Regulations set out the firearms which fall within each category. Details of the categories and sub-categories are set out in the Discussion Paper at page 64. Firearms are categorised according to their functionality (and in some cases appearance), taking into account factors such as action type, magazine capacity and ammunition.

10.1.1 Distinguishing between Category D and prohibited firearms

The Commission is in favour of retaining the Categorisation method as the basis of the regulatory firearms scheme; a scheme aimed at maximising public safety and administering the use of firearms for legitimate purposes. The Categorisation of firearms allows stricter conditions to be applied to certain firearms, in particular automatic and self-loading rifles and shotguns.

In order to maintain clarity across the Categories and improve uniformity with the categorisation in other Australian jurisdictions, the Commission suggests that Category D and prohibited firearms should be treated as two distinct categories. Reference to Category D should therefore be removed from the prohibited firearms list. A single, clear list of prohibited firearms should be created incorporating all firearms listed under regulation 26B(4) of the Firearms Regulations; and made available to the public on the WA Police website.

Stakeholders expressed concern that it takes considerable time to make changes to the national categorisation of firearms, especially in the light of ever-changing technologies. The Commission's recommendations regarding temporary re-categorisation should cater for any deficiencies in that regard (see Recommendation 84).

10.1.2 The categorisation of air rifles

The Discussion Paper covered the issue of so-called new generation air rifles and their categorisation (Discussion Paper page 64 and 148 and Proposal 7 and Proposal 37). Air rifles are currently categorised in Category A and a question was raised as to whether they should be categorised in different categories according to their design and function. In particular WA Police (in its submission of 16 June 2015, page 3) referred to the performance of the semi-automatic models and magazine capacities of certain models. Other stakeholders have disputed this and are of the view that air rifles should remain in Category A and that the technological advancements do not necessarily mean an increase in power.

WA Police (submission dated 9 February 2016, page 5) indicated that at the national level, it has been arguing strongly that consideration needs to be given to reviewing the current categorisation of air rifles as a Category A firearm in the 1996 National Firearms Agreement.

The Commission was presented with sufficient evidence to cast doubt on whether air rifles ought to be re-categorised and will make no proposal in that regard. This type of technical analysis is best left to negotiations at a national level which the Commission trusts will take into account technological data and expert advice.

Recommendation 75:

- 75.1 The Categorisation method should be retained as the basis of the regulatory firearms scheme.
- 75.2 All prohibited firearms, including those listed under regulation 26B(4) should be incorporated where appropriate under a single category of prohibited firearms.

- 75.3 Category D and prohibited firearms should be treated as two distinct categories. Reference to Category D be removed from the prohibited firearms list.
- 75.4 WA Police should continue to review the existing firearm categories in conjunction with other Australian jurisdictions to ensure that the categories take into account changes in technology and are internally consistent.
- 75.5 WA Police, in its interaction at a national level with regard to the categorisation of firearms, should acquire and provide technological data and expert advice on firearm capability.

10.2 Firearms categories and the 'genuine need' requirement

In the 1996 National Firearms Agreement all jurisdictions agreed to 'immediately implement a uniform system of testing applicants for firearms licences of Categories B, C, D and H such that each applicant must establish, to the satisfaction of the licensing authority in the relevant jurisdiction, that he or she has a "genuine need" for owning, possessing or using a firearm of the nominated type'.

The 'genuine need' requirement is a stringent criterion that must be satisfied by applicants for particular categories of firearms (there is no 'genuine need' requirement in respect of firearms of Category A or Category E).

The 'genuine reason' requirement in section 11A of the Firearms Act applies to all licence applications and is in many cases very similar to the 'genuine need' requirement.

The way the Commission understands the two terms is that a 'genuine reason' is why an applicant ought to be issued with approval to own, possess or use a firearm. This can be described by reference to the Applicant's proposed activity or occupation such as sports shooting, hunting, security etc. (this is discussed at Chapter 9). Once an applicant has demonstrated a 'genuine reason', the applicant must then demonstrate a 'genuine need' for the particular type of firearm which is the subject of the application.

Schedule 3 of the Firearms Regulations sets out the genuine need tests applicable to the categories of firearms, as follows:

Category A

There is no genuine need test applicable to Category A firearms although, as with all firearms, an applicant

for a licence, permit or approval must have a genuine reason.

Category B

To satisfy the genuine need test for Category B, the applicant must satisfy the Police Commissioner that a firearm of Category A would be inadequate or unsuitable for the purpose for which the firearm is required.

Category C

To satisfy the genuine need test for Category C, the applicant must satisfy the Police Commissioner that a firearm of Category A or B would be inadequate or unsuitable for the purpose for which the firearm is required.

Category D

To satisfy the genuine need test for Category D, the applicant must satisfy the Police Commissioner that the firearm is required for Commonwealth or state government purposes.

Category E

The genuine need test does not apply to Category E firearms although, as with all firearms, an applicant for a licence, permit or approval must have a genuine reason. This is a miscellaneous category consisting of, for example, captive bolts and paintball guns.

Category H

This category covers all hand guns including air pistols.

The current position is that only certain sports shooters, security employees and pastoralists or persons nominated by the Pastoralist (involved in mustering or yarding cattle that are grazed on the pastoral lease) can show a genuine need for a firearm in this category, provided certain requirements are met and subject to certain restrictions.

10.3 Use of the phrase 'genuine need'

Some stakeholders have suggested that the similarity between the terminologies, 'genuine reason' and 'genuine need' may contribute to confusion in respect of the meaning of each. This terminology is the same as that used in the 1996 National Firearms Agreement.

Proposal 15 of the Discussion Paper suggested that the terminology in the Firearms Act and Firearms Regulations be changed from 'genuine need' to 'special need' to reduce confusion between the 'genuine reason' and the 'genuine need' requirements.

New South Wales *Firearms Act 1996* (NSW) and the ACT *Firearms Act 1996* (ACT) use the phrase 'special

need' to denote the 'need' requirement for certain categories of firearms.

In response to Proposal 15 most stakeholders indicated that they are satisfied with the current terminology and there has been almost no support for a change. The Commission is thus satisfied that the phrase 'genuine need' ought to be retained.

Recommendation 76:

The phrase 'genuine need' should be retained.

10.4 Factors taken into account in determining genuine need

Question 17 of the Discussion Paper refers to Codes of Practice or Standard Operating Procedures regarding the humane killing of animals and the extent to which they should be taken into account when determining 'genuine need'. There are a number of recognised guidelines on the humane shooting of various kinds of animals that operate within Australia generally and Western Australia more specifically. For instance, the Department of Parks and Wildlife provides information on kangaroo management in Western Australia, including a link to the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes (2008). The Department of Parks and Wildlife has produced Standard Operating Procedure 15.1 on humane killing of animals under field conditions in wildlife management which also lists firearms that are suitable for use in particular circumstances.

The Commission acknowledges the relevance of these Codes and Procedures to the determination of whether a genuine need is made out in any particular instance but is of the view that this is one of a number of factors that would be taken into account by the Licensing Authority. The Commission does not believe that this factor needs to be specified in legislation and most stakeholders have agreed with this approach.

It would be useful to firearms applicants to be able to consult an information document on the method of determination of 'genuine need' and the factors that may be taken into account. The Commission recommends that such a document be published on the WA Police website as a guide only without narrowing the general application of the law.

Recommendation 77:

77.1 WA Police should publish an information document which sets out the method of determination of 'genuine need' and the factors that it will consider.

77.2 These factors include any Codes of Practice or Standard Operating Procedures regarding the humane killing of animals.

10.5 Genuine need and genuine firearms collections

An applicant for the licensing of a firearm that is intended to form part of a genuine firearm collection must show a genuine need for any Category B, C and H firearm, that is, the applicant must satisfy the Police Commissioner that a firearm of a lower category would be inadequate or unsuitable for the purpose for which the firearm is required. Currently the genuine need test specified in Schedule 3 of the Firearms Regulations for Category D firearms prevents an approval or permit from being granted, or a licence from being issued, for the purposes of such a firearm forming part of a genuine firearm collection.

Some stakeholders have suggested that any reference to 'genuine need' in relation to firearms applications forming part of a genuine collection ought to be deleted from the Firearms Act.

The Commission has considered the wording of regulation 6A(3) of the Firearms Regulations which states that the genuine need test for any Category other than Category D, does not prevent the Police Commissioner from being satisfied that a person has a genuine need to acquire or possess a firearm of that category for the purposes of the firearm forming part of a genuine firearm collection. The Commission is of the view that this regulation provides sufficient clarity in regard to the application of the genuine need test in the context of firearms collections and will make no recommendation for change in this regard.

At page 136 of the Discussion Paper the Commission raised the following questions:

- should amendments be made to the legislation to allow firearms held under a collector's licence to be carried and used; and
- should firearms in a collection which have been manufactured after 1 January 1946 be rendered temporarily or permanently inoperable.

10.5.1 Rendering of collection firearms which are manufactured after 1 January 1946

The 1996 National Firearms Agreement resolved that all jurisdictions should immediately implement a uniform system for regulating firearms collectors by means of the licence and permit system which included a resolution that firearms in a collection which have been manufactured after 1 January 1946 must be rendered inoperable. Most Australian jurisdictions have implemented this resolution, with differences

in whether the rendering should be permanent or temporary depending on the Category of firearm. Some of these jurisdictions require rendering for firearms manufactured after 1 January 1900. Western Australia has not followed the 1996 National Firearms Agreement in this regard and currently has no such rendering requirements. See the Discussion Paper at page 135 for an inter-jurisdictional comparison on the rendering of firearms.

Feedback from the vast majority of stakeholders, including WA Police (submission dated 9 February 2016, page 24), was not in favour of rendering inoperable any firearms in a collection. The predominant reason provided is that such an action would have a detrimental effect on the commercial and historical value and significance of the firearm. Western Australia has implemented the 1996 National Firearms Agreement resolution in regard to a handgun manufactured after 1946 where under section 15(3) of the Firearms Act it may form part of collection only if it is owned by a student of arms and is within the scope of such person's interest as a student of arms.

The Commission is satisfied that there is no reason to render collection firearms inoperable. The Commission does not consider that there are public safety concerns taking into account that they may not be used and the storage requirements under which they must be housed.

10.5.2 The carrying and use of firearms held under a Collector's Licence

Section 16(1)(b) allows for the issuing of a Firearm Collector's Licence which entitles the holder to possess, but not to carry or use, the firearm named and identified in that licence.

Currently, in the event that a collector wants to use a particular firearm he or she can apply for a conventional Firearms Licence. It is an important consideration that under a collector's licence a person could collect handguns which under the legislation is one of the strictest categories of firearm. The Commission is not in favour of an entitlement to use a firearm held under a Collector's Licence and is of the view that a conventional Firearms Licence is appropriate for that purpose.

Some stakeholders have indicated there may be a need to carry such a collection firearm, for example, to a gunsmith for repairs, and there may be a desire to use the firearm at special events.

Section 21 of the Firearms Act provides that a licence may be made subject to conditions imposed subsequent to the original grant. It is not clear whether this provision can be used to permit the temporary carriage or use of a firearm held under a Collector's Licence. The Commission's view is that this

section is more appropriate to licensing changes and that a temporary permit is the mechanism that would be required for short term carriage or use.

Section 12(3) of the Firearms Act suggests that a permit may be issued in respect of a firearm for the purpose of enabling it to be conveyed to a dealer or the holder of a Repairer's Licence and section 17 allows the Licensing Authority to issue a temporary permit to possess a firearm for, amongst other things, the purpose of any test or demonstration of it or for the purposes of transit. This section appears appropriate to obtain a permit for the temporary carriage or use of a firearm held under a Collector's Licence. On the other hand the three month limitation in section 17(3) may not be appropriate to plan for commemorative historical events or anniversaries.

The Commission recommends that the Firearms Legislation be clarified to ensure that it allows for the Licensing Authority to issue a temporary permit, for a limited period or particular event, to allow for the carriage or use of a specified firearm that is held under a Collector's Licence.

The provision should expand on the phrase 'test or demonstration' to include the purpose of 'commemorative historical events' and 'club days'. With regard to section 17(3) of the Firearms Act, the three month limitation should apply in respect of the actual operative period of the permit, that is, from the date when the permitted activity can first be undertaken, and not from the date of issue.

The Commission is of the view that this same permit provision should be available in respect of a firearm that falls under the Antique Firearm exception; under section 8(1)(mc) of the Firearms Act an Antique Firearm may be carried but not used.

The Commission recommends that a temporary permit should only be issued if the firearm is deemed safe. The Licensing Authority must be able to request evidence that the firearm is safe to use.

A stakeholder requested the Commission to consider the joint licensing of collectable firearms. Co-licensing is already permitted under a Collector's Licence where both licensees qualify. This is most often utilised in the case of partners or a parent and child.

Recommendation 78:

- 78.1 There should be no requirement to render collection firearms inoperable.
- 78.2 The genuine need test as read with regulation 6A(3) of the *Firearms Regulations 1974* (WA) should be retained in respect of genuine firearm collections.

- 78.3 In line with the current position, there should be no automatic permission to use a firearm held under a Collector's Licence.
- 78.4 A provision should be included in the Firearms Legislation, or section 17 should be clarified, to allow for the Licensing Authority to issue a temporary permit, for a limited period or particular event, and with specified conditions, for the carriage or use of a specified firearm that is held under a Collector's License.
- 78.5 The same provision should be available in respect of a firearm that falls under the Antique Firearm exception (under section 8(1)(mc) of the *Firearms Act 1973* (WA)) in respect of the temporary use of the firearm.
- 78.6 In respect of an application for a temporary permit the Licensing Authority should be able to request evidence that the firearm is safe to use.
- 78.7 It should be clarified that the three month limitation in section 17(3) of the *Firearms Act 1973* (WA) apply in respect of the actual operative period of the permit, that is, from the date when the permitted activity can first be undertaken, and not from the date of issue.

10.6 Limitations on genuine need for firearms in particular categories

The Commission is in favour of the Firearms Legislation stating clearly those circumstances where a genuine need for a particular category firearm will be deemed absent as this provides clarity to potential applicants.

The Firearms Legislation achieves this in 2 ways, either through a specific exclusion (as in a Category D firearm being excluded from a firearms collection) or through specifying which type of applicants may have access to a particular category of firearm (thereby excluding applicants who have a genuine reason outside of that type).

The Categories and the firearms under each category are set out at page 64 of the Discussion Paper. The genuine need test applicable to particular categories is discussed at page 95 of the Discussion Paper. The Commission has considered whether there should be any changes to the list of applicants that may be able to show a genuine need for a firearm under particular Categories.

10.6.1 Category C

Stakeholders have made no suggestions for changes to the Category C applicant limitations and the Commission does not recommend any.

10.6.2 Category H

Stakeholders have made no suggestions for changes to the Category H applicant limitations. The Commission does not propose any changes to these applicant limitations.

The Firearms Regulations (Schedule 3, Division 6, cl. 12) set out restrictions on Category H firearms. The Commission recommends some amendments for the purposes of clarity.

The new genuine reason of primary producer (see Section 9.11) will require some restructure of the provisions dealing with the limitations on handguns, but the Commission does not propose any change to the actual limitations themselves as imposed under clauses 11(1)(b) and 11(2)(c) as read with clause 12(1)(ba) of Schedule 3, Division 6 of the Firearms Regulations.

The Commission's view is that Category H should deal only with handguns. The Commission recommends that Category H2 (an underwater explosive device) be moved to a different category.

Recommendation 79:

- 79.1 The provisions dealing with the limitations on applicants for handguns should be restructured to take into account the recommended new genuine reason of a primary producer.
- 79.2 Category H should deal only with handguns and Category H2 (an underwater explosive device) should be moved to a different category.

10.6.3 Category D firearm for pest control

This issue was discussed on page 101 of the Discussion Paper. To satisfy the genuine need test for category D, an applicant must currently satisfy the Police Commissioner that the firearm is required for Commonwealth or State government purposes. Some stakeholders have indicated that the limited application of the 'genuine need' requirements in the context of Category D firearms prevents the use of these firearms by professionals who require them.

Stakeholders have suggested that a semi-automatic firearm is better suited to aerial pest control in order to meet nationally recognised Codes of Practice and/or Standard Operating Procedures and to ensure the humane culling of pests, such as for example to

ensure that the animal receives multiple shots to vital areas to ensure a rapid death.

Some stakeholders have argued that the 'genuine need' restriction on Category D firearms creates a monopoly in favour of the State government in respect of larger scale aerial culling operations which require a Category D firearm. The counter-argument has been that a private operator could be issued approval for a Category D firearm if acting under a contract with a state or federal government body, although this has raised questions about what to do about the firearm upon expiry of the contract.

It must be borne in mind that the licensing requirements for Category D firearms are strictly limited due to their potential to cause harm. These firearms have larger magazine capacities, are more powerful and for the most part are semi-automatic. WA Police supports the retention of the status quo in this regard (submission dated 9 February 2016, page 14). However, given that it is accepted that these firearms can be used for State and Commonwealth purposes, including pest control, it is difficult to see why professional shooters or primary producers seeking to use them for such purposes should be prevented from doing so by the need to make a separate application in respect of each contract and under the umbrella of a contract with a State or Commonwealth agency.

Other Australian jurisdictions permit the use of a Category D firearm for hunting or culling. Section 12 of the *Firearms Act 1996* (Vic) allows a category D longarm firearm to be used for professional hunting where the Chief Commissioner is satisfied that the quarry the applicant proposes to hunt cannot be hunted with any other category firearm. Evidence of this occupation must also be produced. Section 21 [sic] of the *Weapons Regulation 1996* (Qld) provides for permission to be granted for the use of up to 2 Category D firearms by a person who, in the conduct of the person's business or employment (whether or not in primary production), has a need for a category D weapon to cull animals.

The use of a Category D firearm for this purpose is contemplated by the 1996 National Firearms Agreement which refers to occupational categories of shooters who have been licensed for a specified purpose such as extermination of feral animals (the issue of the 'genuine reason' of requiring a firearm for pest control and animal welfare is discussed at Section 9.9). The Commission is satisfied that a Category D firearm may be genuinely required for certain types of pest control.

The Commission recommends that, in line with the 1996 National Firearms Agreement, the legislation permit the licencing of a Category D firearm to a Primary Producer or Professional Shooter where the Licensing Authority is satisfied that the use of such

firearm is for the purpose of the extermination of feral animals. Due to the power of these types of firearms the legislation must provide for strict requirements that need to be met before an application of this nature will be approved, including, but not limited to, training, evidence of occupation and proof of lack of other animal control options which includes the use of a firearm of another category. There should also be a limit on the number of Category D firearms that may be permitted.

The Discussion Paper at page 101 raised the issue of what happens when a genuine need ceases, or is intermittent in nature. The Commission is satisfied that the recommendations relating to storage of Category D firearms at Section 16.7 will cater for any security concerns in this regard.

Recommendation 80:

- 80.1 A Professional Shooter whose occupation is the extermination of feral animals or a Primary Producer may obtain approval for a Category D firearm where the Licensing Authority is satisfied that the use of such firearm is for that specified purpose.
- 80.2 In respect of the previous recommendation, additional requirements should be included in the legislation with regard to training, evidence of occupation and proof of lack of other viable animal control options.
- 80.3 In respect of this genuine need, a Professional Shooter or Primary Producer should not be granted permission for more than two Category D firearms.

10.7 Genuine need and membership of approved shooting clubs

Membership of an approved shooting club (where the person is an active and financial member of the club) is a well-established genuine reason to apply for a Firearm Licence and is contained within section 11A(2)(a) of the Firearms Act.

Club membership is currently relevant to the genuine need test when considering applications for certain Category C and Category H firearms. Some stakeholders suggested that membership of an approved shooting club itself be viewed as a 'genuine need'. This suggestion would allow for club members to be regarded as having an automatic genuine need for certain firearms.

As the Commission pointed out in the Discussion Paper (this issue was discussed at page 98), the effect of such an amendment would remove the current requirement for applicants to satisfy the Police Commissioner of their need for firearms of categories

B, C, D and H. In practice it would mean that approved clubs, rather than the Police Commissioner, would (by accepting membership applications) effectively determine whether an applicant has a genuine need for a particular firearm. This would represent a transfer of responsibility from the Police Commissioner to approved clubs.

Some stakeholders have suggested that the Firearms Legislation should be clarified so as to provide that for certain firearms, membership of an approved shooting club satisfies both the genuine reason and genuine need requirements when used in connection with a recognised shooting discipline. The basis of this suggestion is that it makes no sense to go through a genuine need test and ask if a firearm of a different category would be inadequate or unsuitable when the firearm is required for a specific shooting discipline for which a particular firearm is required.

The Commission is of the view that the Licensing Authority must be in a position to consider the available evidence in respect of the genuine need for a particular firearm and is satisfied with the general nature of the current provision, that is, clause 12(1)(a) of Schedule 3, Division 6 of the Firearms Regulations which refers to the purpose of training for, and participating in, a club, interclub, State, national, or international shooting discipline as read with the genuine reason at section 11A(2)(a).

The Commission does not propose that membership of an approved shooting club be recognised as being sufficient to satisfy the requirement for a 'genuine need'.

Recommendation 81:

Membership of an approved shooting club should not be recognised as being sufficient to satisfy the requirement for a 'genuine need'.

CHAPTER ELEVEN: CATEGORISATION OF FIREARMS – APPEARANCE, DESIGN AND FUNCTION

This chapter considers the extent to which appearance should play a role in the categorisation of a firearm. The appearance of a firearm is relevant to its categorisation under the Firearms Act in the following respects:

- regulation 26B(2)(a) of the Firearms Regulations, which concerns firearms that ‘closely resemble’ prohibited firearms; and
- the definition of ‘Category D’ firearms in Schedule 3, Division 4 of the Firearms Regulations.

11.1 Regulation 26B(2)(a): Firearms which ‘closely resemble’ prohibited firearms

Regulation 26B(2) of the Firearms Regulations provides that a licence, permit or approval relating to a firearm cannot be issued, granted or given if:

- in the Police Commissioner’s opinion, the firearm ‘closely resembles a firearm that is prohibited under regulation 26’;
- in the Commissioner’s opinion, the firearm is designed to be, or capable of being, readily adapted for use as a handgun;
- the firearm is specified in a Table included in the Regulations; or
- the firearm is a revolving rifle (unless it is a single action revolving rifle which, in the Commissioner’s opinion, has significant commemorative, historical, thematic or heirloom value).

Regulation 26B(2)(a) has received substantial criticism from firearms owners due to the phrase ‘closely resembles’ and the reliance on the subjective view of ‘the Commissioner’s opinion’ (which the Police Commissioner delegated to the Licensing Authority). Many stakeholders have argued that the ‘closely resembles’ provision is too subjective, its application is inconsistent and it fails to fulfil any public safety function.

Box 3:

A bit of history

In Western Australia the ability to prohibit a firearm on the basis of its appearance was included in the Firearms Regulations in 1981. A new regulation 26B(1)(e) provided that certain firearms and ammunition were prohibited if in the opinion of the Commissioner it was of a kind requiring the exercise of special precautions. In 1983 a new regulation 26B was inserted which included a 26B(3) which provided for the prohibition on the issuance of a licence for a firearm which closely resembled a prohibited firearm in appearance and which was of a kind in relation to which the Commissioner was of the opinion that the exercise of special precautions was required. This appears to have been a catch-all provision to allow the banning of firearms that were very similar to prohibited firearms.

The ‘special precaution’ requirement was deleted along with the repeal and replacement of 26B by the *Firearms Amendment Regulations (No. 2) 2006*. At that stage the Category D definition had already been introduced but provisions relating to appearance were not consolidated.

Section 6 continued to allow for regulations banning or applying restrictions to types of firearms having regard to the especial potentially dangerous nature of that kind of firearm and the need to exercise special precautions in relation thereto, or otherwise in the public interest.

Regulation 26 contains a table of prohibited firearms and ammunition which includes a firearm of Category D and other specified firearms such as a machine gun. The possession, buying and selling of these are *absolutely prohibited* with exceptions such as for armed forces and in respect of Category D firearms that are licensed and being used in accordance with the licence.

Regulation 26B sets out circumstances in which a licence, permit and approval may not be issued. Amongst other items this includes a ban on firearms which closely resemble firearms that are prohibited under regulation 26 and the firearms that are specified in regulation 26B(4).

This creates the anomaly that a firearm in Category D may be licensed (albeit under strict circumstances) while a firearm that would be in Category B, for example, but is determined as closely resembling a Category D firearm may not be licensed. As an aside, the Commission does not favour the manner in which regulation 26B was drafted where it refers to an *absolute* prohibition despite there being many exceptions to the prohibition.

11.2 Category D firearms: Firearms which substantially duplicates certain other firearms in design, function or appearance

The 1996 National Firearms Agreement provides that Category D firearms are prohibited except for official purposes and include 'self-loading centre fire rifles designed or adapted for military purposes or a firearm which *substantially duplicates those rifles in design, function or appearance*'. Western Australia included this wording in the definition of 'Category D' firearms as set out in Schedule 3, Division 4 of the Firearms Regulations.

11.3 Other Australian jurisdictions

Most Australian jurisdictions provide for the categorisation or re-categorisation of a firearm on the basis of its design and/or appearance although there is no uniformity as to which firearms are affected or how this is done.

New South Wales, Australian Capital Territory and Northern Territory

A firearm can be prohibited on the basis of appearance if it substantially duplicates in appearance (regardless of calibre or manner of operation):

- any machine gun, sub-machine gun or other firearm capable of propelling projectiles in rapid succession during one pressure of the trigger;
- any self-loading centre-fire rifle of a kind that is designed or adapted for military purposes; or
- any self-loading shotgun of a kind that is designed or adapted for military purposes.

Tasmania

A firearm can be prohibited on the basis of appearance if it *substantially duplicates in appearance* any machine gun, submachine gun or other firearm capable of propelling projectiles in rapid succession during one pressure of the trigger.

South Australia

South Australia's Firearms Act 2015 (SA), which is the most recently enacted Act, does not provide for categorisation on the basis of appearance.

Victoria

In Victoria amendments made in 2008 to the *Firearms Act 1996* (Vic) gave the Chief Commissioner of Police limited powers to re-classify firearms. As the Chief Commissioner's delegate, the Superintendent of the Licensing & Regulation Division may re-classify firearms that are ordinarily a category A, B or C longarm into a Category D or E longarm. These may happen when a firearm has been designed or adapted for military purposes or substantially duplicates a firearm of that type in design, function or appearance. The declaration must be published in the Government Gazette. Where an urgent decision is required this may be done as a temporary declaration in consultation with the Minister.

As discussed in the Discussion Paper at page 67, notwithstanding the above cited legislation, unlike the practice in Western Australia the current practice in a number of Australian jurisdictions is not to categorise according to appearance alone.

11.4 The purpose of the prohibition of a firearm based on its appearance

In this section the Commission will consider the reasoning behind the prohibition of a firearm based on its appearance alone and in the next section will look to recommend changes to the manner in which re-categorisation takes place.

The phrases used and their meaning

One criticism of the way that the Firearms Act operates, relates to prohibitions with regard to 'Appearance', 'Design' and 'Function'. In order to consider these criticisms and to ensure an accurate and meaningful assessment of them, an understanding of the meaning of these terms is necessary. The Commission understands the terms 'Appearance', 'Design' and 'Function' have been adopted in the Act with the following meaning:

- 'Appearance' refers to the outward look of the firearm only, how it is viewed through casual observation.
- 'Design' introduces a degree of technicality to the determination and refers to the manner in which the firearm is constructed both in its entirety as well as in its component parts. The design can have a bearing on appearance and/or function.
- 'Function' refers to the manner in which the firearm operates and would include, but not be limited to, calibre, magazine capacity, action and other physical attributes that affect the performance of the firearm.

Pursuant to regulation 26B(2)(a) a firearm is prohibited if it 'closely resembles' a firearm that is prohibited under regulation 26. The Licensing Authority has interpreted the phrase 'closely resembles' to refer to

any, or all of, the design, function or appearance of a firearm.

Although some stakeholders have argued that the origin of regulation 26B(2)(a) was to provide a power not to license a firearm that was especially dangerous and for which special precautions were required, the phrase 'closely resembles' does not lend itself to this interpretation and certainly, in part, refers to appearance. The Commission considers that the principle rationale behind regulation 26B(2)(a) and the Category D1 definition's reference to appearance, is to prevent the licensing of firearms which, by virtue of their resemblance to prohibited or Category D firearms, could create fear in the eyes of the public. As mentioned at the outset of this report, this is viewed by the Commission as one of the objectives of the Act as a whole.

Causing fear to the general public

In circumstances where a firearm is licensed under Category B in respect of function but substantially duplicates a prohibited firearm in appearance, and where that firearm is used in a way that causes fear to the general public, it is useful to consider what offences the user commits in such a scenario.

The Criminal Code provides for offences for appearing in public while armed, or appearing to be armed, with any 'dangerous or offensive weapon' in particular circumstances. The following are relevant offences and penalties under *The Criminal Code*:

- being armed with any dangerous or offensive weapon in or near a place of public entertainment, or a place within 50 metres of a place of public entertainment, without a lawful excuse: guilty of a crime and liable to imprisonment for five years - summary conviction penalty is imprisonment for three years and a fine of \$36,000 (section 68B);
- being armed with any dangerous or offensive weapon in a public place when in company with two or more persons, without a lawful excuse: guilty of a crime and liable to imprisonment for five years - summary conviction penalty is imprisonment for three years and a fine of \$36,000 (section 68C); and
- being, or pretending to be, armed with any dangerous weapon or offensive weapon or instrument in circumstances that are likely to cause fear to any person, unless with lawful authority: guilty of a crime and liable to imprisonment for seven years - summary conviction penalty is imprisonment for three years and a fine of \$36,000 (section 68).

Section 23(8) of the Firearms Act provides that a person who, without lawful excuse, points a firearm at any other person commits an offence. The penalty is imprisonment for three years or a fine of \$12,000.

Section 23(9a) provides that a person who from any place, discharges any firearm, or any shot, bullet, or other missile from a firearm, to the danger of, or in a manner to cause fear to, the public or any person, commits an offence. The penalty is imprisonment for three years or a fine of \$12,000.

In the light of the high penalties it is evident that the above offences are viewed seriously and are intended to have a deterrent affect.

Box 4:

Some statistics

During the five calendar years from 2011 to 2015, a total of 76 charges were lodged in the courts relating to sections 23(8) and 23(9a) of the Firearms Act (data compiled by Department of the Attorney General). According to WA Police, there were no convictions under these specific provisions for that period.

Over the last three years there have been 67, 73 and 79 charges each year in respect of *The Criminal Code* sections 68B, 68C and 68 where a firearm was alleged to have been involved (data compiled by WA Police - statistics are provisional and are subject to revision).

The zero conviction rate under sections 23(8) and 23(9a) of the Firearms Act might suggest that these sections are no longer required, that the use of comparable sections in *The Criminal Code* are preferred or that only more serious charges were progressed. This is discussed under the Law Enforcement chapter.

In the event that the Act is amended to remove reference to the appearance of a firearm, three further questions arise:

- In what circumstances could members of the public be likely to see a firearm that 'closely resembles' a prohibited firearm where it was being used with lawful authority and be afraid by it?
- Would a firearm of this appearance cause any more fear than a firearm of any other appearance in the same context?
- Would this lead to an increase in military-style Category A, B or C firearms and if so, would this have a negative effect on the community and policing?

The Firearms Act is prescriptive about the locations where firearms may be used – approved shooting clubs or organisations including approved ranges and shooting galleries, on private land by the owner's permission, in the course of someone's occupation including primary production, during a paintball

game, or for another approved purpose. It seems apparent to the Commission that firearms are generally not carried and used in areas frequented by members of the public who are otherwise unfamiliar with them.

The Commission is thus not convinced that a firearm which closely resembles a prohibited firearm in appearance and which is used in circumstances within the scope of lawful activity is likely to cause any greater fear to a person than any other firearm.

Secondly, would a firearm of a 'military-type' appearance, when used or carried in a public place or in circumstances likely to cause fear without lawful

authority, be any more likely to cause fear than a firearm of any other appearance in the same context? Section 3B of the *Firearms Act 1996* (Vic) uses the phrase 'designed or adapted for military purposes, or substantially duplicates a firearm of that type in design, function or appearance' in the context of the potential re-classification of firearms; Western Australia uses the phrase in the context of the definition of Category D firearms that are 'self-loading centre fire rifles designed or adapted for military purposes'.

For the purposes of comparison the Commission has included some images of various firearms, some of which are prohibited and others not.

Colt M2012 CMT Bolt Action – prohibited in WA

Image used with permission



Colt M2012 CMT Bolt Action – permitted in WA

Image used with permission



Puma Hunter JW15A .22lr Bolt Action 9 Shot Synthetic Stock Rimfire – permitted in WA

Image used with permission



Gamo Whisper VH Air Rifle .177 Cal w/Night Hunting Kit – permitted in WA

Image used with permission



The level of fear that each firearm may cause is obviously subjective. The question however is not how much fear is created, but the likelihood of causing any fear. The Commission is of the view that the appearance of a category A or B firearm is just as likely to cause fear in the eyes of the public as a firearm that closely resembles a prohibited firearm.

It is not the categorisation of the firearm that reduces the likelihood of public fear – it is rather the context in which the firearm is used. The licence and legislative conditions regulate the context, and the deterrents are various penalties for non-compliance.

Would the removal of reference to appearance lead to an increase in military-style Category A, B or C firearms and if so, would this have a negative effect on policing?

In this regard, some stakeholders have suggested that a secondary objective of the 'appearance' provisions is to reduce the possibility of an escalated police response to an incident. In particular, the suggestion is that limiting the availability of firearms that look like military-type weapons assists police to make more accurate risk assessments about the capacity and type of firearms involved in critical incidents.

The Commission is of the view that if there is an increase in the number of military-style (however this may be defined) Category A, B or C firearms this

would be unlikely to create any significant negative impact on policing resourcing; the Commission is of the view that any firearm if used unlawfully is likely to result in a similar policing response. The Commission is confident that the Police response would quite properly be no less in the event that a person is using a self-loading rim fire rifle with a magazine capacity of 10 rounds than if this same firearm had a military-type appearance.

WA Police has indicated its support for what they refer to as the intent of the 1996 National Firearms Agreement to restrict firearms of a military appearance. The Commission notes that the current 1996 National Firearms Agreement refers to appearance in respect to semi-automatic centre fire rifles designed or adapted for military purposes and does not refer to appearance as a factor in respect to the classification of any other types of firearms. It is also evident that some Australian jurisdictions has departed from this wording (South Australia being the most recent example).

The meaning of the phrases military-purposes is itself problematic. A stakeholder provided a good example: the SMLE (Short Magazine Lee-Enfield) .303 rifle was the standard issue weapon to rifle companies of the British Army and other Commonwealth nations in both the First and Second World Wars and is not subject to restrictions in Western Australia as a military rifle.

Short Magazine Lee Enfield Mk I (1903), UK. Caliber .303 British.

From the collections of Armémuseum (Swedish Army Museum), Stockholm - released into the Public Domain by copyright owner.



Another stakeholder pointed out that the military rifle, Karabiner 98k (pictured below), can also be licensed.

Karabiner 98k

From the collections of Armémuseum (Swedish Army Museum), Stockholm - released into the Public Domain by copyright owner.



The Commission's view is that the phrase military-purposes should only refer to current military firearms and only in the context of the assessment under the Category D provisions.

The Commission favours a technical, evidence-based approach that limits subjective and ad hoc decision-making, and recommends that Western Australia negotiates at the national level for the removal of the 'appearance' provision from the definition of a 'self-loading centre fire rifle designed or adapted for military purposes'.

South Australia has completed a review of its firearms legislation and pursuant to the review has passed the *Firearms Act 2015 (SA)*. This is a re-write of the *South Australian Firearms Act 1977 (SA)* and importantly the concepts of appearance and design have not been included in the 2015 Act in regards to categorisation.

The Commission is satisfied that the terms 'design' and 'function' refer to a degree of technicality that lends itself to a more objective determination of a firearm's similarity to one in a different category and ought to be retained in the Act. The more subjective term 'appearance', where relevant to the determination, is likely to be covered by the terms design or function. Accordingly the Commission considers that the term 'appearance' could be removed with little or no impact on the operation of the regulations according to its intent.

Under certain circumstances a re-categorisation of a firearm may be required, either for a particular firearm or for a type, based on its design or function. The Commission is of the view that regulation 26B(2) (a) should be deleted with the power to re-categorise or ban firearms falling under other provisions of the Firearms Act as discussed in the next section.

Recommendation 82:

Regulation 26B(2)(a) should be deleted.

Recommendation 83:

The Western Australia Government should negotiate at the national level for the removal of the 'appearance' provision from the definition of a 'self-loading centre fire rifle designed or adapted for military purposes'.

11.5 Determining whether a firearm that is ordinarily in one Category substantially duplicates a firearm in another Category in design or function

In this section the Commission considers how a determination would be made whether a firearm ordinarily in one Category substantially duplicates a firearm in another Category in design or function; in what circumstances such a determination should be allowed; and who should make the determination.

As mentioned in the Discussion Paper on page 70, in practical terms the 'appearance' provisions did not affect many applicants; according to WA Police, over the last three financial years there has only been one application refusal on the basis of regulation 26B.

Despite this, from the perspective of applicants, there remains a degree of uncertainty in the application process – they do not know ahead of time whether their application will be refused on the basis of the appearance of the relevant firearm, and there is a perception amongst firearms owners that the categorisation, while necessarily subjective, does not reflect the ordinarily understood standards of administrative decision-making. The Commission has been advised of examples where some stakeholders have had their firearm approved only to have the licence revoked at a later stage under regulation 26B.

Regardless of how often a re-categorisation may be contemplated there will need to be checks and balances due to the subjective nature of the determination. Recommendations for improvement to the manner in which re-categorisation is determined are made below.

Re-categorisation policy

The Commission proposed the release of a policy document regarding assessment of appearance at Proposal 8 dot point 1 of the Discussion Paper. The recommendations relating to appearance (at Recommendation 82) means that this particular proposal is no longer required. The Commission is nevertheless of the view that the Licensing Authority should publically release a policy that provides certainty about the way in which determinations will be made as to whether a firearm ordinarily in one Category substantially duplicates a firearm in another Category in design or function.

The submission from WA Police (dated 9 February 2016, page 6) stated that it has compiled a formal policy in respect of the 'appearance and close resemblance' assessments and this has been provided to the Minister of Police for approval. The Commission recommends that this draft policy be modified if necessary, to deal with re-categorisation in line with the Commission's recommendations.

Re-categorisation decisions

The Licensing Authority should maintain a standard process when assessing whether a firearm meets the criteria for re-categorisation. In Western Australia the Licensing Services Tactical (TAC) meeting makes a decision on a firearm that is referred to it by an assessor with a recommendation. The TAC meeting comprises the Divisional Inspector, Senior Sergeant, Sergeants and other staff as required.

The Commission recommends that a Categorisation Advisory Committee (CAC) be established to evaluate and advise whether a firearm should be re-categorised which, in addition to the current makeup of the TAC, must also include at least one person with extensive technical expertise in firearms who is independent of the Licensing Authority in order to ensure that the CAC provide an independent assessment of firearms that is beyond question.

Section 6 of the Firearms Act provides that the Governor, on the recommendation of the Police Commissioner, may make regulations to prohibit the acquisition, sale, possession, or use of any firearm, silencer or other contrivance of a similar nature, or ammunition, whether licensed under this Act or not, either —

- (a) absolutely; or
- (b) except upon and subject to such conditions, restrictions, and limitations, for such purpose or purposes, and in such place or places, as the Governor considers desirable in the public interest, having regard to the especial potentially dangerous nature of that kind of firearm, contrivance or ammunition and the need to exercise special precautions in relation thereto, or otherwise in the public interest.

Section 6 allows the Governor (on the recommendation of the Police Commissioner) to make regulations that in turn give the power to the Police Commissioner to, for example, prohibit the use and possession of a firearm if it's in the 'public interest', either absolutely or with conditions; and the exercise of this power is not subject to review (as discussed on page 71 of the Discussion Paper, decisions made in accordance with regulations issued under section 6 of the Firearms Act are not reviewable as per *Killen v Commissioner of Police* [2014] WASC 127).

By way of comparison, the South Australian registrar may in regard to a specific application, refuse an application for a permit to acquire a firearm of any class if he or she is satisfied that the firearm is particularly dangerous by reason of its design, construction or any other factor (under section 15A(1) (a) of the *Firearms Act 1977* (SA)). This provision has been included under section 23(3)(g) of the new *Firearms Act 2015* (SA) together with the added phrase 'or is otherwise unsuitable for the purpose

for which it is intended to be used'. This decision is reviewable.

In line with current public expectations on administration and justice, the Commission recommends that section 6 be deleted from the Firearms Act and be replaced with a provision that specifically provides the Police Commissioner the power to temporarily re-categorise a firearm to category D, H or prohibited firearm if it substantially duplicates a firearm of that category in design or function. The ability to place conditions, restrictions, and limitations on licences is catered for under Recommendation 58.

Re-categorisation provisions

In practical terms a Licensing Authority officer will make the first assessment as to whether a firearm falls within the category for which the firearms application is being made. This assessment can be made upon receipt of a Firearm Licence application or on a pre-approval application (discussed below). The officer will either provide approval or pre-approval, as the case may be, or may refer the matter to the CAC with a recommendation. This recommendation could be that the firearm which is the subject of the application is in fact of a different category to that under which the application was made; or that the firearm ought to be in category D, H or prohibited due to its design and function.

The CAC would consider whether the matter has a degree of urgency or requires additional research. The CAC may provide a determination on the correct categorisation based on the current categories or make recommendations to the Police Commissioner on whether a re-categorisation is advisable. This is discussed in more detail in the sections that follow.

Determination of current categorisation

If a Licensing Authority officer refers a categorisation matter to the CAC, then the CAC may make a determination on the category in which the firearm is placed based on the current definition of the various categories. In line with current practice the Commission recommends that this determination be reviewable.

Temporary re-categorisation

There may be situations that come to the attention of the Police Commissioner, either through the CAC or otherwise, that require an urgent re-categorisation of a firearm as a Category D, H (handgun) or prohibited firearm. The Police Commissioner should be empowered to make a temporary declaration in such circumstances after receiving advice from the CAC and in consultation with the Minister. In order to limit the possibility of this power being abused, the Police Commissioner should exercise the power and it should not be delegable.

In order to make a declaration that a firearm is temporarily re-categorised as a category D, H or prohibited firearm, the Police Commissioner must be of the opinion that the firearm substantially duplicates a firearm of that category in design or function.

The Police Commissioner should take account of the following factors:

- the manner in which the firearm operates which would include, but not be limited to, calibre, magazine capacity, action and other physical attributes that affect the performance of the firearm;
- the ability to modify the firearm to make it concealable;
- the especial potentially dangerous nature of that kind of firearm, contrivance or ammunition and the need to exercise special precautions in relation thereto; and/or
- the purpose for which the particular firearm is designed.

The declaration should remain in force for a period of 12 months from the day on which it is published, unless revoked. The declaration should be published in the Government Gazette and on the WA Police website as soon as practicable after it has been made. The WA Police website should include an image of the firearm and the reasons for the decision.

The Police Commissioner should not make a declaration in respect of the same type of firearm more than once.

There would need to be a provision relating to the notification of licence holders who are in possession of firearms affected by the declaration.

The Commission is of the view that temporary re-categorisation determinations ought to be reviewable by SAT.

Permanent re-categorisation

Should a permanent re-categorisation be required then this should be done in the normal course by way of amendment to the Firearms Regulations under section 34(2)(f) of the Firearms Act.

Pre-approval (in respect of firearm type only)

At page 71 and Proposal 8 dot point 2 of the Discussion Paper, the Commission discussed the issue of pre-approvals in the context of regulation 26 and 26B of the Firearms Act. WA Police indicated in its submission (dated 9 February 2016, page 6) that it was supportive of the proposal in regard to firearm type only in that context although it did not support dot point 3 which proposed that a decision on 'closely resembles' should be reviewable.

The Commission considers that a formal ability to seek pre-approval in respect of a particular firearm (to determine whether it should be re-categorised) would be useful in addressing the uncertainty that concerns applicants. It would also be useful for reasons to be provided for the determination made at the pre-approval stage. The suggested pre-approval is an assessment of the firearm type and not an assessment of an application for a Firearm Licence. The Firearms Legislation should set out the requirements of the Licensing Authority in respect to a pre-approval application, including the relevant forms and the level of detail required on the proposed firearm.

The Commission recommends that where the Licensing Authority assessor recommends that pre-approval be refused, the matter be referred to the Categorisation Advisory Committee which, if in agreement, should provide reasons for the refusal of the pre-approval application.

The Commission recommends that the refusal to pre-approve should be reviewable by SAT.

Australian customs and the Licensing Authority

Some stakeholders have suggested that the Licensing Authority should be obliged to accept that a firearm is licensable where it has been given import clearance from the Australian Customs. The Commission's view in this regard is that the administration of firearms in Western Australia is to be determined with reference to State legislation. However the Commission acknowledges that it is reasonable to expect that the Licensing Authority would take into consideration the views of the Commonwealth in respect to types of permitted firearms when they are exercising discretion.

Recommendation 84:

- 84.1 Section 6 should be deleted from the *Firearms Act 1973* (WA).
- 84.2 The Police Commissioner should have the power to temporarily re-categorise a firearm to category D, H or prohibited if it substantially duplicates a firearm of that category in design or function after receiving advice from the Categorisation Advisory Committee and in consultation with the Minister.
- 84.3 The Police Commissioner should exercise this power, and it should not be delegated.
- 84.4 WA Police should formally adopt and publically release a policy setting out the way in which determinations will be made as to whether a firearm ordinarily in one category substantially duplicates a firearm in category D, H or prohibited in design or function.

- 84.5 A Categorisation Advisory Committee should be established to evaluate and advise whether a firearm should be re-categorised, which, in addition to the current makeup of the Licensing Services Tactical meeting, also include at least one person with extensive technical expertise in firearms who is independent of the Licensing Authority.
- 84.6 The Categorisation Advisory Committee should be empowered to make determinations on the Category in which a firearm is placed based on the current definition of the various categories and that this determination be reviewable.
- 84.7 A temporary re-categorisation declaration by the Police Commissioner should be published in the Government Gazette, and the image of the firearm, and the reasons for the decision be published on the WA Police website.
- 84.8 A temporary re-categorisation declaration should be included as a decision on which the applicant may seek a review by SAT.

Recommendation 85:

- 85.1 Provision should be made for a formal pre-approval process for individual firearms to determine whether they will be re-categorised.
- 85.2 The Firearms Legislation should set out the requirements in respect to a pre-approval application, including the relevant forms and the level of detail required on the proposed firearm.
- 85.3 Written reasons should be given for pre-approval determinations, and the SAT should be able to review such determinations.

CHAPTER TWELVE: CORPORATE LICENCES

12.1 The application of Corporate Licences

Section 16(2) of the Firearms Act provides that an organisation holding a Corporate Licence is authorised to permit any person who is:

- an employee or agent of the organisation;
- or a person acting at the request of and on behalf of the organisation;
- or a person employed in the Public Sector by or under an employing authority, within the meaning of the *Public Sector Management Act 1994* (WA)

to possess, carry and use any such firearm or ammunition under certain conditions.

Where the organisation is one that holds a security agent's licence under the *Security and Related Activities (Control) Act 1996* (WA) then such organisation may only permit the security officer to possess a firearm or ammunition to the extent authorised by the security officer's licence under that Act (section 16A of the Firearms Act).

Dealers, manufacturers and repairers possess firearms under their own licences and do not require Corporate Licences (see Chapter 13).

The Commission recommended (at Recommendation 99) that in respect of shooting clubs, each member requires a 'fit and proper' certificate from the Licensing Authority who will also keep a database of club membership.

The Commission has considered whether there are circumstances where a person that may possess a firearm under a Corporate Licence ought to hold an appropriate approval from the Licensing Authority in their own name. Considerations that would favour a separate application and genuine reason are that the Licensing Authority would be able to conduct a probity check on each person who may have access to a firearm, and would be able to maintain an accurate database of these people, including those who were found unsuitable to possess or use a firearm.

On the other hand, there are a large number of people who would currently fall under a Corporate Licence so a change in the legislation to create a new licence type may result in an administrative burden on organisations and the Licensing Authority. In addition, the licence that would then be issued would be different to a regular Firearm Licence as it would not refer to a specific firearm, the firearms being

held under the relevant Corporate Licence of the organisation.

The predominant groups of applicants (in respect of numbers of people) that possess firearms under a Corporate Licence are:

- employees, agents or other people that are permitted by an organisation to possess a firearm under the relevant Corporate Licence in accordance with section 16(2) of the Firearms Act; and
- people that possess and use firearms under the exemptions of section 8(1) of the Firearms Act such as people who go to a shooting gallery, an approved range or club or who play paintball.

In respect of security employees under the *Security and Related Activities (Control) Act 1996*, the Licensing Authority conducts full probity checks on all security applicants who are seeking firstly a security licence and further when they apply for endorsement to carry a firearm. A 'fit and proper' test is thus conducted in regard to security employees and there does not appear to be any reason to recommend amendments to the Firearms Legislation to cater for this group in particular.

The Commission is of the view that the overall Corporate Licence structure could be improved upon in order to reduce the potential risk to the community and this is addressed in the next section.

12.2 Changes to the Corporate Licence structure

The Commission indicated on page 139 of the Discussion Paper that it was concerned that there was no formal mechanism to regulate the possession and use of firearms held under a Corporate Licence.

Some of the issues that the Commission has identified arising in relation to Corporate Licences are:

- the lack of an accurate database of nominated persons who have access to firearms under a Corporate Licence (raised by the Auditor General's office in the 'Auditor General Western Australia, Information Systems Audit Report', Report 11, June 2013);
- no legislation requiring companies to provide a list of personnel who use firearms held under a Corporate Licence;

- the risk that a person who has access to a firearm held under a Corporate Licence may not have easily available proof of entitlement to possess the firearm;
- the lack of independent oversight or control in regard to access by employees to a Corporate Licence and the lack of clarity on the terms and conditions upon which an employee is granted access to firearms under a Corporate Licence;
- the necessity for a clear link between the genuine reason for the Corporate Licence and the reasons for use by employees; and
- the issue of co-licensees under a single Corporate Licence.

12.2.1 The link between a Corporate Licence and a genuine reason

In *Clema and Commissioner of Police* [2006] WASAT 24 at [21] and [24] (*Clema* case) SAT has found that the 'genuine reason' requirement is not limited to Firearm Licences but also applies to applicants for Dealer's Licences. By extension the Commission is of the view that the genuine reason requirement applies to Corporate Licences.

The Commission recommends that the Firearms Legislation, in particular section 11A of the Firearms Act, be clarified to reflect that a genuine reason is required even where the licence application is not in respect of any specific firearm.

The genuine reason would in most corporate type licences be that a licence is required by the person in the course of the person's occupation. In the context of a Dealer's Licence, the occupation in question must necessarily be that of dealer, which is defined by section 4 of the Firearms Act as 'a person who in the ordinary course of business buys, sells or trades in firearms or ammunition' (*Clema* case at [24]). In the case of a Corporate Licence the occupation in question is usually, but not necessarily, that the licence is required for the purposes of a security agency; or by an approved club, range or paintball facility for the purposes of the use of the Corporate firearms by the public.

In assessing whether a Dealer's Licence ought to be revoked, the Licensing Authority will have regard to a lack of dealing in reaching a finding about the licensee's requirement for firearms in the course of its occupation. The Commission is of the view that for all Corporate Licences the Licensing Authority is entitled to have regard to the 'occupation' that formed the basis of the licence application. For example, it would be a relevant factor if the licensee with a Corporate Licence for security employees does not have any employees registered under the *Security and Related Activities (Control) Act 1996* or if a paintball organisation no longer operates the facility.

The Commission is of the view that the link between a Corporate Licence and the related genuine reason needs to be clarified and recommends that the Firearms Legislation expressly provide that a Corporate Licence may only be issued under one genuine reason (an exception to the multiple genuine reason rule) and firearms held under that licence may only be used for the stated purpose that was used to support the existence of that genuine reason. The Commission's view is that it is important for security and public safety that the possession of firearms under a Corporate Licence is limited in this way. For example, no firearm held under a Corporate Licence for an occupation of a security agency should be used for recreational shooting.

Some stakeholders have suggested that there should be limitations on the purpose for which a Corporate Licence may be issued, in particular, that a Corporate Licence should not be issued for the purposes of recreational shooting or hunting. Other stakeholders make particular use of a Corporate Licence for this purpose, for example to allow potential club members who are unlicensed to try out various firearms under supervision. Local governments may use a Corporate Licence for rangers for the purposes of animal control. The Commission is of the view that a blanket limitation on certain purposes is not required and will rather recommend tighter conditions of use as discussed in the next section.

12.2.2 Conditions of use and Nominated Person application

Section 16(2) of the Firearms Act was extracted at the beginning of this Chapter. It provides for the possession and use of the firearms under a Corporate Licence by certain individuals. Stakeholders have indicated concern in relation to what is perceived as loose regulations surrounding the possession and use of firearms in this context. Of particular concern is the lack of independent oversight or control in regard to access by employees to a Corporate Licence and the lack of clarity on the terms and conditions upon which an employee is granted access to firearms under a Corporate Licence.

Proposal 33 of the Discussion Paper suggested that the Firearms Act be amended to include a new licence approval category for people wishing to possess and use a firearm under a Corporate Licence. This suggestion received a mixed response, particularly in the case where currently people are able to use firearms under the exemptions of section 8 of the Firearms Act.

The Commission agrees with the views expressed by some stakeholders that the conditions for the use and possession of a firearm under a Corporate Licence should be tightened. Each Corporate Licence should contain the following minimum conditions:

- the single purpose for which any firearm held under the licence may be used, for example, security under the *Security and Related Activities (Control) Act 1996*;
- the types of employees that may have access to the firearms, for example their position, function or qualification;
- the training requirements (if any) before an employee, agent etc. may possess or use a firearm;
- the categories of firearm permitted under the licence;
- any limitation on the category firearms particular employees may possess or use; and
- the particular storage requirements for the firearms.

The use of any firearm must be in accordance with the terms, restrictions, limitations and conditions applicable to the relevant Corporate Licence (as per section 16(1)(c) of the Firearms Act).

The Commission acknowledges that in many cases people who possess or use a firearm under a Corporate Licence are supervised, such as on a shooting range or on Paintball facilities. The Commission recommends that in such cases, where the possession and use will be as envisaged by one of the exemptions under section 8(1)(l), (m), (ma) and (n) of the Firearms Act and under supervision of a person who either has a Firearms Licence for the categories in use or is an approved Nominated Person as discussed below, then this must be a condition of the Corporate Licence. The Commission is satisfied that under these conditions the exemptions under section 8 of the Firearms Act should continue to apply without any need for the public to register with the Licensing Authority.

The Commission is of the view that where a firearm is to be used under a Corporate Licence by an employee, agent or other person in accordance with section 16(2) of the Firearms Act the legislation should provide that such person must first be approved by and registered with the Licensing Authority through a Nominated Persons application. This would include cases such as security employees, rangers for animal welfare or people hunting under a Corporate Licence issued for that purpose and may include certain staff of an approved club, range or paintball facility. The exemption under section 8(1)(f) will need to be amended to accord with this recommendation. In the case of security employees an approval by the Licensing Authority under sections 24 or 25 of the *Security and Related Activities (Control) Act 1996*, will satisfy the fit and proper test.

12.2.3 Data base of Nominated Persons

The Commission recommends that the Nominated Persons application and authorisation form should be included in the Firearms Regulations, and the

Licensing Authority should maintain a data base of all people nominated to possess and use firearms under a Corporate Licence in accordance with section 16(2) of the Firearms Act. The authorisation of a Nominated Person must contain conditions relating to the category of firearm that such person may possess and use. The regulations should also contain standard terms and conditions for possession and use of firearms by Nominated Persons under a Corporate Licence.

A decision by the Licensing Authority on a Nominated Person application should be subject to review.

The Licensing Authority must be empowered to withdraw permission to use a firearm in the case of Firearms Prohibition Orders (see Section 20.3), or any other relevant matter that comes to its attention in respect to the Nominated Person. The Commission recommends that the Licensing Authority be required to advise an organisation of a Firearms Prohibition Order against a Nominated Person.

Corporate Licence holders should be required to report on the removal of Nominated Person from its Nominated Person list within seven days of that change and, in any event, should send a current Nominated Person list to the Licensing Authority on an annual basis for audit purposes. The legislation should be clear that non-compliance with the reporting obligations is an offence and subject to a penalty.

12.2.4 Co-licensees in respect to Corporate Licences

The intention behind a Corporate Licence is that it be issued for the purposes of a 'business' with an occupational need for firearms. In this context having a co-licensee (which is permissible under the current legislation) makes the monitoring of activity under the licence more difficult and reduces the clear line of responsibility from the users and the licensee to the Licensing Authority.

The Commission recommends that co-licensees not be permitted on Corporate Licences.

12.2.5 Corporate Licences and firearm categories

As recommended above a Corporate Licence application should only be in respect of one genuine reason and the conditions of the licence must restrict the use of firearms held under the licence to one particular purpose.

The category of firearm permitted under a Corporate Licence must relate directly to the genuine reason and the purpose for which the licence is granted. If the purpose is for recreational shooting or hunting, then only Category A and B firearms will be allowed. The Categories permitted for security employees are A,B and H (handguns).

12.2.6 Maintaining proficiency

Some stakeholders suggested that it would be important for firearm users under a Corporate Licence to be able to train and maintain proficiency in the use of the firearm. This raises the question of how this can be done if there is a limitation on the purpose for which the firearm may be used as recommended above.

The Commission's view is that training with a firearm is an integral part of the primary purpose for the use of the firearm and important to issues of safety. This issue can be resolved either by permitting the Nominated Person to use the firearm at an approved shooting range or by keeping the limitation, in which case such person would need to practice at an approved facility using that facility's firearms under a section 8 exemption.

The Commission recommends that a Nominated Person who requires training on the use of a firearm be permitted to do so under the Corporate Licence at an approved club or range or shooting gallery.

12.2.7 Authorisation Card

In order to ensure that an approved Nominated Person can provide proof of his/her permission to possess and use a particular firearm, the Commission recommends that Nominated Persons be issued with an authorisation card containing all relevant details of the permission.

Recommendation 86:

- 86.1 The Firearms Legislation, in particular section 11A of the *Firearms Act 1973* (WA), should be clarified to reflect that a genuine reason is required for Corporate Licences and any other licence type even where the licence application is not in respect of any specific firearm.
- 86.2 The category of firearm permitted under a Corporate Licence should relate directly to the genuine reason and the purpose for which the licence is granted.
- 86.3 For all Corporate Licences the Licensing Authority should be entitled to have regard to the 'occupation' or purpose that formed the basis of the licence application when considering revocation or renewal of the licence.
- 86.4 The Firearms Legislation should expressly provide that a Corporate Licence only be issued under one genuine reason and firearms held under that licence only be used for the stated purpose that was used to support the existence of that genuine reason.

86.5 Each Corporate Licence should contain the following minimum conditions:

- a. the single purpose for which any firearm held under the licence may be used, for example, security under the *Security and Related Activities (Control) Act 1996* (WA);
- b. the types of employees that may have access to the firearms;
- c. the training requirements (if any) before an employee, agent etc. may possess or use a firearm;
- d. the categories of firearm permitted under the licence;
- e. any limitation on the category of firearms particular employees may possess or use; and
- f. the particular storage requirements for the firearms.

86.6 Where the possession and use of firearms under a Corporate Licence will be:

- a. as envisaged by one of the exemptions under section 8(1)(l), (m), (ma) and (n) of the *Firearms Act 1973* (WA); and
- b. under supervision of a person who has a Firearms Licence for the categories in use or who is an approved Nominated Person,

then this should be made a condition of the Corporate Licence and the relevant section 8 exemption will apply.

86.7 Where a firearm is to be used under a Corporate Licence by an employee, agent or other person in accordance with section 16(2) of the *Firearms Act 1973* (WA) the legislation should provide that such person first be approved by and registered with the Licensing Authority through a Nominated Persons application. The exemption under section 8(1)(f) be amended accordingly.

86.8 The requirements that should be satisfied before a Nominated Persons approval is obtained include that the Police Commissioner is satisfied that the person is a fit and proper person.

86.9 A Police Commissioner decision on a Nominated Person application should be subject to review.

86.10 Nominated Persons application and authorisation forms should be included in the *Firearms Regulations 1974* (WA).

- 86.11 The authorisation of a Nominated Person should contain conditions relating to the category of firearm that such person may possess and use.
- 86.12 The regulations should contain standard terms and conditions for possession and use of firearms by Nominated Persons under a Corporate Licence.
- 86.13 The Licensing Authority should maintain a data base of all Nominated Persons including details of the relevant Corporate Licence holder, and the categories and purpose of permitted use.
- 86.14 The Police Commissioner should be empowered to withdraw permission to use a firearm in the case of Firearms Prohibition Orders or any other relevant matter that comes to its attention in respect of the Nominated Person.
- 86.15 The Licensing Authority should be required to advise the holder of a Corporate Licence of a Firearms Prohibition Order against a Nominated Person.
- 86.16 Corporate Licence holders should be required to report on the removal of Nominated Person from its Nominated Person list within seven days of that change and, in any event, should send a current Nominated Person list to the Licensing Authority on an annual basis for audit purposes.
- 86.17 The legislation should be clear that non-compliance with the reporting obligations is an offence and subject to a penalty.
- 86.18 Co-licensees should not be permitted on Corporate Licences.
- 86.19 A Nominated Person who requires training on the use of a firearm should be permitted to do so under the Corporate Licence at an approved club or range or shooting gallery.
- 86.20 Nominated Persons should be issued with an authorisation card containing all relevant details of the permission.

CHAPTER THIRTEEN: DEALERS, REPAIRERS AND MANUFACTURERS

13.1 The structure of the legislation relating to dealers, repairers and manufacturers

While the Firearms Act provides for separate licence types for dealers, repairers and manufacturers, these licence types are dealt with similarly throughout the Act. By way of example employees and agents of these businesses are dealt with in the same manner and have similar reporting obligations.

The *Firearms Act 2015* (SA) in section 4, defines 'dealer' as including a person:

- who carries on the business of purchasing, selling or hiring out firearms, firearm parts or ammunition; or
- who carries on the business of a pawnbroker or auctioneer and handles firearms, firearm parts or ammunition in the course of that business; or
- who carries on the business of repairing, modifying or testing firearms or firearm parts; or
- who carries on the business of holding or storing firearms or firearm parts for the purpose of repair, safekeeping or disposal.

The South Australian legislation seeks to define a dealer more broadly to cover types of closely related businesses. At Recommendation 103 of this Report, the Commission proposed that a Dealer's Licence be extended to automatically include an ability to warehouse firearms. Noting the similarity between Dealers, Repairers and Manufacturer's Licences and further noting that in practice, since a repairer and a manufacturer are likely to need to warehouse firearms; a dealer may need to repair; and a repairer may need to manufacture, there is no practical distinction between these licence categories.

The Commission recommends that the Firearms Legislation be amended by deleting all reference to a Repairer's and Manufacturer's Licence and incorporating those purposes within the definition of a Dealer's Licence, subject to permissible activities discussed below.

For the purpose of recommendations in this Report the Commission will continue to make reference to the current Dealer's, Repairer's and Manufacturer's Licences.

Recommendation 87:

The Firearms Legislation should be amended by deleting all reference to a Repairer's and Manufacturer's Licence and incorporating those purposes within the definition of a Dealer's Licence, subject to permissible activities.

13.2 Reporting under regulation 18(1)(b)

A 'major firearm part' is defined in regulation 18(1a) of the Firearms Regulations as 'any slide, barrel, revolving chamber, frame, receiver, trigger assembly or magazine'. This definition (in this context) has not been challenged by any stakeholders and the Commission deems it appropriate for the record purposes contemplated under section 31(2) of the Firearms Act (note that the Commission at Section 3.5 has recommended that this phrase be amended to 'firearm part').

Section 31(2) provides that the holder of a Corporate Licence, a Dealer's Licence, a Repairer's Licence, a Manufacturer's Licence or an Ammunition Collector's Licence shall compile, maintain and furnish records in such manner as is prescribed and any such record shall be produced for inspection by any member of the WA Police on his or her request.

Regulation 18 provides that a record of all firearms and major firearm parts brought into stock, repaired and delivered, sold or let on hire must be kept by all repairers and dealers. Under regulation 18(1)(b) the repairers and dealers are required to lodge a copy of the records for the preceding calendar month at the police station nearest to the premises named in the licence by not later than the seventh day in each month, whether or not any transaction took place in that month.

Some stakeholders have questioned the requirement to lodge these documents and have suggested that it ought to be sufficient to record the information and make it available for random inspection by WA Police in accordance with the current section 31(2) and for stock inspections to take place under section 31(3).

WA Police has indicated that the lodgement of returns is an important part of the licensing process which allow for the matching of firearm applications to dealer records and up-to-date records of the movement of firearms in Australia. This process will be made more efficient with the introduction of the dealer's portal in the Licensing and Registry system

later this year (email from the Licensing Authority dated 4 August 2016). Noting that the system used by the Licensing Authority in Western Australia feeds into the national system for the recordal of firearm movements, the Commission is satisfied that this dealer reporting mechanism remains an important part of the overall firearm registration and policing scheme and should be retained.

Recommendation 88:

The requirement to lodge dealer returns with WA Police should be retained.

Under Proposal 39, dot point 2, the Commission proposed that the Firearms Legislation provide for infringement notices to be issued for the failure to submit the regulation 18(1)(b) reports.

Regulation 23(1) makes non-compliance with regulation 18(1)(b) an offence and the Commission is of the view that this kind of offence, which for the most part would be regarded as minor, should be linked to the infringement regime, as opposed to the full criminal process under the *Criminal Procedure Act 2004* (WA) which is normally reserved for more serious offences.

Recommendation 89:

The Firearms Legislation should be amended to provide that infringement notices may be issued for the failure to submit reports under regulation 18(1)(b) of the *Firearms Regulations 1974* (WA).

13.3 Use of the Nominated Persons Authorisation

The Nominated Person authorisation formed part of the Commission's recommendation under the chapter dealing with Corporate Licences (Chapter 12). An informal Nominated Persons Authorisation requirement has been extended to the holders of Dealer's Licences. Question 29 of the Discussion Paper asked for submissions on this issue.

Under section 16(1)(d) of the Firearms Act a Dealer's Licence authorises the holder *or an employee or partner of the holder* to have in his or her possession, and to carry in the ordinary course of the business of that dealer, any such firearm or ammunition or to use it for the purpose of testing it or of demonstrating it to a prospective purchaser. Similar provisions apply to Repairer's Licence under section 16(1)(e) and a Manufacturer's Licence under section 16(1)(f).

In addition section 21A of the Firearms Act provides that the conduct of a business under a Dealer's Licence, a Repairer's Licence or a Manufacturer's

Licence is always the responsibility of the holder and is to be personally supervised and managed, on each premises to which the licence applies, by — (a) the holder; or (b) a person appointed as the agent or employee of the holder.

It is clear from these sections that agents or employees of the holders of a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence have free access to possess and use firearms on a regular basis at the business. The Commission notes that a number of the exemptions under section 8 of the Firearms Act provide similar access to firearms in other contexts to people that have not been vetted by the Licensing Authority (such as section 8(1)(l) which covers employees of the holder of a Shooting Gallery Licence).

WA Police support the formalisation of the Nominated Persons Authorisation currently in use (submission dated 9 February 2016, page 25) while other stakeholders are of the view that the requirements of the Dealer's Licence are sufficient with the obligation on the dealer to ensure that its staff are appropriate and suitably trained.

While Question 29 related specifically to dealers, the Commission has considered this question in relation to repairers and manufacturer as well, particularly in the light of its recommendation to have these business types combined under a single Dealer's Licence. The Commission is of the view that it would be useful for dealers, repairers and manufacturers to have a fit and proper assessment undertaken on prospective employees. In regard to these 3 business types, employees have regular access to firearms of many different categories.

13.3.1 Nominated Person application

The Commission recommends that a formal Nominated Person system be legislated as recommended by the Commission for people nominated to possess and use firearms under a Corporate Licence (see Section 12.2).

Where a firearm is to be used under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence by an employee, agent or partner of the holder in accordance with 16(1)(d), (e) and (f) of the Firearms Act, the Commission recommends that the Firearms Legislation provide that such person first be approved by and registered with the Licensing Authority through a Nominated Persons application.

The requirements that must be satisfied before a Nominated Persons approval is obtained include that the Police Commissioner is satisfied that the person is a fit and proper person and the decision on a Nominated Person application should be subject to review.

As with Nominated Persons under a Corporate Licence the following recommendations are made:

- Nominated Persons application and authorisation forms be included in the Firearms Regulations.
- The regulations contain standard terms and conditions for possession and use of firearms by Nominated Persons.
- The authorisation of a Nominated Person contains conditions relating to the purposes for which such person may possess and use firearms.
- The Licensing Authority maintains a data base of all Nominated Persons.
- The Licensing Authority be empowered to withdraw permission to use a firearm in the case of Firearms Prohibition Orders or any other relevant matter that comes to its attention in respect of the Nominated Person.
- The Licensing Authority be required to advise the Licence holder of a Firearms Prohibition Order against a Nominated Person.
- All licence holders have an obligation to report on any removal from its Nominated Person list within seven days of that change and to send a current Nominated Person list to the Licensing Authority on an annual basis for audit purposes.

13.3.2 Authorisation Card

Many stakeholders were of the view that an authorisation card in the context of a dealership would ensure that an approved Nominated Person can provide proof of his/her permission to possess and use a particular firearm. The Commission recommends that Nominated Persons be issued with an authorisation card endorsed with all relevant details and permissions and this requirement be formalised in the Firearms Regulations.

Recommendation 90:

- 90.1 Where a firearm is to be used under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence by an employee, agent or partner of the holder in accordance with 16(1)(d), (e) and (f) of the *Firearms Act 1973 (WA)*, the legislation should provide that such person first be approved by and registered with the Licensing Authority through a Nominated Persons application.
- 90.2 The requirements that must be satisfied before a Nominated Persons approval is obtained should include that the Police Commissioner is satisfied that the person is a fit and proper person.
- 90.3 A decision by the Police Commissioner on a Nominated Person application should be subject to review.

- 90.4 Nominated Persons application and authorisation forms should be included in the *Firearms Regulations 1974 (WA)*.
- 90.5 The regulations should contain standard terms and conditions for possession and use of firearms by Nominated Persons under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence.
- 90.6 The authorisation of a Nominated Person should contain conditions relating to the purposes for which such person may possess and use firearms.
- 90.7 The Licensing Authority should maintain a data base of all Nominated Persons including details of the relevant licence holder, and the categories and purpose of permitted use.
- 90.8 The Police Commissioner should be empowered to withdraw permission to use a firearm in the case of Firearms Prohibition Orders or any other relevant matter that comes to its attention in respect of the Nominated Person.
- 90.9 The Licensing Authority should be required to advise a licence holder of a Firearms Prohibition Order against a Nominated Person.
- 90.10 Dealer, Repairer and a Manufacturer licence holders should have an obligation to report on any removal from its Nominated Person list within seven days of that change and to send a current Nominated Person list to the Licensing Authority on an annual basis for audit purposes.
- 90.11 The legislation should be clear that non-compliance with the reporting obligations is an offence and subject to a penalty.
- 90.12 Nominated Persons should be issued with an authorisation card endorsed with all relevant details and permissions and this requirement be formalised in the *Firearms Regulations 1974 (WA)*.

13.4 Nominated Persons and permissible activities

As discussed on page 139 of the Discussion Paper an employee acting under a Repairer's Licence may carry or use a firearm or ammunition in the course of the licence holder's business, but the Firearms Act does not specifically authorise these employees to repair firearms. Similarly employees under a Dealer's or Manufacturer's Licence may use a firearm for the

purpose of testing it, but they are not specifically empowered to deal in or manufacture firearms.

Proposal 34 made a number of suggestions in order to deal with this issue and to assist with providing for apprenticeships.

13.4.1 Permissible activities

As recommended in the previous section, the authorisation of a Nominated Person should contain conditions relating to the purposes for which such person may possess and use firearms.

Standard permissible activities for all approved Nominated Persons under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence (or the recommended new Dealer's Licence) should be to have firearms in his or her possession in the ordinary course of the business of that dealer, repairer or manufacturer, or to use any such firearm or ammunition for the purpose of testing it or of demonstrating it to a prospective purchaser or customer.

A Nominated Person may be permitted to carry out manufacturing and/or repairs where the Licensing Authority is satisfied that the applicant is able to carry out such activities, including the passing of a written test. The Nominated Person authorisation should then be endorsed accordingly. The Commission recommends that this requirement be formalised in the Firearms Regulations.

The Commission recommends that the Firearms Legislation clearly specify that the Nominated Person may be personally liable for any breach of the endorsement and conditions.

13.4.2 Apprenticeships

Page 140 of the Discussion Paper covered the difficulty that a minor could face in trying to achieve sufficient proficiency to be able to obtain his or her own Repairer's or Manufacturer's Licence. In that discussion the Commission pointed out that the 2008 Police Review recommended that the Firearms Act be amended to allow apprentices/trainees to be exempted from having to obtain a licence and be allowed to do their apprenticeship under the business licence of the manufacturer or repairer.

The Commission is of the view that the same Nominated Person process can be used to alleviate this situation. The Commission recommends that any person over the age of 16 years should be able to apply for permission to repair and/or manufacture under another's Repairer's Licence or a Manufacturer's Licence where, in addition to the usual requirements for a Nominated Person application, the applicant must provide evidence of their written apprenticeship or training contract with the licence holder.

The Licensing Authority should be able to put conditions on the approval of apprenticeship permission and the dealer should have an obligation to inform the Licensing Authority if the apprenticeship is terminated for any reason.

13.4.3 Submission of forms

Proposal 34 also suggested that licensed repairers working for a single entity should be able have their records submitted on one form under the business name. Stakeholders agree with this approach and the Commission recommends that it be implemented in the Firearms Legislation in respect to the reporting obligations of dealers, repairers and manufacturers under section 31(2) of the Firearms Act.

The recommendation in this chapter and those in the Corporate Licence chapter seek to align the requirements of the Firearms Legislation in relation to employees who seek to access firearms as part of their duties.

Recommendation 91:

- 91.1 The standard permissible activities for all approved Nominated Persons under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence should include:
 - a. to have firearms in his or her possession in the ordinary course of the business of that dealer, repairer or manufacturer;
 - b. to use any such firearm or ammunition for the purpose of testing it; or
 - c. to use any such firearm or ammunition for the purposes of demonstrating it to a prospective purchaser or customer.
- 91.2 A Nominated Person should be permitted to carry out manufacturing and/or repairs where the Licensing Authority is satisfied that the applicant is able to carry out such activities, including the passing of a written test.
- 91.3 The Firearms Legislation should clearly specify that the Nominated Person may be personally liable for any breach of the endorsement and conditions on the Nominated Person authorisation.

Recommendation 92:

- 92.1 Any person over the age of 16 years should be able to apply for permission to repair and/or manufacture under another's Repairer's Licence or Manufacturer's Licence where, in addition to the usual requirements for a Nominated Person application, the applicant provides evidence of his or her written apprenticeship or training contract with the licence holder.
- 92.2 The Licensing Authority should be able to put conditions on an apprenticeship permission.
- 92.3 The dealer should have an obligation to inform the Licensing Authority if the apprenticeship is terminated for any reason.

Recommendation 93:

Licensed dealers, repairers and/or manufacturers working for one entity should be entitled to have their records submitted on one form under the business name and section 31(2) of the *Firearms Act 1973 (WA)* should be amended accordingly.

13.5 Restrictions relating to prohibited persons and organisations

The Firearms Regulations allow for scrutiny of the business of firearm dealerships, in particular scrutiny of persons who may be involved in a business behind the scenes but not be listed on a licence application.

Regulation 6E of the Firearms Regulations provide that the Police Commissioner must not issue or renew a Dealer's Licence under certain conditions and regulation 6F provide that a Dealer's Licence may be made subject to the condition that particular prescribed persons cannot be employed by, act as agents for, or participate in the management of, the business.

This issue was raised at question 41 where the Commission questioned whether the restrictions on dealerships should be extended to other licence types. Stakeholders answered Question 41 in the affirmative and the Commission agrees. The Commission thus recommends that the restrictions applying to the holders of Dealer's Licences relating to prohibited persons, close associates and primary responsibility for management be extended to Repairer's Licences, Manufacturer's Licences and Corporate Licences. This will be made easier through the implementation of the single Dealers' Licence under Recommendation at 87.

Recommendation 94:

The restrictions applying to the holders of Dealer's Licences under regulations 6C to 6G of the *Firearms Regulations 1974 (WA)* should be extended to Repairer's Licences, Manufacturer's Licences and Corporate Licences.

13.6 Abandoned firearms

Question 27, dot point 3 asked whether a party that is entitled to store firearms on behalf of third parties be permitted to deliver an uncollected firearm to WA Police after a set period, with WA Police being empowered to destroy it after certain required steps are taken to notify the firearm owner.

According to WA Police (submission dated 9 February 2016, page 23), this problem is best addressed through an agreement between the licensed firearm owner and the dealer in terms of which ownership is relinquished to the dealer after an agreed non-collection period. Most stakeholders have agreed with this point of view stating that firearms should be treated in the same way as other property when it comes to abandonment or the recovery of outstanding amounts.

The Commission is of the view that it is not desirable to insert a new regime into the legislation for the purposes of recovery of fees and expenses and disposal of firearms. In the case of an unlicensed firearm, these can already be seized by WA Police; in the case of a firearm legally owned by a person then the current legal position should apply such as the provisions of the *Warehousemen's Liens Act 1952 (WA)*, particularly as dealers will be permitted to warehouse under the deeming provision suggested under Recommendation 103.

Recommendation 95:

No new legislation should be introduced to deal with abandoned firearms or ammunition.

13.7 Unserviceable firearms

Proposal 26 suggested that possession of an unsafe or unserviceable firearm be an offence; and a dealer or manufacturer who becomes aware that a person is in possession of an unsafe or unserviceable firearm must advise WA Police within a specified period.

This proposal did not receive support from stakeholders. WA Police were of the view that licensed firearm owners are genuinely concerned with firearm safety and would heed the advice of firearm dealers and repairers for the need to repair a firearm. WA Police were also of the view that the proposal would

require further administrative duties from dealers, repairers and further administrative support from WA Police (submission dated 9 February 2016, page 19). This submission was essentially echoed by firearms owners, dealers and others.

The Commission notes that there have been no recorded incidents with regard to this matter. The Commission also takes into account the ability of the public, including dealers, to report any suspected use of unsafe firearms to WA Police (as discussed at Chapter 20 on law enforcement).

The Commission does not recommend proceeding with proposal 26.

Recommendation 96:

A new offence of possessing an unsafe or unserviceable firearm should not be introduced in the legislation and there should be no reporting obligations in this regard on dealers, repairers or manufacturers.

13.8 Major firearm parts in relation to dealers, repairers and manufacturers

Section 4 of the Firearms Act defines 'dealer' as a person who in the ordinary course of business buys, sells or trades in firearms or ammunition; and deal has a corresponding meaning. The recommendation (at Section 3.5) is to include 'major firearm parts' as a definition in the Firearms Act, and to include reference to 'major firearm parts' in the definition of 'dealer'.

Section 16(1) (d) – (f) of the Firearms Act sets out the purposes of Dealer's Licences, Repairer's Licences or Manufacturer's Licences. The Commission recommends that these sections be amended to clearly provide for 'major firearm parts' under the various permissible activities of these licences.

The National Firearms Trafficking Policy Agreement included agreement on legislative provisions to regulate not only the manufacture of firearms, but also the manufacture of firearm parts. The Commission recommends that the dealing in, repair and/or manufacture of major firearm parts without a licence be an offence and that section 19(4) of the Firearms Act be appropriately amended.

Recommendation 97:

97.1 Section 16(1) (d) – (f) of the *Firearms Act 1973* (WA) should be amended to provide for 'major firearm parts' under the various permissible activities of Dealer's Licences, Repairer's Licences and Manufacturer's Licences.

97.2 Section 19(4) of the *Firearms Act 1973* (WA) should be amended to reflect that the dealing in, repair and/or manufacture of major firearm parts without a licence is an offence.

13.9 Deemed dealers

Under Chapter 17 which dealt with lending arrangements, the Commission recommended a lending threshold over which a person will be deemed to be a dealer.

The Commission has considered whether there should be similar deeming provisions with a threshold in regard to the sale of a certain amount of firearms and major firearm parts. Section 10(2) of the *Firearms Act 2015* (SA) provides that for 'the purposes of this section, a person who purchases or sells more than 20 firearms or more than 20 firearm parts in any 12 month period will be taken to be carrying on the business of a dealer in respect of the firearms or firearm parts purchased or sold in excess of 20 in that period unless it is proved that the person was not carrying on such a business'.

The Commission favours this wording, except with reference to 'major firearm parts', and recommends that a deeming provision similar to this be included in the Firearms Act.

Recommendation 98:

The *Firearms Act 1973* (WA) should be amended to provide that a person who purchases or sells more than 20 firearms or more than 20 major firearm parts in any 12 month period will be taken to be carrying on the business of a dealer in respect of the firearms or major firearm parts purchased or sold in excess of 20 in that period unless it is proved that the person was not carrying on such a business.

CHAPTER FOURTEEN: APPROVED SHOOTING CLUBS AND ORGANISATIONS

14.1 Role of approved shooting clubs and organisations

The role of approved shooting club membership in the ‘genuine need’ determination was discussed under Section 10.7. In this chapter the Commission is considering the role of the approved shooting club or organisation itself within the context of the firearm legislation which was discussed at page 99 of the Discussion Paper. To make this chapter easier to read, reference to a ‘shooting club’ means an approved shooting club and an organisation as referred to in section 11A(2)(a) and (b) of the Firearms Act.

Currently under section 23BA of the Firearms Act an officer of a shooting club has a number of reporting responsibilities. Where the officer is of the opinion that an existing member is not a fit and proper person to possess, carry or use a firearm, the officer must inform the Police Commissioner of that opinion and the grounds for reaching that conclusion where that member has a Firearm Licence, or intends to apply for one, or possesses or intends to possess a firearm.

An officer must also report decisions and reasons to the Police Commissioner where a person’s application for membership or renewal of membership of a shooting club was refused or, following a grant or renewal a person’s membership was cancelled.

Under section 23BA(4) the officer is indemnified from criminal or civil liability for actions done in good faith under the section.

Proposal 16 on page 101 of the Discussion Paper essentially suggests clarifying the above provisions by including:

- confirmation that the obligations are compulsory (currently the wording ‘is to’ in these sections appears to oblige the officer to notify the Police Commissioner but it’s not clear);
- a time period for reporting; and
- specifying the penalty to be imposed for breach of these obligations (currently section 23(11) of the Firearms Act may apply - in respect of provisions of the Act for which no penalty is specifically provided an offence is punishable by a penalty of \$2,000).

Many stakeholders questioned whether a shooting club’s reporting responsibilities ought to be included

in the legislation at all; the Commission thus considered this question first.

14.1.1 Should section 23BA be retained?

From the outset the Commission notes that by all accounts there appears to be a good working relationship between the Licensing Authority and shooting clubs and the provisions of section 23BA are being implemented by shooting clubs without any issues.

Shooting club members have a ‘genuine reason’ to possess and use a firearm under the Firearms Legislation. Where a person obtains a licence on the basis of being an active and financial member of a shooting club, it makes sense that the Licensing Authority should be informed if that is no longer the case.

Some stakeholders were of the view that the Police Commissioner should bear sole responsibility for considering whether a person is fit and proper to possess, carry or use a firearm and that this responsibility should not be passed on to a shooting club. The Commission has kept in mind that there may be members who use a shooting club’s firearms and do not have a Firearm Licence themselves. Section 8(m) of the Firearms Act provides that a licence is not required for a person who uses a firearm with permission on an approved range where the firearm is the property of, or is the property of a member of, a shooting club. This means that there is a reliance on the shooting club to ensure that members, and anyone else who is given permission to use a shooting club’s firearms, are fit and proper to do so.

The fact that a shooting club provides a membership letter that supports a person’s licence application cannot be ignored. Although the decision to approve an application is that of the Police Commissioner, a firearm application based on shooting club membership relies in part on the shooting club’s approval of that membership application. A shooting club’s refusal to renew membership or a decision to cancel membership may (although will not necessarily) relate to a decision that the person is not fit and proper and it is important that this information be made available to the Licensing Authority.

Stakeholders raised additional points which the Commission took into consideration. It is possible that a person’s membership application could be refused

on grounds other than a 'fit and proper' reason; as some stakeholders have put it, due to 'personality clashes'. If this were indeed the case, then the Commission agrees that such an applicant should not be prevented from obtaining membership at an alternative shooting club.

"Fit and proper" could refer to many things such as physical or mental health issues, or a person's conduct on a range or the general care with firearms. The Commission has also been alerted to the fact that some people are members of more than one shooting club. It is because of the number of possibilities for membership cancellation that it is best to retain the requirement that a shooting club provide a written record of the reasons to the Licensing Authority. The Commission does not see this as a strategy to prevent club shopping but rather it is a mechanism to alert the Licensing Authority to potential risk which could be a trigger for further investigation.

For this reason the Commission is of the view that section 23BA(2) of the Firearms Act is appropriate in respect of any refusal to renew membership or the cancellation of existing membership and recommends that it remains in the Firearms Legislation.

The Commission also considered whether the reporting obligation in respect of the refusal of new membership applications should be retained. Stakeholder opinion was divided and it appears from submissions that some stakeholders were not aware that section 23BA(2) already provides for this.

It is important that there is a flow of information between shooting clubs and the Licensing Authority in respect of people who have, or are looking to have, access to firearms. The requirement to report a decision to refuse membership and the reasons for that refusal is part of this flow and the Commission's view is that it ought to be retained.

Section 23BA(1) is less clear. An obligation is placed on an officer to inform Police Commissioner when an opinion is formed on whether a shooting club member is 'fit and proper' to possess, carry or use a firearm. It seems likely that if a shooting club officer was of the opinion that a person who is a member of the club is not a fit and proper person, that would lead to the cancellation of the club membership and be captured under the reporting mechanism of section 23BA(2). In any event the Commission does not see how compliance with this reporting obligation could be monitored let alone enforced.

The Commission recommends that section 23BA(1) be deleted. The Commission is of the view that there should be provisions that enable any person to report matters regarding possession and use of a firearm. The recommendations discussed under Section 20.2 (law enforcement) will provide for a reporting mechanism which will allow a shooting club officer, or any other person, to report concerns to WA Police.

14.1.2 Clarifying the operation of section 23BA

Stakeholders already operate on the understanding that the reporting provisions of section 23BA are compulsory. The Commission recommends that the legislation make this clear by using the word 'must' instead of 'is to'.

It is also reasonable that, as there is a reporting obligation, it needs to be clear what that obligation entails and what the consequences are of non-compliance.

In respect of the reporting obligations in section 23BA(2), these relate to the refusal of an application and the cancellation of existing membership. Section 123D(4) of the *Firearms Act 1996* (Vic) provides for reporting to take place within seven days of the refusal of an application for membership, or the termination or suspension of existing membership for any reason. The Commission appreciates that there may be some urgency regarding notification of the cancellation or non-renewal of membership and is satisfied that a seven day period is reasonable for this reason.

The Commission is of the view that the consequences of non-compliance with the reporting obligations must be clear. The Commission recommends that the legislation clarify that non-compliance with the reporting obligations is an offence and subject to a penalty.

14.1.3 Additional provisions relating to approved shooting clubs and organisations

The commission recommends that the Firearms Legislation include the power to make regulations in respect to shooting clubs in the following aspects:

- the manner in which a shooting club must apply for approval, the forms, information and documentation required and the conditions that may be imposed; and
- the entry into, and inspection of, the grounds of a shooting clubs by WA Police for the purposes of determining applications for approval, reviewing approvals or determining whether conditions of approvals are being or have been contravened.

The Commission is of the view that membership of a shooting club should be left to the internal procedures of the shooting clubs themselves and does not recommend regulations in that regard.

Cancellation of membership

The Commission recommends that in the case of a firearms prohibition order (discussed in Section 20.3) or when a person's Firearm Licence is cancelled a shooting club should be required to expel a member and that this obligation should be set out in the Act.

Some jurisdictions, such as Victoria in section 123D of the *Firearms Act 1996* (Vic), include similar provisions but extended to provide that the suspension of a Firearms License must be mirrored by a suspension of membership. The Commission's view is that this is a reasonable precaution and recommends that a similar requirement be introduced into the Firearms Legislation.

In order to facilitate this the Licensing Authority should be required to inform the relevant shooting club of any suspension, firearms prohibition order or cancellation and the shooting club, in turn, must cancel or suspend (as the case may be) the person's membership. The Licensing Authority must notify the shooting club as soon as practicable after the member has been notified.

In order to ensure that a person incurs no civil or criminal liability they would need to be indemnified for action taken in good faith in compliance, or purported compliance, with this section (as under section 23BA(4) of the *Firearms Act* the officer must be indemnified from criminal or civil liability for actions done in good faith under the section).

The current section 21H of the *Firearms Act 1977* (SA) places an onus on the shooting club to expel a person where there is reason to believe that the actions or behaviour of a member of the shooting club has been such that there is a threat to the member's own safety or the safety of others associated with the member's possession or use of a firearm. The Commission is of the view that this kind of provision is best placed in the shooting club's rules, which will be checked during the course of the shooting club application for approval or renewal.

Reporting on current membership

Section 23BA does not have any reporting obligations in regard to a shooting club's current membership nor in regard to the acceptance of new members. The recommendation relating to the obligatory expulsion of members requires that the Licensing Authority be aware of the current membership of all shooting clubs so that they can inform a shooting club should a member fall under the expulsion category.

The Commission recommends that a shooting club be required to send the Licensing Authority a current membership list annually (for audit purposes) and that a shooting club be obliged to advise the Licensing Authority of the acceptance of a new member within 28 days of the acceptance. Section 123D(4) of the *Firearms Act 1996* (Vic) is an example of the latter.

Fit and proper test for membership

A number of stakeholders were concerned that shooting clubs are not in a position to properly assess whether a person is 'fit and proper' to use a firearm. The 2002 National Handgun Agreement states that

shooting clubs should have the power to request a police check on a person prior to acceptance of membership. This police check could refer to a standard police clearance or a more specific report on whether the applicant is a fit and proper person to hold a shooting club member's licence.

Regulation 48 of the *Firearms Regulations 2008* (SA) requires an applicant for membership of a shooting club to produce a specific fit and proper certificate as part of the membership application. While the Commission does not want to be overly prescriptive in an area that appears to be working well, the South Australian requirement may be useful as it should improve transparency and make it easier to explain the necessity for an applicant to comply with a fit and proper test.

The Commission also took into account that a fit and proper certificate would be an additional administrative burden on the Licensing Authority but only for those cases where the potential member is not also applying for a Firearm Licence. A contrary view is that a 'fit and proper' certificate may have the tendency to cause a shooting club to rely solely on the opinion of the Licensing Authority in respect of a membership application. The Commission is satisfied that a shooting club will continue to monitor members in the normal course and recommends that the Firearms Legislation require that an applicant produce a fit and proper certificate with every shooting club membership application. The Firearms Legislation must make it clear that the fit and proper certificate does not entitle an applicant to membership, which remains at the discretion of the shooting club.

Additional reporting obligations in other jurisdictions

There are additional reporting obligations in other Australian jurisdictions such as reporting obligations relating to member's participation in club activities (*Firearms Act 1996* (Vic), section 123C) and a member's suffering from a physical or mental illness or condition, or that other circumstances exist, such that there is a threat to the member's own safety or the safety of another associated with the member's possession or use of a firearm (*Firearms Act 1977* (SA), section 21I). These are particularly onerous and the Commission does not recommend their inclusion in the current section 23BA reporting requirements. The Commission considers these matter best dealt with under law enforcement provisions.

The Commission considered whether the Firearms Legislation should include a provision requiring an applicant to produce 2 character references to the shooting club, and a 100 point identity check, but having reflected on submissions received during the consultation phase, has decided not to recommend this amendment.

While the Commission is of the view that these would be suitable requirements for any application it is satisfied that it should form part of a shooting club's own membership criteria and should not be included in legislation. The Commission suggests all shooting clubs ensure that they include the application requirement of two character references and a 100 point identity check.

While the recommendations in this section will bring WA more in line with the 2002 National Handgun Agreement the Commission has avoided the temptation to recommend that the Firearms Legislation be prescriptive on each matter contained in the Agreement as there has been no indication from any of the stakeholders that the shooting club membership system requires an overhaul.

Recommendation 99:

- 99.1 Section 23BA(2) of the *Firearms Act 1973* (WA) should be retained.
- 99.2 Section 23BA(2) of the *Firearms Act 1973* (WA) should include an obligation to report on the acceptance of new members.
- 99.3 Section 23BA(1) of the *Firearms Act 1973* (WA) should be deleted.
- 99.4 In respect of the reporting obligations in section 23BA(2), the report should be made within seven days of the refusal of an application for membership, or the cancellation of existing membership for any reason; and in respect of acceptance of new members within 28 days of the acceptance.
- 99.5 An approved shooting club or organisation should be required to send the Licensing Authority a current membership list annually (for audit purposes).
- 99.6 Non-compliance with the reporting obligations should be an offence and subject to a penalty.
- 99.7 The Firearms Legislation should include the power to make regulations in respect to shooting clubs and organisations on the following aspects:
 - a. the manner in which a shooting club and organisation must apply for approval, the forms, information and documentation required and the conditions that may be imposed;

- b. the entry into, and inspection of, the grounds of a shooting club or organisation by WA Police for the purposes of determining applications for approval, reviewing approvals or determining whether conditions of approvals are being or have been contravened; and
- c. any matters relating to membership applications.

- 99.8 The Firearms Regulations should provide that an applicant must produce a fit and proper certificate issued by the Licensing Authority as part of an application for a shooting club or organisation membership.
- 99.9 All approved shooting clubs or organisations should ensure that they include an application requirement of two character references and a 100 point identity check in their internal rules.
- 99.10 An approved shooting club or organisation should be required to cancel or suspend membership (as the case may be) in the case of a firearms prohibition order against that member or when the member's Firearm Licence is cancelled or suspended.
- 99.11 The Licensing Authority should be required to advise an approved shooting club or organisation of the cancellation or suspension of a member's Firearms Licence as soon as practicable after the relevant member has been notified.
- 99.12 An indemnity from civil or criminal liability should be included in respect of all action taken in good faith in compliance, or purported compliance, with this section (as currently under section 23BA(4) of the *Firearms Act 1973* (WA)).

CHAPTER FIFTEEN: NEW LICENCE CATEGORIES

15.1 Heirloom licence

There is currently no licence category for Heirloom firearms. Firearms that are inherited can be held under a Collector's Licence or under an ordinary Firearm Licence, depending on the applicant's genuine reason and the type of firearm in question. As discussed in the Discussion Paper from page 133, Western Australia and South Australia are the only two jurisdictions which do not make special provision for heirloom firearms. In other jurisdictions where an Heirloom Licence is available, the firearm must be rendered inoperable for it to apply.

In the Discussion Paper the Commission could not see any advantage in adopting a system with a specific Heirloom Licence as a person who inherits an heirloom firearm could have a firearm rendered inoperable in any event and then possess it without any need for a licence under the Firearms Act. Proposal 31 thus suggested no change in that regard.

Many stakeholders were in favour of creating an Heirloom Licence category (for those cases where the recipient did not want to render the firearm inoperable). Other stakeholders were of the opinion that the current Collector's Licence category already covers the situation. Section 15(1) of the Firearms Act provides that for the purposes of the Firearms Act a firearm can form part of a genuine firearm collection if, in the opinion of the Police Commissioner, it has significant heirloom value.

Section 15(8) states that in considering whether a firearm has significant heirloom value to a particular person, the Police Commissioner has to take into account any special significance that the firearm has because it was owned or possessed by a direct or indirect member of that person's family.

It is clear that the current Collector Licence provisions cater specifically for heirlooms.

Section 15(4) and (5) places a restriction on handguns manufactured after 1946. These may only form part of the genuine collection if owned by a person who is, in the opinion of the Police Commissioner, a student of arms and the handgun is within the scope of that person's interest as a student of arms. If a person wishes to retain a post-1946 handgun heirloom, and does not qualify under section 15(4), the handgun will need to be rendered inoperable. Due to the special risk that attaches to handguns which is evident from the way that they are treated in the Firearms Legislation, the Commission is of the opinion that this restriction is reasonable and should be retained.

The Commission thus recommends that there should be no new Heirloom Licence category in the Firearms Act.

Recommendation 100:

There should be no new Heirloom Licence category in the *Firearms Act 1973* (WA).

15.2 Warehousemen and commercial carriers

The Commission discussed the issues surrounding the lack of a Warehousemen and Commercial carrier licence on page 134 of the Discussion paper. The current legislation grants approved warehousemen and commercial carriers an exemption from licencing requirements under section 8(1)(g) of the Firearms Act. The Commission has retained the use of the word 'warehousemen'; although modern statute drafting usually makes use of gender-neutral terminology, this word has a historical definition in connection with the business of storage that makes it appropriate in this context. The word is in line with that used in the *Warehousemen's Liens Act 1952* (WA).

Section 8(1)(g) exempts a person who is an approved commercial carrier or approved warehouseman, or by the servant of any such person, who in the ordinary course of his/her trade or business as an approved commercial carrier or approved warehouseman carries, (and not by means of a bicycle or motor cycle, unless otherwise approved); or stores a firearm or ammunition for another person.

The two services of warehousing and carrying firearms are considered together as the issues of secure storage and the impact of prescribed requirements on these types of businesses apply equally in both cases. There is also an overlap in that a commercial carrier may need to warehouse the firearms during the course of the transportation.

15.2.1 Different types of carriers

The 2008 Police Review concluded (at page 23-24) that it was 'considered necessary for persons who perform these functions to be licensed' and that it was 'felt that by creating a licensing regime for these persons that they could be better managed', such as by mandating standards on the carriage and storage of firearms and requiring these businesses to submit returns, as is the case with firearms dealers, repairers and manufacturers.

In its recent submission WA Police confirmed its support for amendments to the Firearms Act to create a new Warehousemen and Commercial carriers licence and has suggested that the Firearms Regulations prescribe the manner in which the firearms are carried or couriered across the State and how firearms are to be warehoused (submission dated 9 February 2016, page 23).

The Licensing Authority has implemented a policy with requirements as to how carriers must operate. These requirements have caused concern among stakeholders and this matter is currently under review. In response to the Discussion Paper many stakeholders have expressed opposition to both the suggested new licence categories and the current system of approval.

There are two methods by which firearms can be transported and warehoused, either through an approved commercial carrier and warehouseman or by courier/post. This creates difficulties as it is impossible to regulate the carriage of firearms in cases where the carrier does not know that firearms are being transported.

The points of concern in regard to the regulation of commercial carriers and warehousemen can be summarised as follows:

- Australia Post franchisees and many other larger couriers are not subject to any licensing regime;
- small commercial carriers are prejudiced due to difficulty in complying with unduly onerous carrier requirements;
- a new licencing regime will increase transportation costs;
- unreasonable conditions result in fewer carriers which particularly affect those in remote areas; and
- the pre-1996 exemption, which did not make reference to the approval of carriers and warehousemen, did not create any problems.

There is currently no exemption that applies to an unapproved carrier and warehouseman of firearms, typically mail order sales or carriage by post, and such a carrier and warehouseman could technically be liable for possession of a firearm without lawful authority. The Commission is of the view that all carriers and warehousemen of firearms should be covered under the Firearms Legislation.

As mentioned above the rationale behind the suggestion for licensing warehousemen and commercial carriers is in order to provide for better management, standards for carriage and storage of firearms and reporting requirements. On the other hand, the fact that firearms are not identified as such when being transported reduces the risk of theft.

The 1996 National Firearms Agreement dealt with mail order sales as follows:

- They should apply strictly on a licensed dealer to licensed dealer basis;
- Advertisements for sale are prohibited unless the sale is conducted through a licensed dealer;
- The movement of firearms in Category C, D and H must be in accordance with prescribed safety requirements;
- The commercial transport of ammunition with firearms is prohibited;

In addition to the above resolutions, the Commission also considered whether all firearm packages should be trackable and whether it should be a requirement that packages containing firearms not be packaged or labelled in such a way as to expressly or otherwise indicate their contents.

There is a distinction (although not necessarily a clear one) between commercial carriers and warehousemen on one hand, whose business is in part the carriage of firearms, and other carriers who transport firearms on an ad hoc basis usually without knowledge that they are doing so.

The Commission first reviewed the current position before considering whether changes are required.

15.2.2 Current obligations under the Firearms Legislation

Although approved warehousemen and commercial carriers are exempt from licencing requirements under section 8(1)(g) they are still required to meet other obligations under the Firearms Act:

- Section 23(9)(a) of the Firearms Act provides that a person who whilst carrying, or in actual physical possession of, or having the custody or control otherwise than by way of storage of, any firearm or ammunition, fails or omits to take all reasonable precautions to ensure its safe keeping, commits an offence.
- Section 23(9)(d) of the Firearms Act provides that it is an offence if a person who being responsible for the storage of any firearm or ammunition, fails to provide and use adequate storage facilities to ensure its safety; or where prescribed requirements as to security are specified in relation to a firearm or ammunition of a prescribed kind, to ensure that those requirements are observed; or otherwise, to safeguard it from loss or improper use.
- Regulation 11A of the Firearms Regulations states that a person entitled to possess firearms or ammunition of any kind is to ensure that the firearms or ammunition are stored in accordance with this regulation, that is, firearms and

ammunition are to be stored in a locked cabinet or container that at least meets the specifications described in Schedule 4 or in such other way as is approved.

- Section 30A(3) of the Firearms Act provides that a person who sends a firearm by post to a destination that is outside the State is required to address the firearm to premises at which the business of a dealer may lawfully be carried on; and is not to send ammunition in the package containing the firearm.

15.2.3 Dealers' obligations that do not apply to Warehousemen and Commercial carriers

The following obligations that apply to dealers (and repairers and manufacturers) under the Firearms Legislation do not apply to warehousemen and commercial carriers:

- Record-keeping – dealers have obligations to keep records of firearms dealings under section 31(2) of the Firearms Act and regulation 18 of the Firearms Regulations.
- Safe keeping – section 32 of the Firearms Act provides that the holder of a Dealer's Licence shall keep all firearms and ammunition in a strongroom or otherwise in safe keeping, securely fastened during any period when the premises are not open for trade.
- Emergency provisions – section 7 of the Firearms Act provides that where the Governor is of opinion that any emergency has arisen, or is likely to arise, he/she may by proclamation declare that all dealers of firearms in the State, or in any specified portion of the State, having firearms or ammunition in their possession shall render the same innocuous by a method to be specified in the declaration; shall deliver the same, or any parts or kinds of the same specified in the declaration, within a time and at a place so specified, to the Commissioner or any specified member of the WA Police, for the purpose of safe keeping.
- Responsible party – section 21A of the Firearms Act provides that the conduct of a business under a Dealer's Licence is always the responsibility of the holder and is to be personally supervised and managed, on each premises to which the licence applies, by the holder; or a person appointed as the agent or employee of the holder.
- Section 21B provides that where an offence under the Firearms Act is found to have been committed in the course of the business carried on under a Dealer's Licence by a body corporate, then under certain circumstances any officer or other person concerned in the management of the body corporate, or any person purporting to

act in any such capacity, can be held liable for the offence.

15.2.4 Areas for improvement

The Commission's view is that the following three areas could be improved upon:

- a) the responsibilities of the user of the carrier service;
- b) the responsibilities of post, couriers, warehousemen and small carriers; and
- c) the responsibilities of approved warehousemen and commercial carriers.

Responsibilities of the service user of the carrier service

The Commission is of the view that the primary responsibility in regard to the transportation and warehousing of firearms should be on the person who makes use of this service, that is, the service user and not the service provider. As such, the Commission considers that the Firearms Legislation should be strengthened in regard to the service user's responsibilities.

The Commission recommends that the service user (the licence holder on behalf of whom the firearms are being transported or warehoused, who could be a dealer or a seller of a firearms) have a duty to take reasonable steps to ensure that:

- the carrier and/or warehouseman is one whose usual business is transporting or storing goods;
- the carrier or warehousemen is informed of the contents of the package where more than five firearms are being transported or warehoused or where any of the firearms are in Categories C,D and H;
- the carrier or warehouseman is appropriate for the purposes of the carriage of the firearms in question, in particular noting the difference in carrier responsibilities for carrying more than five firearms or firearms in Categories C,D and H, as referred to below;
- the recipient has lawful authority to possess the firearms;
- a firearm should be transported and warehoused with a trigger-lock in place at all times and the key to the trigger-lock should be packaged separately;
- ammunition should not be packaged with the firearms;
- a package containing firearms should not be packaged or labelled in such a way as to expressly or otherwise indicate its contents;
- the package should be trackable; and

- the transaction with the carrier and/or warehouseman should be in writing.

A failure to meet these responsibilities should be an offence.

Post, couriers and small carriers

The Commission does not consider it practical for each small postal outlet, courier company and small commercial carrier to be licensed under the Firearms Act and thus recommends that such entities be exempt from the licensing requirements.

The Commission recommends that the exemption be framed without reference to approvals, to cover all carriers, that is:

A person who is in possession of a firearm (other than a prescribed firearm), in the ordinary course of the business of transporting or storing goods (other than as a dealer), is exempt from the licencing provisions of the Firearms Act, except that the person carrying on the business must comply with the requirements of the Firearms Act relating to the transport or storage of firearms, major firearm parts or ammunition.

A similar approach is taken in most other Australian jurisdictions; see for example section 8(2)(j) of the *Firearms Act 2015 (SA)*, section 6(3)(a) of the *Firearms Act 1996 (NSW)* and Schedule 3 item 7 of the *Firearms Act 1996 (Vic)*.

Approval

A further consideration is whether some carriers or warehousemen need to have approval and if so, how to differentiate between those that do and those that don't. The advantage to having approved warehousemen and commercial carriers is that they can be monitored by the Licensing Authority and can be required to report. The disadvantage is that the distinction can become arbitrary, the carrier will not always know what they are carrying, and the requirement to obtain approval or licensing could have the effect that carriers will ultimately refuse to carry firearms.

The Commission's view is that the advantages of requiring carriers or warehousemen to be approved are outweighed by the disadvantages and recommends that the requirement of approval be deleted. The Commission considers the most appropriate method of reducing the likelihood of theft of firearms while in transit is for firearms to be transported without being identifiable as such and by setting out minimum storage and transport requirements for businesses which transport and warehouse firearms in the ordinary course of their business. The minimum storage requirements cannot be a 'one size fits all' approach. Allowance must be

made for small operators and the best way to do this is based on the quantities and Categories of firearms.

The Commission recommends that the regulations provide that any carrier or warehouseman that wishes to transport and/or store firearms abide by minimum standards which should include:

- all current obligations under the Firearms Legislation as described above, should continue to apply;
- there should be clear lines of corporate responsibility as set out in section 21B of the Firearms Act;
- Warehousemen and commercial carriers should be included under the section 7 emergency provisions;
- where more than five firearms are carried or stored in one transport or premises the regulations should provide for additional security measures;
- where any of the firearms are in Category C, D or H the regulations should provide for additional security measures;
- ammunition should not be transported with firearms;
- packages containing firearms should not be packaged or labelled in such a way as to expressly or otherwise indicate their contents;
- the package should be trackable; and
- the transaction with the service user should be in writing.

Knowledge of contents

The responsibilities set out in the previous sections do not provide for strict liability. A person charged with an offence would be able to claim that he or she had no knowledge of the contents of the delivery.

Advertisements

Advertisements for sale of firearms, major firearm parts or ammunition should be prohibited unless the sale is conducted through a licensed dealer.

Ammunition, propellant and black powder

The storage and carriage of ammunition, propellant and black powder is discussed at Section 5.3.

15.2.5 Automatic approval to warehouse

Warehousing will only fall under the exemption if the firearms are warehoused in the ordinary course of the business of storing goods, in which case the regulations would apply.

Dealers

Proposal 32 suggested that a Dealer's Licence automatically include the ability to warehouse firearms. It is evident that this function is an inherent part of the business of a dealer. The proposal received unanimous support and the Commission recommends that section 16(1)(d) of the Firearms Act be amended accordingly.

Approved clubs

Question 27, dot point one, asked whether an approved club should automatically be approved to warehouse firearms. Approved clubs may have their own firearms either under a Corporate Licence or under a Firearms Licence held by a club official as its 'armourer'. These licences have their own storage conditions relating to the firearms held under them.

The Commission agrees with the views expressed by most stakeholders that there is a security risk in allowing all approved clubs the automatic ability to warehouse firearms that are held under licences of their members or other parties. Many club facilities are isolated and remotely located and may only have personnel at the facility on weekends.

Recommendation 101:

101.1 The exemption under section 8(1)(g) of the *Firearms Act 1973* (WA) should be framed without reference to approvals, to cover all carriers and warehousemen, that is:

- a. a person who is in possession of a firearm (other than a prescribed firearm), in the ordinary course of the business of transporting or storing goods (other than as a dealer), is exempt from the licencing provisions of the *Firearms Act 1973* (WA), except that the person carrying on the business must comply with the requirements of the *Firearms Act 1973* (WA) relating to the transport or storage of firearms, major firearm parts or ammunition.

101.2 The requirement of approval for carriers and warehousemen should be deleted.

101.3 A service user (the licence holder on behalf of whom the firearms are being transported or warehoused), should have a duty to take reasonable steps to ensure that:

- a. the carrier and/or warehouseman is one whose usual business is transporting or storing goods;

- b. the carrier or warehouseman is informed of the contents of the package where more than five firearms are being transported or warehoused or where any of the firearms are in Categories C,D or H;
- c. the carrier or warehouseman is appropriate for the purposes of the carriage of the firearms in question, in particular noting the difference in carrier responsibilities for carrying more than five firearms or firearms in Categories C,D and H, as referred to in Recommendation 101.4;
- d. the recipient has lawful authority to possess the firearms;
- e. a firearm is to be transported and warehoused with a trigger-lock in place at all times and the key to the trigger-lock should be packaged separately;
- f. ammunition is not packaged with the firearms;
- g. a package containing firearms is not packaged or labelled in such a way as to expressly or otherwise indicate its contents;
- h. the package is trackable; and
- i. the transaction with the carrier and/or warehouseman is in writing.

101.4 Regulations should provide that any carrier or warehouseman that wishes to transport and/or store firearms must abide by minimum standards which include:

- a. all current obligations under the Firearms Legislation as described above, should continue to apply;
- b. there should be clear lines of corporate responsibility as set out in section 21B of the *Firearms Act 1973* (WA);
- c. Warehousemen and commercial carriers should be included under the section 7 emergency provisions;
- d. where more than five firearms are carried or stored in one transport or premises the regulations should provide for additional security measures;

- e. where any of the firearms are in Category C, D or H the regulations should provide for additional security measures;
- f. ammunition is not to be transported with firearms;
- g. packages containing firearms are not to be packaged or labelled in such a way as to expressly or otherwise indicate their contents;
- h. the package should be trackable; and
- i. the transaction with the service user is in writing.

101.5 A failure to meet these responsibilities should be an offence.

Recommendation 102:

Advertisements for sale of firearms, major firearm parts or ammunition should be prohibited unless the sale is conducted through a licensed dealer.

Recommendation 103:

103.1 Firearm Dealer's Licences should automatically include the ability to warehouse firearms.

103.2 Approved shooting clubs should not have the automatic ability to warehouse firearms.

15.3 Theatrical licences

Proposal 35, which suggested the introduction of a new category of theatrical licence, received a mixed reaction. As mentioned on page 141 of the Discussion Paper, New South Wales, the Australian Capital Territory, the Northern Territory, Queensland and Victoria all make some provision for the use of firearms in theatrical performances. It must be borne in mind that many of these jurisdictions also provide that imitation firearms are subject to their firearms legislation which then makes this kind of licence necessary.

Although the 2008 Police Review recommended that the Firearms Act should be amended to create a licence known as a 'theatrical licence', WA Police in its submission dated 9 February 2016, page 26 did not support Proposal 35 and preferred the use of Corporate Licences for that purpose.

A stakeholder from the film industry suggested that the issue is largely irrelevant on the basis that it is no longer necessary to use firearms in film or theatrical performances. The suggestion is that imitation firearms and special effects have evolved to the extent that the use of real firearms in this context is obsolete.

Imitation firearms are currently not regarded as firearms under the Firearms Act, and there is thus no restriction on the appearance of the firearm and there use in the film or theatre industries. The question as to whether the appearance of imitation firearms ought to be restricted is considered in Chapter 4.

The Commission's view is that a theatrical licence is unnecessary in Western Australia due to the limited occasion when real firearms would be required in this context. In the light of the availability of current technology which allows for the use of imitations, it is not advisable to promote the use of real firearms.

In cases where an organisation can show that it requires a licence to possess and use firearms for film and theatrical purposes then a Corporate Licence would be appropriate along with the Nominated Person application (see Chapter 12 which deals with Corporate Licences).

If firearms are required by a film or theatre company (which does not have a Corporate Licence) for a specific film or theatrical production, that is, for a temporary period, then it would need to apply for a permit under the provisions of section 17 of the Firearms Act. The production would then be able to use specific firearms obtained from a relevant Corporate Licence holder or a dealer (see lending of firearms at Chapter 17). The Commission recommends that section 17 be amended to specifically provide for the ability to grant a temporary permit to possess a firearm or ammunition for the purposes of film, television or theatrical production. The Commission also recommends that the Firearms Regulations provide for the conditions that would apply on the issue of such a permit. Regulation 52 of the *Firearms Regulation 2006* (NSW) contains the type of provisions that the Commission considers appropriate for this purpose, including the specific people who may possess and use the firearm, the time period of the permit, the nature of the firearms that may be used, supervision and storage requirements and confirmation that only blank cartridges may be used.

Recommendation 104:

104.1 Where an organisation requires a licence to possess and use firearms for film and theatrical purposes then a Corporate Licence be utilised for that purpose.

104.2 Section 17 of the *Firearms Act 1973* (WA) be amended to specifically provide for the ability to grant a temporary permit for the purposes of film, television or theatrical production.

104.3 The *Firearms Regulations 1974* (WA) set out the applicable conditions for a temporary permit for the purposes of film, television or theatrical production and regulation 52 of the *Firearms Regulation 2006* (NSW) be used as a guide for the formulation of this provision.

15.4 Junior licences

The use of firearms by minors is discussed on page 106 of the Discussion Paper. The current position under the Firearms Act is that in accordance with section 8(1)(n) a person under the age of 18 years is exempt from the licensing requirements where the minor uses a firearm, not being a handgun, or ammunition for that firearm under the supervision of, and which is the property of, a person who is the holder of a licence or permit under the Firearms Act relating to that firearm. There is no lower age limit on the use of a firearm under this exemption.

15.4.1 Minimum age

Minors are permitted to use firearms under different types of regimes across Australian jurisdictions.

TABLE 3

Jurisdiction	System used	Supervision	Purpose	Age limits
Western Australia <i>Firearms Act 1973</i> s8(1)(m) s8(1)(n)	Exemption	No Yes	On an approved range Under the supervision of, and which is the property of, a person who is the holder of a licence or permit under the Firearms Act relating to that firearm.	Any age under 18
Victoria <i>Firearms Act 1996</i> s18 and schedule 2, clause 4	Junior Licence	Yes, with exceptions	Category A or B longarms, C longarms (being shotguns for clay target shooting) or general category handguns (for handgun target shooting) for purposes of receiving instruction or sport or target shooting competitions.	12-18
Tasmania <i>Firearms Act 1996</i> s68 and s70(2) s70(1)	Minor's permit Minor's permit	Yes Yes	Receiving instruction on an approved range or target shooting on an approved range. Receiving instruction and shooting in accordance with the licence. or target shooting on an approved range (age amended from 16 to 14 years on 17 August 2016).	12-14 14-18
New South Wales <i>Firearms Act 1996</i> s32 and reg 45	Minor's firearms training permit Minor's target pistol permit	Yes Yes	Supervision of holder of a category A, category B or category C licence for purpose of receiving instruction or approved. competition including clay target shooting under conditions. Category H for target shooting instruction and competition.	12- 18

Jurisdiction	System used	Supervision	Purpose	Age limits
Queensland <i>Weapons Act 1990</i> s52	Exemption	Yes	Category A or B weapon or a category M crossbow where it is lawful to physically possess and use or at an approved range.	11- 18
s10(2)(a)(ii)	Minor's licence	Yes	Category A, B or H at approved range; or any category A or B weapon to use it in primary production on rural land.	11- 18
<i>Weapons Regulation 1996</i> s23 and s23A		No	Limited category C.	
ACT <i>Firearms Act 1996</i> s84 and s85 <i>Firearms Regulation 2008</i> reg 28	Minor's licence	yes	no ownership. must be member of approved club. Purpose of training or target pistol training or instruction on safe use for primary production.	12-18
South Australia <i>Firearms Act 1977</i> s12(4)	Permit	No	If spouse, child, brother, sister or employee of a person who holds a Firearms Licence and who carries on the business of primary production. Only class A or B firearms.	15-18
South Australia <i>Firearms Act 2015</i> s8(2)(e)	Exemption	Yes	Commercial range or shooting gallery.	Any age
s8(2)(g)		Yes	category A, B or H firearm by member of a shooting club on the grounds of a shooting club for the purpose of shooting in a manner authorised by the club.	10-18
s8(2)(q)		Yes	category A, B or H firearm.	14-18
s8(2)(r)		Yes	category A firearm or an air handgun.	10-18
Northern Territory <i>Firearms Act</i> s28(a) and (b)	Firearms club junior licences	yes	Possess and use firearms of a Category specified in the licence for the purpose of receiving instruction in the safe use of firearms at an approved shooting range or competing in an approved event.	Any age

The Commission notes that WA Police are in favour of retaining the current position (submission dated 9 February 2016 page 14 and the 2008 Police Review). The rationale for this view is that the current exemptions provide broader opportunity to minors who wish to become proficient in competitive target shooting and allows minors to use an adult's firearm under their licence and supervision. Some stakeholders, while in favour of the exemption regime, has suggested that on occasion minors who compete interstate are required to provide some sort of proof of authorisation to possess and use a firearm and that this issue needs to be remedied.

Other stakeholders were of the opinion that a junior licence category should be introduced to allow for a minor to travel on competition under supervision of a club coach who is not the licence holder of the firearm. Others suggest that the minor should be

able to compete without supervision of the licence holder although with the licence holder being at the same venue.

It is evident from Table 3 that there is generally a minimum age for the use and possession of a firearm and authority is provided through licencing, permits and/or exemptions depending on the jurisdiction.

The Commission notes that there have been no reported incidents in respect of minors operating under the current exemptions but is of the view that legislating a minimum age is sensible. The most recent age-related legislation is that of section 70 of the *Firearms Act 1996* (Tas) where effective 17 August 2016, Tasmania reduced the age from 16 to 14 for the use of firearms outside of a range environment.

South Australia in their *Firearms Act 2015* (SA) decided to deal with the issue of minors by providing

for limitations based on age with a lower limit of 10 years for club shooting or the use of a category A firearm or an air handgun outside of a club.

Considering these most recent enactments, it appears that there is a trend towards limiting the use of firearms by minors when outside of an approved range to an age of 14 years, while most jurisdictions have a lower limit of 12 years for all possession and use. Exceptions to this are Western Australia and the new South Australia *Firearms Act 2015* (SA) which does not have an age limit in regard to the use of a firearm on an approved range.

Competitions

Youth shooting competitions in Australia are generally in 2 age categories, under 15 (which is usually 11-15) and 15-18. The Youth Olympics have a general age limit of 15 and 18 years old on 31 December in the year of the Games (<https://www.olympic.org/news/what-is-yog>), although specific age groups can be defined by the relevant International Federation responsible for the sport, in collaboration with the International Olympic Committee.

15.4.2 The Commission's recommended age restrictions

The Commission recommends that no minor under the age of 10 should be allowed to possess or use a firearm. The Commission considers this age as appropriate as it is generally accepted as an age where a minor understands the consequences of his or actions. This also accords with the age in section 29 of *The Criminal Code* (WA) which provides that a person under the age of 10 years is not criminally responsible for any act or omission.

The Commission recommends that the exemption at section 8(1)(m) of the Firearms Act be amended to exclude minors from its operation (with minors being dealt with specifically as set out below).

The Commission recommends that section 8(1)(n) of the Firearms Act be replaced with the following exemptions that apply to minors:

- A minor from the age of 10 to 14:
 - be allowed to use firearms from Category A, B and C (Category C only for purpose of receiving instruction or approved competition in clay target shooting under conditions and with approval from the Police Commissioner) or Category H handguns (only for target shooting instruction and competition);
 - at an approved range or approved shooting gallery, or as a member of an approved shooting club on the grounds of a shooting club for the purpose of shooting in a manner authorised by the club.

- under the continuous supervision of, and which is the property of, a person who is the holder of a licence or permit under the Firearms Act relating to that firearm.
- Where the supervisor is not the parent or guardian then the supervisor must be approved by the minor's parent or guardian.
- A minor from the age of 14 years and under the age of 18 years:
 - be allowed to use a Category A, B and C (Category C only for purpose of receiving instruction or approved competition in clay target shooting under conditions) or Category H handguns (only for target shooting instruction and competition);
 - under the continuous supervision of, and which is the property of, a person who is the holder of a licence or permit under the Firearms Act relating to that firearm.
 - Where the supervisor is not the parent or guardian then the supervisor must be approved by the minor's parent or guardian.

These provisions will allow a child between 10 and 14 to receive instruction on the use of a firearm, and compete, within a confined and supervised environment. From the age of 14 a child will not have any restriction on location (other than as determined under the supervisor's licence) but continuous supervision is necessary and, in line with the current position, the minor may only use a firearm that is held under the supervisor's licence.

15.4.3 Junior Competition Permit

Under the recommended exemption for minors a junior may use a firearm belonging to a parent under their supervision, but the exemption would not permit the junior to use that same firearm under supervision of a third party. Occasions exist where this may be necessary and the Commission thus recommends that the legislation provide for a new temporary permit to allow for someone to stand in the shoes of the parents under limited circumstances.

In order to provide assistance to junior competitors competing interstate the Commission recommends the introduction of a Junior Competition Permit. This is a temporary permit that may be applied for by a minor from 12 to 18 years, who is a member of an approved shooting club, for the purposes of shooting in a competition. It will require the consent of the minor's parents or guardian and a letter of support from the club. The Licensing Authority may conduct a fit and proper test.

The permit will allow the minor, under supervision of a nominated club official or coach (who must have a certain number of years' experience in the particular

discipline) to possess and use a firearm listed on the permit within the confines of the competition. Where the firearms required for the competition are held under a person's licence who is not the supervisor (for example, the minor's parent or a dealer) then the permit may be issued for use of such firearms on presentation of a loan agreement between the supervisor and the licence holder which reflects the details of the firearms and confirms the sole purpose of the loan is the use and possession of the firearm by the supervisor and, at the competition, by the minor (see Chapter 17 on lending firearms).

15.4.4 Use of a firearm by a minor – primary production

In terms of the above recommendations, a minor from the age of 14 will be able to use a Category A or B firearm under the licence of the supervisor. This would apply to a minor who needs to use a firearm of a primary producer under that licence. The Commission considered whether the age limit is appropriate in this context and whether supervision should remain a requirement.

Queensland appears to be the only jurisdiction that allows unsupervised use of any category A or B weapon to use it in primary production on rural land in the conduct of the licensee's business or employment (s23(1)(b) of the *Weapons Regulation 1996* (Qld). The wording of this provision suggests that proof will be required to show that it is the minor's own business or that he or she is employed in such a business.

Western Australia has a large farming community and the Commission understands that minors fulfil important roles in regard to primary production. The Commission's view is that an exception should be made on supervision in this context. The Commission recommends that the exemption in section 8(1)(i) of the *Firearms Act* should continue to apply to minors but only in respect of Category A or B firearms, and subject to a minimum age limit of 10 years. Note the training requirements under Recommendation 36.

Recommendation 105:

105.1 The exemption at section 8(1)(m) of the *Firearms Act 1973* (WA) should be amended to exclude minors from its operation.

105.2 No minor under the age of 10 should be allowed to possess or use a firearm.

105.3 Section 8(1)(n) of the *Firearms Act 1973* (WA) should be replaced with the following minor-specific exemptions:

- a. A minor from the age of 10 to 14:
 - i. Should be allowed to use firearms from Category A, B and C (Category C only for purpose of receiving instruction or approved competition in clay target shooting under conditions and with approval from the Police Commissioner) or Category H handguns (only for target shooting instruction and competition);
 - ii. at an approved range or approved shooting gallery, or as a member of an approved shooting club on the grounds of a shooting club for the purpose of shooting in a manner authorised by the club.
 - iii. under the continuous supervision of, and which is the property of, a person who is the holder of a licence or permit under the *Firearms Act 1973* (WA) relating to that firearm.
 - iv. Where the supervisor is not the parent or guardian then the supervisor must be approved by the minor's parent or guardian.
- b. A minor from the age of 14 years and under the age of 18 years:
 - i. Should be allowed to use a Category A, B and C (Category C only for purpose of receiving instruction or approved competition in clay target shooting under conditions) or Category H handguns (only for target shooting instruction and competition);
 - ii. under the continuous supervision of, and which is the property of, a person who is the holder of a licence or permit under the *Firearms Act 1973* (WA) relating to that firearm.
 - iii. Where the supervisor is not the parent or guardian then the supervisor must be approved by the minor's parent or guardian.

105.4 The exemption in section 8(1)(i) of the *Firearms Act 1973* (WA) in regard to primary producers should continue to apply to minors but only in respect of Category A or B firearms, and subject to a minimum age limit of 10 years.

Recommendation 106:

- 106.1 A temporary Junior Competition Permit should be introduced to allow a minor, under supervision of a nominated club official or coach (who must have a certain number of years' experience in the particular discipline) to possess and use a firearm listed on the permit within the confines of the competition.
- 106.2 The following provisions should apply to a Junior Competition Permit:
- may be applied for by a minor from 12 to 18 years;
 - who is a member of an approved shooting club;
 - for the purposes of shooting in a competition;
 - the applicant to have the consent of the parents or guardian and a letter of support from the approved shooting club; and
 - the Licensing Authority may conduct a fit and proper test.
- 106.3 A Junior Competition Permit should allow a minor to use a firearm held under a person's licence who is not the supervisor (for example, the minor's parent or a dealer) where the application provides evidence of a loan agreement between the supervisor and the licence holder which reflects the details of the firearms and confirms the sole purpose of the loan is the use and possession of the firearm by the supervisor and, at the competition, by the minor.

15.5 Shooting Gallery Licences and the lack of shooting range licences

15.5.1 Shooting Gallery Licences

Question 30 on page 142 of the Discussion Paper asked whether the restrictions on shooting galleries were appropriate. Most stakeholders were satisfied that Shooting Gallery Licences are appropriately regulated. The one issue raised was whether there should be less restriction on the calibre of firearms that may be used.

As mentioned in the Discussion Paper a shooting gallery is usually present at fairgrounds or agricultural shows and allows the public to shoot with certain types of firearms. Section 16(1)(g) of the Firearms Act provides for a Shooting Gallery Licence, which entitles the holder to conduct a shooting gallery in

accordance with the regulations on the premises specified in that licence.

The Commission's view is that due to the safety risk of people using firearms with which they may be unfamiliar in the presence of other members of the public, the restrictions in regard to Shooting Gallery Licences are considered appropriate and should be retained.

15.5.2 Shooting range licences

This matter is discussed on page 142 of the Discussion Paper. Some stakeholder were against the proposal for a new shooting range licence on the basis that in their view most shooting ranges are run by volunteers and as such no one volunteer would want to take on responsibility as the licence holder. In addition stakeholders submitted that by imposing strict standards it will only create inflexibility and fetter discretion which has been exercised without problem by the Licensing Authority.

On the other hand WA Police (in its submission of 9 February 2016, page 26) support Proposal 36 on the basis that it no longer has trained range inspectors and rely on a firearm association accredited independent range assessor who provide a report to the Licensing Authority who then consider the recommendations of the assessor.

Shooting ranges operate by virtue of section 8(1)(m) of the Firearms Act which allows a person to use a firearm, with the permission of the owner of the firearm on an approved range that is properly constructed and maintained. Neither the Firearms Act nor the Firearms Regulations contain specifications in regard to construction and safety standards or calibre restrictions.

It is important to note that the person who manages the range is usually not the owner of the firearms which are normally held under a Corporate Licence. The Commission is satisfied that primary responsibility in regard to firearms should lie with the holder of the licence.

The Commission does not therefore recommend a shooting range licence but is of the view that regulations are required for the purposes of certainty, setting minimum standards of construction, safety and permissible firearms.

Recommendation 107:

- 107.1 The restrictions in regard Shooting Gallery Licences should be retained.
- 107.2 No new shooting range licence should be introduced and the shooting range exemption under section 8(1)(m) of the *Firearms Act 1973* (WA) should be retained.

107.3 New regulations should be introduced in the *Firearms Regulations 1974 (WA)* that set out minimum standards of construction, safety and permissible firearms for shooting ranges.

15.6 Court employees and firearms exhibits

Court employees are not exempt from the licensing requirements of the Firearms Act. Question 31 asked for submissions in that regard.

Western Australian courts have each adopted their own practice and procedures for handling firearms, firearm parts, and ammunition as evidence in criminal trials ('firearms exhibits'). Generally, at all court locations a preference is that firearms be tendered as photographic or digital evidence. On the rare occasion that the original exhibit is tendered, special arrangements are made between the courts with Department of Public Prosecutions (DPP) and WA Police to ensure safe conveyance and handling, with firearms usually returned to WA Police custody at the end of each trial day. Court and Tribunal Services employees are not covered under any Corporate Licence.

The Supreme Court of Western Australia does not have a published procedure for handling firearms exhibits. Arrangements are made on a case by case basis between the court and DPP, and are subject to any direction made by the presiding judicial officer.

The District Court of Western Australia is guided by Practice Direction CRIM 1 of 2011, 'Dealing with Secure and Sensitive Materials', approved by then Chief Judge Martino on 11 August 2011. Similarly, the Magistrates Court of Western Australia has formal procedures published in Direction 1 of 2012, 'Dealing with Secure and Sensitive Materials', which was approved by Chief Magistrate Steven Heath on 2 January 2012.

In summary, District Court and Magistrates Court procedures for handling firearms exhibits are as follows.

- Preference is that evidence relating to firearms, ammunition, weapons and other dangerous items be tendered as photographic or digital images.
- If a party wishes to bring the actual item to court for inspection or tender, arrangements are to be made with the court not less than 21 days before commencement of the trial so that appropriate arrangements can be made.
- It is impracticable for the court to store such items. Accordingly, an order will be made releasing the exhibit to the person who is entitled custody of it, usually the Police Commissioner or the Federal Police.

- When the prosecution brings the items to court, it will need to ensure that a police officer or member of the exhibits management team of the relevant investigating authority is at court when the court rises at the end of the day to take custody of the items.

In the event a firearms exhibit is brought to court, the courts at Perth central business district locations are equipped with secure firearms safe and strongroom facilities that are designed in accordance with Firearms Legislation. When ammunition is tendered with a firearms exhibit, it is kept separately. At regional and circuit court locations, which do not have appropriate secure storage facilities, the firearms exhibits are collected, conveyed and secured appropriately by a WA Police.

The Commission is of the view that some improvements can be made in this area and recommends that:

- WA Police prepare a formal policy document confirming that firearms are rendered temporarily inoperable for the purposes of introduction to court as an exhibit (through the use of basic safety precautions such as lock-boxes and trigger locks) and the manner in which firearms and ammunition are treated at court, including the collection thereof at the conclusion of court proceedings. The heads of the court jurisdictions are to be consulted in the development this policy and to be provided with the policy once finalised.
- Section 8 of the Firearms Act be amended to exempt employees and officers of a court from the licencing provisions of the Act when possessing firearms in the course of their official duties.

Recommendation 108:

108.1 WA Police should prepare a formal policy document confirming that firearms are rendered temporarily inoperable for the purposes of introduction to court as an exhibit (through the use of basic safety precautions such as lock-boxes and trigger locks) and the manner in which firearms and ammunition are treated at court, including the collection thereof at the conclusion of court proceedings.

108.2 The heads of the court jurisdictions should be consulted in the development this policy and be provided with the policy once finalised.

108.3 Section 8 of the *Firearms Act 1973 (WA)* should be amended to exempt employees and officers of a court from the licencing provisions of the Firearms Act when possessing firearms in the course of their official duties.

CHAPTER SIXTEEN: STORAGE OF FIREARMS

16.1 The rationale for strict storage requirements

The rationale for the imposition of strict storage requirements is related to the need to reduce access to firearms by unauthorised people, such as through theft or through unintentional access by young children.

In particular, the risk of theft and the resulting movement of firearms into the black market has been the motivation behind calls for stricter storage requirements. On the other hand, some stakeholders call for a relaxation of regulations on the basis that theft of firearms from licensed owners is an insignificant contributor to black market firearms and that Government should rather focus its limited resources on preventing the illegal importation and manufacture of illegal firearms.

Notwithstanding this debate, the Commission's standpoint is that the benefit to the community of strict storage regulations outweighs the cost to firearms owners and the cost of policing this aspect of the Firearms Legislation.

16.2 Current storage requirements

The storage requirements are set out in Schedule 4 of the Firearms Regulations, which sets out precise specifications for storage cabinets and containers, which must be kept locked. These requirements include, for instance, that the cabinet or container be:

- constructed of mild steel that is two millimetres thick;
- fitted with a protective structure to guard against the forcible removal of any lock; and
- securely anchored from the inside at two points on each of two separate surfaces to two immovable structural surfaces by means of two millimetres by 75 millimetres masonry fixing bolts or coach screws, as is appropriate.

Schedule 4 also sets out the penalties: failure to provide and use adequate storage facilities, or to comply with prescribed requirements, or otherwise to safeguard a firearm or ammunition from loss or improper use, is an offence which carries a penalty of \$2,000 for a first offence and, for a subsequent offence, imprisonment for 12 months or a fine of \$4,000.

Section 32 of the Firearms Act deals with storage requirements and the relevant offences in regard

to a Dealer's Licence, a Repairer's Licence, or a Manufacturer's Licence. Higher penalties may be imposed: for a first offence is a fine of \$4,000; for a subsequent offence it is imprisonment for two years or a fine of \$8,000.

The Commission has compared these penalties to similar provisions in other Australian jurisdictions and is of the opinion that the penalties for breaching the storage requirements could be increased as suggested in Recommendation 143.

The Commission is also satisfied that compliance with storage requirements ought to remain part of the licence application process and that the Firearms Legislation must retain the ability for the Licensing Authority to request a statement in the prescribed form in accordance with section 11(7)(b) of the Firearms Act (as to what the applicant has done, or intends to do, to ensure that any firearms or ammunition in the applicant's possession are stored in accordance with the Firearms Act). The ability for the Licensing Authority to request such a statement at any time, to refuse a renewal application or revoke the licence if this request is not complied with, and to inspect storage facilities should also be retained.

In general the Commission is satisfied that the storage regulations are working well and fall in line with the resolutions of the 1996 National Firearms Agreement and the 2002 National Handguns Agreement (discussed on page 121 of the Discussion Paper). Regulation 11A and Schedule 4 of the Firearms Regulations provide a single set of requirements for any Category firearm and the Commission considers that approach a good one (subject to a few exceptions discussed below).

There are certain issues that were raised by the Commission in its Discussion Paper and by stakeholders in submissions. These are dealt with below.

16.3 Storage and safe keeping

The general storage obligations are set out in section 23(9)(a) and (d) of the Firearms Act through the creation of offences for:

- the failure to take all reasonable precautions to ensure a firearm's (or ammunition) safe keeping when it's not in storage; or
- a failure to provide and use adequate storage facilities to ensure its safety, to safeguard it from loss or improper or to comply with prescribed storage requirements.

The practical application of section 23(9)(a) and (d) was the subject of discussion from page 125 of the Discussion Paper and led to Proposal 29.

The Commission has considered the following:

- Does there need to be clarity as to when a firearm is in transit as opposed to when it should be in storage?
- Should the legislation set out requirements for the safe keeping of firearms while in transit, in particular when a firearm is temporarily kept in a vehicle?

16.3.1 Storage in a secure storage facility

The Commission regards the distinction between the duties in section 23(9)(a) versus 23(9)(d) confusing. At what point in time does a person become responsible for storage as opposed to being in actual physical possession or having custody or control otherwise than by way of storage?

The case of *McGee v Chitty* [2011] WASCA 125 (*McGee* case) was covered in the Discussion Paper at page 126. In that case the Court of Appeal observed that sections 23(9)(a) and 23(9)(d) of the Firearms Act contemplate that a firearm may be in a state of storage or in a state otherwise than by way of storage. The word 'transit' is not defined in the Firearms Act and the Court of Appeal observed that the question of whether something is in transit is a matter to be decided on the particular facts of a given case. In this case, at [59] per Mazza J, the Court of Appeal found that once the firearms had reached the respondent's bedroom in his new house 'on any reasonable view of the circumstances, the firearms were no longer in transit' as they had 'reached their intended destination'. It appears that once a person reaches his or her final destination, the obligation to store firearms in accordance with the Firearms Regulations applies.

The Commission considers that sections 23(9)(a) and 23(9)(d) of the Firearms Act requires redrafting to clearly set out a person's obligations. The Commission considers the interpretation of sections 23(9)(a) and 23(9)(d) by the Court in the *McGee* case was reasonable in the context of the current wording. The Commission does not however agree that this is the manner in which storage and safe keeping should be treated going forward.

The Commission is satisfied with a general obligation of taking all reasonable precautions to ensure safe keeping of firearms. In line with the 1996 National Firearms Agreement the word 'safe keeping' should be taken to mean ensuring that the firearm is not lost or stolen and that the firearm does not fall into the hands of an unauthorised person.

The Commission is of the view that the stricter storage obligations are a subset of the overall safe keeping obligations. A person needs to know when he or she is responsible for storage and as a consequence required to comply with the specific storage obligations set out in the legislation. The responsibility for storage is a condition of a licence or permit. As such it is the responsibility of the licence holder to comply with the storage conditions of the licence or permit as well as the requirements set out in the Firearms Legislation.

Some jurisdictions determine that storage is required when a firearm is not being carried or used (such as section 121 of the *Firearms Act 1996* (Vic) and regulation 21 of the Northern Territory *Firearms Regulations*).

The Commission's view is that the matter can be simplified, without any additional safety risk, by requiring the application of the storage conditions when the firearm is not in the licence holder's actual physical possession at the premises provided on the licence as the person's secure storage facilities.

The Commission recommends that where:

- the licence holder is in possession of the firearm;
- the licence holder is engaged in an activity the purposes for which the licence has been issued;
- the licence holder is not at the storage premises; and
- it is unreasonable for the licence holder to return to the storage premises to store the firearm,

then the general safe keeping obligations should apply (based on section 60A(1) of the *Weapons Regulation 1996* (Qld)).

Where the firearm will not be at the storage premises for reasons outside of the use of the firearm under the licence, for example, moving house, sickness, house renovation, then the licence holder must either advise the Licensing Authority of the new storage premises or obtain a temporary storage permit, discussed below.

Regulation 9 of the Firearms Regulations provides that a holder of a licence, permit or approval must give the Police Commissioner written notice of a change in the storage arrangements for a firearm to which the licence, permit or approval relates no later than 21 days after the event. Under regulation 23(1) a failure to meet this obligation is an offence subject to a penalty not exceeding \$1,000. This requirement ensures that the Licensing Authority remains aware of a person's current place of storage. The Commission recommends that the reporting time frame be reduced to 14 days which is more reasonable taking into account the importance of the Licensing Authority having up-to-date information on the storage premises.

16.3.2 Safe keeping when not in a secure storage facility

The recent case of *Gough v Rankin* [2014] WASC 148 (*Gough* case) dealt with the question of whether a person took all reasonable safeguards to ensure the safe keeping of his firearms and ammunition in accordance with section 23(9)(a) of the Firearms Act. In this case the firearms were kept in an unlocked vehicle. The court, after considering the specific circumstances of the case, found that there was no evidence that the person could have taken more effective steps to conceal the firearms.

The *Gough* case reflects that it is impossible to set out specific safe keeping requirements for every circumstance in which a firearm is not in a person's physical possession.

The Commission considered the relevant legislation in some other Australian jurisdictions (see Discussion Paper at page 129). The analysis of the legislation dealing with safe keeping when firearms are temporarily away from their usual place of storage, revealed varied approaches:

- provision in regulations for storage when in transit and specific provisions for storage in vehicles (Queensland);
- provision in regulations and guidelines for storage in vehicles only (Australian Capital Territory, Northern Territory, Victoria); and
- general provisions requiring all reasonable precautions to ensure safe keeping (Western Australia, Tasmania, New South Wales; South Australia has no specific provision).

In general terms when considering the safe keeping requirements while a firearm is not in storage, the presence of the licence holder should be sufficient security. The issue under consideration is the situation when the firearm is left unattended. This could be for a short period, such as leaving the firearm in the car while having a short travel break or leaving it in a tent when on a hunting trip; or for an extended period, such as leaving it in a vehicle overnight.

Proposal 29 suggested that the Firearms Regulations set out what would be considered 'reasonable precautions' for safe keeping and included suggestions based on the Queensland *Weapons Regulations 1996* (Qld).

Most stakeholders were of the view that, while a general safe keeping obligation should be contained in the Firearms Act, it would be useful to provide some identified precautions that would be deemed to be reasonable in certain circumstances. The views of these stakeholders were that the suggested Queensland provisions are overly restrictive.

The Commission agrees with the proposition that the Firearms Regulations set out some basic acceptable precautions for certain circumstances while not curtailing the court's discretion to determine whether reasonable precautions were taken.

Safe keeping in a vehicle

The Commission has given consideration to acceptable precautions for the safe keeping of firearms in vehicles.

The Commission recommends that a licence holder be deemed to have taken all reasonable precautions to ensure the safe keeping of a firearm if in an unattended vehicle where any one of the following means of stowage is utilised:

- it is stowed unloaded in a locked boot; or
- it is stowed unloaded in a locked compartment or safe within the locked vehicle and out of sight;
- and
- it is secured with the bolt removed (if this is possible for the particular firearm) or with a trigger lock fitted; and
- ammunition is not stored with the firearm but is in a separate locked compartment and out of sight within the locked vehicle.

The Commission understands that trigger locks are reasonably inexpensive devices that are readily available within Western Australia. These devices provide a simple and effective level of security that adequately prevents the unauthorised use of the firearm.

Safe keeping when being delivered by carrier

The Commission recommends that a licence holder be deemed to have taken all reasonable safe keeping precautions when the relevant firearm is held by an appropriate carrier business taking into account the number of firearms and the Category firearms as discussed in the Chapter on carriers and warehousemen (Section 15.2).

Safe keeping when being warehoused

The Commission recommends that a licence holder be deemed to have taken all reasonable safe keeping precautions when the relevant firearm is warehoused by a licensed dealer or an appropriate warehousing business taking into account the number of firearms and the Category firearms as discussed in the Chapter on carriers and warehousemen (Section 15.2).

Safe keeping with shared secured facility

The suggestion of using shared secure facilities is considered below.

16.3.3 Guidelines

Victoria Police, in conjunction with the Victorian Firearm Safety Foundation, has developed guidelines on the appropriate manner to transport firearms (including by car and by public transport), which are available online. The Commission favours this approach and considers it would be beneficial to provide more detail through the use of guidelines on the appropriate manner to transport firearms. The Licensing Authority, in consultation with relevant representative bodies, should produce these guidelines.

The Commission recommends that the Firearms Legislation specifically provide for guidelines that, once approved by the Police Commissioner and gazetted, may be taken into account as a factor in determining whether reasonable precautions were taken to ensure the safe keeping of a firearm.

The Licensing Authority guideline *Firearm Storage Requirements* statement that it is an offence to leave a firearm unattended in a car should be amended to more accurately reflect the current position.

16.3.4 Who is responsible for storage?

The court in the *McGee* case (at [49]) noted that section 23(9)(d) and (e) of the Firearms Act is silent on the person responsible for the storage of a firearm but came to the conclusion that at the very least it includes the holder of the licence for the firearm. The court in *Martino v Green* [2001] WASCA 181 stated that '[s]urprisingly, the Act does not expressly deal with who is responsible for the storage of a firearm or in what circumstances the obligation to store arises' [30].

Regulation 11A(1) provides that a person entitled to possess firearms or ammunition of any kind is to ensure that the firearms or ammunition are stored in accordance with this regulation. This regulation, when read together with section 23(9)(d) and (e) of the Firearms Act does not clarify the matter.

The Commission recommends that the Firearms Act should place an express storage obligation (and the obligation to comply with regulation 11A of the Firearms Regulations or other applicable storage requirements for the particular licence type):

- on the licence holder (whether an individual under a Firearms Licence or the holder of one of the corporate-type licences such as a Dealer's Licence);
- on a person in possession of the firearm under a lending arrangement;
- on the agent/employee of the licence holder where entitled to possess the firearm under any licence under the Firearms Act;
- and where a licence or permit issued under the Firearms Act contains specific storage conditions.

Recommendation 109:

- 109.1 The *Firearms Act 1973* (WA) should retain the general obligation of taking all reasonable precautions to ensure the safe keeping of a firearm.
- 109.2 The *Firearms Act 1973* (WA) should require the application of the general safe keeping obligations where:
 - a. the licence holder is in possession of the firearm;
 - b. the licence holder is engaged in an activity the purposes for which the licence has been issued;
 - c. the licence holder is not at the storage premises; and
 - d. it is unreasonable for the licence holder to return to the storage premises to store the firearm.

Recommendation 110:

The reporting time period under regulation 9 of the *Firearms Regulations 1974* (WA) in respect to a change in the storage arrangements should be amended to 14 days after the event.

Recommendation 111:

- 111.1 The *Firearms Regulations 1974* (WA) should set out basic acceptable safe keeping precautions for certain circumstances while not curtailing the court's discretion to determine whether reasonable precautions were taken.
- 111.2 A licence holder should be deemed to have taken all reasonable precautions to ensure the safe keeping of a firearm if in an unattended vehicle where any one of the following means of stowage is utilised:
 - a. it is stowed unloaded in a locked boot; or
 - b. it is stowed unloaded in a locked compartment or safe within the locked vehicle and out of sight;
and
 - c. it is secured with the bolt removed (if this is possible for the particular firearm) or with a trigger lock fitted; and

d. ammunition is not stored with the firearm but is in a separate locked compartment and out of sight within the locked vehicle.

111.3 A licence holder should be deemed to have taken all reasonable safe keeping precautions when the physical custody of the relevant firearm is transferred in writing to an appropriate carrier business.

111.4 A licence holder should be deemed to have taken all reasonable safe keeping precautions when the physical custody of the relevant firearm is transferred in writing to a licensed dealer or an appropriate warehousing business.

111.5 The Firearms Legislation should specifically provide for guidelines that, once approved by the Police Commissioner and gazetted, must be taken into account as a factor in determining whether reasonable precautions were taken to ensure the safe keeping of a firearm.

Recommendation 112:

112.1 The statement in the WA Police Firearm Storage Requirements guideline that it is an offence to leave a firearm unattended in a car, should be amended to more accurately reflect the current position.

112.2 The *Firearms Act 1973 (WA)* should require adherence to the storage conditions when the person who is obliged to store the firearm is not in actual physical possession of the firearm at the premises provided on the licence as the person's secure storage facility.

112.3 The *Firearms Act 1973 (WA)* should place an express storage obligation (and the obligation to comply with regulation 11A of the *Firearms Regulations 1974 (WA)* or other applicable storage requirements for the particular licence type):

- a. on the licence holder (whether an individual under a Firearms Licence or the holder of one of the corporate-type licences such as a Dealer's Licence);
- b. on a person in possession of the firearm under a lending arrangement;
- c. on the agent/employee of the licence holder where entitled to possess the firearm under any licence under the *Firearms Act 1973 (WA)* ;

d. and where a licence or permit issued under the *Firearms Act 1973 (WA)* contains specific storage conditions.

16.4 Storage by issuers of property letters

The Commission posed a series of questions under Question 12 of the Discussion Paper on page 89. The final question of the series asked whether a property owner who issues a property letter should be required to provide firearm storage facilities. Stakeholders were not in favour of any storage obligations being placed on property owners who allow recreational hunting or shooting on their properties.

The position of WA Police (in its submission dated 9 February 2016, page 11) is that the responsibility of ensuring adequate storage or safe keeping should remain with the licence holder.

Some stakeholders have suggested that, although it should not be mandatory, it would be in the interest of safety if a licence holder is permitted to keep the firearm in a safe belonging to the property owner if such a safe was available.

Some stakeholders have submitted that there is no evidence that suggests that the provision of storage facilities by property owners is required and will only cause increased costs and red tape. Others have concerns about farms that do not have a place where a safe could be installed, in some cases the homestead is many kilometres away from the overnighting area, and concerns have been raised regarding who to hold liable if the storage does not meet legislated requirements.

The Commission has considered the submissions and agrees with some of the concerns raised; in particular the concerns relating to the various practical difficulties that would surround mandatory storage requirements in this context. The Commission therefore does not recommend storage requirements on issuers of property letters. The possibility of sharing storage in remote areas is considered below.

Recommendation 113:

There should be no express storage requirements on issuers of property letters.

16.5 Storing a firearm for somebody else

At page 124 of the Discussion Paper the Commission discussed some of the concerns that have been raised due to the inability of a licence holder to store firearms belonging to another licence holder unless they are co-licensees or are in possession under an exemption (under section 8 of the Firearms Act).

Under section 4 of the Firearms Act 'possession' is defined as '...in addition to actual physical possession of a firearm or ammunition, means the custody or control of it, or having and exercising access to it in any place either alone or in common with others'. Section 19(1) of the Firearms Act makes possession of a firearm without a licence a crime (with a few exceptions).

The Commission notes that storage at WA Police under section 33(3) of the Firearms Act is available in extreme circumstances only and a warehouseman is not always readily available.

In its letter to the Commission of 16 June 2015 the view of WA Police was that the holder of a licence under the Firearms Act must be a responsible person and therefore be prepared to take the necessary action to secure and care for a firearm. The care and storage of a firearm is regarded by WA Police as a non-delegable duty. In their submission of 9 February 2016 at page 20, WA Police confirm this stance and maintain that current legislation provides the level of accountability required and the onus for firearm security remains with the licensed owner.

The Commission agrees with these sentiments but is of the opinion that it does not progress the discussion in regard to storage of a firearm by somebody else. Simply put, a licence holder could say that he or she is not delegating safekeeping by storing a firearm in somebody else's safe – by choosing that method of storage a licence holder can be said to be personally discharging the duty to keep the firearm secure. The Commission's view is that a court may find this kind of safe keeping, when away from the usual place of storage, as taking reasonable precautions, particularly if the licence holder has also fitted a trigger lock to the firearm and/ or removed the bolt.

The question is whether the third party is committing an offence, that is, whether the third party has possession of that firearm when it is in his or her safe. The likely scenario is that the third party would have control over access whether it is access to the safe or control over the premises where the safe is housed and may fall foul of section 19(1) of the Firearms Act.

Proposal 28 suggested the possibility of temporary shared storage by licensed firearms owners under certain circumstances. This proposal received substantial support, save for that of WA Police which was mentioned above.

The Commission is satisfied that a firearm should not be stored in the 'possession' of a person who is not licensed under the Firearms Act because such a person has not passed the 'fit and proper' test. The questions to be posed are thus:

- Should a licence holder be able to store his or her firearm with any other person licensed under the Firearms Act?

- Should there be a limit on the types of firearms that may be stored?
- Should cohabiting partners, who are both separate licenced holders, be permitted to store their firearms in a single safe?

16.5.1 Temporary sharing of secure facilities

The Commission considered whether the legislation should provide for the temporary sharing of secure facilities. This consideration focusses around the risk of theft of a firearm when away from the usual place of storage such as on a hunting trip, and the risk of shared secure facilities giving unauthorised access to firearms. The Commission has been advised that it is common practice to stow a firearm in a locked vehicle even where an alternative firearm safe is available.

The Commission is of the view that the sharing of any secure facility, whether a safe or other facility, is preferable to the unsecured stowage of a firearm. The Commission recommends that all licence holders be entitled to meet their safe keeping obligation (in respect to section 23(9)(a) of the Firearms Act) by securely stowing their firearms together with those of other licence holders on condition that there is no access by unlicensed persons and that the licence holder has access to the facility. For the sake of clarity the Commission confirms that this recommendation does not apply to a licence holder's storage responsibilities.

The Commission also considered whether there should be any restriction on the types of firearms that may be stowed in a shared secure facility. The Commission is of the view that the group of licence holders who would have access to the secure facility would probably have access to the firearms under the current provisions so the risk would not in effect increase. The Commission does not therefore recommend any restriction on the types of firearms that may be temporarily secured together.

The Commission recommends that section 19(1) of the Firearms Act be amended to reflect this exemption to the 'possession' offence.

The Commission does not consider that it is necessary to notify the Licensing Authority of temporary sharing of secure facilities as this will create an administrative burden with little to no benefit.

The Commission is of the view that in order to prevent unauthorised use of a firearm held in a shared secure facility the Firearms Legislation should provide for a requirement that the firearm be secured with the bolt removed or with a trigger lock fitted, or where possible both of those measures being adopted.

The Commission is of the view that the temporary nature of this exception is important. It would be contrary to the intent of the legislation for the

temporary sharing of secure facilities to replace a licence holder's permanent storage obligations. As such, the provisions relating to shared secure facilities should only apply when the storage obligations are not applicable as discussed in Subsection 16.3.1 dealing with storage obligations.

Recommendation 114:

- 114.1 The *Firearms Act 1973 (WA)* should allow licence holders to meet their safe keeping obligation (in respect to section 23(9)(a) of the *Firearms Act 1973 (WA)*) by securely stowing their firearms together with those of other licence holders on condition that there is no access by unlicensed persons and that the licence holder has access to the facility.
- 114.2 The provisions relating to shared secure facilities should only apply when the storage obligations are not applicable.
- 114.3 The Firearms Legislation should provide for a requirement that the firearm in a shared secure facility be secured with the bolt removed or with a trigger lock fitted.
- 114.4 There should be no restriction on the types of firearms that may be temporarily secured together.
- 114.5 Section 19(1) of the *Firearms Act 1973 (WA)* should be amended to reflect these recommendations as an exemption to the 'possession' offence.
- 114.6 The Firearms Legislation with regard to the separate storage of firearms and ammunition should continue to apply.
- 114.7 There should be no requirement to notify WA Police of the shared secure facility arrangements.

16.5.2 Sharing of storage

In addition to the temporary sharing of secure facilities discussed above the Commission also considered whether the sharing of the usual storage safe should be allowed. The Commission gave careful consideration to the potential access to jointly stored firearms in cases of family violence and the risk of the firearm of the victim being accessed by the offender.

Permanent sharing

At Question 26 of the Discussion Paper the Commission asked whether co-habiting persons should be able to store their firearms in the same safe. WA Police maintained that shared storage would undermine the principles of licensing a person and a firearm since a person would be given access to a firearm for

which he or she is not licensed, (submission dated 9 February 2016, page 21).

Some suggested that the joint storage of firearms, even where both parties are licensed under the Firearms Act, poses increased risk to police when attending incidents on the basis that a firearms owner who is licensed for a single firearm would have access to multiple firearms if stored in the same safe. In addition one person could be licensed for a Category A or B firearm while the owner of the safe is licensed for a Category D or H firearm, in effect providing a person temporary access to firearms other than the type of firearms in respect of which he or she is already licensed. The sharing of storage could also pose legal difficulties, such as when one partner has a restraining order against the other.

Proponents of allowing shared storage have highlighted the onerous effect the current regulations have on co-habiting partners in circumstances where they each own their own separately licensed firearms and thus require separate mounted safes in one home. Stakeholders have also raised the common occurrence of being away from the usual place of storage when attending a competition or when using a firearm for recreational purposes.

On the other hand licence holders submitted that they could see no reason why storage should not be shared in the case of co-habiting persons who are both licensed, albeit for different firearms. One of the points raised is that in most cases within a home, both licence holders would in reality have access to both safes.

The Commission considered that, in the light of its recommendation for sharing of secure facilities under certain circumstances, similar principles apply in respect to the sharing of storage. The Commission has weighed up the various risk factors and recommends that in the case of co-habiting licence holders the Firearms Legislation permit them to share their storage safes on condition that each firearm in the shared safe has a fitted trigger lock.

Temporary sharing

The Commission recommends that the Firearms Act provides for a temporary permit under section 17 of the Firearms Act for the temporary storage of a firearm at a specified location where a licence holder proposes to be absent from the State for a substantial period of time; or is temporarily physically incapacitated (similar to section 121A of the *Firearms Act 1996 (Vic)*).

Recommendation 115:

In the case of co-habiting licence holders the Firearms Legislation should permit them to share their storage safes on condition that each firearm in the shared safe has a fitted trigger lock.

Recommendation 116:

The *Firearms Act 1973* (WA) should provide for a temporary permit under section 17 for the temporary storage of a firearm at a specified location where a licence holder proposes to be absent from the State for a substantial period of time; or is temporarily physically incapacitated.

16.6 Storage requirements in remote and regional areas

The Commission considered whether 24-hour remotely monitored burglar alarms, alternatively electronic or audible security, ought to be required in remote and regional areas. This question was raised in the Discussion Paper at Question 24, bullet point 2.

Most stakeholders were against the standalone use of security alarms in remote and regional areas due to their probable ineffectiveness as the alarm will not be responded to fast enough to have a deterrent effect. The Commission acknowledges that the elevated risk of storing firearms in a remote location is most probably not ameliorated by having audible security or a 24-hour remotely monitored burglar alarm.

Taking these factors into account the Commission does not recommend that 24-hour remotely monitored burglar alarms be required in remote and regional areas. Ultimately it always remains the responsibility of the licence holder to make sure that the firearm is securely stored.

Recommendation 117:

24-hour remotely monitored burglar alarms should not be required in remote and regional areas.

16.7 Different storage requirements for different types of firearms

In the Discussion Paper at Question 24, bullet point 1 the Commission asked whether storage requirements should differ according to the type of firearms being stored.

The storage requirements in the Firearms Regulations apply to all categories of firearms provided for in the

Firearms Act; there is no lesser standard for Categories A and B. The Commission views this as consistent with the minimum standard set in resolutions of the 1996 National Firearms Agreement.

Some other jurisdictions have not followed the approach taken in Western Australia and provide for different storage requirements depending on the category of firearm (see for example sections 40 and 41 of the *Firearms Act 1996* (NSW)). It is notable that some of these jurisdictions refer to wooden receptacles for Category A and B firearms which is not the case in Western Australia which refers only to steel. Other jurisdictions, such as the Australian Capital Territory in subsections 181(1) and 182(1) of the *Firearms Act 1996* (ACT), also imposes harsher penalties for breaches of the storage requirements depending on the type of firearms.

The most recent amendments to firearms storage requirements have taken place in Tasmania. Section 35 of the *Firearms (Miscellaneous Amendments) Act 2015* (Tas) contemplates additional prescribed storage requirements which may apply in respect of persons who own handguns (Category H firearms) and in respect of persons who possess 10 or more firearms of other categories. This section has not yet commenced. In the second reading speech, the Tasmanian Police Minister advised that the changes in respect of hand guns are being imposed on the basis that 'hand guns are a more valuable commodity than other firearms in the criminal community' given they are easily carried and concealed. The Police Minister further advised that it was intended that the prescribed storage requirements for handguns would include 'electronic or audible security'.

Except for Category D discussed below, the Commission is not in favour of having different storage requirements for firearms in different Categories. The provisions of schedule 4 of the Firearms Regulations in relation to the specifications for storage cabinets and containers are strict and adequate for most types of firearms. Differing storage requirements would complicate the legislation and cause unnecessary expense on firearms owners, particularly those who own firearms in different categories.

The Police Commissioner currently has the ability to set conditions under section 21 of the Firearms Act which could extend to conditions of storage if considered necessary. This power must be retained. The Commission cannot foresee every future eventuality and it may be appropriate for a particular situation to require alternative storage conditions.

Storage requirements may need to differ due to the type of licence applied for such as a Dealer's Licence and a Corporate Licence; the Commission recommends that the Firearms Act provide that different storage requirements may be prescribed for different licence types.

Due to the changes being implemented in Tasmania regarding the storage of handguns, the Commission has considered whether stricter storage requirements should be implemented in Western Australia for this category of firearm. The Commission acknowledges that a handgun is a more valuable commodity to a criminal than other firearm types due to its concealability but remains of the opinion that the current storage requirements are adequate. WA Police believe there should be heightened security measures for concealable weapons such as handguns or higher powered firearms such as Category C or D (Submission dated 9 February 2016, page 20). No evidence has been presented to suggest that the current storage requirements are inappropriate or that there has been an increase in the theft of handguns.

The security industry operates under Corporate Licences, for the most part for the possession and use of handguns. The Commission has considered whether any additional storage requirements are warranted.

The Commission is of the view that for the purposes of clarity and due to the special risk that attach to this type of licence, the storage requirements for entities operating under a Corporate Licence should be prescribed in the Firearms Regulations and should be a graduated approach depending on the number of firearms held under the licence.

The Commission will not make a recommendation as to the exact details but by way of example there may be different requirements for different numbers of handguns; with different size safes, different disabling requirements, panic switches and/or alarms.

At Subsection 10.6.3 the Commission recommended the wider availability of Category D firearms under strict conditions. The Commission recommends that the Firearms Regulations provide for stricter storage conditions for this Category due to their recommended wider use and potential to cause harm.

Recommendation 118:

118.1 All types of firearms should be subject to the same storage requirements, unless the Police Commissioner determines additional storage requirements in accordance with his/her power under section 21 of the *Firearms Act 1973* (WA) or if prescribed in the *Firearms Regulations 1974* (WA).

118.2 The *Firearms Act 1973* (WA) should provide that different storage requirements may be prescribed for different licence types.

118.3 The storage requirements for entities operating under a Corporate Licence should be prescribed in the *Firearms Regulations 1974* (WA) and be a graduated approach depending on the number of firearms held under the licence.

118.4 Stricter storage requirements for Category D firearms should be prescribed in the *Firearms Regulations 1974* (WA).

16.8 Different storage requirements for different quantity of firearms

In Proposal 27 the Commission suggested that firearms dealers and persons who own 10 or more firearms be required to install and maintain a burglar alarm at the storage premises. In general terms the proposal is that once a licence holder owns a certain number of firearms, he or she should be required to meet stricter storage standards, given that the more firearms are stored in one place, the worse the potential consequences in case of a burglary.

A case can certainly be made for requiring alarms or other forms of increased security at premises where large quantities of firearms and ammunition are stored. In Queensland, regulation 36(1) of the *Weapons Regulation 1996* (Qld), provide that premises used by dealers, armourers and theatrical ordnance suppliers are required to have burglar alarms installed. The alarms must be capable of detecting any entry into the premises by any means and the breakage of any glass door or window and instantly activate a loud siren outside the premises and a remote alarm at the place where the alarm is required to be monitored or connected.

As mentioned above, section 35 of the *Firearms (Miscellaneous Amendments) Act 2015* (Tas) contemplates additional prescribed storage requirements and these include obligations on persons who possess 10 or more firearms. The Tasmanian Police Minister advised that these changes are being imposed on the basis that the more firearms stored at one address the greater the attraction for thieves and the potential harm to the community. It is intended that the prescribed storage requirements would include electronic or audible security.

Stakeholders indicated that there is no evidence that a person over a certain amount of firearms is more likely to be a victim of theft. They also commented on the ineffectiveness of an alarm system as a deterrent; and the fact that firearms dealers or places of well-known firearms stock are more likely to be burgled.

In its submission to the Commission of 16 June 2015, (and repeated in submission dated 9 February 2016, page 20) WA Police advised that it supported

graduated storage requirements relating to the number of firearms a person has in their possession. WA Police also indicated that dealer's already have stricter security conditions under a Corporate Licence so no change is required in that area; as mentioned above, the Commission recommends the ability to prescribe different storage requirements for different licence types.

The Commission is of the view that although the risk of theft is not altered by having additional firearms, the risk is that if there is a theft, a larger amount of firearms would be stolen in a single incident. The Commission considers this a matter that requires some form of risk mitigation. The Commission also agrees that an alarm would not necessarily be effective.

The Commission recommends that where a licence holder has more than 10 firearms stored at the same premises then the Police Commissioner should be able to require additional security measures. The types of additional measures that may be required should be prescribed in the Firearms Regulations; these could include additional safes or electronic or audible security.

The storage and carriage of ammunition, propellant and black powder is considered at Section 5.3.

Recommendation 119:

119.1 Where a licence holder has more than 10 firearms stored at the same premises the Police Commissioner should be able to require additional security measures.

119.2 The types of additional measures that may be required should be prescribed in the *Firearms Regulations 1974 (WA)* and include additional safes or electronic or audible security.

CHAPTER SEVENTEEN: LENDING FIREARMS

17.1 Lending to licence holders

Lending of firearms in the context of this section refers to the agreed use of another person's firearm outside of their supervision.

From page 107 of the Discussion Paper, the Commission considered matters relevant to the lending of firearms and under Proposal 18 suggested that lending arrangement be facilitated through amendments to the Firearms Legislation.

Page 108 of the Discussion Paper provides some examples of lending in other Australian jurisdictions. It is evident that there are varying degrees of regulation, generally with time limits on the lending arrangements.

The primary concern that WA Police has expressed with regard to the lending proposal is that it takes away the onus of having the licence holder responsible for the firearm under the licence. Other stakeholders are in favour of lending to try different firearms before purchasing or for borrowing a firearm when theirs may be inadequate or undergoing repair or if going away on holiday so that it can be stored by another person.

The Commission has taken what it views as a balanced approach to the issue of lending by:

- recognising that there is no uniform Australian approach to this issue;
- acknowledging that a firearms owner must be accountable for his/her firearm; and
- recognising that there may be circumstances where lending ought to be permitted.

The Commission's view is that responsibility and accountability is maintained where the person borrowing the firearm is a licensee in respect of a firearm of the same category that is the subject of the loan agreement (and is thus deemed fit and proper).

The Commission considers that the lending arrangement should be short term only and only for the purpose for which the borrower's licence has been approved. Some stakeholders have suggested an indefinite period while others have suggested a maximum 60 day period. The Commission is satisfied that the 28 day period that has been adopted in South Australia is appropriate (see section 15B of the *Firearms Act 1977 (SA)*)

A further issue is whether the borrower has sufficient storage, in that he or she may borrow firearms that

exceed the quantity held under existing licences. This is the responsibility of the borrower and the normal storage requirements for the borrowed firearm must be complied with.

The Commission has considered whether there should be a requirement that the loan agreement be in writing and whether the Licensing Authority be notified of the arrangement so that they have a record of the movement of the firearm. This notification requirement does not appear in the legislation of those Australian jurisdictions that provide for lending arrangements and could increase the administrative burden of the Licensing Authority.

In the case of lending arrangements, where the lender is not a Dealer, the Commission is of the view that some notification is necessary in order to ensure accountability but the Commission does not consider that the agreement has to be in writing; an oral agreement will suffice. The lender of a firearm (who is not a dealer) should be required to notify the Licensing Authority of the lending arrangements and the notification must include the details of the borrower, the period and the firearm. Email notification would achieve the goal of accountability and the minimal burden in doing so is likely to result in higher compliance.

Regulation 18(1)(b)(ii) suggests that there may already be the ability for a Dealer to lend firearms; the legislation should be clear that this is permitted. Dealer lending arrangements must be in writing and Dealer lending information should form part of the dealer's reporting responsibilities, including the inclusion of copies of the loan agreements and details of the borrowers.

Where a person engages in lending for compensation or undertakes regular lending arrangements then a mere email notification is unlikely to achieve the administrative controls necessary; in such circumstances it would be best that such a person be deemed a dealer and be registered as such. The definition of dealer in section 4 of the *Firearms Act* should be amended accordingly, incorporating a threshold of transactions for the deeming provision to apply.

In Victoria, section 100A of the *Firearms Act 1996 (Vic)* dealers cannot loan a firearm out at a rate equivalent to the full cost of the firearm. This provision ensures the distinction between a sale of a firearm and the loan.

The Commission recommends that the Firearms Regulations prescribe requirements in respect of:

- lending arrangements and dealer reporting;
- any required contents of the notification;
- the basic provisions of any lending agreement;
- the cool off period between loan arrangements during which a borrower may not borrow; and
- the number of times a firearm may be lent between the same parties.

The Commission has considered whether there should be a limitation on which Category firearms may form the subject of a lending arrangement. The Commission is of the view that only Category A and B firearms should be the subject of ad hoc lending arrangements, while all Categories (except prohibited) could be the subject of dealer lending arrangements.

17.2 Lending to non-licence holders

The Commission considered whether it should make recommendations to facilitate dealers lending firearms to non-licence holders. The Commission is of the view that this has merit in that it could reduce the number of firearms in the community; users who only require a firearm occasionally will not need to purchase a firearm. The Commission recommends that the Nominated Person authorisation process be used to pre-qualify borrowers who wish to rent a firearm from a dealer.

The prospective firearm user will need to apply through a licenced dealer for authorisation as a Nominated Person and as with any other Nominated Person application, such person would go through the fit and proper, genuine reason and genuine need tests. A pre-qualified borrower should then be issued a Nominated Person authorisation similar to that under a Corporate Licence.

The Firearms Regulations should provide that the dealer must submit to the Licensing Authority the details of the actual firearm rented out when the firearm is collected.

The Commission has also recommended the use of lending arrangements in the case of Junior Competition Permits (discussed at Subsection 15.4.3).

Recommendation 120:

120.1 The Firearms Legislation should provide for lending arrangements for a period not exceeding 28 days with different requirements for an occasional lender and a dealer.

120.2 A licence holder (who is not a dealer) should be permitted to lend a firearm to another licence holder where:

- a. the borrower holds a licence in respect of the same Category firearm as the firearm that is the subject of the arrangement;
- b. there is no consideration involved;
- c. the firearm being borrowed is a Category A or B firearm (or in the case of a Junior Competition Permit only, Categories A, B, C and handgun);
- d. the lender has notified the Licensing Authority of the lending arrangements;
- e. the notification includes the details of the borrower, the period and the firearm;
- f. the notification is in writing with email to a dedicated email address being permitted; and
- g. the lending arrangement may be by oral agreement.

120.3 A dealer should be permitted to lend a firearm to another licence holder where:

- a. the borrower holds a licence in respect of the same Category firearm as the firearm that is the subject of the arrangement;
- b. the firearm being borrowed is not a prescribed firearm;
- c. the dealer has notified the Licensing Authority of the lending arrangements;
- d. the notification includes the details of the borrower, the period and the firearm;
- e. the loan agreement is in writing; and
- f. the dealer adheres to the reporting requirements and details that should be sent to the Licensing Authority in respect of the loan.
- g. the loan price if there is one be limited to ensure that a firearm is not hired out at its full purchase price.

120.4 The *Firearms Regulations 1974* (WA) should prescribe requirements in respect of:

- a. lending arrangements and dealer reporting;

- b. any required contents of the notification;
- c. the basic provisions of any lending agreement;
- d. the cool off period between loan arrangements during which a borrower may not borrow; and
- e. the number of times a firearm may be lent between the same parties.

- 120.5 The purpose for which the borrowed firearm is used must be in accordance with the terms of the borrower's licence in respect of that Category firearm.
- 120.6 The Nominated Person authorisation process should be used to pre-qualify borrowers, who are not licence holders, who wish to rent a firearm from a dealer.
- 120.7 A pre-qualified borrower should be issued a Nominated Person authorisation similar to that under a Corporate Licence.
- 120.8 The dealer should be required to submit to the Licensing Authority the details of the actual firearm rented out when the firearm is collected by the borrower.
- 120.9 The dealer's responsibilities should be the same as for any other lending arrangement.
- 120.10 Where a person engages in lending for compensation or undertakes regular lending arrangements then such a person should be deemed a dealer and the definition of dealer in section 4 of the *Firearms Act 1973 (WA)* be amended accordingly, incorporating a threshold of transactions for the deeming provision to apply.

17.3 Allowing the use of firearms while under supervision

Question 19, bullet point 2 and 3 (on page 107 of the Discussion Paper) the Commission asked whether an unlicensed adult should be able to use a firearm under supervision of the licence holder. This position has been favoured in South Australia under section 8(2)(p) of the *Firearms Act 2015 (SA)*. The section exempts from the licencing provisions, 'the possession or use of a category A, B or H firearm by a person 18 years of age or more (other than as an employee of a licensed dealer) if the person is with, and is under the continuous supervision of, a person who holds a firearms licence authorising possession of the firearm for the purpose for which it is being used'.

Stakeholders have pointed out that under the Firearms Legislation a person under the age of 18 can use a firearm on private property under the supervision of a licensed holder while an adult cannot. The Commission notes that the recommendations in regard to minors provide for exemptions under strict conditions including continuous supervision. However, it can also be said that in general terms an adult is less likely to abide by, or for that matter to give, instructions received from another adult; the authoritative relationship is not the same as between an adult and a minor.

WA Police does not support unlicensed adults using a firearm of a licensed adult (see submission dated 9 February 2016, page 15). In particular, it is clear that unlicensed individuals have not undergone a fit and proper check with the Licensing Authority.

While it seems to make sense for an unlicensed adult to possess and use a firearm under the same conditions as a minor, the Commission is of the view that an unlicensed adult should be treated differently. The Commission considers that while a minor becomes an adult at 18 and will thus have a relatively short period under an exemption, an adult may be tempted to rely on the exemption indefinitely.

The Commission is of the view that allowing an unlicensed adult to use a firearm of another (whether supervised or not), in contexts outside of the current exemptions, is a risk that goes against the principles of the licensing requirements of the Firearms Act.

Although the age of 18 is a legal fiction of maturity the Commission considers that the age is appropriate in the circumstances and that at 18 a person who wants to continue to use a firearm outside of the exemptions should apply for their own licence.

Recommendation 121:

There should be no additional exemption for an unlicensed adult to use another person's firearm outside of the current exemptions.

CHAPTER EIGHTEEN: REVIEW OF DECISIONS

18.1 An internal review process

The Commission put forward the suggestion of an internal review process in Proposal 44 of the Discussion Paper.

While the SAT is well suited to considering firearm-related matters stakeholders were in favour of a mechanism that could review disputes before they reach the SAT. Proposal 44 suggested a preliminary internal review and stakeholder views differed in this regard; some were of the view that as an internal review of a Licensing Authority decision this kind of review would be unlikely to deliver a different result, while others thought it was a good idea as long as it did not block access to the SAT.

WA Police did not support this proposal (submission dated 9 February 2016, page 34) on the basis that internal procedures have reduced the number of matters being referred to the SAT. In particular a commissioned officer chairs the meetings which consider decisions made under the Firearms Legislation.

A stakeholder made an alternative suggestion to reduce the overall burden on the Licensing Authority caused by disputes which is to establish a Firearms Ombudsman. This model would allow for an independent review of certain decisions. The Commission was referred to the NSW Ombudsman as an example.

The Western Australian Ombudsman is established under the *Parliamentary Commissioner Act 1971* (WA). It can investigate complaints about a decision of a public authority such as WA Police if the complaint relates to a matter of administration (decision making practices and actions in providing their service to the public) (see section 14(1) of the *Parliamentary Commissioner Act 1971*). Except in special circumstances, the Ombudsman cannot investigate matters which can be remedied through a tribunal or court of law (section 14(4) of the *Parliamentary Commissioner Act 1971*).

While it is correct to say the Ombudsman NSW has more expansive authority to investigate matters, as a matter of practice they tend to only address systemic issues. In addition the Ombudsman cannot order a remedy but makes a recommendation. Usually, if the complaint relates to an administrative decision the Ombudsman will not handle this and will suggest it be referred to the NSW Civil Administrative Tribunal that is better positioned to consider and provide a remedy.

The Commission is of the view that there is little purpose in adding the Ombudsman-type regime in between that of the SAT and the Licensing Authority.

As pointed out on page 187 of the Discussion Paper there is precedent for internal review mechanisms in other Western Australian legislation such as the *Animal Welfare Act 2002* (WA) (review to the Minister which may be delegated to the CEO) and the *Dangerous Goods Safety Act 2004* (WA) (Chief Officer).

In New South Wales the internal review is conducted by the Case Management Unit within the Firearms Registry, in accordance with the *Administrative Decisions Review Act 1997* (NSW). Under section 53 of the *Administrative Decisions Review Act 1997* (NSW) an application for an internal review of a decision 'is to be dealt with by an individual (other than the administrator) who is directed to do so by the administrator (the 'internal reviewer'). The internal reviewer directed to deal with an application must be, as far as is practicable, an individual: (a) who was not substantially involved in the process of making the decision under review, and (b) who is an employee of the administrator or is an employee of the same agency or organisation within which the administrator is employed, and (c) who is otherwise suitably qualified to deal with the issues raised by the application'.

South Australia's Firearms Review Committee established under section 7 of the *Firearms Act 1977* (SA) has not been retained under the *Firearms Act 2015* (SA) which provides for reviews to their equivalent of SAT.

Under Chapter 11 the Commission recommended that a Categorisation Advisory Committee (CAC) be established to evaluate and advise whether a firearm should be re-categorised. The Commission also recommended that this Committee include at least one person with extensive technical expertise in firearms who is independent of the Licensing Authority.

The CAC will perform an internal review under narrow circumstances. The Commission is of the view that a more general internal review process would be of assistance to licence holders and applicants as long as it is conducted under strict time frames. The Commission recommends that the Firearms Legislation provide for an automatic review of all reviewable decisions by the Police Commissioner. The Police Commissioner may delegate this function to a

commissioned police officer of a specified rank who is suitably qualified and who was not substantially involved in the original decision.

The internal review should operate under time limits similar to an internal review under the *Freedom of Information Act 1992* (WA).

For clarity the Commission confirms that where the CAC has made a decision or declaration (in respect of the category in which a firearm is placed based on current definition or on an application for pre-approval of firearm type) then that matter should not be subject to the automatic internal review but may be reviewed by the SAT.

Recommendation 122:

- 122.1 The Firearms Legislation should provide for an automatic review by the Police Commissioner of all reviewable decisions.
- 122.2 The Police Commissioner should be able to delegate this function only to a commissioned police officer of a specified rank who is suitably qualified and who was not substantially involved in the original decision.
- 122.3 The internal review should operate under time limits similar to an internal review under the *Freedom of Information Act 1992* (WA).

CHAPTER NINETEEN: RECOGNITION OF LICENCES FROM OTHER JURISDICTIONS

19.1 The recognition of interstate licences

Proposal 23 suggested that the Firearms Act be amended to include recognition of interstate licences where licensees visit or reside in Western Australia on a temporary basis and Question 22 asked for submissions on the detail surrounding such recognition should it be recommended.

The vast majority of stakeholders are in favour of this proposal but it is not supported by WA Police (submission dated 9 February 2016, page 18) who states that although it recognises interstate licences, a temporary permit is still required so that the movement of the firearms can be monitored.

The Commission is of the view that for a short term visit into Western Australia for certain purposes, a temporary permit should not be required from an interstate licence holder where such person can present the appropriate interstate licencing to possess the relevant firearm (that is, where necessary a firearms licence and a permit for the particular firearm).

The Commission considered the purposes for which this exemption should apply; such as for competition, for a recreational or traditional hunting trip, or to assist with pest control, or apply to interstate theatrical licences. The Commission also considered which Categories of firearms should be allowed under an exemption.

The Commission is of the view that a narrow approach should be taken, similar to that in section 26 of the *Firearms Act 1996* (NSW) and section 185(1) of the *Firearms Act 1996* (Vic). The Commission recommends that the Firearms Act be amended to provide that:

- A person who is a resident of another State or Territory, and is the holder of the equivalent of a category A, category B or category H licence issued under the law in force in that State or Territory, is exempt under section 8 of the Firearms Act, but only for the purpose of enabling the person to participate in a shooting competition conducted by an approved club or organisation (or for such other purposes as may be prescribed by the regulations).
- A person who is a resident of another State or Territory, and is the holder of the equivalent of a category C licence issued under the law in force

in that State or Territory for a shotgun, is exempt under section 8 of the Firearms Act, but only for the purpose of participating in a recognised clay target shooting competition conducted by an approved club or organisation (or for such other purposes as may be prescribed by the regulations).

The Commission recommends that the interstate group permits issued under section 17A of the Firearms Act be retained to cover any cases where the exemptions may not apply, for example, for activities that fall outside of a competition. In addition section 17 will also be available to apply for a permit, such as for a guided hunting tour under section 17(1)(d) of the Firearms Act.

The Commission is of the view that police officers will require appropriate instruction to ensure an adequate understanding of the acceptance of interstate licences and the acceptable proof of authorisation in that regard.

Recommendation 123:

123.1 The *Firearms Act 1973* (WA) should be amended to include recognition of interstate licences on the following conditions:

- a. A person who is a resident of another State or Territory, and is the holder of the equivalent of a category A, category B or category H licence issued under the law in force in that State or Territory, is exempt under section 8 of the *Firearms Act 1973* (WA), but only for the purpose of enabling the person to participate in a shooting competition conducted by an approved club or organisation (or for such other purposes as may be prescribed by the Firearms Regulations).

- b. A person who is a resident of another State or Territory, and is the holder of the equivalent of a category C licence issued under the law in force in that State or Territory for a shotgun, is exempt under section 8 of the *Firearms Act 1973* (WA), but only for the purpose of participating in a recognised clay target shooting competition conducted by an approved club or organisation (or for such other purposes as may be prescribed by the Firearms Regulations).

123.2 Section 17A of the *Firearms Act 1973* (WA) should be retained to cover interstate group permits.

123.3 The Police Commissioner should provide appropriate instruction to police officers to ensure an adequate understanding of the acceptance of interstate licences and the acceptable proof of authorisation in that regard.

19.2 International permits

The Commission considered international permits at page 116 of the Discussion Paper. Most stakeholders were in agreement that a nationally recognised permit should be developed as set out in Proposal 24. The Commission recommends that Western Australia contributes to the development of a nationally recognised permit for international participants in firearm competitions.

Recommendation 124:

The Western Australia Government should promote the development of a nationally recognised permit for international participants in firearm competitions.

CHAPTER TWENTY: LAW ENFORCEMENT

20.1 Offences by corporations

Section 21A(1) and (2) deal with the responsibilities for the conduct of a business under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence and ensure joint responsibility between the licence holder and a person operating under his or her permission.

Section 21A(3) appears to hold any licence holder liable for contraventions by an agent, employee or person acting on behalf of the licence holder where the contravention is done on the premises to which the licence relates.

Section 21B of the Firearms Act provides that officers or persons concerned with the management of the business may be liable for an offence of the relevant body corporate. This provision applies specifically to holders of a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence and there does not appear to be similar provisions for other body corporate licence holders.

By contrast, section 72 of the *Firearms Act 2015* (SA), has a general provision in respect to any corporation, under which the corporation's directors may be found guilty of an offence. The Commission recommends that sections 21A and 21B of the Firearms Act be amended to clarify which provisions apply only to holders of Dealer's, Repairer's or Manufacturer's Licences and their agents or employees and which provisions apply more generally in respect to corporations.

The Commission also recommends that a general provision be inserted modelled on section 72 of the *Firearms Act 2015* (SA) to provide that if a corporation is guilty of an offence under the Firearms Act, the directors of the corporation are each guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person, unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence by the corporation.

Recommendation 125:

125.1 Sections 21A and 21B of the *Firearms Act 1973* (WA) should be amended to clarify which provisions apply only to holders of Dealer's, Repairer's or Manufacturer's Licences and their agents or employees and which provisions apply more generally in respect to corporations.

125.2 A general provision should be inserted modelled on section 72 of the *Firearms Act 2015* (SA) to provide that if a corporation is guilty of an offence under the *Firearms Act 1973* (WA), the directors of the corporation are each guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person, unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence by the corporation.

20.2 Whistle-blower provisions

The Commission has considered the ability of third parties to report firearm's concerns to WA Police. Health professionals may report under the current section 23B of the Firearms Act, and the Commission did not recommend any changes in that regard.

The Commission recommended at Recommendation 99 that section 23BA(1) be deleted in favour of a general reporting mechanism to be provided in the Firearms Legislation. The Commission took note of the 'whistle-blower' provisions in the *Public Interest Disclosure Act 2003* (WA). Modelled on those provisions the Commission recommends that a person be able to make a report to WA Police if:

- he or she is of the opinion that a person who is in possession of a firearm, or intends to apply for licence, permit or other authorisation under the Firearms Act, is not a fit and proper person to possess, carry or use a firearm; and
- he or she believes on reasonable grounds that the information is true; or has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.

The Firearms Legislation should provide for the protection of the identity of the reporting person. The report should not affect the reporting person's liability for anything to which the information relates. A report made in good faith in accordance with the provision must not give rise to a criminal or civil action or remedy.

Recommendation 126:

- 126.1 A person should be able to make a report to WA Police if:
- He or she is of the opinion that a person who is in possession of a firearm, or intends to apply for licence, permit or other authorisation under the *Firearms Act 1973* (WA), is not a fit and proper person to possess, carry or use a firearm; and
 - He or she believes on reasonable grounds that the information is true; or has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.
- 126.2 The Firearms Legislation should provide for the protection of the identity of the reporting person when made in good faith.
- 126.3 The report should not affect the reporting person's liability for anything to which the information relates.
- 126.4 A report made in good faith in accordance with the provision should not give rise to a criminal or civil action or remedy.

20.3 Firearms prohibition orders

Question 40 at page 170 of the Discussion Paper posed the question as to whether firearms prohibition orders should be implemented in Western Australia. Stakeholders were divided as to whether such an order was necessary taking into account the existing powers of the Police Commissioner to prohibit a person from possessing a firearm. Section 20 of the Firearms Act empowers the Police Commissioner to refuse to renew or to revoke any licence, permit or approval relating thereto where satisfied (amongst others) that a person who is the holder of a licence, permit or approval under this Act:

- could not, because of section 11 (fit and proper test), be granted the approval or permit or issued the licence, as the case requires, if the person were then applying for it – section 20(1)(a)(iii); or
- that harm may be suffered by any person as a result of a person retaining or regaining possession of a firearm or ammunition – section 20(1)(aa); or
- that to do so is in the public interest – section 20(1)(ac); or
- that the circumstances in which his approval under this Act was given in relation to any person

or matter no longer prevail – section 20(1)(d).

As mentioned in the Discussion Paper (at page 168), the *Criminal Organisations Control Act 2012* (WA) provides for control orders to be made against members of declared criminal organisations and persons who have an association with a declared criminal organisation, which prevent their possessing or using firearms and the Firearms Regulations also provide restrictions on the grant of Dealer's Licences where the applicant is a close associate of persons who are not fit and proper persons.

While the restrictions in the *Criminal Organisations Control Act 2012* (WA) cannot be applied to prevent persons from accessing firearms who do not fall within the narrow categories in that Act, such as those who may have, for instance, a long history of violent offending or threatening behaviour it is unlikely that a person with such a history would be regarded as 'fit and proper' under section 11 of the Firearms Act.

The provisions of the Firearms Act therefore do not appear to rule out entirely the possibility of persons who are not fit and proper persons being capable of accessing firearms. Further, the restrictions provided for in the *Criminal Organisations Control Act 2012* (WA) will only apply to particular classes of persons. In view of this, the Commission considers that it is worth exploring whether a system of firearms prohibition orders ought to be adopted in Western Australia.

20.3.1 Firearms prohibition orders in other jurisdictions

South Australia

Section 43 of the *Firearms Act 2015* (SA) provides that an interim firearms prohibition order may be issued by a police officer if the police officer suspects on reasonable grounds that possession of a firearm by the person would be likely to result in undue danger to life or property; or the person is not a fit and proper person to possess a firearm.

Some of the other provisions relevant to the interim order are:

- the order only comes into force against the person when it is served personally on the person;
- it expires 28 days after the Registrar is given written notice of the person's address for service;
- if a police officer proposes to issue an interim firearms prohibition order against a person the officer may require the person to remain at a particular place while the order is prepared and issued so that the order may be served on the person; or accompany the officer to the nearest police station for the order to be served; and
- if the person refuses or fails to comply with the requirement or the officer has reasonable

grounds to believe that the requirement will not be complied with, the officer may arrest and detain the person in custody (without warrant) for so long as may be necessary for the order to be served on the person; or two hours, whichever is the lesser.

Section 44 provides for the issue of a firearms prohibition order against a person by the Registrar if satisfied that possession of a firearm by the person would be likely to result in undue danger to life or property; or the person is not a fit and proper person to possess a firearm, and that it is in the public interest that a firearms prohibition order should apply to the person. This section also contains a separate provision similar to that mentioned above in the *Criminal Organisations Control Act 2012* (WA).

The effect of the order is that any licence or permit under the Act held by the person is suspended and such person must not acquire, possess or use a firearm, a firearm part, a sound moderator or ammunition and must immediately surrender to the Registrar all firearms, firearm parts, sound moderators and ammunition owned by or in the possession of the person.

Section 57(11) of the *Firearms Act 2015* (SA) provides that a police officer may, as reasonably required for the purpose of ensuring compliance with a firearms prohibition order issued by the Registrar or to which a person is subject by order of a court:

- detain a person to whom this subsection applies and search the person for any firearm, firearm part, sound moderator, ammunition or licence liable to seizure under this section; and
- stop and detain a vehicle, vessel or aircraft to which this subsection applies and search the vehicle, vessel or aircraft for any firearm, firearm part, sound moderator, ammunition or licence liable to seizure under this section; and
- enter premises to which this subsection applies and search the premises for any firearm, firearm part, sound moderator, ammunition or licence liable to seizure under this section.

Section 57(11) applies:

- to a person who a police officer suspects on reasonable grounds is a person to whom a firearms prohibition order issued by the Registrar applies or to which the person is subject by order of a court; and
- to a vehicle, vessel or aircraft that a police officer suspects on reasonable grounds:
 - is in the charge of a person to whom the subsection applies; or
 - is a vehicle, vessel or aircraft in which a person to whom this subsection applies is or was

a passenger (other than a vehicle, vessel or aircraft to which the public are admitted); and

- to premises that a police officer suspects on reasonable grounds –
 - are occupied by, or under the care, control or management of, a person to whom the subsection applies; or
 - are premises in which a person to whom this subsection applies is or was present (other than premises to which the public are admitted).

New South Wales

In New South Wales, section 73 of the *Firearms Act 1996* (NSW) provides the Commissioner of Police with the authority to make a firearms prohibition order, prohibiting a person from possessing a firearm if, in the Commissioner's opinion, the person is not a fit person, in the public interest, to have possession of a firearm. The effect of the order is set out under section 74 of the Act. In summary, it is an offence for a person subject to a firearms prohibition order to:

- possess or acquire a firearm, firearm parts or ammunition;
- reside in premises where a firearm, firearm parts or ammunition is kept; or
- for another person to sell or give a firearm, firearm parts or ammunition to someone they know is subject to such an order.

In 2013 police powers under firearms prohibition order provisions were strengthened. Under section 74A(2) of the *Firearms Act 1996* (NSW) a police officer, without warrant, may:

- (a) detain a person who is subject to a firearms prohibition order, or
- (b) enter any premises occupied by or under the control or management of such a person, or
- (c) stop and detain any vehicle, vessel or aircraft occupied by or under the control or management of such a person,

and conduct a search of the person, or of the premises, vehicle, vessel or aircraft, for any firearms, firearm parts or ammunition.

These powers may be exercised 'as reasonably required' for the purpose of determining whether a firearms prohibition order subject has committed an offence under section 74.

In recognition of the potential far-reaching impact of expanded police powers, section 74B required the Ombudsman New South Wales to monitor and review police exercise of search powers two years following commencement of section 74A. The review, published 12 September 2016, made a number of

recommendations to ensure fair and reasonable use of the search powers (see *Review of police use of the firearms prohibition order search powers* – August 2016, by the Ombudsman New South Wales, hereafter called the ‘Search Powers Review’).

Of particular concern to the Ombudsman was the interpretation of section 74A(1) which provides that the powers of a police officer under this section may be exercised as reasonably required for the purposes of determining whether a person who is subject to a firearms prohibition order has committed an offence of certain provisions of the Act.

The Ombudsman identified 14 per cent of search events proceeded solely on the basis that the person was a firearms prohibition order subject. The Ombudsman was of the view that searches on this basis alone were not sufficient to meet the ‘reasonably required’ test and that such searches may be beyond the search powers. A recommendation was made that section 74A be amended or NSW Police Force policy be revised to clarify this. A further recommendation is that a program of police education be undertaken to ensure lawful use of firearms prohibition order searches.

The New South Wales firearms prohibition order does not expire. Search powers can be exercised over a person’s lifetime unless the order is revoked. The Ombudsman recommended that the firearms prohibition order expire five years after service, at which point the Commissioner may issue a fresh order if required. The Ombudsman suggested that this would ensure currency of information regarding risks posed by a firearms prohibition order subject, therefore reducing the risk of powers having unreasonable impact on individuals.

In regards to powers to search persons, vehicles and premises, the following findings and recommendations were made by Ombudsman NSW in its Search Powers Review:

- the law in relation to person searches (strip searches) be clarified so that police must follow the same processes as for non-firearms prohibition order searches to maintain people’s privacy and dignity;
- it may be appropriate to expand search powers to those who are not subject to a firearms prohibition order to prevent firearms being hidden during a search;
- the legislation relating to firearms prohibition order searches of premises be clarified for police to have power to search a vehicle parked on premises even if it is not under the control or management of a firearms prohibition order subject;

- written information about police firearms prohibition order search powers should be provided to any person in the premises subject to a search, so that occupiers understand that police are acting lawfully;
- current legislative provisions, which impede police use of video recordings when undertaking firearms prohibition order premises searches, be changed to allow for recordings; a standard accountability measure; and
- current legislative provisions that impede seizure powers during firearms prohibition order searches be changed, to provide police with clear legislative authority to seize any firearms, firearm parts or ammunition found during the exercise of firearms prohibition order search powers.

20.3.2 Western Australia and firearms prohibition orders

Section 20 of the Firearms Act sets out the Police Commissioner’s powers to refuse to renew or to revoke any licence, permit or approval. The exercise of that power does not prohibit a person from having possession of a firearm in general; for example, such a person could still access firearms under the exemptions. In addition, there are no special provisions relating to police powers of search and seizure that are enlivened under section 20.

Current police powers under section 24 of the Firearms Act are in respect to a person in possession of a firearm or ammunition and entry and search of premises on which there are reasonable grounds to suspect that any firearm or ammunition may be found in the possession of such a person.

Section 24(4)(b) allows a member of the WA Police to stop, search, and detain any person who is suspected on reasonable grounds of having a firearm or ammunition in his or her possession without lawful excuse; and any vehicle or conveyance where there are reasonable grounds to suspect that a firearm is kept without lawful excuse.

These powers may be exercised without warrant except that the entry and search powers can only be exercised without warrant if:

- the member of the Police Force is reasonably of the opinion that there is an immediate threat of harm being suffered by a person;
- the delay that would be involved in obtaining a warrant would be likely to increase the risk or extent of such harm; and
- gives the Police Commissioner, after the powers are exercised, a written report explaining the reason for that opinion.

Recommended firearms prohibition order

The Commission recommends that Western Australia introduces firearms prohibition order provisions in the Firearms Act in order to:

- be able to prevent a person, who is not a fit and proper person, from possessing a firearm whether they have had a licence revoked, not renewed, operate under an exemption, or as a Nominated Person or have never held a firearms licence;
- provide for higher penalties in the case of possession of a firearm when in breach of a firearms prohibition order;
- be able to consider whether to provide increased police entry, search and seizure powers specific to enforcement of firearms prohibition order; and
- facilitate enforcement of interjurisdictional firearms prohibition orders.

The Commission recommends that the new firearms prohibition order provisions be modelled on sections 73 and 74 of the *Firearms Act 1996* (NSW) subject to the following:

- a firearms prohibition order may be issued by the Police Commissioner if satisfied that: possession of a firearm by the person would be likely to result in undue danger to life or property; or the person is not a fit and proper person to possess a firearm, and that it is in the public interest that a firearms prohibition order should apply to the person; and
- a firearms prohibition order expire five years after service, at which point the Police Commissioner may issue a fresh order if required.

Entry, search and seizure

The Commission considered the new firearms prohibition order entry, search and seizure provisions in the light of balancing the rights of an individual as against the safety of the community. The search and seizure powers in South Australia and New South Wales are broad and the NSW Search Powers Review expressed particular concern with regard to the extent of searches undertaken for no reason other than the fact that a person was subject to a firearms prohibition order.

The Commission has been provided no evidence to suggest that such broad powers are necessary in Western Australia and views the potential impact of the exercise of these powers on individuals as a serious concern.

In the light of this, the Commission recommends that the entry, search and seizure powers in respect of firearms prohibition orders be as contained under the current section 20 of the Firearms Act, that is, the powers may be exercised as reasonably required for

the purpose of ensuring compliance with a firearms prohibition order and can be exercised without warrant if:

- the member of the WA Police is reasonably of the opinion that there is an immediate threat of harm being suffered by a person; and
- the delay that would be involved in obtaining a warrant would be likely to increase the risk or extent of such harm; and
- gives the Police Commissioner, after the powers are exercised, a written report explaining the reason for that opinion.

There must be clear legislative authority to seize any firearms, firearm parts or ammunition found during the exercise of firearms prohibition order search powers.

Review

A decision to make a firearms prohibition order should be reviewable, unless such person would already have been ineligible to possess or use a firearm under another non-reviewable provision of the Firearms Act.

Recommendation 127:

127.1 The *Firearms Act 1973* (WA) should be amended to provide for firearms prohibition orders.

127.2 The new firearms prohibition order provisions should be modelled on sections 73 and 74 of the *Firearms Act 1996* (NSW) subject to the following:

- a. a firearms prohibition order may be issued by the Police Commissioner if satisfied that: possession of a firearm by the person would be likely to result in undue danger to life or property; or the person is not a fit and proper person to possess a firearm, and that it is in the public interest that a firearms prohibition order should apply to the person; and
- b. a firearms prohibition order expire five years after service, at which point the Police Commissioner may issue a fresh order if required.

127.3 The entry, search and seizure powers in respect of firearms prohibition orders should be as contained under the current section 24 of the *Firearms Act 1973* (WA), that is, the powers may be exercised as reasonably required for the purpose of ensuring compliance with a firearms prohibition order and can be exercised without warrant if:

- a. the member of the WA Police is reasonably of the opinion that there is an immediate threat of harm being suffered by a person;
- b. the delay that would be involved in obtaining a warrant would be likely to increase the risk or extent of such harm; and
- c. gives the Police Commissioner, after the powers are exercised, a written report explaining the reason for that opinion.

127.4 There should be clear legislative authority to seize any firearms, major firearm parts or ammunition found during the exercise of firearms prohibition order search powers.

127.5 A decision to make a firearms prohibition order should be reviewable, unless such person would already have been ineligible to possess or use a firearm under another non-reviewable provision of the *Firearms Act 1973* (WA).

127.6 The *Firearms Act 1973* (WA) should include provisions to facilitate enforcement of firearms prohibition orders made in other jurisdictions and WA Police should engage with law enforcement agencies in other jurisdictions to ensure they are noted.

20.4 Family violence and firearms licences

The Commission asked for comment on the interaction between the Firearms Act and the *Restraining Orders Act 1997* (WA) (Restraining Orders Act) at Question 42 of the Discussion Paper.

Under the Firearms Act the Police Commissioner can form an opinion that a person is not fit and proper if satisfied that at any time within the period of five years before the person applies for the approval, permit or licence, the person was convicted of an offence involving violence (section 11(3)(a)(ii)) or that a violence restraining order was made against the person (section 11(3)(a)(iv)). The definition of violence restraining order in section 11(4) of the Firearms Act includes an interim violence restraining order. These provisions allow for the Police Commissioner to refuse an application for a licence or to revoke a licence under section 20 of the Firearms Act.

The Commission is of the view that where an interim restraining order was issued and later was discharged and not made final then that interim order should not be sufficient ground for forming an opinion that a person is not a fit and proper person. The

Commission recommends that section 11(3)(a)(iv) be amended accordingly.

Section 27A of the Firearms Act deals with the situation from the point of view of the courts. Under section 27A(1) a court making a violence restraining order against a person may order that, for a term set by the court or until a court orders to the contrary, the person be disqualified from holding any licence, permit, or approval, or any particular licence, permit, or approval, under this Act.

20.4.1 Usual order prohibiting possession of a firearm

While WA Police is satisfied as to the interaction between the Firearms Act and the Restraining Orders Act, many stakeholders were unhappy with the effect of interim violence restraining orders on the possession of firearms. These stakeholders agreed that there should be no tolerance of family violence. The request was that the Commission consider a provision which allows the restrained person to apply to the court early in the process for a variation of an interim order which permits him or her to have possession of firearms, subject to appropriate safeguards. Other stakeholders suggested that in the absence of evidence of the misuse of a firearm, a threat of using a firearm or mental instability, a violence restraining order should not automatically result in the removal of a firearm.

Due to the inherent potential risk to victims, which is far greater than the risk to licence holders of an incorrect disqualification, the Commission is not prepared to recommend any relaxation to section 14(1) of the Restraining Orders Act which provides that, subject to some exceptions, every violence restraining order includes a restraint prohibiting the person who is bound by the order from being in possession of a firearm or firearms licence, and from obtaining a firearms licence. Nor will the Commission recommend any change to the automatic seizure of firearms under an interim restraining order.

20.4.2 Variation of order to use a firearm

The Commission gave consideration to the ability of a respondent to apply to the court early in the process for a variation of an interim order. Section 14(5) of the Restraining Orders Act provides that when making a violence restraining order a court may permit the respondent to have possession of a firearm, and, if necessary, a firearms licence relating to it, on such conditions as the court thinks fit if satisfied that:

- a) the respondent cannot carry on the respondent's usual occupation unless the respondent is permitted to have possession of a firearm;
- b) the behaviour in relation to which the order was sought did not involve the use, or threatened use, of a firearm; and

- c) the safety of any person, or their perception of their safety, is not likely to be adversely affected by the respondent's possession of a firearm.

Section 31 of the Restraining Orders Act gives the respondent of an interim order up to 21 days to complete the respondent's endorsement copy of the order in accordance with the instructions on it, and return it to the registrar, indicating an objection to the order. In such event a hearing date is fixed and section 33(2)(d) states that if the interim order includes a restraint on the respondent that prohibits or restricts the respondent from being in possession of a firearm that the respondent reasonably needs in order to carry on his or her usual occupation, the registrar is to ensure that the date fixed for the final order hearing is as soon as practicable after the respondent returns the respondent's endorsement copy of the interim order.

The Commission considers the provisions of the Restraining Orders Act sufficient to provide an early opportunity for a licence holder to show the court that there is no risk to the alleged victim and the firearm is required for employment purposes. In addition to section 33(2)(d), section 45 states that an application can be made to vary a restraining order and section 46(4)(a)(iii) provides that leave can be granted to vary an interim order if the restraints imposed by the order are causing 'serious and unnecessary hardship', and that it is 'appropriate that the application is heard as a matter of urgency'.

20.4.3 Suspension of licence duration period

The Commission's view is that some improvements can be implemented in regard to the period during which a licence holder is disqualified under a court order. The Commission recommends amendments to provide that while a licence is suspended under the section 27A(1) disqualification period, the duration period of the licence is also suspended (unless the licence is revoked by the Police Commissioner). This will prevent the licence from lapsing while the violence restraining order matter is being concluded.

Recommendation 128:

Where an interim restraining order was issued and was discharged without a final restraining order being made then that interim order should not be used as evidence for forming an opinion that a person is not a fit and proper person and section 11(3)(a)(iv) of the *Firearms Act 1973* (WA) should be amended accordingly.

Recommendation 129:

The *Firearms Act 1973* (WA) should be amended to provide that while a licence is suspended under the section 27A(1) disqualification period, the duration period of the licence is also suspended (unless the licence is revoked by the Police Commissioner).

20.5 Automatic temporary suspension on a charge of a violent offence

Proposal 42 suggested that the Firearms Act be amended to provide for an automatic temporary suspension of licences and temporary surrender of firearms where a person has been charged with a pre-defined offence under the Firearms Act, an offence involving assault with a weapon or an offence involving violence.

Section 24(2) of the Firearms Act provides that a police officer may 'seize and take possession of any firearm or ammunition that is in the possession of a person, whether or not the person is licensed or otherwise authorised to possess it', if in the police officer's opinion possession of the firearm or ammunition by that person may result in harm being suffered by any person; or that person is not at the time a fit and proper person to be in possession of it. In addition the Police Commissioner has the power to revoke a licence under section 20. A licence could be revoked on the basis that a person has been arrested for a serious violent offence.

The potential benefit of an automatic licence suspension is that it could also reduce any possible time lag between a person being charged and the suspension of the licence.

WA Police is not in favour of Proposal 42 (submission dated 9 February 2016, page 32) and is satisfied with the current position under section 24(2) of the Firearms Act. In their submission, WA Police maintain that 'whilst the intent of this proposal has merit, the practice of seizure of firearms in all instances as dictated would require considerable operational activity, result in the seizure of significant number of firearms and burden WA Police with further administrative and procedural practices'.

Most stakeholders were of the view that the suggestions in Proposal 42 are not required; they were more concerned with the manner in which seized firearms are dealt with when WA Police act under section 24(2). It was alleged that WA Police will not always return the firearm, nor revoke the licence. The Commission's recommendations in the next section should clarify the obligations upon seizure.

The Commission has noted some serious concerns raised by the Sheriff of Western Australia (under

submission from the Department of the Attorney General dated 12 February 2016) in relation to the possession of licensed firearms by parties that may not be fit and proper. This point has been mentioned in Chapter 8 regarding the fit and proper test.

Recommendation 130:

Automatic temporary suspensions should not be included in the *Firearms Act 1973* (WA).

20.6 Seizure of firearms

Section 24(2) of the Firearms Act provides that a member of the WA Police may seize and take possession of any firearm or ammunition that is in the possession of a person, whether or not the person is licensed or otherwise authorised to possess it if, in the opinion of the member of the WA Police, possession of it by that person may result in harm being suffered by any person; or that person is not at the time a fit and proper person to be in possession of it.

Due to the lack of clarity in the requirements surrounding the treatment of firearms which are seized by WA Police under the Firearms Act, Proposal 40 on page 167 of the Discussion Paper suggested that the requirements of regulation 22A of the Firearms Regulations be amended to apply to all cases of seizure. Regulation 22A only applies to cases where WA Police exercises powers of entry without a warrant under section 24(2a) of the Firearms Act and, when those powers are exercised, any firearm or ammunition was seized or taken under section 24(2).

Some stakeholders expressed concern that by applying regulation 22A to all seizure it is moving responsibility away from the WA Police and putting the onus on the potentially innocent person to retrieve his or her property within the time limits. The Commission is satisfied that under regulation 22A(6)(a) the Police Commissioner must return a firearm to an owner within 21 days of notification of the Licensing Authority under regulation 22A(3) if no further action is taken against him or her. The Commission considers it important that the 21 day period is strictly adhered to.

The Commission recommends that a provision be incorporated in the Firearms Legislation that applies to all seizure of firearms, ammunition or major firearm parts, which clearly sets out the rights and responsibilities of all parties. The provisions of regulation 22A(3) to 22A(9) of the Firearms Regulations should be used for this purpose.

At Proposal 41, dot point 2, the Commission also considered seizure upon revocation of a licence. Section 33(1)(c) of the Firearms Act, which deals with disposal of firearms that are in the possession of WA Police, provides a three month period for the

owner to dispose of it. Regulation 13 of the Firearms Regulations requires a revoked licence to be delivered to a police station within seven days of receipt of the notice of revocation. The Commission recommends that section 20 be amended to clearly set out the rights and obligations of the parties upon refusal to renew or revocation of any licence, permit or approval, including the time period within which the firearm and ammunition must be disposed of and the circumstances under which and the manner in which the firearm and ammunition may be seized.

Recommendation 131:

131.1 A provision should be incorporated in the Firearms Legislation that applies to all seizure of firearms, ammunition or major firearm parts; which clearly sets out the rights and responsibilities of all parties; and which is modelled on the provisions of regulation 22A(3) to 22A(9) of the *Firearms Regulations 1974* (WA).

131.2 Section 20 of the *Firearms Act 1973* (WA) should be amended to clarify:

- a. the period during which a person must dispose of firearms and ammunition following refusal to renew or revocation of his or her licence; and
- b. when and how WA Police may seize firearms and ammunition following refusal to renew or revocation of a licence.

Police powers of seizure are exercisable solely on the basis of a police officer's opinion and are most likely couched in those terms in order to prevent immediate or imminent harm to any person. At Question 39 of the Discussion Paper, dot points 1, 2 and 3, the Commission asked whether the concept of reasonableness ought to be a requirement for reaching an opinion prior to exercising section 24 powers of seizure.

The Commission is of the view that in respect to section 24(1) of the Firearms Act the onus should be on the possessor of the firearm to provide evidence of authority to possess. As such the Commission does not recommend any amendment in that regard.

Section 24(2) of the Firearms Act deals with circumstances where a police officer is of the opinion that possession may result in harm to any person or that the possessor is not fit and proper to be in possession. In this case the Commission's view is that due to the potential of imminent harm and the fact that the power is seizure and not detention of a person, the provision does not require reference to 'reasonableness'. The concept of 'reasonableness'

is part of section 24(2a) where the police officer is considering entry and search of a premises.

The Commission recommends that a requirement of reasonableness be introduced in section 24(3) so that an opinion that a firearm is unsafe or unserviceable is based on reasonable grounds. While it is likely that a reasonableness test would always be applicable, the introduction of the word in this section may assist in alleviating any public concern there may be in this context.

Question 39, dot point 4 asked whether section 24(6) should be amended to apply to people who are administering the Firearms Legislation but who are not members of the WA Police, such as if a person refuses without lawful excuse to answer any question put by a member or any staff of WA Police. This was not supported by the WA Police (submission dated 9 February 2016, page 30) nor by most other stakeholder and the Commission sees no reason to recommend any amendments in that regard.

Recommendation 132:

A requirement of reasonableness should be introduced in section 24(3) of the *Firearms Act 1973* (WA) so that an opinion that a firearm is unsafe or unserviceable is based on reasonable grounds.

20.7 Disposal

Under section 33(1)(a) of the Firearms Act the Police Commissioner may only dispose of a firearm if the owner cannot be found. The Commission is of the view that for the sake of clarity the provision should specify that the Police Commissioner should take all reasonable steps to locate the owner prior to disposal.

Recommendation 133:

Section 33(1)(a) of the *Firearms Act 1973* (WA) should be amended to specify that the Police Commissioner take all reasonable steps to locate the owner prior to disposal.

20.8 Definition of possession

20.8.1 Deemed possession and major firearm parts

Section 25(2) of the Firearms Act states that where any firearm is carried in parts by, or is otherwise in the possession of, two or more persons each and every one of those persons is deemed to be in possession of the firearm.

With the recommendation to include the term 'major firearm parts' in the Firearms Act (Recommendation:

9), the Commission considered whether a major firearm part could itself be carried in parts and if so, whether the 25(2) deeming provision should apply. The Commission is of the view that although a major firearm part could be broken down further, these smaller components should fall outside of any provisions relating to unlawful possession.

20.8.2 Definition of possession

Section 4 of the Firearms Act defines possession as follows: "in addition to actual physical possession of a firearm or ammunition, means the custody or control of it, or having and exercising access to it in any place either alone or in common with others'. The Commission considers that under this definition knowledge is a pre-requisite to being said that a person is in possession.

As discussed on page 155 of the Discussion Paper, the 2008 Police Review recommended that the definition of 'possession' in the Firearms Act be amended to reflect more clearly the requirements of the National Firearms Trafficking Policy Agreement, in particular to deal with the potential difficulty in identifying who out of a group of offenders could be charged for possession of an unlawful firearm, where there was no actual physical possession by any in the group.

Question 32 of the Discussion Paper called for comments on the definition. The Commission considered whether possession should include cases where it cannot be shown that a person has actual knowledge of the presence of the firearm.

Section 6 of the *Firearms Act 2015* (SA) deals with the issue of possession and contains the following provision which goes beyond the Western Australian definition (this provision is also in the *Firearms Act 1977* (SA) at section 5(14)), that is a person also has possession if the person occupies, or has care, control or management of, premises, or is in charge of a vehicle, vessel or aircraft, where the item is found. Section 6(3) qualifies this by stating that it does not apply if the person proves that:

- he or she did not know, and could not reasonably be expected to have known, that the item was on or in the premises, vehicle, vessel or aircraft; or
- the item was in the lawful possession of another or he or she believed on reasonable grounds that the item was in the lawful possession of another.

The Commission is of the view that the aforementioned South Australian provision will bring the definition of possession in line with the National Firearms Trafficking Policy Agreement mentioned above. While this may expose individuals to the risk of criminal charges in respect of firearms the existence and presence of which they may not have been aware, the qualifications will provide innocent

parties with an appropriate defence (albeit that they would have the onus of proof in that regard).

Recommendation 134:

- 134.1 The current definition of 'possession' in the *Firearms Act 1973* (WA) should be expanded to include that a person has possession of an item if the person occupies, or has care, control or management of, premises, or is in charge of a vehicle, where the item is found.
- 134.2 The expanded portion of the definition should not apply if the person proves that:
- a. he or she did not know, and could not reasonably be expected to have known, that the item was on or in the premises or vehicle; or
 - b. the item was in the lawful possession of another or he or she believed on reasonable grounds that the item was in the lawful possession of another.

20.9 Forfeiture of firearms upon conviction

In terms of section 28 of the *Firearms Act* when a person is convicted for any offence under any written law, the court may order that any firearm, ammunition, silencer, or any other item to which the *Firearms Act* applies 'relating to the charge' be forfeited to the Crown. This provision appears to be limited by the phrase 'relating to the charge' particularly in a case where the offender has multiple firearms or where a person is convicted of a serious violent offence that does not involve a firearm.

Proposal 41, dot point 3 of the Discussion Paper was a suggestion to alleviate this issue. Most stakeholders were in support of the suggestion although some were concerned that the phrase 'involves physical violence' could incorporate relatively minor offences. The Commission agrees that the phrase is broad but is of the view that judicial discretion would limit its operation to cases where the court considers forfeiture is appropriate in the circumstances of the case and any existing antecedents.

20.10 Disqualification under the Sentencing Act

The recommendation under the previous section relates to forfeiture of firearms. Proposal 41, dot point 1 of the Discussion Paper proposed an amendment to section 106 of the *Sentencing Act 1995* (WA) which deals with the disqualification of an offender from holding or obtaining a licence, permit or approval under the *Firearms Act*. The Commission suggested that section 106 be strengthened by providing a

rebuttable presumption that a disqualification order will be made under certain circumstances.

At page 174 of the Discussion Paper the Commission pointed out that it appeared that disqualification orders were only made by the courts in a minority of cases. The concern that this proposal seeks to address is that where disqualification is not specifically raised in court it may be that the possibility of such an order could be overlooked. Many stakeholders including WA Police (submission of 9 February 2016, page 32) were in favour of the proposal.

Some stakeholders were of the view that there is nothing to suggest that the courts are having difficulty with the application of section 106 or that it is being overlooked. The Commission was referred to the case of *Carley v Birnie* [2015] WASC 494 (*Carley* case) which has proved informative.

The disqualification powers under section 106 apply to a firearms offence, an offence involving assault with a weapon and an offence involving violence. The court in the *Carley* case (at 50) stated in passing that the definition of 'firearm offence' did not specifically refer to the *Firearms Regulations*. The Commission recommends that the definition be amended to include an offence under the *Firearms Regulations*.

Of more direct relevance to the proposal under consideration in this section is that the court in the *Carley* case (at 50-53) paid careful consideration to the seriousness of the offence and the facts of the case when considering whether disqualification ought to apply. It is important to note that, unlike forfeiture under section 28 of the *Firearms Act*, section 106 of the *Sentencing Act 1995* is a sentence. As such the Commission considers that it is appropriate that the section remain unamended to retain judicial discretion as opposed to including a rebuttable presumption.

Recommendation 135:

The definition of 'firearm offence' in section 106 of the *Sentencing Act 1995* (WA) should be amended to include an offence under the *Firearms Regulations 1974* (WA).

Recommendation 136:

Section 28 of the *Firearms Act 1973* (WA) should be amended to extend its operation to allow forfeiture of any firearms upon conviction where the charge or offence either involves physical violence, or involves the use or threatened use of a firearm.

20.11 Infringements

At page 156 of the Discussion Paper the Commission considered whether there were any additional offences in the Firearms Legislation which were appropriate to be included under the infringement regime. Proposal 39, dot point 3 suggested that those offences in sections 22A(2), 22A(3), 22B, 22C, 23, 30, 30A, 30B, 31 and 32 of the Firearms Act that do not include imprisonment as a penalty be prescribed as offences in respect of which infringement notices may be issued.

Many stakeholders were of the view that the offences under the sections referred to should not be offences at all. The Commission is of the view, as a general proposition, that a failure to meet an obligation should carry a penalty. Where the offences are relatively minor (and do not have the possibility of imprisonment), the infringement procedures are appropriate and should be followed.

WA Police reiterated its support for this proposal in its submission dated 9 February 2016 (page 29). The Commission is satisfied that this proposal is reasonable and in the interest of licence holders and recommends that the Firearms Act be amended to provide that infringement notices may be issued in respect of certain prescribed offences that do not have imprisonment as a possible penalty.

Recommendation 137:

Those offences in sections 22A(2), 22A(3), 22B, 22C, 23, 30, 30A, 30B, 31 and 32 of the *Firearms Act 1973* (WA) that do not include imprisonment as a penalty should be prescribed as offences in respect of which infringement notices may be issued.

20.12 Amnesty

The Commission has considered the various situations where a person may be in possession of a firearm without exemption or licence but without necessarily having culpability. The Discussion Paper set out a number of examples at page 151 including:

- a person might be concerned about the mental health of a family member who owns a firearm and remove it from him or her;
- a person may inherit a firearm as part of a deceased estate; or
- a person may pick up an abandoned firearm or otherwise be in possession of an unlicensed firearm.

In these cases the possessor of the firearm may want to hand the firearm over to the WA Police or may wish to proceed with licensing.

Under section 6(2)(a) and (b) of the *Weapons Act 1999* (WA), a person does not commit an offence of carrying or possessing a prohibited weapon if the person is doing so only so as to deliver it into the custody of a member of the WA Police or an employee of the WA Police. There is no similar provision in the Firearms Act although WA Police has indicated that it has 'a non-publicised permanent amnesty to cater for persons who come into possession of a firearm in innocent circumstances' (submission dated 16 June 2015, page 9).

There are currently negotiations under way between the Commonwealth, States and Territories for a national firearms amnesty under which firearms can be handed back without penalty.

In South Australia the General Firearms Amnesty, which commenced on 1 December 2015 and was to conclude on 30 June 2016 has been extended until 31 December 2016. Members of the public in possession of unwanted, unregistered or illegal firearms, firearm parts, mechanisms, fittings, prohibited firearm accessories, silencers and ammunition may hand these in at a participating licensed firearms dealer's premises or to police at any police station during the amnesty period without fear of prosecution. The general amnesty must be declared by the Registrar with approval of the Minister under section 37 of the *Firearms Act 1977* (SA).

It is noteworthy that in the new *Firearms Act 2015* (SA), South Australia, like Tasmania's section 129 of the *Firearms Act 1996* (Tas), has moved towards a permanent amnesty. Section 64(1) of the *Firearms Act 2015* (SA) provides that:

A person may bring a firearm or ammunition, or a firearm part, prohibited firearm accessory, sound moderator or a restricted firearm mechanism, (an "unauthorised item") to a police station, or to another location approved by the Registrar, and surrenders it to the Registrar, and no action is to be taken against the person in respect of any offence relating to the unauthorised possession of the item by that person.

Section 64 also deals with the application to obtain the necessary authority to possess the item that was handed in and for the manner in which to deal with disposal of the surrendered item.

While the WA Police is of the view that a formal amnesty is not required (submission dated (February 2016, page 28). The Commission does not agree and considers certainty in this regard important to proper administration of firearms. The Commission recommends that the Firearms Act include a permanent general amnesty modelled on section 64 of the *Firearms Act 2015* (SA).

The Commission considered whether the amnesty provision should permit the surrender of firearms to a licensed dealer. While it would amount to double-

handling, in that the dealer would have to hand the firearms over to the WA Police in any event, innocent possessors may be less fearful to approach a dealer. The Commission is of the view that there is merit in allowing surrender at a dealer but considers that each surrender point outside of the WA Police should be specially considered and considers that section 64(1) of the *Firearms Act 2015* (SA) caters for this by allowing the Licensing Authority to approve surrender locations. This will also allow for licensed dealers to opt out should they wish.

The Commission further recommends that the WA Police website promote the amnesty and includes details as to the various scenarios under which the amnesty provisions could be utilised, including deceased estates.

Recommendation 138:

138.1 The *Firearms Act 1983* (WA) should be amended to include a permanent general amnesty modelled on section 64 of the *Firearms Act 2015* (SA) where:

A person may bring a firearm or ammunition, or a major firearm part, prohibited firearm accessory or silencer to a police station, or to another location approved by the Licensing Authority, and surrender it to the Licensing Authority, and no action is to be taken against the person in respect of any offence relating to the unauthorised possession of the item by that person.

138.2 The WA Police website should promote the amnesty and include details as to the various scenarios under which the amnesty provisions could be utilised, including deceased estates.

20.13 Indictable offences and *The Criminal Code*

The Commission considered whether indictable offences in the Firearms Act should be moved to *The Criminal Code* (page 157 of the Discussion Paper) and Question 34 called for submissions in that regard.

Stakeholders were generally in agreement that for the lay person it is useful to have all firearms-related offences in the Firearms Act. The Commission supports the view that as far as is possible, matters relating to the administration and possession of firearms should appear in a single piece of legislation so that people can more easily understand their obligations.

The Commission does not therefore recommend that indictable offences in the Firearms Act be moved to *The Criminal Code*.

Recommendation 139:

The indictable offences in the *Firearms Act 1973* (WA) should be retained in that Act.

20.14 Similar offences in *The Criminal Code* and the Firearms Act

The Commission considered whether offences in the Firearms Act that are similar to offences in *The Criminal Code* should be consolidated or whether it was appropriate that they appear in both Acts. The principle expressed in the previous section flowed into this question; that offences relating to firearms ought to appear in the Firearms Act.

While sections 19(1ab) and 23(9a) of the Firearms Act are firearms specific, sections 68D(2), 68E(2) and 68(1) of *The Criminal Code* operate more broadly and cover various weapons. For this reason the Commission considers it appropriate that these offences remain in their respective Acts.

In response to Question 36 of the Discussion Paper on this matter, stakeholders for the most part were concerned on the lack of parity between penalty levels for the above offences. As mentioned in the Discussion Paper (page 160) there appear to be disparities between some of the penalties for offences in the Firearms Act and those for offences in *The Criminal Code* where the offences involve very similar elements.

The Commission recommends that the penalties under section 23(9a) of the Firearms Act be increased to at least match that of section 68(1) of *The Criminal Code*.

The Commission notes that sections 68D(2) and 68E(2) of *The Criminal Code* could apply to different types of weapons, most of which are likely less lethal than a firearm. As such it may be appropriate for a person to be charged under those sections with lower maximum penalties with the opportunity for a charge under section 19(1ab) of the Firearms Act if the weapon is a firearm. The Commission does not therefore recommend parity of penalties in this case.

Recommendation 140:

The offences in sections 19(1ab) and 23(9a) of the *Firearms Act 1973* (WA) and in sections 68D(2), 68E(2) and 68(1) of *The Criminal Code* (WA) should remain in their respective Acts.

Recommendation 141:

The penalties under section 23(9a) of the *Firearms Act 1973* (WA) should be increased to at least match that of section 68(1) of *The Criminal Code* (WA).

20.15 Interstate firearm offences

At page 161 of the Discussion Paper the Commission observed that while the National Firearms Trafficking Policy Agreement resolved that all jurisdictions would make it an offence to conspire to commit an interstate firearm offence, Western Australia has not implemented this. The *Firearms Act 2015* (SA) has a new provision to meet the national resolution referred to. This new provision under section 73 of that Act provides that :

- (1) A person must not, in this State—
 - (a) aid, abet, counsel or procure the commission of an offence in any place outside this State, being an offence punishable under the provisions of a law in force in that place that corresponds to a provision of this Act; or
 - (b) conspire with another to commit an offence in any place outside this State, being an offence punishable under the provisions of a law in force in that place that corresponds to a provision of this Act (whether the other conspirator is in this State or elsewhere).
- (2) The maximum penalty for an offence under subsection (1) is the same penalty or forfeiture that the person would be subject to if the offence concerned had been committed in this State.
- (3) A person must not conspire with another to commit an offence under this Act (whether the other conspirator is in this State or elsewhere).
- (4) The maximum penalty for an offence under subsection (3) is the same penalty or forfeiture that the person would be subject to for the offence he or she conspired to commit.

Section 23C of the *Firearms Act* provides that a person who by act or omission is in any way directly or indirectly knowingly concerned in the commission of any offence against the *Firearms Act* is deemed to have committed that offence and is punishable accordingly.

The Commission compared section 23C to section 73 of the *Firearms Act 2015* (SA). The Commission is of the view that the phrase 'in any way directly or indirectly knowingly concerned' in section 23C would cover the same acts or omissions as the words aid, abet, counsel, procure and conspire as used in section 73.

Section 23C refers specifically to an offence under the *Firearms Act* while section 73 refers to an offence punishable under the provisions of a law in force in another state (or other place) that corresponds to a provision of the South Australian Act. The Commission is of the view that where a person in Western Australia is knowingly concerned in the commission of an offence in another state it is possible that it would not be regarded as an offence against the *Firearms Act*.

For the sake of clarity, the Commission recommends that section 23C of the *Firearms Act* be amended to include a provision similar to that of section 73 of the *Firearms Act 2015* (SA).

Recommendation 142:

Section 23C of the *Firearms Act 1973* (WA) should be amended to include a provision similar to that of section 73 of the *Firearms Act 2015* (SA) to give full effect to the resolution, recorded in the National Firearms Trafficking Policy Agreement, to provide for an offence to conspire to commit an interstate firearm offence.

20.16 Offences and penalties under the Firearms Act

The Terms of Reference require the Commission to provide advice on and recommend appropriate legislative changes regarding penalties for firearm offences and, in so doing, consider consistency with penalties in other Australian states and territories.

The offences in the *Firearms Act* are briefly discussed at Annexure 3 of the Discussion Paper while annexures 4 and 5 set out inter-jurisdictional comparisons. It is clear from these annexures that there is no uniformity in penalties across Australia and any drive to obtain uniformity would need to be coordinated at a Commonwealth and interstate level.

While in general terms, Western Australian penalty levels are consistent with the range of penalties in other Australian jurisdictions, there are a number of offences that may require penalty adjustment and the Commission recommends that in the drafting of any new *Firearms Legislation*, particular attention is paid to these.

20.16.1 Trafficking

Question 38 of the Discussion Paper asked whether trafficking should be dealt with separately in the *Firearms Act*. Most stakeholders were in agreement that this should be done in order to emphasise the seriousness of the offence.

Section 7(C) of the *Firearms Act 1996* (Vic) was amended at the end of 2015 to lower the number of

unregistered firearms that is a traffickable quantity from 10 firearms to three firearms. The quantity is now in line with s19(1aa) of the Firearms Act while other states and territories have anything from one to 10 firearms. The Commission is satisfied that the reference to three firearms is satisfactory.

The Commission is of the view that there does not need to be specific mention of an offence of 'trafficking' in the Firearms Act. The Commission recommends however that the offences in regard to three or more firearms be contained in a separate section. The Commission further recommends that the offence be consolidated into that of selling, or acquiring, three or more firearms without authority. In addition both the transferor and transferee may be liable for the offence where they were authorised but they were aware the other party was not.

The penalty of 14 years is on the lower end of an interjurisdictional comparison and an increase to 20 years for a repeat offender should be considered.

20.16.2 Offences with few number of firearms

As recommended in the previous section, the offences for purchasing or acquiring, or for selling or supplying a firearm when less than three, without licence or permit should be consolidated into its own section.

The penalties across Australian jurisdictions for a Category A firearm range from 12 months to seven years and the Western Australia penalty of three to five years appears reasonable. There is greater discrepancy when considering firearms in other Categories where some jurisdictions have up to 15 years while Western Australia only has a maximum seven years for a handgun or prescribed firearms in certain cases.

The Commission recommends that the maximum penalty for handguns, Category D and prohibited firearms be increased to at least 10 years.

20.16.3 Manufacturing

Section 59A of the *Firearms Act 1996* (Vic) was introduced into the Victorian Act at the end of 2015 providing for a penalty of a fine and imprisonment of five or 10 years depending on the circumstances. Section 19(4) of the Firearms Act provides for a penalty of 14 years for a handgun and five years in other cases. Western Australia appears to be on the lower side of a jurisdictional comparison and the Commission recommends that an increase be considered.

20.16.4 Storage and safekeeping

The Commission is of the view that the penalties for offences under section 23(9)(a) and 23(9)(d) of the Firearms Act ought to be increased in order to provide a greater deterrent.

20.16.5 Other specific areas for consideration

The Commission recommends that specific consideration be given to the following additional areas in respect to penalties:

- the formulation of offences and penalties as a result of the introduction of the term major firearm parts into the legislation;
- the penalty in regard to disposing or selling ammunition without licence or permit under section 22A(3) requires a substantial increase;
- the penalty in regard to discharge of a firearm through a public place, dwelling house or across a road under section 23(9)(c); and
- using a firearm on another person's land without permission under section 23(10).

20.16.6 Graduated penalties

The Commission notes that other Australian jurisdictions have graduated penalties depending on the relevant firearm Category and whether it is a first or subsequent offence. The Commission recommends that this approach be considered in the drafting of new legislation.

20.16.7 Improvement of wording in section 23(1)

Section 23(1) of the Firearms Act provides that a person who permits possession of any firearm or ammunition to be taken by another person 'where there are reasonable grounds for believing that he knows, or ought to know, that the other person is affected by alcohol or drugs, or alcohol and drugs, or that the other person is of unsound mind, commits an offence'. The penalty for this offence is imprisonment for 18 months or a \$6,000 fine.

As pointed out in the Discussion Paper the wording of this offence is unusual; it does not simply require that there be reasonable grounds to suspect that a person is affected by alcohol and/or drugs but adds the additional element that there must be reasonable grounds to suspect that the relevant person 'knew or ought to know' that a particular state of affairs existed. The Commission recommends that the language in this offence be reconsidered.

20.16.8 Offence of theft of a firearm

Victoria through the *Firearms Amendment (Trafficking and Other Measures) Act 2015* recently inserted a new section 74AA into their *Crimes Act 1958* (Vic) to add a specific offence for the theft of a firearm and the following penalty: 1800 penalty units or 15 years imprisonment. Section 378 of *The Criminal Code* (WA) creates the offence of stealing and under section 378(5)(f) the penalty is a maximum of 14 years if the offender, in order to commit the offence, opens

any locked room, box, or other receptacle by means of a key or other instrument.

Section 378(5)(f) may not cover every scenario particular to a firearm and the Commission thus recommends that a specific provision be introduced into *The Criminal Code (WA)* which provides for an increased penalty in respect of the theft of a firearm.

Recommendation 143:

143.1 There should be no specific mention of an offence of 'trafficking' in the *Firearms Act 1973 (WA)*.

143.2 Offences in regard to three or more firearms should be contained in a separate section and:

- a. consolidated into that of selling, or acquiring, three or more firearms without authority;
- b. both the transferor and transferee be liable for the offence where they were authorised but they were aware the other party was not; and
- c. the penalty of 14 years should be increased to 20 years for a repeat offender.

143.3 Offences for:

- a. purchasing or acquiring, or
- b. for selling or supplying a firearm

without licence or permit, when less than three firearms, should be consolidated into their own section and where that offence concerns handguns, Category D and prohibited firearms the maximum penalty should be increased to at least 10 years.

143.4 Section 19(4) of the *Firearms Act 1973 (WA)* should be amended to increase the penalties in regard to unlawful manufacturing of firearms.

143.5 The penalties for safekeeping and storage offences under section 23(9)(a) and 23(9)(d) of the *Firearms Act 1973 (WA)* should be increased in order to provide a greater deterrent.

143.6 Specific consideration should be given to the following additional areas in respect to penalties:

- a. the formulation of offences and penalties as a result of the introduction of the term 'major firearm parts' into the legislation;

- b. the penalty in regard to disposing or selling ammunition without licence or permit under section 22A(3) requires a substantial increase;
- c. the penalty in regard to discharge of a firearm through a public place, dwelling house or across a road under section 23(9)(c); and
- d. using a firearm on another person's land without permission under section 23(10).

143.7 The Western Australia Government should consider a greater use of graduated penalties depending on the relevant firearm Category and whether it is a first or subsequent offence.

143.8 The language in section 23(1) of the *Firearms Act 1973 (WA)* should be reconsidered to provide clarity in regard to the offence that relates to knowing whether a person is affected by alcohol or drugs.

143.9 A specific provision should be introduced into section 378(5) of *The Criminal Code (WA)* which provides for an increased penalty in respect of the theft of a firearm.

APPENDIX ONE:

Submissions

A D O	Anthony G	Brad R	Charles S
A D T	Anthony M	Brad R	Chester Pass Branch
A P P	Anthony M	Brad Y	- Sporting Shooters
Aaron C	Anthony S	Bradley G	Association Australia
Aaron C	Anthony S	Bradley K	(WA)
Aaron H	Anthony S	Bradley M	Chris A
Aaron M	Anthony T	Brandon W	Chris A
Aaron R	Antonino F	Braydon R	Chris B
Aaron S	Antonino R	Brendan A	Chris B
Aaron T	Antony R	Brendan K	Chris G
Aboriginal Legal Services	Ari R	Brendan M	Chris H
Western Australia	Aronn C	Brent O	Chris J
Adam A	Artist Embassy	Brett B	Chris L
Adam B	Productions	Brett D	Chris N
Adam B	Ashley B	Brett R	Christian S
Adam E	Ashley D	Brett R	Christine D
Adam H	Ashley G	Brett S	Christine G and John T
Adam J	Ashley J	Brett V	Christopher B
Adam K	Ashley M	Brett W	Christopher B
Adam M	Australian A	Brett W	Christopher E
Adam N	Australian C	Brian A	Christopher G
Adele K	Axel R	Brian C	Christopher H
Adrian G	Ballistic Equipment	Brian C	Christopher P
Adrian S	& Sports Technology	Brian E	Christopher P
Adrian T	Australia	Brian F	Christopher W
Alan B	Barbara M	Brian G	Claire R
Alan C	Barry B	Brian L	Claudio M
Alan F	Barry G	Brian M	Clive C
Alan H	Barry M	Brock H	Clyde S
Alan M	Barry P	Brock S	Clyde S
Alan S	Barry W	Brook R	Colin A
Albert H	Barry W	Bruce D	Colin C
Albert P	Barry L	Bruce F	Colin C
Aleesa O	Bassendean Bellevue	Bruce G	Colin M
Alex C	Rifle Club	Bruce P	Colin R
Alex M	Bassendean C	Bruce T	Colin S
Alex S	Beacon C	Bruce Y	Colin W
Alex W	Beaton F	Bruno C	Colin Y
Alexander H	Beau H	Bryan W	Collie Clay Target Club Inc
Alexander S	Belinda G	Bryce J	Con G
Alf C	Ben A	Bullfinch Shooting Club	Connie R
Alfred F	Ben B	C J G	Connor F
Allan B	Ben E	Cairn G	Connor W
Allan H	Ben E	Caleb H	Coral C
Allan W	Ben J	Callan D	Craig A
Amanda P	Ben M	Callum H	Craig A
Amber K	Ben O	Callum T	Craig C
Andrew B	Ben S	Cameron	Craig D
Andrew B	Ben W	Cameron P	Craig E
Andrew B	Benjamin S	Campbell L	Craig E
Andrew C	Beth D	Carmelo C	Craig F
Andrew C	Beth H	Carole F	Craig G
Andrew E	Bevan D	Caroline C	Craig H
Andrew F	Biagio V	Casey D	Craig L
Andrew H	Bill M	Cath M	Craig V
Andrew P	Bill P	Caydenn L	Crispian L
Andrew R	Blake T	Central Desert Native	Curtis H
Andrew S	Bob B	Title Services	Cyle C
Andrew W	Bob E	CF H	D A and B A
Andrew W	Bob S	Charle B	D R
Angelo R	Bodean B	Charles H	Daiman C
Anne C	Brad P	Charles M	Dakota K

Dale H	David L	Evan E	Graeme D
Damian B	David L	Farshid	Graeme H
Damian M	David L	Fiona T	Graham B
Damian P	David M	Florinda R	Graham B
Damien B	David M	Francis D	Graham C
Damon C	David N	Frank D V	Graham E
Dan H	David N	Frank M	Graham H
Dan M	David P	Frank O	Graham O
Dan S	David Q	Frank O	Graham P
Dane P	David R	Fraser W	Graham W
Dane S	David R-C	Fred A	Grant H
Dane T	David S	Fred B	Greg A
Danial W	David S	Fred M and Pat M	Greg D
Daniel	David T	Frederick P	Greg G
Daniel A	David T	Freeman T	Greg J
Daniel C	David W	FW R	Greg K
Daniel C	Dean M	G G	Greg L
Daniel F	Deanne V	Gail F	Greg M
Daniel G	Debbie W	Gareth W	Greg W
Daniel J	Denis S	Garry H	Gregory P-S
Daniel M	Denis W	Garry S	Guisepe D B
Daniel M	Dennis M	Garry T	Guy T
Daniel M	Department of Parks and Wildlife	Garth T	Hamish M
Daniel M	Department of Sport and Recreation	Gary J	Harrison B
Daniel P	Department of the Attorney General (Sheriff's Office)	Gary J	Harrison I
Daniel S	Derek C	Gary S	Harry M
Daniel S	Derek H	Gary W	Hayden M
Daniel S	Derek K	Gavern H	Heather L
Daniel T	Derek R	Gavin C	Hedley H
Daniel T	Derek W	Gavin D	Heidi T-G
Daniel W	Devin C	Gene H	Helen M
Daniel W	Dillan S	Geoff	Henry C
Daren P	Dimitri A	Geoff B	Homer M
Darren D	Dmitry S	Geoff C	Hon Rick Mazza
Darren J	Domenic T	Geoff C	Hon Tony Simpson MP
Darren M	Don D	Geoff H	Ian B
Darren P	Don K	Geoff M	Ian B
Darren W	Doug P	Geoffrey D	Ian C
Darryl H	Douglas G	Geoffrey D	Ian H
Darryl T	Drew G	Geoffrey P	Ian G
Daryl C	Duncan C	George D	Ian M
Dave A	Duncan M	George H	Ian M
Dave B	Dylan H	George M	Ian M H
Dave C	Dylan L	George O	Ian P
Dave G	ED	George S	Ian S
Dave K	Eddie W	George S	Ian S
Dave K	Edward B	George T	Illyra D
Dave L	Elizabeth M	George Y	International Coalition for Women in Shooting and Hunting
Dave N	Ellen M	Geraldton C	International Practical Shooting Confederation WA Inc
Dave S	Ellenmary P	Gerard D	Isaac R
David A	Ellery C	Giles L	Istvan V
David B	Elliott F	Giuseppe M	Ivan G
David B	Eric B	Glen B	J W S
David C	Eric C	Glenn E	Jack G
David C	Eric H	Glenn H	Jack S
David D	Erlanda D	Glenn K	Jacob G
David F	Ernest P	Glenn T	Jacqui H
David G	Ethan T	Glynn M	Jaime G
David H		Gôichi O	
David H		Gordon C	
David H		Gordon H	
David H		Graeme B	

Jake M	Joe R	Julie T	Lawrie P
Jake S	Joel B	Justin L	Lawson J
James B	Joel P	Justin L	Lee D
James C	Joel T	Justin M	Lee D
James F	Joel W	Justin S	Lee E
James F	Joffre B	Justin W	Leigh Y
James G	Johan W	Kaiden C	Len L
James H	Johannes B	Kaj O	Len S
James H	John B	Kalan K	Leo C
James H	John C	Karen W	Leo L
James H	John C	Karl R	Leo R
James M	John D	Kathy C	Leon K
James R	John D	Kathy W	Leon P
James T	John E	Keira S	Leon R
James W	John G	Keith B	Leslie H
Jamie C	John G	Keith D	Leslie M
Jamie H	John G	Keith F	Levi F
Jamie W	John H	Keith K	Lewis K
Jan N	John H	Keith M	Lincoln T
Jan V	John J	Keith P	Lindsay C
Jane H	John K	Keith T	Lindsay S
Jared C	John L	Ken E	Lindsay W
Jarrad H	John M	Ken G	LJ M
Jarrad M	John M	Ken P	Lloyd C
Jarrad S	John M	Kenn C	Logan C
Jarrahdale Sporting	John M	Kenneth C	Lon R
Shooters Inc	John M	Kent B	Lorenzo P
Jarrold L	John N	Kerri R	Lucas P
Jasmin L and Bradley L	John O	Kerrie G	Luciano B
Jasmine D	John P	Kerry H	Luka S
Jason A	John P	Keven J	Luke
Jason B	John R	Kevin	Luke B
Jason B	John R	Kevin C	Luke F
Jason B	John S	Kevin J	Luke H
Jason C	John S	Kevin J	Luke P
Jason F	John S	Kevin M	Luke S
Jason F	John W	Kevin Q	M H
Jason G	John W	Kevin R	Mal B
Jason H	John W	Kevin S	Mal M
Jason M	Jon D	Kevin T	Malcolm H
Jason M	Jon R	Kevin V	Malcolm J
Jason N	Jon S	Kevin W	Malcolm J
Jason P	Jonathan B	Keyser S	Malcolm N
Jason P	Jonathon D	Kim M	Malcolm P
Jason R	Jonathon K	Kim O	Malcolm S
Jason R	Jordan H	Kim P	Malcolm W
Jayden L	Jose R	Kim S	Marc C
Jeff K	Josef G	Kitika D	Marc D
Jeffery I	Josef T	KR M	Marcel J
Jeremy C	Joseph B	Kristoffer M	Marcus A
Jerome B	Joseph D	Kurt G	Marcus B
Jerome H	Joshua C	Kyle B	Marcus C
Jerred C	Joshua L	Kylie V	Marcus G
Jesse B	Joshua M	Kylie W	Marcus S
Jessica B	Joshua M	Kym B	Margaret B
Jessica H	Joyce H	L M	Margaret D
Jessica W	JS G	Lachlan A	Margaret F
Jim K	Julian G	Lance E	Maria R
Jim S	Julian M	Lance K	Mark C
Jiri M	Julie C	Larry G	Mark C
Jodie B	Julie D	Larry M	Mark D
Joe E	Julie D	Laurens W	Mark E

Mark H	Michael S	Noel R	Peter S
Mark H	Michael T	Norm C	Peter T
Mark H	Michael W	Nyaree L	Peter T
Mark K	Michael W	Ong Y	Peter V
Mark M	Michael Y	Owen T	Peter W
Mark M	Michelle G	P D	Peter-John G
Mark M	Michelle V D M	Paolo R	Phil H
Mark R	Mick B	Pastoralists & Graziers	Phil H
Mark S	Mick E and Caroline E	Association of WA (Inc)	Phil M
Mark S	Mick R	Pat S	Phil R
Mark S	Mika R	Patricia M	Philip M
Mark T	Mike B	Patrick B	Philip R
Mark W	Mike F	Patrick F	Philippe E
Mark W	Milan D	Patrick T	Phillip S
Markus R	Miles S	Paul	Pierre M
Martin A	Minister for Police (South	Paul B	Piet V D L
Martin C	Australia) Hon Tony	Paul B	Pietro L
Martin C	Piccolo	Paul B	PJ B
Martin D	Minister for Transport	Paul B	PT P
Martin M	Hon Dean Nalder	Paul B	Public Health Association
Martin M	Mitch F	Paul C	Australia
Martin M	Mitch R	Paul C	R D
Martinus V D M	Muhammad P	Paul D	Ralph F
Mary A R	Mundaring Marksmen	Paul D	Ray B
Mathew G	Association	Paul D	Ray D
Mathew J	Munn C	Paul G	Ray L
Matt L	Murray G	Paul M	Ray M
Matthew A	Murray S	Paul M	Raymond B
Matthew B	Murray W	Paul P	Raymond C
Matthew B	Naomi R	Paul P	Rebecca T and Craig A
Matthew G	Nathan F	Paul R	Regan P
Matthew H	Nathan H	Paul R	Reid D
Matthew J	Nathan I	Paul R	Revel D
Matthew R	Nathan J	Paul S	Rex H
Matthew S	Nathan T	Paul S	Rhett J
Matthew S	Nathyn L	Paul S	Riaan B
Maxwell B	Ned T	Paul S	Riccardo R
Mel P	Neil H	Paul W	Richard
Melissa E	Neil H	Paul W-H	Richard A
Melissa H	Neil P	Perth Muzzle Loading	Richard B
Melissa H and Travis H	Neil R	Club	Richard C
Mental Health	Neil T	Peta R	Richard D
Commission (Western	Nelson Y	Peter	Richard G
Australia)	Nev K	Peter A	Richard H
Mervyn S	Neville J	Peter A	Richard H
Michael B	Nic J	Peter and Pamela K	Richard I
Michael B	Nicholas B	Peter C	Richard L
Michael B	Nicholas C	Peter D	Richard M
Michael C	Nicholas D	Peter D	Richard M
Michael D	Nicholas D	Peter D-H	Richard M
Michael D	Nicholas E	Peter F	Rick S
Michael F	Nicholas R	Peter G	Rignold P
Michael F	Nicholas R	Peter K	Riki D
Michael H	Nicholas S	Peter K and Wendy K	Rob G
Michael J	Nicholas T	Peter M	Rob M
Michael M	Nichole B	Peter M	Robert A
Michael N	Nick N	Peter N	Robert C
Michael O	Nicola A	Peter N	Robert D
Michael P	Nigel D	Peter O	Robert F
Michael P	Nigel H	Peter O	Robert G
Michael P	Nigel L	Peter R	Robert H
Michael S	Nigel Y	Peter R	Robert H

Robert K	Scott M	Stuart S	Tristan H
Robert L	Scott R	Stuart S	Tristan H
Robert L	Scott S	Sunny M	Tristram W
Robert U	Sean B	Suzanne N	Troy G
Robert W	Sean B	Suzanne P	Troy M
Roberta M	Sean C	Suzie J	Troy P
Robin L	Sean P	Suzy A	Troy S
Robin R	Seaton C	Synjon A-B	Tyrel P
Rodney A	Sergio R	T H	Tyson T
Rodney E	Shae B	Tarrant L	Vance C
Rodney L	Shane A	Telemachos A	Vermingone
Roger A	Sharron M	Terence H	Vernon L
Rohan D	Shaun B	Terence M	Vernon L
Roland B	Shaun S	Terrance W	Vernon S
Roland G	Shaun S	Terrence F	Victor L
Ron B	Shaun T	Terry E	Victor S
Ron B	Shooters Union Australia	Terry F	Vince S
Ron C	Inc	Terry J	Vincent A
Ron L	Simon G	Terry L	Vincent L
Ron W	Simon K	The Shooters Shop	Vincent P
Ross A	Simon N	Theo	VN H
Ross P	Simon S	Thomas L	WA Farmers
Ross R	Simon V	Thomas L	WA Police
Ross W	Simon V D B	Thomas Y	Waldemar N
Rosyln S	Simon W	Tim B	Walter E
Rouald S	Simon W	Tim C	Warren D
Rowan H	Spencer A	Tim P	Warren G
Roy A and Sons	Sporting Shooters and	Tim P	Wayne A
Roy H	Fishers Party WA Inc	Timothy A	Wayne F
Roy J	Sporting Shooters	Timothy B	Wayne H
Roy M	Association of Australia	Timothy C	Wayne S
Royal Society for the	(Western Australia)	Timothy C	West Australian Gun Club
Protection of Cruelty to	Stacy W	Timothy H	West Australian Historical
Animals	Stan G	Timothy J	Military Society
Russel H	State Solicitor's Office	Timothy P	West Australian Pistol
Russell L	Steelo's Guns and	Timothy S	Association
Russell P	Outdoors	Tobie D	West Coast Gun Club
Russell T	Stefan C	Toby L	Western Australia Arms
Ryan A	Stephen A	Toby W	and Armour Society
Ryan B	Stephen B	Todd P	Western Australian Clay
Ryan B	Stephen B	Todd S	Target Association Inc.
Ryan J	Stephen D	Tom B	Western Australian
Ryan M	Stephen D	Tom D	Firearm Traders
Ryan S	Stephen D and Heather D	Tom H	Association
Ryan S	Stephen H	Tom S	Western Australian Pork
S C	Stephen M	Tommie C	Producers Association
Sacha N	Stephen M	Tony	Will C
Salli V	Stephen P	Tony B	Will C
Sam A	Stephen R	Tony P	William S
Sam H	Steve B	Tori M	Zac B
Sam M	Steve C	TP F	
Sam W	Steve G	Travis C	
Sam W	Steve T	Travis C	
Samantha B	Steve W	Travis J	
Samantha W	Steven C	Travis M	
Samuel B	Steven F and Eleanor F	Travis M	
Sarah S	Steven H	Tren S	
Saverio M	Steven J	Trent S	
Scott B	Steven N	Trevor B	
Scott F	Steven T	Trevor R	
Scott H	Stewart F	Trevor S	
Scott K	Stuart J	Tristan B	

APPENDIX TWO:

List of recommendations

Recommendation 1:

The Western Australia Government should review the practical operation of the firearm laws after any new firearms legislation has been operating for a period of five years.

Recommendation 2:

- 2.1 The Firearms Legislation should be redrafted from the ground up and be re-enacted.
- 2.2 Any new firearms legislation should be restructured in order to improve clarity of parts such as the administration and licensing process, law enforcement, police powers and offences, and taking into account other structural recommendations in the Report.
- 2.3 Provisions in any new firearms legislation should be worded to provide greater clarity than is provided under the current *Firearms Act 1973 (WA)* and *Firearms Regulations 1974 (WA)*.

Recommendation 3:

- 3.1 The *Firearms Act 1973 (WA)* should contain a statement as to the purpose of the Firearms Legislation that confirms:
 - a. the primary principle is the need to ensure public safety;
 - b. the possession and use of firearms is a privilege that is always conditional on that need to ensure public safety; and
 - c. public safety can be improved by requiring strict controls on the possession, use, dealing and manufacturing of firearms and requiring the safe and secure storage and carriage of firearms.
- 3.2 The Western Australia Government should consider introducing an objects clause to the *Weapons Act 1999 (WA)* to better differentiate between the purposes of the *Firearms Act 1973 (WA)* and the *Weapons Act 1999 (WA)*.

Recommendation 4:

The alternative application procedure under regulation 3BA of the *Firearms Regulations 1974 (WA)* and the related forms should be deleted.

Recommendation 5:

Sections 30B(1) and (2) of the *Firearms Act 1973 (WA)* should be amended to replace 'is required to' with 'must'.

Recommendation 6:

- 6.1 The definition of 'firearm' should be amended to mean:
 - a. a gun or other device ordinarily described as a firearm; or
 - b. a device that, if used in the way for which it was designed or adapted, is capable of being aimed at a target and causing death or significant injury by discharging a projectile or other specified substance;
 - c. including if the device is in parts which if assembled and in working order would be a firearm within the meaning of this definition; or where such device has been temporarily rendered inoperable;
 - d. but excluding anything that is prescribed in regulations under the *Weapons Act 1999 (WA)* to be a prohibited weapon or a controlled weapon; or any device declared by the regulations not to be a firearm.

- 6.2 The *Firearms Act 1973* (WA) should provide that items may be excluded from the definition of firearm by prescribing them in the *Firearms Regulations 1974* (WA).

Recommendation 7:

The *Firearms Act 1973* (WA) and *Weapons Act 1999* (WA) should remain separate.

Recommendation 8:

- 8.1 Any firearm receiver or frame that is not a part of the firearm under an existing firearm licence should fall under the definition of a firearm.
- 8.2 A person should not be able to acquire a 'major firearm part' unless authorised by a licence to possess a firearm to which that firearm part relates, or by a licence to possess that part.
- 8.3 A major firearm part is taken to 'relate' to a firearm when its replacement or incorporation into the firearm will not fall foul of the prohibition against alterations (see recommendation 13).

Recommendation 9:

A term 'major firearm part' should be included in the *Firearms Act 1973* (WA) in respect of the following:

- a) A person should not give possession of a major firearm part to an unauthorised person.
- b) The definition of dealer should include a person who in the ordinary course of business buys, sells or trades in major firearm parts.
- c) Where section 30B of the *Firearms Act 1973* (WA) requires a person to report a lost or stolen firearm to the Police Commissioner, it should include the loss or theft of a major firearm part.
- d) Section 30A of the *Firearms Act 1973* (WA) which requires that a person include certain details in an advertisement or posting of the item should be extended to encompass major firearm parts, with the appropriate adjustment for the type of information that may be available for the part.
- e) A person against whom a firearms prohibition order is in force should not acquire, possess or use a major firearm part.
- f) The definition of major firearm parts should be used in the context of surrender and seizure, in respect of police powers and the general amnesty.

Recommendation 10:

The Western Australia Government should consider whether any other areas of the Firearms Legislation are appropriate to include reference to 'major firearm parts'.

Recommendation 11:

- 11.1 'Major firearm part' should be defined as:
- a. a gas piston, friction assembly, action bar, breech bolt or breech block;
 - b. a firearm barrel;
 - c. an assembled trigger mechanism;
 - d. a magazine designed or intended for use with a firearm; and
 - e. something, other than a complete firearm, that includes one or more of these items.
- 11.2 The definition of 'major firearm part' should be qualified so as to limit an item from falling under the definition unless it is designed as, or reasonably capable of forming, part of a working firearm.

- 11.3 The term 'major firearm part' should be replaced with 'firearm part' in the definition in regulation 18(1a) of the *Firearms Regulations 1974* (WA) with the rest of the definition being retained.

Recommendation 12:

- 12.1 The *Firearms Act 1973* (WA) should provide that prohibited firearm accessories may be declared in the *Firearms Regulations 1974* (WA) due to the especial potentially dangerous nature of the accessory and the need to exercise special precautions in relation thereto; and/or the purpose for which the particular accessory is designed.
- 12.2 There should be no restrictions on the sale of parts or accessories such as pistol grips and muzzle brakes unless listed in the *Firearms Regulations 1974* (WA) as a prohibited firearm accessory.
- 12.3 A person who acquires, owns or has possession of a prohibited firearm accessory without lawful authority should be guilty of an offence.

Recommendation 13:

The prohibition against altering a firearm in s23(5)(c) of the *Firearms Act 1973* (WA) should be amended to prohibit:

an alteration that affects the design or characteristics of the original manufacture of a firearm, being an alteration which results in the firearm becoming a firearm of a different Category (whether temporarily or permanently); or such other alteration that may be prescribed by the Police Commissioner.

Recommendation 14:

Section 17B of the *Firearms Act 1973* (WA) should be amended to permit wider use of silencers subject to the following requirements:

- a. a silencer be classed as a prohibited accessory;
- b. a permit be required to possess and use a silencer;
- c. permission may be granted by the Police Commissioner or his or her delegate;
- d. permission may only be granted to an applicant who can demonstrate that it is necessary in the conduct of the applicant's business or employment to possess or use the silencer;
- e. there be no restriction on the type of firearm with which a silencer may be used as long as it is only that firearm indicated on the permit;
- f. permission granted under this section is not to be restricted in regard to its own time period but should endure for the period of operation of the licence for the relevant firearm; and
- g. the *Firearms Regulations 1974* (WA) may contain set regulations regarding the use and storage of silencers.

Recommendation 15:

- 15.1 An 'antique firearm' should be defined as any firearm manufactured before 1 January 1900 that is:
- a. a handgun not capable of discharging breech-loaded metallic cartridges or is not a handgun of a type that uses percussion, or methods developed during or after the development of percussion, as a means of ignition; or
 - b. in the case of a firearm other than a handgun, a breech loading firearm which is a firearm the ammunition for which is determined by the Police Commissioner not to be commercially available or is not capable of discharging breech-loaded metallic cartridges;
 - c. but excluding a firearm with revolving chambers or barrels and a cannon.

- 15.2 The definition of antique firearm should also include a receiver or frame of such antique firearm.
- 15.3 The phrase 'antique firearm' should be used rather than 'antique mechanism firearm'.
- 15.4 A person in possession of an antique firearm should not be in possession of any propellant such as black powder or ammunition manufactured for the purposes of propelling a projectile from an antique firearm.

Recommendation 16:

An antique firearm should continue to fall under the definition of a firearm.

Recommendation 17:

Working replicas of antique firearms should continue to be subject to the licensing provisions of the Firearms Legislation.

Recommendation 18:

- 18.1 A captive bolt should be defined in the *Firearms Act 1973 (WA)* as a device designed for use in the humane killing or stunning of livestock by means of a retractable bolt.
- 18.2 A captive bolt should be excluded from the definition of 'firearm'.
- 18.3 A captive bolt should be defined as a controlled weapon under the *Weapons Act 1999 (WA)* and that it be a lawful excuse to use or possess a captive bolt for the purposes of animal welfare.

Recommendation 19:

- 19.1 Industrial tools like nail guns, line throwers and other similar devices should be excluded from the definition of firearm.
- 19.2 In considering the list of items to exclude, due regard should be given to exclusion in other Australian jurisdictions, unless captured by the recommended new definition of a firearm.

Recommendation 20:

Spud guns should be excluded from the definition of firearm in the *Firearms Act 1973 (WA)* and should be defined as a controlled weapon under the *Weapons Act 1999 (WA)*.

Recommendation 21:

Single shot air powered pistols and rifles should remain part of the definition of a firearm.

Recommendation 22:

WA Police should continue to monitor developments in firearm technology, including the manufacture of 3D printed firearms, raise related issues at an inter-jurisdictional level where appropriate and ensure that state legislation is updated as appropriate.

Recommendation 23:

- 23.1 The term 'permanently inoperable firearm' should be defined in the *Firearms Act 1973* (WA).
- 23.2 For a firearm to be removed from the registry on the basis of being permanently inoperable, a licensed dealer, manufacturer or repairer should first provide a certificate to that effect to the Licensing Authority.
- 23.3 The manner in which a firearm can be rendered permanently inoperable should be prescribed in the *Firearms Regulations 1974* (WA), but the prescribed methods should not be exhaustive.
- 23.4 The *Firearms Act 1973* (WA) should state that it is an offence to render operable a firearm that had been rendered inoperable, unless with prior approval of the Police Commissioner.
- 23.5 In relation to a firearm that has been rendered inoperable, making that firearm capable of being fired (operable) should be deemed to be manufacturing.
- 23.6 A temporarily inoperable firearm should remain a firearm under the *Firearms Act 1973* (WA).

Recommendation 24:

- 24.1 The definition of 'ammunition' in the *Firearms Act 1973* (WA) should be amended so as to specifically exclude:
 - a. inert cartridges/dummy round/drill round (that is, does not contain primer, propellant, or explosive charge);
 - b. paintball pellets;
 - c. spent primers; and
 - d. spent casings whether reusable or not.
- 24.2 The *Firearms Act 1973* (WA) should provide that the *Firearms Regulations 1974* (WA) may prescribe specific items that form part of, or are excluded from, the definition of 'ammunition'.

Recommendation 25:

Form 19 in Schedule 1 of the *Firearms Regulations 1974* (WA) should be amended by removing the 'address' column.

Recommendation 26:

- 26.1 All components of the Licensing and Registry system should be made fully operational as soon as is practicable but nevertheless within six months of the tabling of this Report.
- 26.2 WA Police should conduct a review of the Licensing and Registry system after its first full year of operation to verify that it is functioning as intended.
- 26.3 The review of the Licensing and Registry system should be made publicly available.
- 26.4 Any deficiencies in the Licensing and Registry system revealed by the review should be addressed as a matter of priority.

Recommendation 27:

- 27.1 The Department of Transport and Western Australia Police should collaborate to implement a system for the receipt of firearms applications, conducting the 100-point check and taking photographs at Department of Transport Driver and Vehicle Services.
- 27.2 A firearms applicant who has a driver's licence should be able to apply at Department of Transport Driver and Vehicle Services for a firearms licence without having to go through the 100-point check and photographing.

- 27.3 Arrangements between Australia Post and the Licensing Authority should be retained as an option for applicants.

Recommendation 28:

A fee discount structure should not be implemented.

Recommendation 29:

- 29.1 A serviceability certificate should be provided in respect of each firearm that is the subject of a Firearm Licence application.
- 29.2 A serviceability certificate should be renamed a Firearm Identification and Serviceability Certificate to better reflect its purpose.
- 29.3 Form 1 of the *Firearms Regulations 1974 (WA)* should be amended to include the same required firearm details as in Form 3 to ensure consistency between the 2 forms and to allow for a potential pre-approval without a serviceability certificate.

Recommendation 30:

- 30.1 A pre-approval process should be incorporated into the Firearms Legislation in terms of which an application can be made without a serviceability certificate in respect of the applicant (fit and proper test), the genuine reason and the genuine need test, but be subject to the firearm being of the same type as that identified in the application and subject to a serviceability certificate and any other relevant conditions being provided in the principle application.
- 30.2 The pre-approval process should include a reasonable time limit for the transaction for the purchase of the firearm to be concluded, after which it would lapse.
- 30.3 A pre-approval decision should be reviewable.

Recommendation 31:

Form 22 in the *Firearms Regulations 1974 (WA)* should be amended to reflect that in the case of an application for an additional firearm, the documentary evidence in respect of available storage facilities only needs to be submitted upon the Licensing Authority's request.

Recommendation 32:

- 32.1 The current paper licence and extract of licence should be replaced with a single plastic authorisation card to be issued to holders of firearms licences/ permits/ approvals and to Nominated Persons.
- 32.2 All reference to the 'Firearms Act Extract of Licence' should be removed from the Firearms Legislation and replaced with a reference to a single authorisation card.
- 32.3 The authorisation card should on the face of it reflect:
- a. the identity of the Nominated Person/licence holder (without storage and residential address); and
 - b. for each firearm, the Category, type, action and configuration of the firearm and purpose for which the person is entitled to possess and use it.
- 32.4 The annotation on the authorisation card should be in a simple code referring to the Category, type, action and configuration of the firearm and the purpose for which the person is entitled to possess and use it.

- 32.5 WA Police, in consultation with the Department of Transport and licensed dealers, repairers and manufacturers should develop a 'smart card' licence system.
- 32.6 Dealers, repairers and manufacturers should be required to operate on compatible computer infrastructure to accommodate the introduction of a 'smart card' system.

Recommendation 33:

The Minister should be empowered to prescribe Forms in the *Firearms Regulations 1974* (WA) and gazette them.

Recommendation 34:

Section 5A of the *Firearms Act 1973* (WA) should be amended to provide more flexibility to the Police Commissioner in delegating functions under the Act, including where appropriate to unsworn police staff.

Recommendation 35:

There should be no legislative requirements with regard to time periods for collection of firearms from dealers.

Recommendation 36:

- 36.1 The *Firearms Regulations 1974* (WA) should be amended to include specific provisions that set out all training requirements including:
- a. An applicant be required to satisfactorily complete a 'firearms awareness certificate' module on firearms safety and a module on firearms laws, prior to being issued a licence, permit or approval for the first time.
 - b. An applicant be required to satisfactorily complete all three modules of a 'firearms awareness certificate', that is a module on firearms safety, one on firearms laws and practical module on firearms competency:
 - i. prior to being issued a licence, permit or other approval for a Category H1 handgun for the first time; or
 - ii. prior to being issued a licence, permit or other approval for a Category D firearm for the first time; or
 - iii. prior to being issued a licence, permit or other approval for a Category C firearm if such applicant has not at any time had an existing licence, permit or approval for another Category firearm for a period of at least 12 months.
- 36.2 Where an applicant has already completed modules one and two, they should not need to be repeated.
- 36.3 Different training and competency levels may be required for different Categories of firearms.
- 36.4 Special regard should be had to training for users of handguns for sporting shooters, in the security industry and for users of Category D firearms.
- 36.5 The training regulations should also apply to applicants for approval as a Nominated Person under a licence such as a Corporate Licence.
- 36.6 The *Firearms Regulations 1974* (WA) should provide for the approval of examiners by the Police Commissioner and certain deemed approvals should be specified, for example, experienced officers of approved clubs and Police Officers above a certain rank.
- 36.7 In respect of a minor from the age of 10 to 14, the minor's supervisor must ensure that the minor has a satisfactory understanding of firearms safety prior to permitting the minor to use a firearm under exemption.

- 36.8 In respect of a minor from the age of 14 years and under the age of 18 years, the minor's supervisor must ensure that the minor has successfully completed a 'firearms awareness certificate' module on firearms safety and a module on firearms laws, prior to permitting the minor to use a firearm under exemption.
- 36.9 In respect of a minor acting under an exemption in regard to paintball or at a shooting gallery, the minor's supervisor must ensure that the minor has a satisfactory understanding of firearms safety prior to permitting the minor to use a firearm under exemption.
- 36.10 In respect of a minor from the age of 10 acting under an exemption in regard to Primary Production, the relevant licence holder must ensure that the minor has successfully completed all three modules of a 'firearms awareness certificate', that is a module on firearms safety, one on firearms laws and a practical module on firearms competency.

Recommendation 37:

WA Police, in its interactions at a national level with regard to a new National Firearms Agreement, should suggest relaxation of the restriction on the number of handguns during the 12 month probationary period, with a view to facilitating genuine competition.

Recommendation 38:

The Firearms Legislation should be amended to incorporate the WA Police warranty replacement policy, subject to a 'like for like' replacement being permitted at any time where it can be shown to be under warranty; or if outside of warranty it can be established, to the satisfaction of the Police Commissioner, that it is in fact a 'like for like' exchange.

Recommendation 39:

The renewal process should not require a licence holder to reconfirm his or her genuine reason or genuine need or require a 'fit and proper' test.

Recommendation 40:

The term of licences should be increased to five years except for the following licences for which the one year term be retained:

- a. all licences that authorise the possession or use of Category D or H (handgun) firearms, except for a Category H (handgun) held under a Firearm Collector's Licence;
- b. Licences that authorise the possession or use of Category C firearms by a primary producer or for vertebrate pest animal control (as the case may be); and
- c. Where the licence holder (who may renew for five years) chooses to renew a licence for one year.

Recommendation 41:

- 41.1 The renewal process should require submission of a signed renewal form and payment of the fee.
- 41.2 The renewal form should be a signed Statutory Declaration and contain at least the following information:
- a. name of licence holder;
 - b. occupation or primary business;
 - c. address;
 - d. firearms held under the licence;

- e. storage address;
- f. name of approved club or organisation (where relevant); and
- g. confirmation of physical and mental wellbeing.

Recommendation 42:

The terms of licences may be aligned where a licence holder has multiple licences with the same duration period and pays any adjusted licensing fee.

Recommendation 43:

- 43.1 The Licensing Authority should be required to send renewal notices to licence holders using the most recent address for that licence holder on the database and regulation 4 of the *Firearms Regulations 1974* (WA) should be amended accordingly.
- 43.2 The Licensing Authority should have no further obligations to notify the licence holder of the need to renew their licence.

Recommendation 44:

The Firearms Legislation should provide that where the fees or charges for a licence, or a licence renewal, is dishonoured by the relevant financial institution, the licence has no effect as from the time of grant or renewal.

Recommendation 45:

- 45.1 Sections 9A(6), 9A(7) and 19A of the *Firearms Act 1973* (WA) should be amended as required in order to remove the 12 month grace period and retain the three month grace period.
- 45.2 Section 9A(7) should be amended to reflect that after the three month period has elapsed, a person who has not renewed has to apply for a new Firearm Licence in accordance with section 18(1).
- 45.3 The Firearms Legislation should continue to allow for the issue of an infringement notice and seizure of firearms upon expiry of the three month grace period.
- 45.4 The Firearms Legislation should be clear that there is no offence for failure to renew where the Licensing Authority has been notified within the three month period that there is no intention to renew.
- 45.5 The infringement provisions under section 19A of the *Firearms Act 1973* (WA) should apply to all licence types.

Recommendation 46:

In addition to the matters in current section 19A(6), the *Firearms Act 1973* (WA) should provide that whenever a person pays an infringement in respect of failure to renew, that will not negatively impact on the fit and proper test and cannot be a reason for the revocation of a licence or refusal to grant a new licence.

Recommendation 47:

The requirement to provide evidence of identity based on a 100-point check should be formally approved by the Police Commissioner under regulation 7(3)(b) and 7B of the *Firearms Regulations 1974* (WA).

Recommendation 48:

Section 11(3) of the *Firearms Act 1973* (WA) should be amended by the inclusion under section 11(3)(a) of a conviction for a serious sexual or a serious drug-related offence.

Recommendation 49:

WA Police should review its policies to ensure that all licence holders have a regular criminal check on a rotational basis.

Recommendation 50:

The Western Australia Government should initiate a detailed analysis and assessment of the policy surrounding mental health and access to firearms.

Recommendation 51:

The 'fit and proper person' test should be applied each time a person seeks to license an additional firearm.

Recommendation 52:

- 52.1 The 'reasonable justification' test should be retained.
- 52.2 The fact that an applicant already has a firearm or firearms similar to the firearm that is the subject of an application, should not of itself be a reason to assess the additional firearm as being unjustified.

Recommendation 53:

- 53.1 There should be no detailed public checklist for genuine reason determination.
- 53.2 The WA Police website should include a clear statement of the law in regard to the genuine reason test, with reference to the reasonable justification test, in the context of applications for additional firearms and should list some of the possible considerations that may be taken into account.

Recommendation 54:

There should be no upper limit on the number of firearms a single Firearm Licence holder may possess.

Recommendation 55:

- 55.1 There should be no expedited process for licence applications.
- 55.2 Section 18(10) of the *Firearms Act 1973* (WA) should be deleted.

Recommendation 56:

- 56.1 The WA Police website should include a clear statement in regard to the genuine reason test, with reference to the reasonable justification test, in the context of applications for recreational shooting and hunting.
- 56.2 The WA Police website should clarify that the size of the property is only one of a number of considerations when looking at whether there is a reasonable justification for a particular firearm and should list some of the other possible considerations that may be taken into account.

56.3 The size of the property should not carry greater weight than any other consideration when determining the reasonable justification for a particular firearm.

Recommendation 57:

The place where a firearm may be used should not be restricted only to those properties that were the subject of the property letters.

Recommendation 58:

- 58.1 A firearm may be used on land other than that described in the property letter as long as it meets the conditions of the licence that was issued in respect of the particular Category A or B firearm, as the case may be.
- 58.2 The Firearms Legislation should explicitly enable the Police Commissioner to place conditions or restrictions on the licence for that firearm in respect of, for example, the purpose for which it is used, property size or location, place of storage or vermin-type.
- 58.3 The *Firearms Regulations 1973* (WA) should contain a list of pre-approved conditions which may be placed on a recreational shooting or hunting licence.
- 58.4 A number of terms should be defined in the Firearms Legislation that can be used to promote a clear understanding of the conditions, such as populous areas, rural, town site or other relevant terms.

Recommendation 59:

- 59.1 The evidence required to prove the genuine reason, that is, the property letter, should be removed from the definition of the genuine reason and be inserted as one of the evidentiary requirements in the *Firearms Regulations 1973* (WA).
- 59.2 The regulations should state that a property letter is required to prove the genuine reason of recreational shooting/hunting and state the matters that are required to be addressed in the property letter.
- 59.3 Either an owner or occupier of the private property concerned should be allowed to issue a property letter. 'Occupier' should also include a manager of the property.

Recommendation 60:

- 60.1 The legislation should specifically provide for the case where a person may wish to hunt or shoot recreationally on his or her own property and that the applicant is required to produce written evidence that he/she owns, occupies or manages the land.
- 60.2 The documentation provided should also capture all the information that would be required in a property letter in order to meet the genuine reason requirement.

Recommendation 61:

- 61.1 A landowner, who provides written permission to shoot on his or her land to a person or body for a fee or reward, or to a large number (for example 20) of persons or bodies, should be required to keep a register.
- 61.2 The register should be submitted to the Licensing Authority on request and at least once annually.
- 61.3 The Regulations should set out the information required to be kept in the register.
- 61.4 There should be a penalty for non-compliance with the obligations to keep a register.

Recommendation 62:

It should not be necessary to renew a property letter.

Recommendation 63:

A property letter should be required for an application for an additional firearm for the purposes of recreational shooting or hunting.

Recommendation 64:

There should be no blanket prohibition on the licencing of muzzle loading firearms for the purposes of recreational hunting.

Recommendation 65:

- 65.1 The *Firearms Act 1973 (WA)* should set out the genuine reasons under clear, separate sections for each genuine reason under which is listed the categories of firearms that may be permitted for that genuine reason and the types of applicants that could qualify in regard to that genuine reason.
- 65.2 The *Firearms Regulations 1974 (WA)* should set out the evidence that is to be submitted to demonstrate the genuine reason.

Recommendation 66:

- 66.1 The Firearms Legislation should provide for a genuine reason of vertebrate pest animal control.
- 66.2 To qualify the applicant should be a professional contract shooter engaged or employed in pest control or a person employed by or authorised by a government agency prescribed by the regulations that has functions relating to the control or suppression of pests.

Recommendation 67:

- 67.1 The Firearms Legislation should provide for a genuine reason of animal welfare.
- 67.2 To qualify the applicant should be a veterinary surgeon, an officer of the RSPCA, a government official with responsibilities for animal welfare, or an owner, transporter, drover or other handler of animals who may need to destroy animals to avoid suffering.

Recommendation 68:

Section 8(1)(h) of the *Firearms Act 1973 (WA)* should be clarified to ensure that a firearm licensed to an abattoir may be used under an exemption:

- a. by persons working for the abattoir for the purpose of dealing a blow to any animal with intent to slaughter it;
- b. or to render the animal insensible prior to slaughtering;
- c. on land used by the abattoir for the purposes of its business; and
- d. if the use of the firearm and ammunition by that person is expressly authorised by the abattoir.

Recommendation 69:

- 69.1 The Firearms Legislation should provide for a genuine reason of 'primary producer'.

69.2 A successful application under the 'primary producer' genuine reason allow the firearm owner to use the firearm for both vertebrate pest animal control and animal welfare.

Recommendation 70:

- 70.1 The *Firearms Act 1973* (WA) should clearly specify that an application can be brought under multiple genuine reasons.
- 70.2 Firearms application forms should clearly cater for an application with multiple genuine reasons.

Recommendation 71:

Separate 'change in condition' application forms should be made available to the public.

Recommendation 72:

Applicants should be required to apply for each genuine reason for which the firearm is to be used.

Recommendation 73:

- 73.1 Airsoft should be permitted under the Firearms Legislation, subject to appropriate regulation to ensure public safety, including the management of the venues, limitations on the performance of the firearms and conditions on the types of projectiles used.
- 73.2 The Firearms Legislation for Airsoft should be similar as that in place for Paintball including the same limitations with regard to age.
- 73.3 Airsoft projectiles should be non-metallic and there be no self-contained gas cartridge systems.
- 73.4 Airsoft firearms should have a mandatory colouration to distinguish them from lethal firearms.
- 73.5 Airsoft and Paintball clubs should be approved under the Firearms Legislation in the same way as a shooting club.
- 73.6 Airsoft venues should be regulated and be approved and properly constructed and maintained for the purpose of playing Airsoft.
- 73.7 There should be an ability to obtain approval for the use of a venue on a temporary basis.
- 73.8 Permanent or temporary venue approval may be obtained from the licensing authority who should consider all issues of safety, including whether the venue is close to a populated area, the number of participants, permission of the landowner and the identity and experience of the responsible operator.
- 73.9 The Firearms Legislation should allow individual ownership and possession of Airsoft firearms outside of a club venue only by Airsoft club members.
- 73.10 An approved Airsoft club should be able to apply for a Corporate Licence for Airsoft firearms and ammunition.
- 73.11 It should be an offence to modify the Airsoft firearm in any way that affects the velocity of the projectile or the type of projectile that can be fired, or to alter any identifying markings or colouration.

Recommendation 74:

- 74.1 The 'genuine reason' requirement in section 11A(1) of the *Firearms Act 1973* (WA) should be amended to include 'Aboriginal traditional hunting' as a separate genuine reason.

- 74.2 The Categories of firearms which may be the subject of an application under this genuine reason should be the same as that for recreational hunting.
- 74.3 The Licensing Authority should be able to place conditions on the traditional hunting licence in the same way as recommended for recreational licences.
- 74.4 Traditional hunting with a firearm should not be restricted only to the land which is the subject of the permission letter.
- 74.5 An Aboriginal licence holder who wishes to engage in traditional hunting activities with a firearm should always be required to obtain permission from a private property owner, prescribed Native Title body corporate, a representative body, the Department of Parks and Wildlife or a pastoralist (as is appropriate in the circumstances) prior to entering upon land for that purpose.
- 74.6 Where a person has nominated 'Aboriginal traditional hunting' as his or her genuine reason, the following evidence should be provided in support of the application:
- a. Written permission from a private property owner, prescribed Native Title body corporate, a representative body, the Department of Parks and Wildlife or a pastoralist (as is appropriate in the circumstances).
 - b. The letter of support and any other evidence should contain the following minimum information: confirmation of the applicant's identity as an Aboriginal person wishing to engage in traditional hunting, a description of the land in question and the nature of the fauna that the applicant intends to hunt.
- 74.7 The Department of Parks and Wildlife should modify its existing written permission system if necessary to require written permissions, with or without conditions, in all cases where the applicant proposes to use a firearm for Aboriginal traditional hunting on CALM Act land.
- 74.8 The Department of Parks and Wildlife should liaise with any other body where there is joint responsibility for the land in question if there is no pre-agreement on a permission system.
- 74.9 Written permission in the case of the use of a firearm for Aboriginal traditional hunting, should only be provided to a single person and not to a group or family unit.
- 74.10 The Department of Parks and Wildlife should be required to keep a register with the details of all written permissions that have been provided.
- 74.11 The register should be submitted to the Licensing Authority on request and at least once annually.
- 74.12 The Regulations should set out the information required to be kept in the register.
- 74.13 Where the Department of Parks and Wildlife is of the view a deemed permission ought to apply, such areas of land should be specified in appropriate regulations.
- 74.14 The *Land Administration Act 1997 (WA)*, in particular sections 104 and 267, should be amended to clarify the circumstances under which firearms may be used for Aboriginal traditional hunting on Crown land.

Recommendation 75:

- 75.1 The Categorisation method should be retained as the basis of the regulatory firearms scheme.
- 75.2 All prohibited firearms, including those listed under regulation 26B(4) should be incorporated where appropriate under a single category of prohibited firearms.
- 75.3 Category D and prohibited firearms should be treated as two distinct categories. Reference to Category D be removed from the prohibited firearms list.
- 75.4 WA Police should continue to review the existing firearm categories in conjunction with other Australian jurisdictions to ensure that the categories take into account changes in technology and are internally consistent.
- 75.5 WA Police, in its interaction at a national level with regard to the categorisation of firearms, should acquire and provide technological data and expert advice on firearm capability.

Recommendation 76:

The phrase 'genuine need' should be retained.

Recommendation 77:

- 77.1 WA Police should publish an information document which sets out the method of determination of 'genuine need' and the factors that it will consider.
- 77.2 These factors include any Codes of Practice or Standard Operating Procedures regarding the humane killing of animals.

Recommendation 78:

- 78.1 There should be no requirement to render collection firearms inoperable.
- 78.2 The genuine need test as read with regulation 6A(3) of the *Firearms Regulations 1974 (WA)* should be retained in respect of genuine firearm collections.
- 78.3 In line with the current position, there should be no automatic permission to use a firearm held under a Collector's Licence.
- 78.4 A provision should be included in the Firearms Legislation, or section 17 should be clarified, to allow for the Licensing Authority to issue a temporary permit, for a limited period or particular event, and with specified conditions, for the carriage or use of a specified firearm that is held under a Collector's Licence.
- 78.5 The same provision should be available in respect of a firearm that falls under the Antique Firearm exception (under section 8(1)(mc) of the *Firearms Act 1973 (WA)*) in respect of the temporary use of the firearm.
- 78.6 In respect of an application for a temporary permit the Licensing Authority should be able to request evidence that the firearm is safe to use.
- 78.7 It should be clarified that the three month limitation in section 17(3) of the *Firearms Act 1973 (WA)* apply in respect of the actual operative period of the permit, that is, from the date when the permitted activity can first be undertaken, and not from the date of issue.

Recommendation 79:

- 79.1 The provisions dealing with the limitations on applicants for handguns should be restructured to take into account the recommended new genuine reason of a primary producer.
- 79.2 Category H should deal only with handguns and Category H2 (an underwater explosive device) should be moved to a different category.

Recommendation 80:

- 80.1 A Professional Shooter whose occupation is the extermination of feral animals or a Primary Producer may obtain approval for a Category D firearm where the Licensing Authority is satisfied that the use of such firearm is for that specified purpose.
- 80.2 In respect of the previous recommendation, additional requirements should be included in the legislation with regard to training, evidence of occupation and proof of lack of other viable animal control options.
- 80.3 In respect of this genuine need, a Professional Shooter or Primary Producer should not be granted permission for more than two Category D firearms.

Recommendation 81:

Membership of an approved shooting club should not be recognised as a being sufficient to satisfy the requirement for a 'genuine need'.

Recommendation 82:

Regulation 26B(2)(a) should be deleted.

Recommendation 83:

The Western Australia Government should negotiate at the national level for the removal of the 'appearance' provision from the definition of a 'self-loading centre fire rifle designed or adapted for military purposes'.

Recommendation 84:

- 84.1 Section 6 should be deleted from the *Firearms Act 1973 (WA)*.
- 84.2 The Police Commissioner should have the power to temporarily re-categorise a firearm to category D, H or prohibited if it substantially duplicates a firearm of that category in design or function after receiving advice from the Categorisation Advisory Committee and in consultation with the Minister.
- 84.3 The Police Commissioner should exercise this power, and it should not be delegated.
- 84.4 WA Police should formally adopt and publically release a policy setting out the way in which determinations will be made as to whether a firearm ordinarily in one category substantially duplicates a firearm in category D, H or prohibited in design or function.
- 84.5 A Categorisation Advisory Committee should be established to evaluate and advise whether a firearm should be re-categorised, which, in addition to the current makeup of the Licensing Services Tactical meeting, also include at least one person with extensive technical expertise in firearms who is independent of the Licensing Authority.
- 84.6 The Categorisation Advisory Committee should be empowered to make determinations on the Category in which a firearm is placed based on the current definition of the various categories and that this determination be reviewable.
- 84.7 A temporary re-categorisation declaration by the Police Commissioner should be published in the Government Gazette, and the image of the firearm, and the reasons for the decision be published on the WA Police website.
- 84.8 A temporary re-categorisation declaration should be included as a decision on which the applicant may seek a review by SAT.

Recommendation 85:

- 85.1 Provision should be made for a formal pre-approval process for individual firearms to determine whether they will be re-categorised.
- 85.2 The Firearms Legislation should set out the requirements in respect to a pre-approval application, including the relevant forms and the level of detail required on the proposed firearm.
- 85.3 Written reasons should be given for pre-approval determinations, and the SAT should be able to review such determinations.

Recommendation 86:

- 86.1 The Firearms Legislation, in particular section 11A of the *Firearms Act 1973 (WA)*, should be clarified to reflect that a genuine reason is required for Corporate Licenses and any other licence type even where the licence application is not in respect of any specific firearm.

- 86.2 The category of firearm permitted under a Corporate Licence should relate directly to the genuine reason and the purpose for which the licence is granted.
- 86.3 For all Corporate Licences the Licensing Authority should be entitled to have regard to the 'occupation' or purpose that formed the basis of the licence application when considering revocation or renewal of the licence.
- 86.4 The Firearms Legislation should expressly provide that a Corporate Licence only be issued under one genuine reason and firearms held under that licence only be used for the stated purpose that was used to support the existence of that genuine reason.
- 86.5 Each Corporate Licence should contain the following minimum conditions:
- the single purpose for which any firearm held under the licence may be used, for example, security under the *Security and Related Activities (Control) Act 1996* (WA);
 - the types of employees that may have access to the firearms;
 - the training requirements (if any) before an employee, agent etc. may possess or use a firearm;
 - the categories of firearm permitted under the licence;
 - any limitation on the category of firearms particular employees may possess or use; and
 - the particular storage requirements for the firearms.
- 86.6 Where the possession and use of firearms under a Corporate Licence will be:
- as envisaged by one of the exemptions under section 8(1)(l), (m), (ma) and (n) of the *Firearms Act 1973* (WA); and
 - under supervision of a person who has a Firearms Licence for the categories in use or who is an approved Nominated Person,
- then this should be made a condition of the Corporate Licence and the relevant section 8 exemption will apply.
- 86.7 Where a firearm is to be used under a Corporate Licence by an employee, agent or other person in accordance with section 16(2) of the *Firearms Act 1973* (WA) the legislation should provide that such person first be approved by and registered with the Licensing Authority through a Nominated Persons application. The exemption under section 8(1)(f) be amended accordingly.
- 86.8 The requirements that should be satisfied before a Nominated Persons approval is obtained include that the Police Commissioner is satisfied that the person is a fit and proper person.
- 86.9 A Police Commissioner decision on a Nominated Person application should be subject to review.
- 86.10 Nominated Persons application and authorisation forms should be included in the *Firearms Regulations 1974* (WA).
- 86.11 The authorisation of a Nominated Person should contain conditions relating to the category of firearm that such person may possess and use.
- 86.12 The regulations should contain standard terms and conditions for possession and use of firearms by Nominated Persons under a Corporate Licence.
- 86.13 The Licensing Authority should maintain a data base of all Nominated Persons including details of the relevant Corporate Licence holder, and the categories and purpose of permitted use.
- 86.14 The Police Commissioner should be empowered to withdraw permission to use a firearm in the case of Firearms Prohibition Orders or any other relevant matter that comes to its attention in respect of the Nominated Person.
- 86.15 The Licensing Authority should be required to advise the holder of a Corporate Licence of a Firearms Prohibition Order against a Nominated Person.
- 86.16 Corporate Licence holders should be required to report on the removal of Nominated Person from its Nominated Person list within seven days of that change and, in any event, should send a current Nominated Person list to the Licensing Authority on an annual basis for audit purposes.
- 86.17 The legislation should be clear that non-compliance with the reporting obligations is an offence and subject to a penalty.

- 86.18 Co-licensees should not be permitted on Corporate Licences.
- 86.19 A Nominated Person who requires training on the use of a firearm should be permitted to do so under the Corporate Licence at an approved club or range or shooting gallery.
- 86.20 Nominated Persons should be issued with an authorisation card containing all relevant details of the permission

Recommendation 87:

The Firearms Legislation should be amended by deleting all reference to a Repairer's and Manufacturer's Licence and incorporating those purposes within the definition of a Dealer's Licence, subject to permissible activities.

Recommendation 88:

The requirement to lodge dealer returns with WA Police should be retained.

Recommendation 89:

The Firearms Legislation should be amended to provide that infringement notices may be issued for the failure to submit reports under regulation 18(1)(b) of the *Firearms Regulations 1974 (WA)*.

Recommendation 90:

- 90.1 Where a firearm is to be used under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence by an employee, agent or partner of the holder in accordance with 16(1)(d), (e) and (f) of the *Firearms Act 1973 (WA)*, the legislation should provide that such person first be approved by and registered with the Licensing Authority through a Nominated Persons application.
- 90.2 The requirements that must be satisfied before a Nominated Persons approval is obtained should include that the Police Commissioner is satisfied that the person is a fit and proper person.
- 90.3 A decision by the Police Commissioner on a Nominated Person application should be subject to review.
- 90.4 Nominated Persons application and authorisation forms should be included in the *Firearms Regulations 1974 (WA)*.
- 90.5 The regulations should contain standard terms and conditions for possession and use of firearms by Nominated Persons under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence.
- 90.6 The authorisation of a Nominated Person should contain conditions relating to the purposes for which such person may possess and use firearms.
- 90.7 The Licensing Authority should maintain a data base of all Nominated Persons including details of the relevant licence holder, and the categories and purpose of permitted use.
- 90.8 The Police Commissioner should be empowered to withdraw permission to use a firearm in the case of Firearms Prohibition Orders or any other relevant matter that comes to its attention in respect of the Nominated Person.
- 90.9 The Licensing Authority should be required to advise a licence holder of a Firearms Prohibition Order against a Nominated Person.
- 90.10 Dealer, Repairer and a Manufacturer licence holders should have an obligation to report on any removal from its Nominated Person list within seven days of that change and to send a current Nominated Person list to the Licensing Authority on an annual basis for audit purposes.
- 90.11 The legislation should be clear that non-compliance with the reporting obligations is an offence and subject to a penalty.

90.12 Nominated Persons should be issued with an authorisation card endorsed with all relevant details and permissions and this requirement be formalised in the *Firearms Regulations 1974* (WA).

Recommendation 91:

- 91.1 The standard permissible activities for all approved Nominated Persons under a Dealer's Licence, a Repairer's Licence or a Manufacturer's Licence should include:
- a. to have firearms in his or her possession in the ordinary course of the business of that dealer, repairer or manufacturer;
 - b. to use any such firearm or ammunition for the purpose of testing it; or
 - c. to use any such firearm or ammunition for the purposes of demonstrating it to a prospective purchaser or customer.
- 91.2 A Nominated Person should be permitted to carry out manufacturing and/or repairs where the Licensing Authority is satisfied that the applicant is able to carry out such activities, including the passing of a written test.
- 91.3 The Firearms Legislation should clearly specify that the Nominated Person may be personally liable for any breach of the endorsement and conditions on the Nominated Person authorisation.

Recommendation 92:

- 92.1 Any person over the age of 16 years should be able to apply for permission to repair and/or manufacture under another's Repairer's Licence or Manufacturer's Licence where, in addition to the usual requirements for a Nominated Person application, the applicant provides evidence of his or her written apprenticeship or training contract with the licence holder.
- 92.2 The Licensing Authority should be able to put conditions on an apprenticeship permission.
- 92.3 The dealer should have an obligation to inform the Licensing Authority if the apprenticeship is terminated for any reason.

Recommendation 93:

Licensed dealers, repairers and/or manufacturers working for one entity should be entitled to have their records submitted on one form under the business name and section 31(2) of the *Firearms Act 1973* (WA) should be amended accordingly.

Recommendation 94:

The restrictions applying to the holders of Dealer's Licences under regulations 6C to 6G of the *Firearms Regulations 1974* (WA) should be extended to Repairer's Licences, Manufacturer's Licences and Corporate Licences.

Recommendation 95:

No new legislation should be introduced to deal with abandoned firearms or ammunition.

Recommendation 96:

A new offence of possessing an unsafe or unserviceable firearm should not be introduced in the legislation and there should be no reporting obligations in this regard on dealers, repairers or manufacturers.

Recommendation 97:

- 97.1 Section 16(1) (d) – (f) of the *Firearms Act 1973* (WA) should be amended to provide for ‘major firearm parts’ under the various permissible activities of Dealer’s Licences, Repairer’s Licences and Manufacturer’s Licences.
- 97.2 Section 19(4) of the *Firearms Act 1973* (WA) should be amended to reflect that the dealing in, repair and/or manufacture of major firearm parts without a licence is an offence.

Recommendation 98:

The *Firearms Act 1973* (WA) should be amended to provide that a person who purchases or sells more than 20 firearms or more than 20 major firearm parts in any 12 month period will be taken to be carrying on the business of a dealer in respect of the firearms or major firearm parts purchased or sold in excess of 20 in that period unless it is proved that the person was not carrying on such a business.

Recommendation 99:

- 99.1 Section 23BA(2) of the *Firearms Act 1973* (WA) should be retained.
- 99.2 Section 23BA(2) of the *Firearms Act 1973* (WA) should include an obligation to report on the acceptance of new members.
- 99.3 Section 23BA(1) of the *Firearms Act 1973* (WA) should be deleted.
- 99.4 In respect of the reporting obligations in section 23BA(2), the report should be made within seven days of the refusal of an application for membership, or the cancellation of existing membership for any reason; and in respect of acceptance of new members within 28 days of the acceptance.
- 99.5 An approved shooting club or organisation should be required to send the Licensing Authority a current membership list annually (for audit purposes).
- 99.6 Non-compliance with the reporting obligations should be an offence and subject to a penalty.
- 99.7 The Firearms Legislation should include the power to make regulations in respect to shooting clubs and organisations on the following aspects:
- the manner in which a shooting club and organisation must apply for approval, the forms, information and documentation required and the conditions that may be imposed;
 - the entry into, and inspection of, the grounds of a shooting club or organisation by WA Police for the purposes of determining applications for approval, reviewing approvals or determining whether conditions of approvals are being or have been contravened; and
 - any matters relating to membership applications.
- 99.8 The Firearms Regulations should provide that an applicant must produce a fit and proper certificate issued by the Licensing Authority as part of an application for a shooting club or organisation membership.
- 99.9 All approved shooting clubs or organisations should ensure that they include an application requirement of two character references and a 100 point identity check in their internal rules.
- 99.10 An approved shooting club or organisation should be required to cancel or suspend membership (as the case may be) in the case of a firearms prohibition order against that member or when the member’s Firearm Licence is cancelled or suspended.
- 99.11 The Licensing Authority should be required to advise an approved shooting club or organisation of the cancellation or suspension of a member’s Firearms Licence as soon as practicable after the relevant member has been notified.
- 99.12 An indemnity from civil or criminal liability should be included in respect of all action taken in good faith in compliance, or purported compliance, with this section (as currently under section 23BA(4) of the *Firearms Act 1973* (WA)).

Recommendation 100:

There should be no new Heirloom Licence category in the *Firearms Act 1973* (WA).

Recommendation 101:

101.1 The exemption under section 8(1)(g) of the *Firearms Act 1973* (WA) should be framed without reference to approvals, to cover all carriers and warehousemen, that is:

- a. a person who is in possession of a firearm (other than a prescribed firearm), in the ordinary course of the business of transporting or storing goods (other than as a dealer), is exempt from the licencing provisions of the *Firearms Act 1973* (WA), except that the person carrying on the business must comply with the requirements of the *Firearms Act 1973* (WA) relating to the transport or storage of firearms, major firearm parts or ammunition.

101.2 The requirement of approval for carriers and warehousemen should be deleted.

101.3 A service user (the licence holder on behalf of whom the firearms are being transported or warehoused), should have a duty to take reasonable steps to ensure that:

- a. the carrier and/or warehouseman is one whose usual business is transporting or storing goods;
- b. the carrier or warehouseman is informed of the contents of the package where more than five firearms are being transported or warehoused or where any of the firearms are in Categories C,D or H;
- c. the carrier or warehouseman is appropriate for the purposes of the carriage of the firearms in question, in particular noting the difference in carrier responsibilities for carrying more than five firearms or firearms in Categories C,D and H, as referred to in Recommendation 101.4;
- d. the recipient has lawful authority to possess the firearms;
- e. a firearm is to be transported and warehoused with a trigger-lock in place at all times and the key to the trigger-lock should be packaged separately;
- f. ammunition is not packaged with the firearms;
- g. a package containing firearms is not packaged or labelled in such a way as to expressly or otherwise indicate its contents;
- h. the package is trackable; and
- i. the transaction with the carrier and/or warehouseman is in writing.

101.4 Regulations should provide that any carrier or warehouseman that wishes to transport and/or store firearms must abide by minimum standards which include:

- a. all current obligations under the Firearms Legislation as described above, should continue to apply;
- b. there should be clear lines of corporate responsibility as set out in section 21B of the *Firearms Act 1973* (WA);
- c. Warehousemen and commercial carriers should be included under the section 7 emergency provisions;
- d. where more than five firearms are carried or stored in one transport or premises the regulations should provide for additional security measures;
- e. where any of the firearms are in Category C, D or H the regulations should provide for additional security measures;
- f. ammunition is not to be transported with firearms;
- g. packages containing firearms are not to be packaged or labelled in such a way as to expressly or otherwise indicate their contents;
- h. the package should be trackable; and
- i. the transaction with the service user is in writing.

101.5 A failure to meet these responsibilities should be an offence.

Recommendation 102:

Advertisements for sale of firearms, major firearm parts or ammunition should be prohibited unless the sale is conducted through a licensed dealer.

Recommendation 103:

103.1 Firearm Dealer's Licences should automatically include the ability to warehouse firearms.

103.2 Approved shooting clubs should not have the automatic ability to warehouse firearms.

Recommendation 104:

104.1 Where an organisation requires a licence to possess and use firearms for film and theatrical purposes then a Corporate Licence be utilised for that purpose.

104.2 Section 17 of the *Firearms Act 1973* (WA) be amended to specifically provide for the ability to grant a temporary permit for the purposes of film, television or theatrical production.

104.3 The *Firearms Regulations 1974* (WA) set out the applicable conditions for a temporary permit for the purposes of film, television or theatrical production and regulation 52 of the *Firearms Regulation 2006* (NSW) be used as a guide for the formulation of this provision.

Recommendation 105:

105.1 The exemption at section 8(1)(m) of the *Firearms Act 1973* (WA) should be amended to exclude minors from its operation.

105.2 No minor under the age of 10 should be allowed to possess or use a firearm.

105.3 Section 8(1)(n) of the *Firearms Act 1973* (WA) should be replaced with the following minor-specific exemptions:

- a. A minor from the age of 10 to 14:
 - i. Should be allowed to use firearms from Category A, B and C (Category C only for purpose of receiving instruction or approved competition in clay target shooting under conditions and with approval from the Police Commissioner) or Category H handguns (only for target shooting instruction and competition);
 - ii. at an approved range or approved shooting gallery, or as a member of an approved shooting club on the grounds of a shooting club for the purpose of shooting in a manner authorised by the club.
 - iii. under the continuous supervision of, and which is the property of, a person who is the holder of a licence or permit under the *Firearms Act 1973* (WA) relating to that firearm.
 - iv. Where the supervisor is not the parent or guardian then the supervisor must be approved by the minor's parent or guardian.
- b. A minor from the age of 14 years and under the age of 18 years:
 - i. Should be allowed to use a Category A, B and C (Category C only for purpose of receiving instruction or approved competition in clay target shooting under conditions) or Category H handguns (only for target shooting instruction and competition);
 - ii. under the continuous supervision of, and which is the property of, a person who is the holder of a licence or permit under the *Firearms Act 1973* (WA) relating to that firearm.
 - iii. Where the supervisor is not the parent or guardian then the supervisor must be approved by the minor's parent or guardian.

105.4 The exemption in section 8(1)(i) of the *Firearms Act 1973* (WA) in regard to primary producers should continue to apply to minors but only in respect of Category A or B firearms, and subject to a minimum age limit of 10 years.

Recommendation 106:

- 106.1 A temporary Junior Competition Permit should be introduced to allow a minor, under supervision of a nominated club official or coach (who must have a certain number of years' experience in the particular discipline) to possess and use a firearm listed on the permit within the confines of the competition.
- 106.2 The following provisions should apply to a Junior Competition Permit:
- a. may be applied for by a minor from 12 to 18 years;
 - b. who is a member of an approved shooting club;
 - c. for the purposes of shooting in a competition;
 - d. the applicant to have the consent of the parents or guardian and a letter of support from the approved shooting club; and
 - e. the Licensing Authority may conduct a fit and proper test.
- 106.3 A Junior Competition Permit should allow a minor to use a firearm held under a person's licence who is not the supervisor (for example, the minor's parent or a dealer) where the application provides evidence of a loan agreement between the supervisor and the licence holder which reflects the details of the firearms and confirms the sole purpose of the loan is the use and possession of the firearm by the supervisor and, at the competition, by the minor.

Recommendation 107:

- 107.1 The restrictions in regard Shooting Gallery Licences should be retained.
- 107.2 No new shooting range licence should be introduced and the shooting range exemption under section 8(1)(m) of the *Firearms Act 1973 (WA)* should be retained.
- 107.3 New regulations should be introduced in the *Firearms Regulations 1974 (WA)* that set out minimum standards of construction, safety and permissible firearms for shooting ranges.

Recommendation 108:

- 108.1 WA Police should prepare a formal policy document confirming that firearms are rendered temporarily inoperable for the purposes of introduction to court as an exhibit (through the use of basic safety precautions such as lock-boxes and trigger locks) and the manner in which firearms and ammunition are treated at court, including the collection thereof at the conclusion of court proceedings.
- 108.2 The heads of the court jurisdictions should be consulted in the development this policy and be provided with the policy once finalised.
- 108.3 Section 8 of the *Firearms Act 1973 (WA)* should be amended to exempt employees and officers of a court from the licencing provisions of the *Firearms Act* when possessing firearms in the course of their official duties.

Recommendation 109:

- 109.1 The *Firearms Act 1973 (WA)* should retain the general obligation of taking all reasonable precautions to ensure the safe keeping of a firearm.
- 109.2 The *Firearms Act 1973 (WA)* should require the application of the general safe keeping obligations where:
- a. the licence holder is in possession of the firearm;
 - b. the licence holder is engaged in an activity the purposes for which the licence has been issued;
 - c. the licence holder is not at the storage premises; and
 - d. it is unreasonable for the licence holder to return to the storage premises to store the firearm.

Recommendation 110:

The reporting time period under regulation 9 of the *Firearms Regulations 1974 (WA)* in respect to a change in the storage arrangements should be amended to 14 days after the event.

Recommendation 111:

- 111.1 The *Firearms Regulations 1974 (WA)* should set out basic acceptable safe keeping precautions for certain circumstances while not curtailing the court's discretion to determine whether reasonable precautions were taken.
- 111.2 A licence holder should be deemed to have taken all reasonable precautions to ensure the safe keeping of a firearm if in an unattended vehicle where any one of the following means of stowage is utilised:
- a. it is stowed unloaded in a locked boot; or
 - b. it is stowed unloaded in a locked compartment or safe within the locked vehicle and out of sight; and
 - c. it is secured with the bolt removed (if this is possible for the particular firearm) or with a trigger lock fitted; and
 - d. ammunition is not stored with the firearm but is in a separate locked compartment and out of sight within the locked vehicle.
- 111.3 A licence holder should be deemed to have taken all reasonable safe keeping precautions when the physical custody of the relevant firearm is transferred in writing to an appropriate carrier business.
- 111.4 A licence holder should be deemed to have taken all reasonable safe keeping precautions when the physical custody of the relevant firearm is transferred in writing to a licensed dealer or an appropriate warehousing business.
- 111.5 The Firearms Legislation should specifically provide for guidelines that, once approved by the Police Commissioner and gazetted, must be taken into account as a factor in determining whether reasonable precautions were taken to ensure the safe keeping of a firearm.

Recommendation 112:

- 112.1 The statement in the WA Police Firearm Storage Requirements guideline that it is an offence to leave a firearm unattended in a car, should be amended to more accurately reflect the current position.
- 112.2 The *Firearms Act 1973 (WA)* should require adherence to the storage conditions when the person who is obliged to store the firearm is not in actual physical possession of the firearm at the premises provided on the licence as the person's secure storage facility.
- 112.3 The *Firearms Act 1973 (WA)* should place an express storage obligation (and the obligation to comply with regulation 11A of the *Firearms Regulations 1974 (WA)* or other applicable storage requirements for the particular licence type):
- a. on the licence holder (whether an individual under a Firearms Licence or the holder of one of the corporate-type licences such as a Dealer's Licence);
 - b. on a person in possession of the firearm under a lending arrangement;
 - c. on the agent/employee of the licence holder where entitled to possess the firearm under any licence under the *Firearms Act 1973 (WA)* ;
 - d. and where a licence or permit issued under the *Firearms Act 1973 (WA)* contains specific storage conditions.

Recommendation 113:

There should be no express storage requirements on issuers of property letters.

Recommendation 114:

- 114.1 The *Firearms Act 1973* (WA) should allow licence holders to meet their safe keeping obligation (in respect to section 23(9)(a) of the *Firearms Act 1973* (WA)) by securely stowing their firearms together with those of other licence holders on condition that there is no access by unlicensed persons and that the licence holder has access to the facility.
- 114.2 The provisions relating to shared secure facilities should only apply when the storage obligations are not applicable.
- 114.3 The Firearms Legislation should provide for a requirement that the firearm in a shared secure facility be secured with the bolt removed or with a trigger lock fitted.
- 114.4 There should be no restriction on the types of firearms that may be temporarily secured together.
- 114.5 Section 19(1) of the *Firearms Act 1973* (WA) should be amended to reflect these recommendations as an exemption to the 'possession' offence.
- 114.6 The Firearms Legislation with regard to the separate storage of firearms and ammunition should continue to apply.
- 114.7 There should be no requirement to notify WA Police of the shared secure facility arrangements.

Recommendation 115:

In the case of co-habiting licence holders the Firearms Legislation should permit them to share their storage safes on condition that each firearm in the shared safe has a fitted trigger lock.

Recommendation 116:

The *Firearms Act 1973* (WA) should provide for a temporary permit under section 17 for the temporary storage of a firearm at a specified location where a licence holder proposes to be absent from the State for a substantial period of time; or is temporarily physically incapacitated.

Recommendation 117:

24-hour remotely monitored burglar alarms should not be required in remote and regional areas.

Recommendation 118:

- 118.1 All types of firearms should be subject to the same storage requirements, unless the Police Commissioner determines additional storage requirements in accordance with his/her power under section 21 of the *Firearms Act 1973* (WA) or if prescribed in the *Firearms Regulations 1974* (WA).
- 118.2 The *Firearms Act 1973* (WA) should provide that different storage requirements may be prescribed for different licence types.
- 118.3 The storage requirements for entities operating under a Corporate Licence should be prescribed in the *Firearms Regulations 1974* (WA) and be a graduated approach depending on the number of firearms held under the licence.
- 118.4 Stricter storage requirements for Category D firearms should be prescribed in the *Firearms Regulations 1974* (WA).

Recommendation 119:

- 119.1 Where a licence holder has more than 10 firearms stored at the same premises the Police Commissioner should be able to require additional security measures.
- 119.2 The types of additional measures that may be required should be prescribed in the *Firearms Regulations 1974 (WA)* and include additional safes or electronic or audible security.

Recommendation 120:

- 120.1 The Firearms Legislation should provide for lending arrangements for a period not exceeding 28 days with different requirements for an occasional lender and a dealer.
- 120.2 A licence holder (who is not a dealer) should be permitted to lend a firearm to another licence holder where:
- a. the borrower holds a licence in respect of the same Category firearm as the firearm that is the subject of the arrangement;
 - b. there is no consideration involved;
 - c. the firearm being borrowed is a Category A or B firearm (or in the case of a Junior Competition Permit only, Categories A, B, C and handgun) ;
 - d. the lender has notified the Licensing Authority of the lending arrangements;
 - e. the notification includes the details of the borrower, the period and the firearm;
 - f. the notification is in writing with email to a dedicated email address being permitted; and
 - g. the lending arrangement may be by oral agreement.
- 120.3 A dealer should be permitted to lend a firearm to another licence holder where:
- a. the borrower holds a licence in respect of the same Category firearm as the firearm that is the subject of the arrangement;
 - b. the firearm being borrowed is not a prescribed firearm;
 - c. the dealer has notified the Licensing Authority of the lending arrangements;
 - d. the notification includes the details of the borrower, the period and the firearm;
 - e. the loan agreement is in writing; and
 - f. the dealer adheres to the reporting requirements and details that should be sent to the Licensing Authority in respect of the loan.
 - g. the loan price if there is one be limited to ensure that a firearm is not hired out at its full purchase price.
- 120.4 The *Firearms Regulations 1974 (WA)* should prescribe requirements in respect of:
- a. lending arrangements and dealer reporting;
 - b. any required contents of the notification;
 - c. the basic provisions of any lending agreement;
 - d. the cool off period between loan arrangements during which a borrower may not borrow; and
 - e. the number of times a firearm may be lent between the same parties.
- 120.5 The purpose for which the borrowed firearm is used must be in accordance with the terms of the borrower's licence in respect of that Category firearm.
- 120.6 The Nominated Person authorisation process should be used to pre-qualify borrowers, who are not licence holders, who wish to rent a firearm from a dealer.
- 120.7 A pre-qualified borrower should be issued a Nominated Person authorisation similar to that under a Corporate Licence.

- 120.8 The dealer should be required to submit to the Licensing Authority the details of the actual firearm rented out when the firearm is collected by the borrower.
- 120.9 The dealer's responsibilities should be the same as for any other lending arrangement.
- 120.10 Where a person engages in lending for compensation or undertakes regular lending arrangements then such a person should be deemed a dealer and the definition of dealer in section 4 of the *Firearms Act 1973* (WA) be amended accordingly, incorporating a threshold of transactions for the deeming provision to apply.

Recommendation 121:

There should be no additional exemption for an unlicensed adult to use another person's firearm outside of the current exemptions.

Recommendation 122:

- 122.1 The Firearms Legislation should provide for an automatic review by the Police Commissioner of all reviewable decisions.
- 122.2 The Police Commissioner should be able to delegate this function only to a commissioned police officer of a specified rank who is suitably qualified and who was not substantially involved in the original decision.
- 122.3 The internal review should operate under time limits similar to an internal review under the *Freedom of Information Act 1992* (WA).

Recommendation 123:

- 123.1 The *Firearms Act 1973* (WA) should be amended to include recognition of interstate licences on the following conditions:
- a. A person who is a resident of another State or Territory, and is the holder of the equivalent of a category A, category B or category H licence issued under the law in force in that State or Territory, is exempt under section 8 of the *Firearms Act 1973* (WA), but only for the purpose of enabling the person to participate in a shooting competition conducted by an approved club or organisation (or for such other purposes as may be prescribed by the Firearms Regulations).
 - b. A person who is a resident of another State or Territory, and is the holder of the equivalent of a category C licence issued under the law in force in that State or Territory for a shotgun, is exempt under section 8 of the *Firearms Act 1973* (WA), but only for the purpose of participating in a recognised clay target shooting competition conducted by an approved club or organisation (or for such other purposes as may be prescribed by the Firearms Regulations).
- 123.2 Section 17A of the *Firearms Act 1973* (WA) should be retained to cover interstate group permits.
- 123.3 The Police Commissioner should provide appropriate instruction to police officers to ensure an adequate understanding of the acceptance of interstate licences and the acceptable proof of authorisation in that regard.

Recommendation 124:

The Western Australia Government should promote the development of a nationally recognised permit for international participants in firearm competitions.

Recommendation 125:

- 125.1 Sections 21A and 21B of the *Firearms Act 1973* (WA) should be amended to clarify which provisions apply only to holders of Dealer's, Repairer's or Manufacturer's Licences and their agents or employees and which provisions apply more generally in respect to corporations.
- 125.2 A general provision should be inserted modelled on section 72 of the *Firearms Act 2015* (SA) to provide that if a corporation is guilty of an offence under the *Firearms Act 1973* (WA), the directors of the corporation are each guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person, unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence by the corporation.

Recommendation 126:

- 126.1 A person should be able to make a report to WA Police if:
- a. He or she is of the opinion that a person who is in possession of a firearm, or intends to apply for licence, permit or other authorisation under the *Firearms Act 1973* (WA), is not a fit and proper person to possess, carry or use a firearm; and
 - b. He or she believes on reasonable grounds that the information is true; or has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.
- 126.2 The Firearms Legislation should provide for the protection of the identity of the reporting person when made in good faith.
- 126.3 The report should not affect the reporting person's liability for anything to which the information relates.
- 126.4 A report made in good faith in accordance with the provision should not give rise to a criminal or civil action or remedy.

Recommendation 127:

- 127.1 The *Firearms Act 1973* (WA) should be amended to provide for firearms prohibition orders.
- 127.2 The new firearms prohibition order provisions should be modelled on sections 73 and 74 of the *Firearms Act 1996* (NSW) subject to the following:
- a. a firearms prohibition order may be issued by the Police Commissioner if satisfied that: possession of a firearm by the person would be likely to result in undue danger to life or property; or the person is not a fit and proper person to possess a firearm, and that it is in the public interest that a firearms prohibition order should apply to the person; and
 - b. a firearms prohibition order expire five years after service, at which point the Police Commissioner may issue a fresh order if required.
- 127.3 The entry, search and seizure powers in respect of firearms prohibition orders should be as contained under the current section 24 of the *Firearms Act 1973* (WA), that is, the powers may be exercised as reasonably required for the purpose of ensuring compliance with a firearms prohibition order and can be exercised without warrant if:
- a. the member of the WA Police is reasonably of the opinion that there is an immediate threat of harm being suffered by a person; and
 - b. the delay that would be involved in obtaining a warrant would be likely to increase the risk or extent of such harm; and
 - c. gives the Police Commissioner, after the powers are exercised, a written report explaining the reason for that opinion.
- 127.4 There should be clear legislative authority to seize any firearms, major firearm parts or ammunition found during the exercise of firearms prohibition order search powers.

127.5 A decision to make a firearms prohibition order should be reviewable, unless such person would already have been ineligible to possess or use a firearm under another non-reviewable provision of the *Firearms Act 1973* (WA).

127.6 The *Firearms Act 1973* (WA) should include provisions to facilitate enforcement of firearms prohibition orders made in other jurisdictions and WA Police should engage with law enforcement agencies in other jurisdictions to ensure they are noted.

Recommendation 128:

Where an interim restraining order was issued and was discharged without a final restraining order being made then that interim order should not be used as evidence for forming an opinion that a person is not a fit and proper person and section 11(3)(a)(iv) of the *Firearms Act 1973* (WA) should be amended accordingly.

Recommendation 129:

The *Firearms Act 1973* (WA) should be amended to provide that while a licence is suspended under the section 27A(1) disqualification period, the duration period of the licence is also suspended (unless the licence is revoked by the Police Commissioner).

Recommendation 130:

Automatic temporary suspensions should not be included in the *Firearms Act 1973* (WA).

Recommendation 131:

131.1 A provision should be incorporated in the Firearms Legislation that applies to all seizure of firearms, ammunition or major firearm parts; which clearly sets out the rights and responsibilities of all parties; and which is modelled on the provisions of regulation 22A(3) to 22A(9) of the *Firearms Regulations 1974* (WA).

131.2 Section 20 of the *Firearms Act 1973* (WA) should be amended to clarify:

- a. the period during which a person must dispose of firearms and ammunition following refusal to renew or revocation of his or her licence; and
- b. when and how WA Police may seize firearms and ammunition following refusal to renew or revocation of a licence.

Recommendation 132:

A requirement of reasonableness should be introduced in section 24(3) of the *Firearms Act 1973* (WA) so that an opinion that a firearm is unsafe or unserviceable is based on reasonable grounds.

Recommendation 133:

Section 33(1)(a) of the *Firearms Act 1973* (WA) should be amended to specify that the Police Commissioner take all reasonable steps to locate the owner prior to disposal.

Recommendation 134:

134.1 The current definition of 'possession' in the *Firearms Act 1973* (WA) should be expanded to include that a person has possession of an item if the person occupies, or has care, control or management of, premises, or is in charge of a vehicle, where the item is found.

134.2 The expanded portion of the definition should not apply if the person proves that:

- a. he or she did not know, and could not reasonably be expected to have known, that the item was on or in the premises or vehicle; or
- b. the item was in the lawful possession of another or he or she believed on reasonable grounds that the item was in the lawful possession of another.

Recommendation 135:

The definition of 'firearm offence' in section 106 of the *Sentencing Act 1995* (WA) should be amended to include an offence under the *Firearms Regulations 1974* (WA).

Recommendation 136:

Section 28 of the *Firearms Act 1973* (WA) should be amended to extend its operation to allow forfeiture of any firearms upon conviction where the charge or offence either involves physical violence, or involves the use or threatened use of a firearm.

Recommendation 137:

Those offences in sections 22A(2), 22A(3), 22B, 22C, 23, 30, 30A, 30B, 31 and 32 of the *Firearms Act 1973* (WA) that do not include imprisonment as a penalty should be prescribed as offences in respect of which infringement notices may be issued.

Recommendation 138:

138.1 The *Firearms Act 1983* (WA) should be amended to include a permanent general amnesty modelled on section 64 of the *Firearms Act 2015* (SA) where:

A person may bring a firearm or ammunition, or a major firearm part, prohibited firearm accessory or silencer to a police station, or to another location approved by the Licensing Authority, and surrender it to the Licensing Authority, and no action is to be taken against the person in respect of any offence relating to the unauthorised possession of the item by that person.

138.2 The WA Police website should promote the amnesty and include details as to the various scenarios under which the amnesty provisions could be utilised, including deceased estates.

Recommendation 139:

The indictable offences in the *Firearms Act 1973* (WA) should be retained in that Act.

Recommendation 140:

The offences in sections 19(1ab) and 23(9a) of the *Firearms Act 1973* (WA) and in sections 68D(2), 68E(2) and 68(1) of *The Criminal Code* (WA) should remain in their respective Acts.

Recommendation 141:

The penalties under section 23(9a) of the *Firearms Act 1973* (WA) should be increased to at least match that of section 68(1) of *The Criminal Code* (WA).

Recommendation 142:

Section 23C of the *Firearms Act 1973* (WA) should be amended to include a provision similar to that of section 73 of the *Firearms Act 2015* (SA) to give full effect to the resolution, recorded in the National Firearms Trafficking Policy Agreement, to provide for an offence to conspire to commit an interstate firearm offence.

Recommendation 143:

143.1 There should be no specific mention of an offence of 'trafficking' in the *Firearms Act 1973* (WA).

143.2 Offences in regard to three or more firearms should be contained in a separate section and:

- a. consolidated into that of selling, or acquiring, three or more firearms without authority;
- b. both the transferor and transferee be liable for the offence where they were authorised but they were aware the other party was not; and
- c. the penalty of 14 years should be increased to 20 years for a repeat offender.

143.3 Offences for:

- a. purchasing or acquiring, or
- b. for selling or supplying a firearm

without licence or permit, when less than three firearms, should be consolidated into their own section and where that offence concerns handguns, Category D and prohibited firearms the maximum penalty should be increased to at least 10 years.

143.4 Section 19(4) of the *Firearms Act 1973* (WA) should be amended to increase the penalties in regard to unlawful manufacturing of firearms.

143.5 The penalties for safekeeping and storage offences under section 23(9)(a) and 23(9)(d) of the *Firearms Act 1973* (WA) should be increased in order to provide a greater deterrent.

143.6 Specific consideration should be given to the following additional areas in respect to penalties:

- a. the formulation of offences and penalties as a result of the introduction of the term 'major firearm parts' into the legislation;
- b. the penalty in regard to disposing or selling ammunition without licence or permit under section 22A(3) requires a substantial increase;
- c. the penalty in regard to discharge of a firearm through a public place, dwelling house or across a road under section 23(9)(c); and
- d. using a firearm on another person's land without permission under section 23(10).

143.7 The Western Australia Government should consider a greater use of graduated penalties depending on the relevant firearm Category and whether it is a first or subsequent offence.

143.8 The language in section 23(1) of the *Firearms Act 1973* (WA) should be reconsidered to provide clarity in regard to the offence that relates to knowing whether a person is affected by alcohol or drugs.

143.9 A specific provision should be introduced into section 378(5) of *The Criminal Code* (WA) which provides for an increased penalty in respect of the theft of a firearm.



LAW REFORM COMMISSION
of
WESTERN AUSTRALIA