

15 March 2023

Department of Police, Fire and Emergency Management
Strategy & Support
GPO Box 308
Hobart, TAS 7001

[By email to strategy.support@dpfem.tas.gov.au]

Dear DPFEM,

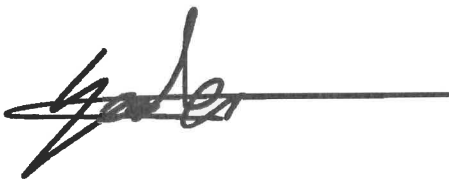
Re: Firearms Amendment (Community Safety) Bill 2023

Please find enclosed my submission regarding the proposed amendments to the *Firearms Act 1996* (Tas) as put forward in the *Firearms Amendment (Community Safety) Bill 2023*.

I am a PhD Candidate at the University of Tasmania. My thesis is on firearms policy and law reform. I have published on this topic in various scholarly legal and policy journals. I also provided submissions, and appeared as a witness, to the Tasmanian Parliament's Select Committees on firearms law reform.

My submission is represented in order of the proposed amendments. Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel Diprose Adams', written over a horizontal line.

Samuel Diprose Adams

SUBMISSION ON
THE FIREARMS AMENDMENT (COMMUNITY SAFETY) BILL 2023
by
SAMUEL H. G. DIPROSE ADAMS

I. INTRODUCTION

While not part of the proposed amendments, it would be useful to amend the *Firearms Act 1996* (Tas) ('the Act') and include a section specifically outlining the purpose and aims of firearms policy in Tasmania. This would aid future amendments by serving as a point of reference with clear aims and objectives for firearms laws and regulations. Other Australian jurisdictions have clear provisions outlining the purpose of their firearms legislation, including s 3 of the *Firearms Act 1996* (NSW), s 1 of the *Firearms Act 1996* (Vic), s 3 of the *Firearms Act 2015* (SA). Such a provision provides guidance to Tasmanian courts, police officers, firearm dealers and owners, and the community about exactly what Tasmanian firearms policy aims to achieve.

Section 3 of the *Firearms Act 2015* (SA) relevantly reads:

3—Principles and objects of Act

(1) *The underlying principles of this Act are—*

(a) to confirm firearm possession and use as a privilege that is conditional on the overriding need to ensure public safety; and

(b) to improve public safety—

(i) by imposing strict controls on the possession, use, acquisition, supply and manufacture of firearms; and

(ii) by promoting the safe and responsible storage, transport and use (whether for recreational or other purposes) of firearms; and

(c) to facilitate a nationally consistent approach to the control of firearms.

(2) *The objects of this Act are as follows:*

(a) to ensure that the possession and use of automatic and self-loading firearms is permitted only in strictly limited circumstances;

(b) to establish an integrated licensing and registration scheme for all firearms;

- (c) to require each person who possesses or acquires a firearm or ammunition under the authority of a licence or permit to have established a genuine reason to possess or acquire the firearm or ammunition;*
- (d) to provide strict requirements that must be satisfied in relation to firearms and transactions and activities involving firearms, including requirements to ensure the safe and secure storage and transport of firearms;*
- (e) to reduce the number of firearms that are in unlawful possession in the community through a general amnesty;*
- (f) to prevent or restrict persons and organisations from accessing, possessing or using firearms for criminal purposes;*
- (g) to minimise the risk of persons becoming victims of crimes involving the use or threatened use of firearms;*
- (h) to minimise the risk of persons causing injury or harm (including psychological harm) to themselves or others by the use or threatened use of firearms.*

Section 3 of the *Firearms Act 1996* (NSW) reads:

3 Principles and objects of Act

(1) The underlying principles of this Act are—

- (a) to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety, and*
- (b) to improve public safety—*
 - (i) by imposing strict controls on the possession and use of firearms, and*
 - (ii) by promoting the safe and responsible storage and use of firearms, and*
- (c) to facilitate a national approach to the control of firearms.*

(2) The objects of this Act are as follows—

- (a) to prohibit the possession and use of all automatic and self-loading rifles and shotguns except in special circumstances,*
- (b) to establish an integrated licensing and registration scheme for all firearms,*

- (c) to require each person who possesses or uses a firearm under the authority of a licence to prove a genuine reason for possessing or using the firearm,*
- (d) to provide strict requirements that must be satisfied in relation to licensing of firearms and the acquisition and supply of firearms,*
- (e) to ensure that firearms are stored and conveyed in a safe and secure manner,*
- (f) to provide for compensation in respect of, and an amnesty period to enable the surrender of, certain prohibited firearms.*

Section 1 of the *Firearms Act 1996* (Vic) reads:

1 Purpose

The purposes of this Act are—

- (a) to give effect to the principle that the possession, carriage, use, acquisition and disposal of firearms are conditional on the need to ensure public safety and peace by—*
 - (i) establishing a system of licensing and regulating the possession, carriage and use of firearms and related items which does not allow for self defence to be used as a reason for obtaining a licence to possess, carry or use a firearm; and*
 - (ii) establishing a system of licensing and regulating the carrying on of the business of dealing in firearms; and*
 - (iii) establishing a system of permitting and regulating the acquisition and disposal of firearms and related items; and*
 - (iv) establishing a system of registering firearms; and*
 - (v) establishing requirements for the secure storage and carriage of firearms; and Authorised by the Chief Parliamentary Counsel*
 - (vi) establishing a Firearms Appeals Committee to hear applications for review of decisions of the Chief Commissioner under the Act; and*
 - (vii) making provision for the education of the community in the safe and responsible use of firearms; and*
 - (viii) providing for strict control on the possession, carriage, use, acquisition, disposal and storage of firearms; and*
 - (ix) making other related provisions; and*

(b) to repeal the Firearms Act 1958; and

*(c) to make various consequential amendments to other Acts.*⁴

For an international contrast, the *Arms Act 1983* (NZ) states:

1A Purposes of this Act

(1) The purposes of this Act are to—

(a) promote the safe possession and use of firearms and other weapons; and

(b) impose controls on the possession and use of firearms and other weapons.

(2) The regulatory regime established by this Act to achieve those purposes reflects the following principles:

(a) that the possession and use of arms is a privilege; and

(b) that persons authorised to import, manufacture, supply, sell, possess, or use arms have a responsibility to act in the interests of personal and public safety.

The addition of these provisions provides guidance and clarity in the overall policy environment. This is particularly important for courts that are bound to consider the purpose and object of an act when interpreting it. Section 8A of the *Acts Interpretation Act 1931* (Tas) states:

8A. Regard to be had to purpose or object of Act

(1) In the interpretation of a provision of an Act, an interpretation that promotes the purpose or object of the Act is to be preferred to an interpretation that does not promote the purpose or object.

While the purpose and objectives of an act need not be expressly stated for s 8A to apply, it is certainly helpful. The purpose and objects outlined in the *Firearms Act 2015* (SA) are the most detailed and could serve as a model for Tasmania. It may be beneficial to include a further object that reflects a need to balance the strict control of firearms with the interests of legitimate firearm owners. Another addition could be similar to s 1(a)(vii) of the Victorian legislation which states that the legislation is for ‘making provision for the education of the community in the safe and responsible use of firearms’. A section specifically outlining the purpose or aims of the legislation can be specifically crafted to suit the needs of Tasmania and provide a reference point for future amendments and discussions on firearms policy and law.

II. SECTION 3 AMENDMENT (INTERPRETATION)

The addition of a definition of firearm sound suppressor is useful in clarifying exactly what objects may or may not fall within the scope of the law. The proposed definition reads:

firearm sound suppressor means any implement designed to suppress the sound caused by the discharge of a firearm, whether or not the implement forms part of the firearm or can be attached to, or removed from, the firearm;

The terminology of suppressor instead of silencer is best practice given that such devices only reduce the noise rather than silence it completely. Overall, the wording of the definition is reasonable. However, the word 'designed' may be problematic for devices that were designed for an alternative purpose but have now been modified or fitted to a firearm for the purpose of suppression. Such devices could include an automotive oil-filter, coke bottle, or even a pillow. Some alternative definitions provide guidance on how this section could be modified:

Section 4 of the *Firearms Act 1973 (WA)* reads:

sound suppressor —

(a) means a device that is made or modified to be fitted to a firearm to reduce the noise of the firearm firing or discharging; and

(b) includes a device commonly known as a silencer;

In this example from Western Australia, the key term is 'made or modified'. Such terminology could be incorporated into the Tasmanian amendment to read 'designed or modified' instead of just designed. Another example is from South Australia.

Section 4 of the *Firearms Act 2015 (SA)* reads:

sound moderator means a device designed or adapted to be attached to, or comprising part of, a firearm to muffle the report when the firearm is fired and includes baffles, tubes or other parts that when fitted together would comprise a sound moderator;

Here, the terminology is adapted rather than modified. The Victorian legislation, despite using the inaccurate and colloquial term of a silencer, takes a slightly different approach:

Section 3(1) of the *Firearms Act 1996 (Vic)* reads:

silencer means any instrument or thing by means of which the sound caused by the discharge of a firearm is rendered less audible, whether the instrument or thing forms part of the firearm or is or can be affixed or attached to the firearm;

Ultimately, the definition should be amended to include more than just items designed to suppress the sound of a firearm discharge. It should include items that have been modified, adapted, or otherwise fixed or used with the firearm for that purpose. While this amendment does not contemplate the policy approach towards suppressors, it could be worth considering whether suppressors used for environmental or auditory protection should be excluded from the definition.

III. LEVER ACTION SHOTGUNS – SECTIONS 14, 15, AND 17 AMENDMENTS

It appears that the primary purpose of amending sections 14, 15, and 17 is to create national uniformity in the approach towards lever actions shotguns. However, there is no clear policy rationale – apart from national uniformity – for this decision. It is not clear why pump and lever actions are singled out compared with other actions; such as bolt and break actions. It would be useful to provide guidance as to why, in Tasmania, it fosters better community outcomes by categorising shotgun actions in this way. It appears that the historical rationale behind categorising pump-action shotguns separately was because of their use by police and military forces. However, this argument does not apply to lever-actions. If the rationale is based on the speed of their functioning by the operator, in the same vein why semi-automatics and fully-automatics are in different categories, then there needs to be a test developed to determine which categories manually-operated shotguns should rightfully fall within. Otherwise, it seems entirely arbitrary that lever action shotguns are treated differently to other action types.

IV. SECTION 29 AMENDMENT AND IDENTIFIED ORGANISATION PARTICIPANT

The purpose of amending s 29 is to prohibit members of identified organisations – currently being outlaw motorcycle gangs – from firearm ownership. This provision is linked with s 6A(1) of the *Police Offences Act 1935 (Tas)* which proscribes the identified organisations. There are three concerns with this provision.

The first is that it is entirely superfluous. Section 29(1) provides the Commissioner with more than sufficient powers to reject a firearms licence application from someone in an outlaw motorcycle gang if they pose a threat to the community. A member of an outlaw motorcycle gang that poses a threat to themselves or others, who would be a risk to public safety, or would be unable to store and use firearms responsibly would not be a fit and proper person. The amendment would only be valid and necessary if an applicant satisfied all the requisite criteria – that they can safely own and use firearms without risk to themselves or others – and so are in all other regards a fit and proper person but they should still be denied a firearm because of their group affiliation.

Second, the amendment removes the power and discretion of the Commissioner to decide licence applications. It could be, that in certain circumstances, a member of a motorcycle gang may have a valid reason to own a firearm – such as for employment or agricultural use. In this circumstance the Commissioner should have the discretion to decide the person’s application and assuming all other relevant criteria are satisfied.

Third, the provision acts as a form of collective punishment for members of these groups by removing their ability to own firearms. This sort of collective punishment that is unable to be reviewed judicially is contrary to ideas and values of liberalism and individualism. It removes the capacity for an individual to be judged on their merits. Colloquial idioms such as ‘tarred with the same brush’ generally reflect the unethical approach to judging people by their affiliations. While identified organisations currently refer only to outlaw motorcycle gangs, the list can be expanded in the future. This is the primary concern of the provision.

V. SECTION 114 AND 115 AMENDMENTS – TOY FIREARMS

The s 14 amendment appears to close a loophole whereby, as the law currently stands, a person could carry a firearm with criminal intent but not be found guilty of such an offence if they can demonstrate the firearm was toy. This is because the definition of a firearm includes ‘an imitation firearm, other than a toy’. The main concern with this amendment is that is more likely to result in children being charged and convicted under s 114. Children are the primary target market for toys, including toy guns, and are most likely to be in possession of such toys. This means children, or juveniles, committing crimes with toy guns could be found guilty of firearms offences where they otherwise would not have been found guilty. However, this circumstance is likely a rare occurrence and ultimately the issue remains that the juveniles manifested the necessary criminal intent to satisfy s 114 in the first instance.

The amendment to s 115 reads:

displays, whether by carrying it or otherwise, an imitation firearm that is a toy with the intention that another person believes that the toy is a firearm.

This amendment appears to target offenders using a toy firearm during the course of an assault and prevent them from arguing the firearm was a toy as a defence to the charge. This occurred in the decision of *Lusted v Fazackerley* [2011] TASMC 11 where the court held that:

The community would condemn the use of a toy gun in this way. A toy can be used for a sinister purpose but it does not follow that it is not a toy. If it is a toy it is not a firearm. Thus s 115 has no application to this case.

However, the primary concern with this amendment is in the wording ‘with the intention’. This intention relates to the offender intending to create the belief in the mind of the victim that the firearm is live. It would, therefore, be a defence to this charge for the offender to argue that they never intended for the victim to believe the firearm was live. Instead, it would be more consistent with the policy objective of the section for this wording to be replaced with ‘and’ so the amendment would read:

displays, whether by carrying it or otherwise, an imitation firearm that is a toy and that another person believes that the toy is a firearm.

This means that if the victim believes the toy to be a live firearm then the charge is made out. If the victim knows the firearm is a toy, then it would not make sense for the aggravated assault charge to

be successful. The purpose of the section is punish those using firearms to increase the fear or risk to victims during an assault. If the victim knows the firearm is a toy - regardless of the offender's intentions – then the firearm has not increased the fear or risk to the victim. Similarly, if the victim does not know the firearm is a toy, then the firearm has increased the fear or perceived risk to the victim.

It is worth noting some general comments that apply to the proposed amendments to s 114 and 115. The regulation of imitation firearms, and toys in particular, is a challenging policy area. The literature identifies several notable challenges, including substitution:

The option of obtaining a real gun was open to most offenders who carried an imitation or bluffed, but they explicitly chose not to carry one either because they felt it unnecessary or they feared the consequences of their actions were they to be placed in a situation where they had the capability of employing lethal force. (O'Donnell & Morrison, 1997, p. 317)

Consideration should be given to further controls on [imitation firearms and toy guns], while bearing in mind potential counter-productive outcomes including possible increases in the use of real guns or other weapons such as knives (Hales et al., 2006, p. 106)

It is important to note that there is literature recognising legitimate benefits to owning toy and imitation firearms. While the level of benefit is subjective, it is recognised both internationally and nationally and is a consideration in implementing and enforcing such policy changes.

For instance, more or less realistic imitations of firearms are used for relatively new leisure or hobby activities, such as "airsoft"; this is a leisure activity which takes the form of a game generally involving two opposing teams of players equipped with imitation guns (generally made of plastic) which shoot 6mm or 8mm plastic pellets propelled by gas or compressed air. The propulsion power ranges in general from 2 to 7 joules. (European Commission, 2010, p. 3)

Other objects are similar in certain respects to firearms, without necessarily imitating them in a very realistic manner: take, for example, the launchers used for "paintball". This is a leisure activity practiced in privately-owned natural or urban settings and usually involving two opposing teams of players equipped with launchers which propel paint pellets by gas or compressed air. Paint pellets are projected by a force of between 10 and 13 joules. (European Commission, 2010, p. 3)

The European Commission report specifically mentions joules because the categorisation of firearms in Europe is based on joules. Joules referring to the amount of energy within the objects being discharged from the toy or firearm. Below a certain threshold, the joules are insufficient to cause lethal injury and so are categorised as toys. This raises an important question for Tasmania: what is a toy firearm? Tasmania does not have a legislative definition although it is becoming increasingly clear that one would be beneficial. Particularly in light of decisions regarding airsoft, gel-blasters, and paintball.

There are also broader philosophical arguments around the cost-benefit analysis of toy guns in society:

On the one hand, it can be argued that the relatively few incidents where a toy is mistaken for a weapon, even if the result is the tragic death of a child, does not justify a complete ban on toy and imitation weapons that would deprive the rest of the child population of the pleasure of playing cops and robbers with realistic props. (Wood, 2009, p. 280)

This sentiment is precisely why the definition of a firearm states 'other than a toy'. As noted in Hansard on Wednesday 31 JUL 96 when Mr Schulze asked the question 'I was just wondering how far we are

going down that track in terms of banning kids toys and stopping children playing those sorts of games'. This topic was raised again in Tasmanian Parliament on Thursday 23 APR 15 when Mr Dean stated that 'I have grave concerns about the way we are headed in this country. We are outlawing all of the fun things that we used to participate in and wrapping our children in cotton wool - and the adults as well'. Similarly, in *Lusted v Milburn* [2015] TASM 7 the court stated that:

There is no doubt that a children's toy can be used to good effect in criminal activity, but the intention of the legislature is clear to avoid the absurd result that toy stores and children would be committing offences under firearms legislation

Ultimately, whether Tasmania requires a definition of toy firearm, and broader questions around the policy approach towards such toys, is not the purview of these proposed amendments. However, they are important considerations moving forward and for future policy changes.

VI. SECTION 129 AMENDMENT – AMNESTY

There are several reasons why a member of the public may not be comfortable taking an unlawfully held firearm to a police station. This includes that the member does not understand the law and the protections it affords them, general distrust or discomfort with interacting with the police, or proximity to a police station versus proximity to a dealer. For this reason, firearms dealers should be able to receive and hold firearms to then be provided to the Commissioner.

VII. BIBLIOGRAPHY

These references have all contributed to the comments made here.

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