

9/85

# **AN AGENDA FOR THE REFORM OF FIREARMS LAWS**

**J. D. Fine**

**AN AGENDA FOR THE REFORM OF FIREARMS LAWS:**

Recommendations to the Criminology Research Council  
for Practical Reforms to and the Harmonization of  
Australia's State and Territorial Firearms Laws

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### Summary

This Report is based upon research carried out over a two-year period into the administration of the firearms laws in each State and internal Territory of Australia. It is based upon interviews conducted Australia-wide, with police, officers of firearms user organizations, and members of numerous other segments of the community.

The costs of current Australian practices and policies are evaluated in terms of their effectiveness in attaining the goal of reducing, so far as is reasonably possible, both the criminal and the accidental misuse of firearms.

The Report also highlights the extent to which the weaknesses in certain States' firearms laws undermine the firearms laws of the other States and Territories.

Certain measures are advocated which would entail a fundamental change from present policies of many States and Territories. These include the following:

1. Rationalization of the criteria applied to individuals seeking all types of firearms, for any purposes;
2. adoption of specific and meaningful safe keeping requirements for all privately owned firearms;
3. introduction of community-based instruction in firearms safety for licence applicants;
4. abandonment of the concept of registration of each rifle and shotgun in the community, due to its inordinate cost and its failure to benefit the police or the community;
5. assignment of responsibility for administering firearms laws to a small, special-purpose agency in each State;

6. introduction Australia-wide of broadly representative Firearms Consultative Committees, with both appellate and policy-formulating roles; and

7. reciprocal recognition of firearms licences throughout the States and Territories of Australia.

A complete list of the Report's 51 specific Recommendations for changes to Australian firearms regulatory strategies is contained in Appendix "B", at pages 98 through 109.

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7 March 1988

The Secretary  
Criminology Research Council  
P. O. Box 28  
Woden, A.C.T. 2606

Dear Sir,

I have the honour to report through you to the officers of the Commonwealth and State Attorneys-General Departments who comprise the Council the findings of my study of Australia's firearms laws (your reference No. 9/85).

Enclosed please find the requisite 15 copies of my Report, An Agenda for the Reform of Firearms Laws.

Yours faithfully,

J. D. Fine



### Introduction (Methodology)

The Report which follows is based upon a study conducted throughout Australia from the latter half of 1985 through the first half of 1987. The author conducted this study following publication in 1985 of a work describing the current state of firearms laws throughout Australia.

The purpose the author had in mind in undertaking this study was to assess the extent to which different techniques served to prevent the accidental and intentional misuse of firearms, as well as to gain some idea of the cost-effectiveness of these alternative regulatory strategies. Although not a social scientist, the author familiarized himself with the vast, sometimes arid, literature in this field prior to framing a research methodology. The methodology which he opted to follow was not, however, that of the criminologist or the number-cruncher. Rather, he decided to follow a programme of research which may be open to challenge for being impressionistic and which makes no pretence of following a recognized "scientific" method.

This study is based upon over 100 extended and open-ended interviews, conducted with persons throughout Australia. The interviewees were selected from among the most knowledgeable and experienced persons whom the author could identify in each State and Territory, and from among persons holding a wide range of interests in the matter of firearms and firearms laws. Most interviews were tape recorded to help to assure accuracy. All but a very few were conducted in a relaxed atmosphere and without the pressures of strict limits as to time. While some interviews might have been as brief as 15 or 20 minutes, and at least one extended over nearly two full working days, a typical interview lasted from 30 to 45

minutes. Most interviews were conducted on a one-to-one basis; however, on some occasions small groups of persons sharing common views (for example, the three senior officers of a State shooters' organization) were seen as a group, usually for a longer-than-average period of time.

The breadth and complexity of firearms regulation, and the profound psychological and emotional considerations surrounding the matter in Australia today, appeared to the author to make it impossible to conduct any statistically based study in this field which is calculated to indicate viable policy options. Instead, the author wished to describe a practical and comprehensive firearms regulatory strategy, and to do so in language which is as straightforward as possible. The author's goal was to so describe a regulatory strategy which is reasonably calculated to reduce instances of the use of firearms in crime and the frequency of firearms accidents, without unnecessarily burdening legitimate users of firearms.

Most of the information which has been shared by interviewees with the author in the course of this study is not obtainable from public documents or from materials of the sort found in an archive or in a library. A great many interviewees, especially firearms owners and serving police of relatively junior rank, shared their experiences with the author on the strict understanding that he would not reveal the source of this information, and that no views or opinions would be attributed by the author to these interviewees. As a further safeguard, the author resolved at an early stage in the study that when especially sensitive information was related in interviews he would turn off the tape recorder and take no written notes. Consequently Appendix "A" to this Report merely categorizes interviewees by jurisdiction and by vocation or avocation.

In preliminary drafts of this Report attempts were made to buttress the findings which are presented by indicating the place of residence and background of each person who provided the information, and the means whereby the interviewee came to have knowledge of the information. However, on re-reading these drafts it appeared too likely that this technique might compromise the confidentiality which the author had promised to his sources. Thus, should the views advanced in this Report be questioned as being simply one man's opinion, the author can only reply that this opinion was formed only after many hundreds of hours of study, and only after considering the views and arguments of a wide cross-section of relevant groups in every State and Territory of Australia.

It had been hoped when first planning this project to report the findings of the study shortly after completion of research in early 1987. However instead of receiving a hoped-for period of study leave, the author found himself instead immersed in new and pressing duties at another university across the country. Hence publication of this Report has suffered some delay.

It would not have been possible to undertake this study without the generous financial assistance of the Criminology Research Council. Equally, this Report could not have been written without the patient assistance of each of over 100 interviewees, as well as numerous other persons with whom the author discussed firearms control matters on a less formal basis. However, the author must note special debts of thanks owed to the following individuals, as well as to certain others for whom public acknowledgment in this Report might be indiscreet:

Mr Bob Badland, Firearms Field Officer, New Zealand Mountain Safety Council; Inspector A. G. McCallum, Firearms Coordinator, New Zealand Police; Mr Ted Clarke, member, and Mr Andrew Margetts, Secretary, Victorian Firearms Consultative Committee; Chief Inspector Brian Fennessy, Victoria

Police; Mr William Cortney, Weapons Curator, Australian War Memorial, Canberra; Assistant Commissioner C. G. Wilson, South Australia Police Department; Assistant Commissioner A. F. Metcalfe, Northern Territory Police Force; Senior Sergeant W. Probert, New South Wales Police; Professor Richard Harding, of the Faculty of Law of the University of Western Australia, and formerly Director, Australian Institute of Criminology, Canberra - and above all to Judith, who suffered graciously through my absence from home on research trips, and especially through my work on this study at home.

*J. D. F.*  
Edgewater, Western Australia  
Leap-Day 1988

## I - Licensing Criteria

At present, there is significant variation among the laws of the different States and Territories in the criteria applied to determine who may possess firearms. In the case of rifles and shotguns,<sup>1</sup> the most frequently owned types of firearms in Australia, little is done in most States and Territories to limit lawful possession of firearms to persons of proven ability to possess and to use firearms safely.

A. Handguns -

Throughout the country possession of handguns<sup>2</sup> by private persons is strictly controlled. The largest class of private handgun owners is target shooters who belong to organized pistol clubs. The invariable practice, subject to relatively minor administrative variations across the country, is for police to licence new members of pistols clubs to obtain their first pistols, for purposes of target shooting only, after they have completed a meaningful course of instruction at their clubs in the safe use of target pistols. Instruction is offered by persons jealous of their privileges to possess handguns for purposes of competitive shooting. Would-be members can be observed closely; and any who appear likely to be a hazard on the club's range, any who

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<sup>1</sup> The term "long guns" will be used from time to time in this Report to describe rifles and shotguns collectively. Unless the context indicates otherwise, as used in this Report the term will not include fully automatic firearms.

<sup>2</sup> The term "handguns" will be used in this Report to describe all firearms, other than fully automatic firearms, designed for ready concealment on the person or to be held and fired with only one hand. Again, the term will not include any fully automatic firearms.

only want to own target pistols for ulterior reasons and will not accept the discipline of regular competitive shooting, or any persons who otherwise are likely to act irresponsibly inevitably do not qualify to obtain pistol licences. Such licence applicants are, of course, screened by police prior to licensing.<sup>3</sup>

A consequence of this established practice is that target pistol shooters in Australia neither present, nor are generally thought to present, any significant hazard to the community. Accidental misuse of target shooters' handguns is virtually non-existent. Police in every State and in both internal Territories with whom the author has spoken are of the view that target pistol shooters are a class of firearms owners whose possession and use of firearms is of little concern to them.

Relatively few privately owned firearms in Australia are kept for purposes other than formal target shooting.<sup>4</sup> Hunting with handguns generally is not permitted. In most States, the firearms acts and administrative practices seem generally to restrict the possession of handguns for protection of property to situations of true necessity, such as the situation of the businessman in a remote area, not served by an armoured car company, who is forced to transport large amounts of cash to or from a distant bank. While some State licensing authorities have set out clear guidelines to determine in advance which circumstances justify issuance of a handgun licence for purposes of protection of property and which do not, many other licensing authorities appear to make these decisions on an *ad hoc* basis. It is suggested that licence applicants as well as the community at large would be

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<sup>3</sup> The general matter of police screening of firearms licensees is addressed later in this Chapter.

<sup>4</sup> The matter of the possession and use of firearms by private security firms is beyond the scope of this paper.

better served, and all would be better assured of the just administration of firearms laws, if all jurisdictions' firearms licensing authorities, in consultation with Firearms Consultative Committees, both formulated and made generally available to the community upon request detailed statements of the criteria followed for the issuance of handgun licences for purposes of protection of property.

Police officials in several States have suggested that it is not practical to formulate general and objective criteria against which to assess such questions as an applicant's need for a handgun to protect property, or even one's over-all "fitness" to receive any firearms licence. However, this appears to have been done quite successfully by the Northern Territory Police. This force now has a detailed manual of procedures for firearms licensing available to police throughout the Territory on its on-line computerized information retrieval system. A full copy could be printed out for the author, for which he is grateful. Similarly, a printed *Arms Manual* is published in loose leaf form by the New Zealand Police. Furthermore, the author is not impressed with general arguments to the effect that internal police policy manuals always must remain confidential, and cannot be made available to the public at cost.

Additionally, when applicants convince licensing authorities of their need for handguns for purposes of protection of property, in most States licences are issued without obliging these would-be handgun owners to undertake any meaningful course of instruction in the safe handling and use of handguns. This is seen as a cause for concern, although instances in recent years of the misuse of such handguns appear to be have been few.

In at least two States, the author has reason to suspect that some persons have been licensed to possess handguns for purposes of personal protection, or merely because they wish to keep revolvers or pistols in their homes. On one occasion the author was told by a prominent community figure, in the

course of a conversation about other matters, that he had kept a licenced handgun for such purposes for some years. In off-the-record conversations, members of that State's police force stated a belief that politically well-connected individuals did receive new pistol licences from time to time. The author does not have sufficient information to hazard even a guess as to the number of such licences outstanding in that populous jurisdiction.

In a second and somewhat less populous State, several persons who where interviewed in the course of this project claimed personal knowledge of people not meeting the usual licensing criteria, yet nonetheless obtaining handgun licences through political channels. Discussions with others in that community in special positions to observe closely the practices of its Ministry tended to confirm the likely existence of this practice.

As a first step in an attempt to ascertain whether such practices generally exist in Australia, the author formally requested from the licensing authorities in Canberra a list of handgun licensees in the Australian Capital Territory. Canberra was selected because its modest population would allow easier identification and categorization of all handgun licensees. The author intended to attempt to assess the proportion of persons on that list who might be thought likely to possess handguns for reasons of personal protection. However, the Australian Federal Police declined to supply such a list, citing confidentiality requirements exempting this information from the scope of Commonwealth freedom of information legislation.

Even if the number of handguns kept for purposes of personal protection by prominent figures in the community is relatively small, the consequent danger to the community at large appears unjustifiable. People who are actually at risk of personal attack ought to be guarded by competent police



personnel. Surely a less perilous badge of political influence can be awarded to the merely well-connected than a handgun licence.

The author has interviewed two further classes of persons who claim a need for handguns which is not recognized by licensing practices in most Australian jurisdictions. These are would-be handgun hunters and some primary producers.

Special-purpose handguns are manufactured which are technically suitable for the hunting of all but the world's very largest game animals. However, most shooters with whom the author has spoken who express a desire to hunt with handguns rather than rifles merely wish to hunt vermin with smaller calibre and less esoteric handguns, to add further variety to their sporting activities. The argument most usually put by such people is that if suitable persons can be licensed to own pistols for purposes of shooting on a target range, and if it is lawful for hunters to use long guns in the field, then persons found fit to hold firearms licences ought to be allowed to own and use handguns for purposes of hunting.

This line of reasoning does not appear convincing. The use in Australia of long arms in the field is not subject to the same controls as, and has given rise to far greater concern than, the use of firearms on target ranges. Acceptance of a desire to own handguns for purposes of hunting well might lead to the proliferation of handguns in the community. This is because assertions by would-be firearms owners of a desire to own firearms for purposes of field use cannot reasonably be verified, as can be done quite easily in the case of target shooters merely by verifying the enforcement of range attendance and competition requirements which are imposed by firearms clubs upon their members. The general community likely would be unwilling to accept either a major increase in the number of handguns in Australia, or the sight

of people going through the countryside with holstered handguns on their hips.

Some primary producers have put the argument that they should be allowed to carry revolvers for purposes of the humane destruction of injured livestock. They claim that when working stock on horseback in difficult terrain, it may be both difficult and unsafe to transport a rifle in a scabbard.

The author raised this question with officials of primary producer organizations in several States and Territories. Reactions were mixed, some dismissing the argument as fanciful, and others suggesting that at least in some regions the argument had merit. As this matter appears to be one likely to require different responses from State to State, no Recommendation on point is offered in this Report. Rather, it is suggested that State Firearms Consultative Committees consider the matter in the light of local conditions.

Save for the author's strong suspicion that, at least in some Australian jurisdictions, handgun licences have been issued for political reasons to persons not meeting existing legal criteria, it appears that the general practices followed throughout Australia for handgun licensing meet the legitimate requirements of pistol shooters without seriously jeopardizing any interests of the over-all community. Thus, with respect to the criteria for licensing the private use<sup>5</sup> of handguns, it is RECOMMENDED -

1. The practice be continued of permitting members of organized clubs, affiliated with State and Territorial pistol associations, to possess and use handguns for purposes of competitive target shooting after completion of training courses

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<sup>5</sup> The matter of possession but not use of handguns by collectors is addressed in Chapter III of this Report.

conducted by their clubs and after vetting by police.

2. Licences to possess handguns for purposes of protection of property continue to be issued only in situations of actual necessity; and such licences henceforth be issued only in circumstances meeting predetermined criteria. Such licences should be issued only to persons who have completed meaningful courses of theoretical and practical instruction in the use and safe handling of handguns.

3. The general practice in Australia of not recognizing the desire to hunt with handguns in the field as a valid reason for the issuance of a handgun licence should be maintained.

4. Measures be taken to assure that no further handgun licences are issued anywhere in Australia to persons of political influence who do not meet the usual criteria for obtaining such a licence. Necessary steps be taken to assure that any such licences now extant are cancelled.

#### B. Long Guns -

The greatest preponderance of firearms licences in Australia today are held to enable the use by firearms licence holders of rifles and shotguns in the field - in simple language, for the purpose of hunting. Only extensive conversations with field shooters across Australia brought home to the author, who is not a hunter, the intense emotional attachment which so many people have to firearms and to the sport of hunting. A great many people throughout the country see field shooting not just as another sport or recreational activity, like football or boating, but as a

means through which to maintain an intimate contact with the natural environment.

While most non-hunters may be unable to comprehend how one can see the killing of wildlife as a reaffirmation of man's place in the natural environment, the author has come slowly to be convinced that in the lives of many in the community hunting has this almost mystical role of enabling them to maintain a sense of the natural order. Even for others, for whom field sports are just a simple recreational interest, perceived threats from non-hunters to prohibit them from enjoying their sport are viewed with the same concern with which members of the MCC might view threats to outlaw cricket. Thus for an extremely large number of people in the community the prospect of loss of the privilege to keep firearms for purposes of field shooting is a matter of the most serious concern.

Quick suggestions, often made following notorious instances of the criminal misuse of firearms, for the curtailment of all entitlements to own firearms for purposes of field shooting have given rise to a generalized fear among very many field shooters that any review of firearms legislation will lead to confiscation of their weapons, and to the legislative abolition of their sport. The fears of long gun owners are exacerbated by the almost annual amendments to firearms acts in certain States in recent times, and by the failure in many States of governments to undertake widespread consultation with shooters before introducing new legislation.

As any reader of the newspapers will know, instances of firearms-related injury and of occasional deaths are not rare (especially, it seems, at the beginning of hunting seasons in various States). However, in view of the widespread ownership and use of firearms for field shooting, the frequency of such misuse seems far too low to justify curtailment of people's

privilege to own and to use firearms for field shooting.<sup>6</sup> The matter of user education as a technique to reduce the frequency of incidents of firearms misuse is addressed late in this Chapter.

In view of the foregoing, it is RECOMMENDED -

5. Persons expressing a desire to own firearms for purposes of field shooting should be deemed to have good cause to obtain firearms licences.

While some States have required proof of such intent from urban applicants for firearms licences in the form of written permission to hunt from a certain number of rural land

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<sup>6</sup> See R. W. Harding, *Firearms and Violence in Australian Life* (Perth: University of Western Australia Press, 1981) (hereinafter referred to as "Harding"), pages 70-72 for extensive statistical information regarding the prevalence of firearms ownership in Australia for purposes of field shooting, and pages 98-99 regarding the statistically modest incidence of firearms-related injury in Australia. In fact, the author is informed by Professor Harding that other research suggests that this incidence has decreased in the in the period 1983-86.

However, the author notes that he has cause to question the accuracy of published statistics concerning firearms-related injuries. (Harding, for example, at the latter reference cited above, notes the reasons for the absence of reliable nation-wide statistics, and notes a total of "141 firearms accidents resulting in casualty" in one State, South Australia, over a period encompassing 1 July 1973 through 31 March 1977.) When the author's undergraduate research assistant telephoned a limited number of major Perth-area hospitals in the summer of 1987-88 to inquire into the number of firearms-related injuries they had treated in the recent past, she reported being told of significantly higher numbers of incidents than the author had anticipated from reading published Australian statistics. However, the author's informal survey certainly was not a systematic one; some double-counting may have occurred between institutions; the survey did not pretend to follow any accepted statistical practices; and the numbers reported may not be representative of Australia as a whole. These significant qualifications notwithstanding, further inquiry seems to be indicated.

owners, these requirements appear to have unnecessarily inconvenienced legitimate shooters almost with the frequency with which they have been evaded. Hence no such requirements are proposed.

Primary producers also clearly require firearms as a "tool of the trade". They often may have to dispose of injured animals humanely and at reasonable expense, or to control vermin. As in the case of hunters, it is suggested that it is not possible, at reasonable cost and without unduly burdening large numbers of persons who have a legitimate reason for requiring firearms, to demand that each such applicant prove a need for firearms in his or her particular circumstances. Therefore it is further RECOMMENDED -

6. Persons wishing to own firearms for purposes associated with primary production, including land owners and rural workers, be deemed to have good cause to obtain firearms licences.

Conversation with serving police personnel, in every State and mainland Territory and at all levels in police hierarchies, indicates that a major perceived inadequacy of present firearms laws in Australia is the frequent inconsistency of legislation from State to State. One major such inconsistency relates to categories of firearms which cannot lawfully be possessed or sold in one State, but which frequently can be bought lawfully elsewhere in Australia. It then is simple, if unlawful, to bring these firearms into States where their ownership is illegal.

To cite the most extreme example, Tasmanian firearms laws fail to make illegal the private ownership or sale of

fully automatic weapons.<sup>7</sup> Only self-regulation by that State's collectors and dealers appears to have prevented fully automatic weapons from being shipped to the Australian mainland States, where private possession of such firearms uniformly is illegal.

Of more practical concern has been the failure of two States, Queensland and Tasmania, to require any licensing whatsoever of long gun owners. In these States any persons not specifically prohibited to own firearms have been allowed to purchase and use rifles and shotguns. So long as situations such as this exist, it will be extremely difficult if not impossible to enforce effectively the firearms laws of other States.

Moreover, the Commonwealth's customs laws and administrative practices allow the importation into the country of virtually any types of firearms which the importer can own legally in his State of residence. Thus there is no coherent nation-wide policy regarding classes of firearms which may be added to the national inventory. This matter is all the more serious as the preponderance of Australia's firearms are imported; only a relative handful are manufactured in Australia. If the States and Territories cannot achieve a greater degree of uniformity in their firearms laws, then the Commonwealth authorities should take steps to formulate lists of classes of firearms which may and may not be imported from abroad for private or commercial purposes - regardless of the terms of the firearms act in the State where they happen first to be landed in Australia.

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<sup>7</sup> A fully automatic firearm - a machine gun, in common language - is one which continues to fire so long as the trigger is depressed, until it runs out of ammunition. By contrast, a semi-automatic firearm is one in which the pressure of gasses released when each round is fired cause the next cartridge to moved into firing position; however, with a semi-automatic firearm the trigger must be depressed and released as each round is fired.

C. Character and Fitness of Licensees -

In each of the States which licence firearms owners, the licensing authorities presently search local police records to assure that licence applicants satisfy the respective State's particular requirements regarding absence of a record of recent or serious criminal convictions. In some places the local police station is asked to advise whether or not its personnel have any cause to question the applicant's fitness to possess firearms, even in the absence of criminal convictions. In at least two States, police call on the neighbours of applicants for handgun licences to inquire further into their fitness.

Thorough criminal records checks certainly must always be carried out to assure that firearms licences are not issued to persons prohibited by law from possessing firearms. It is suggested that given the mobility of the population today, such procedures should be followed in each case as will be sufficient to reveal a criminal conviction recorded anywhere in Australia, not merely in the State where a firearms licence is sought. If senior police commanders believe that their manpower is used effectively by making inquiries of the neighbours of certain classes of firearms licence applicants, then their professional judgments should be respected - subject, of course, to an applicant's right of appeal to a Firearms Consultative Committee against any consequent denial of a firearms licence.<sup>8</sup>

The administrative procedures associated with the issuance of firearms licences must necessarily provide a reasonable opportunity for such police investigations as are described above to be carried out.

Therefore is further RECOMMENDED -

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<sup>8</sup> See the discussion of the appellate function of Firearms Consultative Committees in Part B of Chapter IV.



7. The fitness of applicants for firearms licences ought to be verified in every case through a search of records of criminal convictions nationwide, and through such other means as may appear appropriate and cost-effective in the professional judgment of police officials in each State and Territory.

Many in the community with whom the author has spoken, most notably perhaps officials of certain women's organizations, express concern that persons without any prior criminal conviction but with a propensity to violence - in particular, any propensity to domestic violence - should not be permitted to hold firearms licences.

It would seem beyond legitimate debate that actual spouse<sup>9</sup>-bashers, even if never convicted in the criminal courts, should not be licensed to possess firearms. However, the author cannot accept the proposition that anyone against whom domestic violence simply is *alleged* ought to be denied the privilege of owning firearms. Opportunities for vindictiveness through the abuse of such a provision in firearms licensing laws surely would be too great. The appropriate response, balancing the rights of all involved, would appear to be a mechanism whereby all Family Court judges and State magistrates before whom allegations of domestic violence may be brought and proven, whether in a civil or criminal proceeding, are given jurisdiction to order that an individual be prohibited from holding a firearms licence for a specified period of time, or that his rights to own firearms otherwise be restricted. An example of such a restriction might be to prohibit one spouse from possessing firearms within a kilometre of the other spouse's home.

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<sup>9</sup> The word "spouse" will be used in this Report in a loose sense to include both husband and wife, as well as persons living together in an ongoing domestic relationship although not married to one another.

Following inquiries of appropriate professionals, it appears that no reliable indicators exist to identify persons who have not exhibited violent behaviour in the past, yet who nonetheless have a propensity to either violent behaviour in general or to domestic violence in particular. For that reason no restrictions on firearms licensing relating merely to applicants' propensity to violent behaviour are proposed in this Report.

Thus it is RECOMMENDED -

8. Magistrates and Family Court Judges be given jurisdiction to prohibit or to restrict the entitlements to possess firearms of persons whom they find, after a hearing *inter partes*, are more likely than not to have committed, or to have threatened seriously to commit, acts of violence against others. Any such order, or the refusal to make such an order, should be subject to the usual rights of appeal.

The author has noted elsewhere other requirements for firearms licensing common throughout Australia, such as absence of disqualifying mental illness and being of sufficient age.<sup>10</sup> No changes to common Australian practices in this regard are recommended. However, many firearms statutes authorize the denial of licences to persons found not to be "fit and proper persons" to possess firearms. To avoid the possibility of abuse and of inconsistency, over time or from place to place within each State, it is RECOMMENDED -

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<sup>10</sup> For a description of the current firearms act in each State and Territory, and of relevant Commonwealth legislation, see J. D. Fine, *Firearms Laws in Australia*, (North Ryde, N.S.W.: C.C.H. Australia Limited, 1985) (hereinafter referred to as "Fine").

9. Each State's Firearms Regulatory Authority,<sup>11</sup> in consultation with its Firearms Consultative Committee,<sup>12</sup> formulate and make public the criteria it will use to determine applicants' fitness to hold firearms licences.

A necessary corollary to this Recommendation requires that a meaningful right of appeal exist against a decision that an individual does not meet the established test of fitness to possess firearms. Recommendations in point are offered in the discussion in Chapter IV of Firearms Consultative Committees.

If realistic licensing standards are followed nationwide, and even if they do differ to some minor extent from State to State, it would seem reasonable that a person licensed to possess and to use firearms in one State be entitled to use these firearms when visiting a second Australia State, in a manner consistent with the second State's laws. A new licence should not be required upon crossing each State border. Experience in jurisdictions which do afford a greater or lesser degree of recognition to other States' firearms licences suggests that such reciprocal recognition of firearms licences throughout Australia would not jeopardize the safety of the community to any significant extent. Hence it is RECOMMENDED -

10. Persons visiting in any State or Territory for a period of less than 90 days who hold a firearms licence of any type issued by their State of residence be deemed to hold the nearest equivalent type of firearms licence known to the

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<sup>11</sup> About which see Part A of Chapter IV.

<sup>12</sup> About which see Part B of Chapter IV.

laws of the State or Territory in which they are visiting.

D. Safety Education -

The most which has been done heretofore to assure that applicants for firearms licences in Australia can use firearms safely is to require, in some States, that applicants pass a brief and very simplistic multiple choice test. The tests typically exclude only persons who will indicate their belief that one may safely shoot after drinking alcohol, that loaded guns can be tossed over fences, and that other such obviously unsafe conduct with firearms is permissible.

By contrast, authorities in New Zealand have abolished the registration of long guns in that country and simultaneously have introduced a safety education programme for new shooters. A voluntary organization, the Mountain Safety Council, with a very modest level of public funding, administers the firearms education programme. It arranges for over 600 experienced shooters throughout that country to receive appropriate training and educational materials, and then to give lectures and demonstrations, using either their own firearms or firearms obtained from the police for this purpose. Attendance at such instructional sessions by new shooters is compulsory, prior to their sitting a meaningful written examination in the safe use of firearms.<sup>13</sup> Having visited with officials of the Mountain Safety Council and of the New Zealand Police, and after attending a typical course, I am highly impressed with the level of training in firearms safety which is provided to all new shooters in that country.

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<sup>13</sup> For a published overview of the New Zealand experience, see C. I. H. Forsyth, *Firearms in New Zealand* (Wellington: New Zealand Mountain Safety Council, 1985).

In addition to assuring that shooters have at least a minimal technical knowledge of the workings of firearms and a good knowledge of necessary safety precautions, the course appears to do something more. The instructors are themselves experienced firearms users; they donate their time to help to assure that their sport will be a safe one in the future. The attitudes of these volunteer sportsmen/instructors regarding the serious responsibility which should attach to the ownership and use of firearms seems to be communicated very effectively to the new shooters in their classes. The students' attention in these firearms safety classes certainly appears more rapt than that which one normally would expect of a group of young people attending a class because someone has told them that they must do so.

There is every reason to hope that over time such a requirement of safety education may help to reduce the incidence of the misuse of firearms. The New Zealand Police certainly believe that they have achieved a benefit to the community by substituting such classes for a system of long gun registration which was regarded generally as burdensome, costly to administer, and of little use in either the prevention of crime or the apprehension of criminals. Unpublished criminal statistics shared with the author in New Zealand indicate that substitution of a strategy centred around safety education rather than registration has not resulted in any significant increase in most classes of firearms-related crime in recent years.

The author has canvassed the possibility of introducing such a scheme into Australian laws during interviews and conversations with many knowledgeable persons throughout the country. Unfortunately, no organization exists in Australia akin to the New Zealand Mountain Safety Council. While officers of Australian shooters' organizations were not unanimously in favour of the idea of organizing such courses in their respective States, many such organizations have reacted positively to the concept. Should such courses be

established, much in the way of useful experience and excellent educational materials could be borrowed from the New Zealanders.

Ideally, all applicants should be required before being licensed to undergo a further hands-on training course, as do new target pistol shooters throughout Australia. While lectures, demonstrations and a substantial police-administered written test can do much to increase the likelihood of one being a safe shooter, an apprenticeship on a range under the immediate supervision of experienced shooters undoubtedly is far more effective. However, while such a requirement may be practical in some localities, it would appear that the necessary manpower cannot realistically be expected to be forthcoming in most States. It would appear also that in many places the necessary range facilities are not available, and would be quite costly to provide. Therefore it is proposed only that Firearms Consultative Committees investigate the feasibility of introducing immediately voluntary hands-on training for long gun users, as well as the long-term possibility of making such training compulsory.

The author has not been persuaded that exemptions from the user education requirement advocated herein should be afforded to rural persons, or to persons living in remote areas. Rather, measures should be taken to assure that State shooters' organizations seek out competent people in the bush to be trained as volunteer firearms safety instructors.

While the cost of operating a firearms safety education programme need not be great, and certainly it would be far less than the cost of existing long gun registration schemes, this cost will have to be met. To give the courses every chance of success in conveying a sense of the high level of responsibility which must attach to firearms use, it is felt that their students should not be required to pay a high fee in order to attend. Any such fee would, it is suggested, make

at least some students resentful of having to attend the course - certainly not the best of attitudes to bring to the classroom. In view of the very modest cost at which the New Zealand Mountain Safety Council has been able to introduce firearms safety education of a high standard throughout that country, it is suggested that such programmes should be funded in Australia from general State revenues.<sup>14</sup>

The New Zealand course is required of all applicants for firearms licences. While new members of Australian target shooting clubs often will receive even more thorough instruction in safety measures associated with the specialized firearms they will shoot at their clubs, it is proposed that the general requirement of an evening's lecture followed by a multiple-choice examination similarly should be imposed upon all applicants for new firearms licences in this country.

Parenthetically, the author notes that along with the introduction of a meaningful safety education requirement, the New Zealand Police replaced their existing firearms licence documents with a new form of licence. Like most Australian firearms licences today, the old New Zealand licence looked like just another bureaucratic form. The new licence, however, has been produced in the form of a small booklet with a stiff red fabric cover.<sup>15</sup> While it may seem a small gesture, presentation of a significant-looking firearms licence to a new shooter who has just passed a fairly

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<sup>14</sup> The Mountain Safety Council receives a grant of some tens of thousands of dollars every year from the quasi-autonomous New Zealand Lottery Board, rather than from the Consolidated Revenue Fund. Thus it may not be absolutely accurate to speak of the New Zealand firearms safety education programme as being government funded.

<sup>15</sup> The red fabric cover stock is the same as that used by the New Zealand Government Printer for that country's diplomatic passports. The author understands that only a small number of diplomatic passports are required each year in New Zealand, but that the Government Printer had to buy a large quantity of the cover stock. Excess stock went into the covers for the new firearm licences.

rigorous safety course and examination further underlines the seriousness with which the community views his right to possess firearms. Especially in the minds of younger shooters, a firearms licence should be an object of some material significance, something they would not wish to have taken from them.

Especially in view of the New Zealand experience, it therefore is RECOMMENDED -

11. All new applicants for firearms licences be obliged to undergo a course of instruction in firearms safety offered by an approved voluntary organization of shooters in each State and Territory.

12. Necessary public funds be allocated to meet the cost of:

- a. providing educational materials for such courses,
- b. organizing courses State-wide, and
- c. training experienced shooters throughout each State and Territory to be volunteer instructors.

13. The organizations approved in each State to offer such safety courses cooperate with one another, and seek the assistance of the New Zealand Mountain Safety Council, in the production of effective syllabi and educational materials, and in planning training courses for volunteer instructors.

At present, some States permit license applicants who are not able to read English to take the existing firearms



safety tests with the assistance of a translator. In other States senior police officials take the view that if one cannot read a test printed in simple English, then one will not be able to read notices in the field warning of conditions which prohibit shooting, or which make shooting unsafe in those places. This latter reasoning seems sound. For reasons of public safety, it is RECOMMENDED -

14. An ability to read simple warning notices in the English language should be a requirement for obtaining a firearms licence.

Finally, the author has known of shooters suffering serious physical disabilities who have nonetheless obtained firearms licences. One, in particular, apparently was not able to see a bird which perched 25 metres away, on the top of his target at a range. Therefore it is RECOMMENDED -

15. Firearms licence holders be required to submit medical certificates of their fitness to use firearms biennially, after attaining age 65. The firearms licensing authorities in each State be entitled to require any shooter to undergo a physical or visual examination by a medical or optometric practitioner nominated by that authority.

#### E. Entitlements of Firearms Licence Holders -

The matter of restricting the number and types of long guns which holders of firearms licences may own is considered elsewhere in this Report. For reasons canvassed in depth therein, it is proposed that the holder of a firearms licence be permitted (subject to continuing to meet safe keeping

requirements<sup>16</sup>) to acquire such firearms (save for fully automatic weapons) as he or she may wish.

Rather than issuing additional pistol licences to persons who are to be authorized by law to own and use pistols, as is now done in many States, it is proposed that persons meeting the criteria for ownership or possession of handguns, discussed at the beginning of this Chapter, be issued with a firearms licence which bears a simple endorsement on the first page such as the legend "HANDGUN ENDORSEMENT". An additional page (or pages, as may be necessary) would be added to such licences for the notation of the descriptions and serial numbers of the individual's handguns and any restrictions upon their use. A typical endorsement at this page might be to the effect of, "HANDGUN POSSESSION AND USE RESTRICTED TO CLUB SHOOTING AND RELATED PURPOSES".

The author has not been convinced that any benefit follows to the community from the periodic expiration and re-issuance of Australian shooter's licences. Licences can, of course, be cancelled and recalled at any time for good cause. With computerized record-keeping and two-way radios, police instantly can verify the current validity of a firearms licence. Another lesson might be learned from the New Zealanders, it would seem, who now issue firearms licences for life. Thus it is RECOMMENDED -

16. Firearms licences be valid until revoked by a court following conviction for a crime or by order of the Firearms Consultative Committee, or until the licensee attains age 65. Licences of persons age 65 or over be valid for periods of five years, and then be renewable without fee, upon

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<sup>16</sup> See Chapter II below.

production of a certificate of medical fitness to use firearms.

At present, rules vary from State to State concerning the number of handguns which competitive target shooters are permitted to own. In view of the need of such shooters to use costly and specialized firearms for various internationally sanctioned competitions, and as target pistol shooters do not often present police with a cause for concern, it is proposed that holders of firearms licences endorsed as described immediately above be entitled to own up to ten pistols of a type suitable for use in nationally or internationally sanctioned competitions without need for further authorization. This would not appear at all likely to lead to any increase in the availability to criminals of "Saturday Night Specials". Such licensees should continue to be obliged to prove annually that they remain active participants in organized handgun competitions. It is therefore RECOMMENDED -

17. A licensee whose firearms licence is endorsed to authorize his or her use of target handguns in organized competition ordinarily be entitled to own up to ten handguns suitable for use in nationally or internationally sanctioned competitions. Upon proof of regular participation in more than five types of competitions allowing the use of different types of handguns, such a licensee may be authorized to own up to two handguns of each such type.

As noted frequently in this Report in different contexts, a large proportion of shooters in the Australian community, in every State and Territory without exception, are distrustful of the motives of all who propose changes to firearms laws. This distrust is not entirely without good cause, as instances of police maladministration of firearms

laws abound. Politicians' motives also frequently are distrusted. All suggestions for licensing reform are viewed as potential avenues for future confiscation of firearms; similarly, all new fees, however modest, are seen as vehicles through which future governments might seek to burden firearms owners through draconic increases to such fees in future years.

The special-purpose Firearms Regulatory Authorities in each State and Territory, the creation of which is proposed elsewhere in this Report,<sup>17</sup> are intended to reduce greatly the likelihood of maladministration of firearms laws in the future by assuring that the persons administering these laws are aware of the legitimate needs of firearms owners, and are not fundamentally antagonistic to the large group of the public whom they are to serve. To give these new Authorities every prospect of success, they should not be burdened with any appearance to the bulk of the firearms owning public of being revenue gathering arms of government. Therefore it is RECOMMENDED -

18. There be no fee payable for the issuance of a firearms licence.

However it will no doubt be thought necessary, in some States at least, to assure at regular intervals that persons licensed to own handguns still possess each of their licensed handguns. Regular inspection of serial numbers is likely to occupy no small amount of staff time. A reasonable fixed fee for such an inspection, not calculated by reference to the number of handguns owned, appears likely to be regarded as innocuous by handgun licensees. Therefore it is RECOMMENDED-

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<sup>17</sup> See Part A of Chapter IV.

19. The fee for endorsing or periodically re-endorsing a firearms licence to reflect ownership of any number of handguns be \$15 through the year 1990. Thereafter this fee should not rise at a rate greater than the rate of inflation affecting consumer prices generally.

## II - Safe Keeping

In most Australian jurisdictions today there appear to be only nominal obligations cast upon firearms owners to assure the safe keeping of their firearms. Measures are required to set specific and reasonable standards, to help assure that firearms are not easily stolen by burglars, and cannot readily fall into the hands children and others not able to use them safely.

The present laws usually speak only of the owner's obligation to take "all reasonable care" (or words to this effect) to assure the safe keeping of his firearms. Legislation almost uniformly lacks specific requirements and fails to explain what level of care will be deemed "reasonable" in even the most frequently encountered situations.

The only specific requirement which has been found in the course of this study is the requirement created by the administrative practices of the New South Wales police, apparently acting without specific legislative authority,<sup>18</sup> with regard to safe keeping of privately owned hand guns. Where a person seeks to licence two or more hand guns, it appears to be the general practice of the New South Wales police to refuse to issue the licences unless the individual obtains a steel safe of a type approved by the police, and bolts it into the structure of his home.<sup>19</sup>

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<sup>18</sup> Save of course the general "reasonable care" standard.

<sup>19</sup> Indeed, police personnel visit the intending pistol licensee's home to test that the safe has been properly fitted - usually by the application of what the constable or sergeant may deem a due amount of brute force.

The safe keeping standards applied to firearms dealers fall outside the scope of this study. However, information gleaned in the course of interviews and informal discussions suggests that across Australia police forces counsel firearms dealers regarding what in their opinion constitute necessary security precautions in specific dealers' situations (and in light of an apparent increase in the frequency of burglaries of gun dealers' premises in certain cities). Most dealers with whom the author has spoken appear themselves to be fully attentive to the need - in their own interest and in that of the general community - to take sufficient care to safeguard their premises and their stock.

With respect to virtually all other classes of private firearms owners, and in virtually every Australian State and Territory, the position appears to be that safe keeping requirements are almost never enforced until firearms have been lost, most usually through theft or burglary. Police inform the author that prosecutions for failure to meet safe keeping obligations are most rare in other situations. The proof of one's ability to provide secure storage for firearms is not regarded as a condition-precedent to the issuance of a firearms licence, save in the exceptional instance from New South Wales cited previously.

It does not appear to be adequate, to use the old phrase, to bolt the barn door only after the horse is long gone. It is therefore RECOMMENDED -

20. As a precondition to the issuance of a new firearms licence, the Authority inspect the place at which firearms are to be stored when not in use, to assure that adequate facilities exist to assure their safe keeping.

21. Upon being informed of a firearms owner's change of address, the licensing Authority similarly should inspect the owner's new home. If

adequate provision for safe keeping is not found at the new location, the owner should be obliged to deposit his firearms with a licensed dealer within 48 hours.

Moreover, it is submitted that it is most unsatisfactory for firearms owners to be unable to determine whether they are meeting safe keeping standards until they are charged with, and tried for, an offence. Standards must be made specific and clear, but without thereby losing the flexibility to recognize that different levels of security may be appropriate to different situations and to different classes of firearms; and that similar levels of security may well be met by different firearms owners through many equally effective means. It is therefore RECOMMENDED -

22. Firearms Regulatory Authorities, following consultation with State Firearms Consultative Committees, promulgate practical minimum standards and practices required for the safe keeping of all privately owned firearms.

23. The minimum safe keeping standard for all privately owned hand guns be the provision of a steel pistol safe bolted to the structure of the building.

24. Should a firearms owner so wish, he may provide safe keeping through other physical security devices than those specifically approved. The owner shall have the burden of persuading the Firearms Consultative Committee that he can afford a level of security not less than that offered by the relevant approved practices.



It has been suggested to the author several times in the course of this study that keeping a long gun in one's locked home constitutes adequate safe keeping. In view of the epidemic level of residential burglaries throughout Australia, in the countryside as well as in the major cities, this suggestion seems manifestly unacceptable. The goals of assuring that firearms only are used by persons trained in their safe use, and that firearms not be readily available to criminals or other persons ineligible to obtain a firearms licence, clearly require that a standard of safe keeping be maintained which is sufficient to prevent firearm from being taken away by what might be termed the average casual burglar.

This level of security ought to be sufficient to eliminate most instances of firearms loss through crime. If it proves not to be so, then the matter ought to be reexamined by Firearms Consultative Committees with a view to raising the requirement. Therefore it is RECOMMENDED -

25. The minimum standard of safe keeping for a rifle or shotgun ordinarily should be the storage of it within a closet or a built-in wardrobe, having stout walls, a solid door, a dead bolt lock or keyed "entry set" of door knobs, and hinge pins on the door which cannot be removed as a means of gaining entry. Firearms Consultative Committees also should evaluate other security devices which firearms owners may choose to use and which afford a similar or greater level of safe keeping for long guns; and the Committees should publish and make available lists of such approved devices.

A. Justification for the Recommendations -

It has been suggested to this author by a few individuals that imposition of such a safe keeping requirement

as that proposed in Recommendation 25 above would prove a drain on police manpower, that it would drive shooters from their sport, or that it would cause a significant decline in dealers' sales of long guns.

The first of these objections might be met by the removal of responsibility for the administration of firearms laws in each State and Territory from the police force to a special-purpose civilian agency, as is proposed elsewhere in this Report. The over-all cost to the community of firearms law administration ought not be increased on balance by so doing. Civilian employees, not sworn police, then could visit shooters' homes to inspect pistol safes and gun closets. Each licensee's home need only be visited once. The cost of such visits surely will be less than that of operating massive computerized police registries of long guns.

Without meaning to suggest that the task is beyond the abilities of the many handywomen in the community, it is the author's impression that most Australian shooters are men quite up to the task of fitting a new closet door without having to hire a tradesman. Shooters frequently own firearms of a replacement value of hundreds of dollars each; and it is not at all uncommon to meet shooters who own several firearms worth collectively some thousands of dollars. Hence it does not appear unreasonable to require that shooters expend under \$100 for a door and a lock, to assure the safe keeping of their rifles and shotguns.

The argument has been put to the author that some primary producers, and other people in specific rural situations, may need immediate access to a firearm; and that it is not always unreasonable have a loaded firearm leaning by the front door, for example. However, the author has not been persuaded by those who have put such arguments (who are indeed only a small proportion of the rural residents whom the author has interviewed) that the danger of theft or

misuse of such a firearm by unlicensed persons ever can justify such a practice. In any event, Recommendation 25 above is cast in language which might allow a licensee to attempt to convince his State's Firearms Consultative Committee, on appeal, that the facts of his special situation might make such a practice a reasonable standard of safe keeping for any particular firearm.

A further matter needs to be addressed concerning the safe keeping of firearms, that of applicable standards of safe keeping when firearms are stored temporarily away from the owner's home. The author does not believe it to be feasible for him to present an exhaustive list of rules to govern such storage. The circumstances in which firearms may be used away from the owner's home vary too greatly. Any code of applicable rules thus is likely to be too long, with too many intertwined provisions, to be readily understandable by shooters. Without offering specific Recommendations regarding the content of such rules, it is suggested that State Firearms Consultative Committees - preferably acting together, Australia-wide - at least prepare and issue to all licensed firearms owners a discursive statement regarding reasonable precautions to take to ensure the safe keeping of firearms away from one's home. Situations which should be addressed, in clear language and perhaps on one side of one sheet of paper, include the field shooter spending the night in a tent, the target shooter staying in a friend's home or a motel while attending a shooting competition, and the shooter stopping for a restaurant meal while driving with his firearms in the car.<sup>20</sup>

The author admits to having an ulterior motive in advancing this set of safe keeping proposals. These proposals stand to impose a burdensome new requirement upon a great

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<sup>20</sup> See the discussion in Part D of Chapter III below of the related matter of rules governing the temporary public display of collectors' firearms.

many people in the community - albeit a burden whose reason should be clear to firearms owners. The author acknowledges that very many shooters will resent even the modest cost of \$100 for a new closet door and keyed door knob entry set. It is recognized that some few less wealthy shooters will truly be put upon by such an expense. However, it has been put to the author that various of the measures he recommends in this Report, such as the abolition or non-introduction of registration requirements for long guns and the removal of most firearms responsibility from the police to a more knowledgeable and efficient special-purpose agency, will be seen by the public as having a "negative symbolic effect"<sup>21</sup>; the state might be perceived to be saying that firearms are *less* serious.

It is suggested that meaningful and specific safe keeping requirements, vigorously enforced, must result in the reduction in the availability of illicit firearms in future years. It ought to bring about this goal more directly than strategies featuring registration requirements. Also, it is suggested that along with stringent user education requirements, safe keeping standards as proposed in this Chapter are better calculated than other regulatory strategies to produce the desired "positive symbolic effect" upon firearms owners, regarding the seriousness and care with which society demands that they treat their firearms.

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<sup>21</sup> The author is indebted to Dr Paul Wilson of the Australian Institute of Criminology for the application of the terminology to the present context. However, the same point has been made by others whom the author interviewed, including police and politicians, albeit in more and different words than those suggested by Dr Wilson.

## III - Collectors of Firearms

In Australia as overseas, many private individuals maintain collections of firearms, typically of antique firearms of obsolete designs. As a rule, collectors do not use these firearms, although a minority would wish to fire some of the items they own from time to time. Fewer than a half-dozen public museums in Australia maintain and display large collections of firearms which are of special historic or cultural interest.

Current legislation responds to the requirements of collectors and public museums more or less adequately, and in a variety of ways. Major public museums and their staff members often are exempt from the operation of relevant provisions of the firearms acts, with respect to firearms held in their collections.<sup>22</sup> Private collectors often are allowed to keep, but not to use, firearms of varying ages, under varying legal requirements. In at least one State, most collectors are allowed by police to take out firearms dealer's licences in order to maintain their collections.<sup>23</sup>

The author has interviewed a number of major museums' firearms curators, as well experienced individual collectors and officers of firearms collectors' organizations across Australia. He also has raised the matter of firearms collectors with police in several of the States. The general impression which emerges is that the legitimate role played by serious firearms collectors is not, as a rule, adequately safeguarded by most Australian State firearms acts.

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<sup>22</sup> See the recommendation to maintain this exemption in Part D of Chapter VI of this Report.

<sup>23</sup> For a description of the legal requirements from State to State, see Fine, *op. cit.*, note 10.

#### A. Preservation of the Heritage

Australia's handful of professional specialist firearms curators recognize how their own collections and their own budgets are not adequate to preserve this segment of Australia's (and the world's) cultural heritage, and that the assistance of private firearms collectors therefore is needed. While there are some excellent smaller public firearms collections - that of the Queen Victoria Museum in Launceston comes to mind - the only large research collections of firearms in Australia's public museums of which the author has become aware are those housed at the Museum of Victoria in Melbourne and at the National War Memorial in Canberra. Professional curators recognize that at least a "small core" of amateur collectors use their own collections, and those of their fellow enthusiasts, as a basis for serious historical research leading to publications in learned journals. Some private collectors in Australia, the professionals have said, are recognized international authorities in the field. Still others, while not themselves engaged in scholarly research, perform a valuable community service in preserving a part of the country's heritage, or of what will become a part of the historical and technological heritage of future generations.

There are provisions in certain of the present firearms acts in Australia which require collectors' firearms to be rendered inoperable. Experts with whom the author has consulted are of the view that it is intolerable to treat any object kept for its historical, cultural or technological significance in such a manner. The author believes that such a requirement is not necessary, in view of other safeguards of the interests of the general community affecting the collection of firearms which are recommended in this Report.

### B. Community Concerns -

However, as responsible collectors generally appreciate, the community has an immediate concern: it is necessary to assure that collectors' firearms are not likely to be misused, either accidentally or criminally. While knowledgeable collectors might find incredible (in the strictly literal sense) a criminal brandishing a blunderbuss in a holdup, the average member of the community might, understandably, be just as alarmed and frightened as if he or she were to be menaced with a firearm of modern design. Collectors' firearms also need to be safeguarded against accidental misuse by children and others. Collectors themselves should be required to be aware of basic principles applicable to the safe handling of all firearms.

Therefore a simple and adequate starting point in balancing the requirements of both collectors and the general community is to require all firearms collectors to possess a firearms licence. In order to obtain such a licence, as proposed elsewhere in this Report, they would be obliged to undergo a course of instruction in the principles of firearms safety.<sup>24</sup> As with all other applicants for firearms licences, persons with serious or recent criminal records would be ineligible to receive a licence,<sup>25</sup> and intending collectors would have to demonstrate their capacity to afford safe keeping for their firearms.<sup>26</sup> As there appears to be no good cause to restrict the number of most categories of long guns which a firearms licence holder may own (subject to his having adequate facilities for safe keeping of them all), special legal provisions do not appear to be necessary for very many collectors. A basic firearms licence, of the type

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<sup>24</sup> See Part D of Chapter I above.

<sup>25</sup> See Part C of Chapter I above.

<sup>26</sup> See Chapter II above.

proposed in this Report, should suffice. Thus it is RECOMMENDED -

26. Firearms collectors be entitled to hold a firearms licence, subject to the usual conditions and requirements pertaining to such a licence.

Many collectors also acquire handguns of special historical or technological significance. Once again, subject to the normal requirements which it is recommended elsewhere in this Report relate to all handgun licensees,<sup>27</sup> this appears unobjectionable. The needs of very many collectors might be satisfied by a provision allowing a collector to possess up to ten handguns as a part of his firearms collection. If collectors are to be exempt from the requirement that they prove themselves proficient in the safe use of handguns through regular involvement in organized competitive target shooting, then it would appear reasonable for collectors to be prohibited from firing their handguns unless they also have qualified for an endorsement upon their licenses authorizing them to use pistols for purposes of competitive shooting.<sup>28</sup> It is RECOMMENDED -

27. A firearms licensee be entitled, if desirous of maintaining a collection of firearms of historical or technological significance, to have endorsed on her or his firearms licence the particulars of not more than ten handguns.

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<sup>27</sup> See above in Part A of Chapter I.

<sup>28</sup> For the requirements which it is recommended be imposed upon persons seeking such a license endorsement, see Parts A and E of Chapter I, above.



28. Unless the licensee also is a member in good standing of a recognized firearms club which maintains appropriate facilities and requires its members to acquire and maintain proficiency in the safe use of handguns, it is to be endorsed on the licence that these handguns may not be discharged.

The terms of Recommendation 27 above are cast in language which should afford the Firearms Regulatory Authority a right to refuse to endorse the particulars of handguns on a licence, or to remove from a firearms licence an endorsement relating to handguns, if it believes that the individual wishes to possess the handguns for purposes other than as a part of a collection of firearms of historical or technological significance. As with any other adverse licensing decision, the licensee could appeal such a decision to the Firearms Consultative Committee.<sup>29</sup> The language of this Recommendation would require the collector to show it is more likely than not that this is his intention.

#### C. Special Collectors -

Some collectors will have collections which include more than ten handguns. Others will wish to include in their collections certain firearms which other types of private owners could not legitimately require, such as firearms not readily used in recognized firearms sports. Further provisions are required to meet the legitimate needs of such collectors, while safeguarding the interests of the general community.

The community at large would, it is submitted, be alarmed if large private inventories of handguns, of handguns of a type seen by the community as especially useful in

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<sup>29</sup> For the appellate role of this Committee, see Part B of Chapter IV.

violent crime, or of fully automatic firearms<sup>30</sup> were maintained in other than carefully controlled circumstances. To meet this demand of the community it is proposed that only certain firearms licences be given a "Special Collector" endorsement.

Prior to issuing a Special Collector endorsement, the Firearms Regulatory Authority should ascertain that the applicant indeed is a serious collector, that he is serving to preserve a portion of the community's historical or technological heritage. The Authority in each State might take the advice of experienced and well-reputed collectors in making such case-by-case evaluations. At the same time the adequacy of the applicant's safe keeping facilities might be reviewed by officers of the Authority, in light of the nature of the firearms which the applicant intends to collect. Also, the police should be informed of the application and afforded a sufficient opportunity to make such further inquiries as they may deem necessary, in addition to the usual investigations they ordinarily carry out into all applicants for firearms licences, to assure that the applicant for a Special Collector endorsement is not likely to use such weapons for improper purposes.

If a licensee receives a Special Collector endorsement on his licence, it is proposed that he be obliged to report to the Firearms Regulatory Authority the particulars of every handgun and fully automatic firearms he acquires, and similarly to report every transaction whereby he disposes of such firearms. The licensee also would be obliged to maintain a register of all such firearms in his collection, and to allow access to the collection and to this register by the Authority and by police at all times. The Authority, it is

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<sup>30</sup> The matter of other types of long guns, identified in some States' laws for special regulation, is discussed in Part E of Chapter VI of this Report.

anticipated, would make such inspections as are necessary to assure that the privilege of Special Collector endorsements is not abused.

In language which it is hoped might be of more specific use to a legislative draftsman, in order to give effect to the proposals described above it is RECOMMENDED -

29. The following classes of firearms may only be owned (and may not be discharged) by holders of a firearms licence endorsed with the legend "SPECIAL COLLECTOR":

- a. fully automatic firearms, and
- b. handguns of a type not suitable for use in any nationally or internationally sanctioned target competition.

30. A "SPECIAL COLLECTOR" endorsement also should be required on the firearms licence of any collector desirous of owning more than ten handguns.

31. The full particulars of all dealings by Special Collectors in handguns and fully automatic firearms should be both recorded in a register kept with those firearms, and sent forthwith to the Firearms Regulatory Authority.

32. Applicants who are denied Special Collector endorsements or whose endorsements the Authority proposes to cancel may appeal such decisions to the Firearms Consultative Committee. Such appeals shall be allowed if applicants can establish (upon the usual civil standard of proof) that:

- a. they can provide adequate safe keeping facilities for firearms of the number and

type which they collect, or propose to collect;

b. these firearms comprise or will comprise, in whole or in conjunction with other firearms or other articles, a collection of significant historical, cultural or technological value to the community; and

c. the possession of more than ten handguns or of fully automatic firearms (as the case may be) does not otherwise endanger the safety of others.

33. The Authority and sworn police personnel (acting at the direction of a commissioned officer) shall have the right to inspect the registers and all firearms owned by Special Collectors at any time, for any reason, and without need to give notice to the licensee.

D. Displays -

Many experienced collectors with whom the author has spoken, in many States, are concerned about the absence of provisions in present firearms acts to enable collectors' organizations to hold public displays of firearms in private collections. The author believes that there is merit in these concerns. As the matter is a complex one, of significance only to a small minority, a lengthy list of specific Recommendations has not be formulated for inclusion in this Report. However, it is RECOMMENDED -

34. The State and Territorial Firearms Consultative Committees, in consultation with appropriate experts and with one another, formulate regulations sanctioning the public exhibition of

firearms owned by private persons which are of historical, cultural or technological significance, and assuring the safe keeping of firearms at such exhibitions.

#### IV - Administration, Appeals and Policy Formulation

##### A. Administrative Institutions -

In each State and Territory of Australia firearms laws are administered today by the police. Decisions to licence, to refuse licences or to revoke licences, as well as the administration of long gun registration requirements, are made by police personnel.<sup>31</sup> The cost to the community of general duty police devoting time and resources to interviewing licence applicants, administering even the present generally inadequate safety quizzes, and in some places verifying the particulars of firearms, is substantial.<sup>32</sup> Moreover, all but the least populous jurisdictions have at least one relatively senior policeman, in all cases but one of commissioned rank, spending at least a substantial portion of his working day overseeing the administration of that State's firearms regulatory structure.

While it has been acknowledged in this Report that some few and relatively infrequent tasks associated with firearms regulation must be undertaken with the assistance of sworn police personnel, by far the greatest proportion of such

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<sup>31</sup> While the language of the Firearms Ordinance in the Australian Capital Territory would lead one to believe that an independent Registrar makes firearms licensing decisions, the office is in fact discharged as one of the functions of a senior commissioned officer of the Australian Federal Police who is involved in the administration of that Force's responsibilities for what is described as the "community policing" of Canberra and its environs.

<sup>32</sup> See the discussion of hidden costs associated with police administration of firearms laws throughout Australia in Part D of Chapter V below.

administrative tasks could be performed more cheaply, and without the slightest risk to the community, by civilian public service employees. For the reasons which follow it therefore is RECOMMENDED -

35. In each State and Territory police functions relating to the administration of firearms laws be transferred to a Firearms Regulatory Authority (described throughout this Report as "the Authority").<sup>33</sup>

36. The officers of the Authority shall be empowered to call upon the assistance of the police to undertake searches through criminal records, and to enforce orders of the Authority and of the Firearms Consultative Committee (referred to as "the Committee").

An example of the sort of assistance anticipated by that portion of Recommendation 36 which follows the comma is that required to enforce an order that a firearms licence and firearms be surrendered, in an instance where an individual ceases to be qualified in law to possess firearms. The author accepts the point made by police, that this sort of role - which does not typify the present day-to-day duties of police in administering firearms laws - is played more safely by one in the blue uniform of the police than it would be by civilians.

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<sup>33</sup> The formal title of the body is of no consequence. Also, its legal status - be it an independent unit within government or an appendage of some larger department, such as sports and recreation, or conservation - could be altered to meet the exigencies of each State's and Territory's administrative conventions.

There are several reasons for which it is thought preferable to remove day-to-day responsibilities for the administration of firearms laws from police forces. One of these reasons, the opportunity to free sworn police personnel for duties directly related to law enforcement, has been discussed already. Others are canvassed below.

Following discussions with great numbers of responsible firearm licensees throughout the country, the author is of the firm view that, at a daily level, police administration of firearms laws in many localities throughout Australia is marked by an unacceptably high level of incompetence. While the few more senior police personnel at the respective State and Territorial police headquarters complexes for whom firearm law administration occupies a major part of their duties almost invariably have a sound knowledge of the law and a sophisticated understanding of the numerous technical issues which arise in this field, most members of the firearm owning public never deal with these gentlemen.

Rather, the public now deals with far more with junior police personnel at the local level. Typically, one constable or sometimes a sergeant at each police station is assigned to deal with firearms-related matters. This duty assignment normally is for a short period of time, often only for one year, before the member is rotated to other police duties. The author frequently has had interviewees complain that the police with whom they deal at the suburban police station typically do not have a full grasp of the provisions of their State's firearms act, are not at all familiar with the operation of most sporting firearms, and have little appreciation of the real-world sporting situations (be they field shooting or target shooting on a range) in which the firearm law must operate in practice.

A further complaint is heard with somewhat less frequency. It is that relatively high-ranking police with no special



responsibility for the formulation of policy relating to the administration of firearm acts, such as commanders of police districts, can, due to the hierarchical nature of police forces, subvert the firearms laws. The author has confirmed through discussion with several unrelated sources that in the recent past, in one of the more populous States, the senior police officer in a major provincial city happened to be of the view that no one but police should ever be allowed to own firearms. Apparently, he caused all of his subordinates dealing with firearm licence applications in that city and its suburbs to be informed orally of his views. These constables and sergeants got the message that - if necessary, regardless of the terms of the State's firearms statute and regardless of State-wide policies formulated by the firearms branch in the capital city - qualified persons seeking firearms licences should be turned away from the police station, empty-handed, at every possible opportunity. This subversion of the letter and the purpose of the firearms laws continued for quite some time, until a new commanding officer arrived in the police district.

This particular situation may well be unique. The author is aware of no other instance where idiosyncratic policies, at variance with those of the firearms laws, have been pursued so regularly over so large a population area. However, shooters in virtually every State have related experiences of their States' laws being given interpretations varying radically from police station to police station - and at the same police station from year to year as different individuals rotated into and out of firearms-related duties.

Another frequent complaint voiced by licensees in various States is that often the one constable assigned to firearms duties in a particular station is not regularly available. In some States he may also be administering up to 20-odd other licensing-type statutes, such as liquor licens-

ing, taking him into the field for much of the time he is on duty. Due to the personnel policies of some police forces, the designated constable may be rostered on variable shifts, working different hours or different days during different weeks of the year. In consequence, compliance with the law has at times been difficult for members of the relevant section of the public honestly seeking to comply with applicable legal requirements.

Fundamental considerations of justice and of the due administration of the laws are offended by such situations. While the occurrence of such problems apparently has been reduced in many States when strong and astute commissioned officers have been given over-all charge of firearms matters at central headquarters, so long as firearms laws are administered by police forces many of the police personnel in the field always will lack familiarity with firearms laws and with the practical environment in which they have to be applied. It is in the very nature of the career structures and personnel policies of Australian police forces that constables and sergeants will rotate into and out of firearms-related duties too quickly to allow the average member of the public a fair opportunity of dealing regularly with knowledgeable personnel. The public will be dealing too frequently at the local level with people struggling to learn the job. Moreover in organizations of quasi-military discipline, such as police forces, the immediate presence and the command authority of local station and district officers over their low-ranking subordinates always will give such senior officers the ability to affect the manner in which constables carry out centrally formulated firearms policies.

It is obvious that the compulsory enforcement of firearm laws in dangerous or emotionally charged situations will have to be undertaken by, or with the assistance of, sworn

uniformed police personnel.<sup>34</sup> All police must, of course, continue to have the authority to take action to deal with violations of firearms laws which they observe, and with instances reported to them by the public in which violations of the firearms laws endanger the public safety. It is not proposed that such responsibilities be removed from the police in the various States and Territories.

However, it is proposed that the day-to-day administration of firearms laws be removed from police forces to a Firearms Regulatory Authority, and that such an Authority be established as a discrete unit of government in each State and Territory. The Authority would recruit its relatively small administrative staff from among persons interested in working in this field for an extended period of time. Its administrative staff could realistically be expected to become intimately familiar with the details of local firearms laws and regulations. Such a small, special-purpose agency could assure the uniform, consistent application and interpretation of the laws, both throughout the jurisdiction and over time.

Duties of the Authority would include over-all supervision of the voluntary organization in that State which administers the programme of compulsory safety training for firearm licence applicants through volunteer teachers. The Authority also would be charged to develop further strategies calculated to reduce, insofar as possible, accidental and other misuse of firearms in the community.<sup>35</sup> This function probably can be discharged most effectively through coopera-

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<sup>34</sup> See the example at the beginning of this Chapter.

<sup>35</sup> Possible examples of such strategies might be the provision of firearms safety instruction for school-age children when requested by school authorities or community groups, and development of practical and effective standards for the safe design and operation of firearm ranges.

tive efforts involving Firearms Regulatory Authorities nation-wide, working in conjunction with relevant expert sub-committees recruited by their respective State Firearms Consultative Committees.

The Authority's officers would inspect firearms licensees' homes to assure compliance with legal requirements for adequate safekeeping facilities to be provided for all firearms. It would verify the particulars of firearms held under authority of Handgun or Special Collector Endorsements on firearms licences. The Authority also would administer tests to licence applicants, and attend to the paperwork and record-keeping associated with the administration of the firearms laws.

To offer adequate service to the public, the Authority would have to maintain offices throughout each State. More than one location in each metropolitan area would be necessary. It should be administratively feasible to maintain perhaps one office in each urban area of approximately 300,000 population, although economies of scale might allow a better service to be given to the public by having a somewhat larger catchment area for each office in the largest cities. Hence cities like Sydney or Melbourne each might have about five or six offices of their respective State's Firearms Regulatory Authority; Perth and Adelaide might have about three each; while one each might adequately serve such cities as Geelong and Newcastle. Offices also would be required throughout rural areas.

Especially in areas of sparse population, offices need not be staffed on a full-time basis. The populations of many districts would require only that the Authority's officer visit its local office for perhaps one day per week, keeping to a regular and published schedule. The Authority might also share such premises with other civilian agencies of State or Territorial government, further reducing cost. While the

costing of this proposal in accordance with the circumstances and governmental accounting practices of each State is well beyond the scope of this Report, the author is confident that in most if not all jurisdictions removal of the administration of firearms laws from the police to a special-purpose Firearms Regulatory Authority would not occasion any significant net increase in government expenditure.<sup>36</sup>

A further benefit, less tangible perhaps though even more significant, might follow from adoption of this Recommendation. As noted throughout this Report, the experience of a great many of Australia's firearm owners over time have caused them to develop an antipathy towards all measures by the community intended to minimise the misuse of firearms. While the vast majority of firearms owners share in this over-all goal, their experiences often cause them to view with extreme skepticism and concern any proposals for reform. Their cooperation usually will not be extended to police administrators, whom they feel they have good cause to view with distrust or disdain. This also requires greater continuity of firearms policy and longer assignment for senior personnel than is possible through the personnel policies of most Australian police forces.

To allow for cooperation in this field between government and those governed, there is a need to vest responsibility for firearms matters in persons who can gain more fully the confidence and cooperation of firearms users. There is a need to clear the air.

#### B. Appeals -

Save for South Australia and Victoria, persons dissatisfied with police decisions in firearms regulatory matters

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<sup>36</sup> Accurate costing must, of course, allow for the hidden costs of using police forces to administer firearms laws, as discussed below in Part D of Chapter V.

must now appeal these police decisions to a local magistrate. Firearms licensing matters only account for the tiniest proportion of the business of any Australian magistrate's court. Understandably then, magistrates' decisions in such cases are lacking in consistency. Those sitting on the local bench in some districts of various States are reputed to be either significantly more lenient or significantly more stringent than are their brethren elsewhere in the same State. In most instances, magistrates have little familiarity with the various technical complexities associated with firearms licensing and with recognized applications of firearms by various classes of licensees.

Victoria and South Australia each have introduced appellate<sup>37</sup> bodies known as Firearms Consultative Committees.<sup>38</sup> The Victorian Committee had nine members during most of the period of this study, including equal numbers of lawyers, senior commissioned officers of police, and representatives of firearms user organizations. Appeals were heard by panels of three members, chaired in each instance by a legally qualified member and including one policeman and one shooter. The three-member Committee in South Australia was chaired by the police Assistant Commissioner with responsibility for overseeing firearms matters within the South Australia Police, and included a lawyer and a prominent officer of the State's major firearms users' organization.

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<sup>37</sup> The South Australian Firearms Consultative Committee's formal role is to advise the Commissioner concerning appeals to him from the administrative decisions of his Assistant Commissioner. However as this Committee in fact plays an essentially appellate function, it is discussed below in such a context.

<sup>38</sup> A body of the same name far more recently introduced in New South Wales has no appellate functions, either in law or in practice.

Technically, the statutory role of the South Australian Committee is to advise the Commissioner of Police whether to accept or reject appeals in relation to firearms licensing from decisions of his Assistant Commissioner. While in law the Committee merely advises the Commissioner, in practice the Commissioner always accepts the Committee's advice. In practice too, the South Australian Committee affords aggrieved parties an opportunity for a hearing *de novo*: it gives persons the chance to have their case heard again in its entirety, often bringing to light facts not available to the Assistant Commissioner when he first passed upon the matter by himself.

Being an advisory committee, the South Australia Firearms Consultative Committee dispenses with most of the legal formalities of the courtroom. The author had the privilege of attending two sessions of the Committee's hearings, with the permission of its members and of the applicants<sup>39</sup> whose cases were heard. Its meetings are conducted in absolute accordance with the principles of natural justice - save for the fact that the original administrative decision-maker, the Assistant Commissioner, sits in appeal from his own decisions. However, the attitudes which the incumbent Assistant Commissioner consistently brought to this difficult role seemed invariably to prevent applicants from suffering any prejudice in fact.

While the Committee sat only in Adelaide, applicants (including city applicants) were allowed, if they wished, to present their case in writing, rather than attending to make

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<sup>39</sup> For the sake of clarity, the term *applicant* will continue to be used in the remainder of this Chapter to describe persons seeking new or renewed firearm licences, or other privileges under firearms acts. The author recognizes that, at least in the case of the Victorian Committee, persons appearing before its panels ought technically be described as appellants.

their case orally. A formal appeal still may be taken from the Committee to a stipendiary magistrate - although few applicants in South Australia have exercised this right when unsuccessful before the Committee.

The author also was privileged to attend two sessions at which panels of the Victoria Firearms Consultative Committee heard appeals from police decisions. By contrast with South Australian practices, the Victorian Firearms Consultative Committee's appellate panels always were chaired by a lawyer and always received oral evidence on oath. While both States' structures allow for applicants to be legally represented, perhaps for good reason applicants seem to avail themselves of this right somewhat more frequently in Victoria. As a formal matter of law the Victorian Committee is an appellate body; thus if they are still dissatisfied, applicants only may take the matter to a superior court on a question of law. Typically, the Victorian Committee takes a longer time to hear each matter than does its South Australian counterpart. The Victorian Committee has a public servant who serves as its Secretary. His tasks include informing each applicant fully, in advance of the hearing, of the procedures the panel will follow in dealing with his appeal. The Victorian Committee's proceedings are tape recorded and, if necessary, transcripts can be produced. By contrast, in South Australia no verbatim record is kept of proceedings, and the Assistant Commissioner's secretary attends to the relatively few clerical tasks associated with the operation of that Committee.

Notwithstanding the points of dissimilarity between the Victorian and South Australian Committees, the procedures and the effectiveness of both Firearms Consultative Committees stand in profound contrast to those of magistrate's court hearings. With due respect to Australia's local bench, both of the Committees appear to be far better equipped than



magistrates to discharge the function of hearing appeals related to firearms licensing matters. The author had the impression in both States that the respective Committees offered far less rigid and less intimidating an environment to which typical members of the community might come and explain, each in his own way, where he believed the police to have erred in dealing with his firearms licence application or related matters. Unlike the procedure of the courts, formal rules of evidence - which include many quite technical rules, most of which must be quite incomprehensible to the layman - need not be followed at these hearings. Frequently, it was clear that the special expertise of one or another member of the Committee was relied upon to elucidate a point.

These special-purpose appellate bodies seem far preferable to judicial hearings before magistrates for two reasons. First, there is a significantly better chance for actual matters in issue in each case to be discovered and evaluated by the decision-makers: as said in the part first of a famous maxim of the common law, justice is much more likely to be done. Secondly, and no less importantly, applicants appeared to the author to leave the hearings of each Firearms Consultative Committee substantially more assured than are most litigants before magistrate's courts that their cases had received full consideration on their merits, and that the decision-maker reached a decision only after fully understanding their side of the matter: as the famous maxim continues, justice therefore appeared more manifestly to be done.

Following observation of the excellent work being done through substantially different formal structures in South Australia and in Victoria, the author does not propose to suggest in substantial detail the specific form which such Committees should take. Certainly neither State appears to have need to make major changes to a structure which works

well for it. However, notwithstanding the substantial expertise and strict impartiality the incumbent Assistant Commissioner brought to his work in South Australia, the author would recommend that his successor's assistance to the Firearms Consultative Committee should be by way of offering evidence only, and that he not sit as a member of the Committee. As we lawyers say (thankfully, most of us don't say it that often), *Nemo debet esse iudex in sua propria causa*. Finally, to help to assure strict compliance with the rules of natural justice, it is suggested that when hearing appeals the Committee or its panel always be chaired by a legally qualified member.

To embody the proposals in this second Part of this Chapter, it will therefore be RECOMMENDED -

37. Each State and Territory provide, through a mechanism appropriate to local conditions, for persons to appeal against decisions of the Firearms Regulatory Authority to a Firearms Consultative Committee.

38. Each such Committee should adopt procedures which will allow applicants to have their cases heard afresh, without regard for the formal legal rules of evidence except in instances in which the Committee believes that compliance with the rules of evidence would be in the interest of justice.

39. Where practical, hearings should be conducted regularly in centres outside of the State's capital city.

40. Oral evidence received at appellate hearings should be tape recorded. These audio tapes, along with physical evidence, should be maintained to facilitate possible appeals from the Committees' decisions to the courts.

41. Decisions of fact made by the Committees should be final. Their decisions and orders should be subject to a right of appeal to a judge of the respective State or Territorial Supreme Courts for error of law, whether or not the alleged error be apparent on the face of the record.

The primary advantage of a senior commissioned police officer serving as a member of appellate panels appears to be the knowledge of police administrative practices respecting firearms matters which he brings to the Committee. If this work of the police be transferred to Firearms Regulatory Authorities as has been recommended,<sup>40</sup> then this function would best be performed by an officer of the Authority who has not personally been involved in the case at an administrative level. Moreover, the author has been told that service on the Committee often proves disruptive to the other duties of the three senior commissioned officers of police assigned by the Chief Commissioner of the Victoria Police to serve on the Committee in that State. In instances where the basis for revocation or denial of a firearms licence relates to the alleged danger which an applicant might pose to the community, then competent police evidence ought to be called through witnesses knowledgeable of the relevant facts, in the usual manner. Hence it is further RECOMMENDED -

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<sup>40</sup> See above in Part A of this Chapter.

42. That the Committee in each State and Territory be composed of equal numbers of:

a. persons -

i. holding the degree of bachelor of laws attained from a university in a common law jurisdiction, or

ii. admitted to practice as legal practitioners (howsoever described) before the Supreme Court of that State or Territory;

b. senior officers or retired senior officers of the State's Firearms Regulatory Authority; and

c. persons representative of and selected by local organizations of firearms users.

C. Policy Formulation -

The full nine-member Firearms Consultative Committee of Victoria met periodically during the term of this study to assess current firearms laws and policies, and recommend any amendments and administrative changes they might deem necessary to the Minister responsible for firearms laws, the Minister of Police. In technical areas, or areas affecting special classes of firearms users, the Committee might draw informally upon the expertise of others in the community, as well as upon that of its own members. While the South Australia statutes gave a similar responsibility to that State's Committee, it never had occasion to meet for this purpose during the currency of this study.

In addition to offering an especially informed and broadly based group to assist the Government in its responsibilities with respect to firearm laws, consideration of possible new Government firearms policies by the Victorian Committee also has offered a channel through which concerned

firearm users, of various interests, and resident throughout that State, feel that they can direct their ideas and concerns in this field, with the expectation that they will be afforded due consideration. It thus fulfilled the additional and important function of helping to dissuade very many firearm users from the long-held view that their interests stand in inevitable opposition to those of government and of the broader community.

In specific terms therefore, it is RECOMMENDED -

43. State and Territorial Firearms Consultative Committees be charged, in law and in practice, with the responsibility of reviewing the effectiveness of firearms laws and administrative practices, and of evaluating options for reform and change put to them by government or by persons within the community.

Institutionalization of opportunities for cooperation, communication and mutual compromise ought over time to make for a greater internalization by firearm users of values underlying firearm laws, as well as for greater appreciation by government of the legitimate concerns of responsible firearms users. Put more simply, Firearms Consultative Committees like that of Victoria stand to enhance and to further the interests and goals actually shared by both firearm users and the community at large.

## V - Registration of Firearms

The matters of the periodic verification of the details of licensed handguns, and of fully automatic weapons held under especially secure conditions by some few Special Collectors, are discussed elsewhere in this Report.<sup>41</sup> This Chapter is concerned only with the contentious issue in Australia today of whether the law should require the registration with police forces or other government agencies of the details of rifles and shotguns owned by persons who are themselves already licensed to possess and to use firearms. With respect to this issue the author makes only one Recommendation, which he will attempt to justify throughout the remainder of this Chapter: it is RECOMMENDED -

44. Legislation requiring the obligatory registration of firearms should not be enacted in Australia. States and Territories whose Parliaments have enacted such legislative requirements should repeal them forthwith. The term "registration of firearms" as used in this Recommendation means all schemes, of whatever name, for the compilation of the details of particular rifles and shotguns owned by persons who themselves hold firearms licences.<sup>42</sup>

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<sup>41</sup> See Part A of Chapter I, and Part C of Chapter III, respectively.

<sup>42</sup> This Recommendation is not intended to affect requirements for firearms dealers to maintain registers of firearms transactions.

This Recommendation is made primarily because registration appears to be an ineffective use of police time and of public resources. There appears to be no evidence whatsoever that the cost of administering any type of registration scheme might achieve any commensurate reduction in the criminal misuse of firearms, or any increase whatsoever in the frequency with which criminals are apprehended by police. These appear to be the goals posited for registration by its proponents in government, who have been heard in recent years to propose registration schemes for long guns to assuage public outrage and fear in the wake of lurid firearms-related crimes.

Secondarily, registration is rejected because of its failure to achieve goals posited for it by its more sophisticated proponents, including certain of my fellow university academics. In particular -

(A) Long gun registration, in those Australian jurisdictions in which it has been introduced in recent years, does not appear to be achieving a meaningful reduction in the number of firearms held (often without proper safe keeping facilities) by private persons who have no real use for or strong attachment to these firearms. Registration thus does not appear to be a strategy particularly well calculated to reduce the availability of firearms to criminals, through a diminution in the number of firearms likely to be lost through burglary.

And -

(B) Not only has the introduction of long gun registration failed to be of positive "symbolic effect" by reinforcing in shooters' minds the seriousness with which the community views firearms ownership and use; rather, it generally has had a strong *negative* "symbolic

effect" upon firearms owners, as will be described in this Chapter.

A. Absence of Direct Policing Benefit -

It would be difficult to avoid favouring some scheme or other for the registration of the particulars of individual long guns owned by private persons who are themselves licensed to possess and to use firearms, if such a regulatory strategy could be found to be of some significant direct benefit to police in either deterring crime or apprehending criminals. No such benefit appears to follow from any known registration strategy.

Greenwood's exhaustive study of the effects and benefits of long gun registration in Britain is now rather dated.<sup>43</sup> Moreover, cultural links notwithstanding, one may justifiably question the relevance of a British study to Australian social conditions. However, the thoroughness of that study and the unparalleled cooperation which Inspector Greenwood received from police throughout England during his sabbatical at the Institute of Criminology of Cambridge University make his results noteworthy still. Many decades following the introduction of long gun registration in England, Greenwood could find no proof that its long gun registration programme had been of real assistance to any police force in apprehending even one criminal.<sup>44</sup>

Greenwood only could find one benefit to have accrued from the registration of the particulars of privately-owned long guns: of all of the types of goods which might be recovered by police from burglars after their apprehension, registered long guns were the type which could most readily

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<sup>43</sup> Colin Greenwood, *Firearms Control: A Study of Armed Crime and Firearms Control in England and Wales* (London: Routledge & Kegan Paul, 1972).

<sup>44</sup> *Ibid.*, p. 246.



be identified and returned to those from whom they had been stolen. Greenwood did not even deem worthy of discussion in his report any suggestion that long gun registration might somehow deter the commission of crime. Perhaps because of the universal difficulties in proving a negative assertion, there is no evidence in Australia to support any suggestion that long gun registration deters crime. Inspector McCallum's assertion in this regard, quoted immediately below, appears apposite to Australia, as well as to New Zealand.

A recent internal study undertaken by the New Zealand Police, while somewhat less comprehensive than Greenwood's, convinced that country's police officials to recommend legislation which has resulted in the end to long gun registration in New Zealand. It too found that, under New Zealand conditions, "There is no evidence to suggest there is any relationship between the registration of firearms and their control. Education will reduce misuse more than registration."<sup>45</sup>

No study comparable to Colin Greenwood's has been undertaken anywhere in Australia. The present author certainly has not had the time or resources even to contemplate replicating Greenwood's work in Australia. Evaluation of the effectiveness of Australian firearms registration schemes thus must be based upon more impressionistic data.

In interviewing police in each State and Territory which registers long guns or handguns, the author usually had occasion to inquire whether their registries have been of use in criminal investigations. Replies have varied. Many experienced police occupying positions related to firearms registration, at all ranks in the police hierarchy, have

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<sup>45</sup> A. G. McCallum, *Firearms Registration in New Zealand* (Wellington: Support Services Directorate, New Zealand Police, 1982), p. 26. McCallum's conclusions continue at p. 27: "It is unlikely that firearm registration controls firearm use in domestic violence. .... The question whether firearm registration deters offenders from using firearms in the commission of crime remains unanswered but it is unlikely."

replied that they never have known their respective long gun or handgun registration schemes to have assisted greatly in a criminal investigation. In one State the author was assured that there had been "one or two" such instances, but he was fobbed off when he pressed for further particulars. On at least two occasions, the author had the sense that high-ranking policemen with whom he raised the matter were politely but unenthusiastically defending their respective State Governments' pro-registration policies, when they replied to the effect that recourse to firearms registries might on occasion be one step among many taken by prudent criminal investigators within these States' respective police forces.

If firearms registration was of significant assistance to police anywhere in Australia in their criminal investigation duties, then the author would have expected at least some of the many police whom he interviewed nation-wide to support it enthusiastically for this reason. None did.

Long gun registration schemes at times have been promised by political leaders in the wake of some tragic and notorious crime involving the misuse of firearms. As most such "Massacres" in recent years have seen offenders readily identified and apprehended, registration no doubt is advocated at such times in the expectation that it will prevent, or at least deter, the criminal misuse of firearms. In the early stages of this research project the author raised this possibility with some experienced police personnel. The author was not sufficiently brave to continue to raise this possibility with police across the country, as he found himself thought to be extraordinarily naive, or a typically muddle-headed academic, merely for raising the suggestion.

The reaction of politicians in proposing long gun registration in the aftermath of notorious instances of the criminal misuse of firearms is not, of course, a totally

irrational act. Elected officials usually do have an especially good perception of the general community's fears and concerns. They realize that they are expected by the public to take steps, through administrative devices or legislation, which will give concrete manifestation to the community's collective values.

Law clearly is expected by the community, when dealing with firearms as well in other realms, to fulfill an educative function. In particular, the community demands that our firearms laws serve (among other things) to inform those who own or use firearms of the seriousness with which the general public views the need for proper use of firearms - to remind firearms owners of the attitudes of responsibility which the community demands that they display. Unfortunately, while schemes for long gun registration may be "flavour of the month", they are not well calculated in present-day Australian conditions to achieve this goal.

#### B. Symbolic Effects -

If we dismiss arguments favouring registration as a crime prevention or offender apprehension device, then we are left with a suggestion that the act of bringing one's firearms to a police station for a constable to note down their particulars - either once only, or on a periodic basis - will convey to the firearms user this attitude of seriousness, of the obligation he owes to the community to use his firearms safely and lawfully at all times. The author is quite convinced, following discussion with numerous firearms owners in each State and Territory, that registration schemes now in place do not have this effect, and that their introduction in jurisdictions which presently do not require registration would not produce such an effect.

In reviewing notes taken over a two-year period, the author finds that individual shooters, almost unanimously, seem to view registration with derision. When asked to discuss possible community benefits of registration they tend

to note immediately how ludicrous they find politicians' proposals to reduce crime by compelling the registration of firearms owned by persons who qualify for firearms licences. Firearms owners thus approach the police station, firearms in hand, with minds occupied with the sense of being compelled to participate in a massive farce. Thoughts of the seriousness with which the community views firearms ownership, and of the necessary attitudes of care, proficiency and responsibility which one must bring to firearms use, are the furthest things from their minds.

Shooters, and the officers of firearms owners' organizations of many stripes whom the author interviewed, also are quick to raise what they perceive to be likely sinister motives of politicians in proposing long gun registration. Many such interviewees are fearful that registration either will be a "thin edge of the wedge" leading to ultimate firearms confiscation, or that it will be a basis for the future introduction of iniquitous taxes upon privately owned firearms. While one may wish to question whether such suspicions are valid or whether they are always arrived at with total rationality, the fact remains that a large proportion of Australia shooters *do* hold such suspicions. Once again, the sought after "positive symbolic effect" will not be achieved when persons present their firearms for registration with such thoughts as these occupying their minds.

In those Australian jurisdictions which have had registration introduced in recent years, the author was told regularly by many firearms owners that they had not registered all or even most of their firearms. Knowledgeable police officials and officers of firearms owners' organizations alike estimate - or simply guess - that some very large proportion of firearms go unregistered. All are agreed that most of those firearms owners who decide to violate registra-

tion laws are people who otherwise are quite honest and law-abiding. In jurisdictions which the author visited for purposes of this study in which registration schemes have been proposed or were under serious consideration, shooters and the elected officers of their various associations frequently indicated that some large fraction of their own long guns, and those of their members, would not be registered. A figure in the range of 50 per cent frequently would be used.

If, as the author suspects, long gun registration schemes motivate a great many firearms owners to engage in serious violations of the laws for the first time, then, quite contrary to the intention of the proponents of registration laws, registration has a profoundly adverse psychological as well as symbolic effect. It is the author's firm impression that, in Australia today, the introduction of long gun registration laws is making the target population less likely to afford automatic obedience to society's rules concerning the possession and use of firearms.

The author is concerned least the introduction of registration requirements give shooters the impression that they form a class whose interests are in opposition to the general values of the community. It is submitted that far better strategies than registration exist through which the general society can convey the values which it insists must accompany the private possession and use of firearms. These strategies are advocated and described elsewhere in this Report.<sup>46</sup> These favoured strategies are ones which will convey to shooters a sense of participation in the community's general scheme of values - not a sense of standing apart from and in opposition to such values - when they approach the care and use of their firearms.

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<sup>46</sup> See in particular the discussions of relating to safety education and safe keeping requirements in Part D of Chapter I, and in Chapter II, respectively.

### C. Unwanted Firearms -

The author taught at a university in Sydney during the period when much of the research for this Report was undertaken. At that time a long gun registration scheme was planned for New South Wales. Ultimately, details were published in the press. In various ways, my research interest became widely known on the campus.<sup>47</sup> Somewhat to my surprise, numerous people - including students, technicians and senior academics - indicated that they had some long gun or other, which they may never have used, stored away in an attic. It might typically have been a war trophy or a sporting firearm of no special monetary or sentimental value inherited from a father, uncle or grandfather.

If asked, I would explain the proposed new law. I then usually would be told by these people that they would simply leave the firearm in the attic. None suggested to me that they might be motivated by introduction of a registration law to dispose of their firearm. Eventually, I wondered how many people there might be just at that university who held an unused firearm, to which they were only casually attached, but who were not moved even by the well-publicized introduction of registration laws to consider compliance with the new law.

Those who favour registration so as to reduce the inventory of what this author terms (for want of better words) "casually owned firearms", do not seek to reduce this inventory of firearms just for the abstract purpose of having

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<sup>47</sup> For example, the internal university newsletter highlighted my publication of a book describing the current firearms laws in each State and Territory. A photo accompanied the story. However, unlike the scores of such photos published in that newsletter each year which show a bug-eyed academic in front of shelves of tattered books, I was pictured holding a revolver.

fewer firearms in the community. Rather, they will suggest that such firearms are among those most likely to come into criminal hands through burglary. They also will suggest that such firearms, perhaps even having been stored with their ammunition by their less-than-knowledgeable owners, very often will be accessible to curious children, who may thus suffer accidental injury. Each of these suggestions must be evaluated seriously and critically.

The author does not accept that, even in the long term, criminals will be prevented from acquiring firearms through a registration strategy. In three States, the author felt that he had established sufficient rapport with senior police personnel to receive frank answers to pointed inquiries concerning the availability of illicit handgun. Each of these States has had legal requirements for the registration of all privately owned handguns on their statute books for many decades. In each of these States the author was assured that handguns still were readily available to criminals who wanted them. There is no reason to suspect that a long gun registration law might fare any better over time.

A typical response to the author's queries was that of one long-serving police officer, who said that a member of the criminal community only had to walk into a certain pub in the State's capital city, put a certain sum of currency on the bar, indicate that he wanted a pistol and wasn't fussy about the make or calibre, and then wait for about an hour.

The author received no responses from police to these questions which suggested that long-standing handgun registration laws kept handguns from criminals who wanted them. Given the far larger present-day inventories of long guns in Australia,<sup>48</sup> the author does not find credible the suggestion that the introduction of even the nation-wide requirements

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<sup>48</sup> See Harding, *op. cit.*, note 6, at pages 53-58, where the statistics presented suggest that not more than 5% of the firearms in Australia are handguns.

for the registration of rifles and shotguns will ever thwart many criminals who are intent upon illegally acquiring firearms.

D. Cost -

No doubt a manageable firearms registration scheme, which is able to retrieve all data which has been deposited in it, can be implemented. However, undoubtedly it would cost more than do most firearms registration systems now in place. However, even leaving questions of low compliance rates aside for the moment, it is suggested that even the amounts of manpower and funds presently spent on registration could be better spent upon other strategies more likely to reduce the incidence of the misuse of firearms.

As noted previously, the far smaller numbers of privately owned handguns throughout Australia have been subject to compulsory registration laws for many decades in each State and Territory. Bugs should have been worked out of such schemes over such a period of time. However, police involved in handgun registration duties in some jurisdictions have admitted to the author that, either at present or in the recent past, they were lacking confidence in the accuracy of their own registration records.

Experiences related to the author by handgun licensees in many jurisdictions incline the author to suspect that substantially greater levels of care, and of funding, would have to be forthcoming to assure the reliability of firearms registration records. The author has seen computer-generated registration renewal forms which reflect the loss from the system of all record of the particulars of a licensee's handguns. Reference to the former year's form shows the information to have been taken down by police.

The author has been present when two police knocked unannounced on a handgun licensee's door to take away "your



unlicensed pistols", claiming that the police computer showed that the owner had failed to renew his licences for each pistol. The owner thereupon produced his current licences, which had been renewed some weeks before.

In one police headquarters building the author was told stories of personnel in the field registering firearms, and recording the name of a telescope manufacturer, which was stamped into the scope attached to the firearm, as being the name of the manufacturer of the firearm. In another State, he learned that registration records of numerous firearms in that State which were of Russian manufacture were quite unreliable, as constables had recorded the Cyrillic alphabet characters in these firearms' serial numbers inaccurately. Other such instances were related regularly by interviewees.

If present registration procedures may need to be vastly improved, and if this will make registration systems cost more than they cost now, just how expensive are the firearms registration systems which now are in place in Australia? It would appear that the cost is significant, and that much of the cost usually is hidden and is normally not calculated as a cost of operating registration schemes.

Unlike manual systems for registering the details of firearms and their owners, computerized systems need not take up large amounts of physical space in police headquarters. Instead of banks of file cabinets and card drawers, information can be recorded in existing police computers' memories. Initial programing costs to allow firearms information to be added to these databases will be relatively modest. Even in the relatively larger States, it is not uncommon for there to be fewer than a half-dozen sworn police personnel who spend most of their time working exclusively or even primarily on firearms regulatory duties. Civilian clerks can attend to necessary data processing duties, collect registration fees, keep the books and prepare the financial accounts, and also can deal with many of the inquiries by those few members of

the public who may call at the State's central firearms registry.

However, the real cost is hidden out in the suburbs and in the countryside. As discussed elsewhere in this Report, it is common now throughout Australia for firearms registration to be accomplished by police in suburban and rural stations.<sup>49</sup> Either a general duty constable, or a constable or sergeant responsible for various licensing duties, will undertake these tasks. Each handgun owner may be seen once each year. Often, he or she will present several target pistols of different types. The policeman, whose familiarity with firearms often extends only to his police service revolver, may have to manipulate a decided alien and expensive piece of precision machinery in order to locate an inconspicuously stamped and perhaps lengthy series of letters and numbers. This then will have to be compared with the serial number recorded in police records. Presumably, the constable or sergeant also is assessing whether the firearm is of the same pattern, manufacturer and calibre as is reflected in registration records (or, if the firearm is being registered for the first time, as is asserted by its owner).

All of this may take quite a few minutes. It certainly interrupts whatever work the policeman was doing before the firearms owner arrived. It is suggested that given the many thousands of long guns to be registered annually in most States, an accurate and thorough manpower utilization study would show that the effect of long gun registration is (or would be) equivalent to diverting quite some number of sworn police personnel into what are essentially full-time clerical duties. The actual cost to the community of long gun registration thus is far greater than that of establishing a

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<sup>49</sup> See Part A of Chapter IV.

central registry at police headquarters with its small full-time staff. It is suggested that these costs are not justified by any benefit which the community might realistically hope to gain from long gun registration.

## VI - Subsidiary Matters

In the course of this study many interviewees raised numerous points regarding the technicalities of their respective State's or Territory's firearms act. Section-by-section evaluation of each of these eight local statutes is not possible in this Report. However, certain specific issues, which are subsidiary to the general strategy proposed in the preceding Chapters, must be detailed in order to complete this proposal for a global strategy concerning the regulation of firearms in Australia.

A. Ammunition Sales -

Various States have statutory requirements affecting the sale of ammunition. The most common of these obliges a dealer to assure himself that his purchaser is licensed to own a specific firearm, or is the registered owner of a firearm, of a type which uses the ammunition which any purchaser proposes to buy. Many of these requirements are new additions to the various States' firearms acts.

Two justifications for this type of regulation have been advanced. Some of its proponents claim it reduces the chance of a stolen firearm being used in a crime, as the thief is not likely to have the appropriate document with which to buy ammunition for it. Others point to the positive symbolic effect of such a requirement, which is said to highlight the seriousness with which society views the use of firearms.

By contrast, opponents of such regulations suggest that the imposition of such requirements unduly burdens legitimate shooters. If ammunition is found on sale, perhaps while visiting another town, the shooter may be unable to purchase

it without making a special trip for the purpose, licence in hand. Also, such requirements may make illegal an innocuous hobby of interest to a small, but not insignificant, number of persons: collecting firearms ammunition. Most ammunition collectors do not own - indeed, could not hope to own - one firearm chambered to fire each of the scores of varieties of ammunition in their respective collections.

A relatively large proportion of firearms users manufacture their own ammunition from commercially-available components, including bullets or shot, brass cartridges or plastic (or cardboard) shotgun shells, and smokeless powder. Some do so to achieve results not available with ready-made ammunition. Most though probably "reload" at home to reduce the cost of their sport. Anyone with minimal dexterity and perhaps a \$60 set of tools (often sold with full directions) can manufacture ammunition quite safely from components. Components are available in most gun shops. No State or Territory restricts the purchase of reloading components or tools.

In the view of this author the balance properly is to be struck in favour of the firearms user or ammunition collector in this instance. Few Australian police with whom the author has discussed the matter believe that such ammunition controls ever can have a significant effect in reducing the misuse of firearms. While the inconvenience and burden imposed on firearms users by ammunition controls may appear to others to be of a relatively low level, in the present author's opinion this burden has had the effect not infrequently of making a frustrated would-be ammunition purchaser resentful and contemptuous of the firearms laws, rather than of making him or her immediately mindful of the seriousness with which society views the use of firearms. It is suggested that people cannot be made aware very effectively of the seriousness of firearms use through the imposition of burdens - however trivial and petty - which are widely regarded as pointless by those burdened. Therefore it is RECOMMENDED -

45. Laws requiring one's possession of a firearms licence or lawful ownership of certain firearms as a condition to the purchase of firearms ammunition be repealed by States which have enacted such laws, and that they not be introduced in other Australian jurisdictions.

B. Amnesties -

The various States and Territories have had numerous firearms amnesties in recent years. Firearms amnesties are periods, frequently of several months' duration, during which owners can turn their unwanted firearms into the police without risk of prosecution for breach of firearms licensing or registration laws. Large numbers of unwanted firearms thus continue to be removed from the community, often being surrendered by people possessing little if any knowledge regarding the safe use those firearms. Simply by virtue of being unwanted firearms, the weapons in question are likely to be among those *least* securely stored, and hence most prone to fall into criminal hands through burglary.

To further entice people to dispose of their unwanted firearms, it has been suggested by many whom this author has interviewed that the concept of amnesties should be extended. Some have suggested that amnesties be perpetual: that people always be permitted to turn in unwanted guns to police on essentially a no-questions-asked basis (except, of course, should it be found that the firearm has been used in the commission of a crime). Others have proposed that during amnesties people should be permitted to sell unwanted firearms to licensed firearms dealers, to offer some financial inducement for people to surrender such firearms.

In the course of wide discussion, the author has not had put to him any good reason *not* to make amnesties perpetual.

Certainly the expenditure of public funds on advertising firearms amnesties would be all the more effective if this idea was adopted. The only countervailing consideration, that prohibitions upon the unlicensed possession of firearms might be undermined, need not eventuate if a "perpetual amnesty" law is properly explained by Firearms Regulatory Authorities to the public. Thus it is RECOMMENDED<sup>50</sup> -

46. It shall be an affirmative defence to a charge of being in unlawful possession of a firearm under State and Territorial firearms laws if one is in possession of that firearm with the intention of surrendering it as soon as is reasonably practical to a lawful authority. The burden of proving such an affirmative defence to a firearms act charge shall rest upon the person so charged.

Provided that the police are not deprived of any reasonable opportunities to solve crimes, no objection has been found to proposals to allow firearms to be surrendered to licensed dealers. Dealers could be obliged to enter the particulars of any firearms they so accept (and of the people from whom they have accepted these firearms) in their registers, and also required to allow police to inspect and test such firearms before the dealer may sell them to a third party. Also, States which remove responsibility for most firearms-related matters from police to a special-purpose civilian Firearms Regulatory Authority ought to allow the surrender of firearms to that Authority. Therefore it is RECOMMENDED -

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<sup>50</sup> The author is indebted to Professor Harding for suggesting substantial improvements, which have been incorporated in the phraseology of Recommendation 46.

47. For purposes of Recommendation 46, a "lawful authority" should be deemed to include:

- a) the police,
- b) the Firearms Regulatory Authority, or
- c) a licensed firearms dealer.

Finally, some expert private collectors and museum weapons curators have noted that many firearms of special historical or other significance which have been surrendered to police in past amnesties have been melted down. The loss to the community seems pointless. Therefore it is RECOMMENDED

48. The museum in each State or Territory housing its principal firearms collection be offered the opportunity (in the option of that museum) either to inspect, or to inspect lists of, all firearms coming into the ownership of the police or Firearms Regulatory Authority and not required for purposes of criminal investigation or evidence in a court of law. That museum may obtain any such firearm and add it to its collection.

#### C. Black Powder Firearms -

A significant number of persons in the Australian community shoot black powder firearms. These firearms are of a variety of designs, some common in the mediaeval era, others still in general use past the middle of the nineteenth century. The common features of such weapons are two. First, they use black powder<sup>51</sup> - a propellant producing far more (and far more acrid) smoke and less propulsive force than do modern synthesised smokeless propellants. Second, most black

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<sup>51</sup> A simple, ages-old mixture of saltpetre, sulphur and charcoal.



powder weapons do not use a sealed cartridge. Instead, the user is obliged to go through slow and laborious procedures before the firearms can be fired. It may be necessary to measure and to load powder and shot separately into the firearm's chamber or chambers; to apply a sealant of grease to each chamber, to prevent the premature ignition of the weapon; and finally to add percussion caps with which the charge can be ignited. While the proportion of Australian target shooters or hunters who use black powder weapons is small, their numbers are significant in each State, in absolute terms.

Various overseas countries do not treat black powder weapons as firearms for legal purposes. The argument is made in Australia too that no bank robber or other criminal is likely to want to go through the ritual associated with the loading of such old-fashioned firearms; therefore, it is claimed, the sale, use and possession of black powder firearms should not be regulated by our firearms acts. This premise may indeed be valid, however other considerations militate strongly against such deregulation of black powder firearms.

The criminal's brandishment of most black powder weapons is likely to cause fright in the community. Only the cognoscenti could tell whether or not such a firearm is loaded. Also, the unsafe use of black powder weapons is of particular concern. Their users must be especially mindful of the principles of firearms safety. Therefore it is felt that deregulation of this class of firearms would send a false message regarding the seriousness with which the community views the

use of firearms in general.<sup>52</sup> Consequently it is RECOMMENDED

49. Black powder firearms continue to be treated as firearms under Australian firearms laws.

Some black powder shooters in Australia wish to assemble their own handguns or long guns from kits, which are made commercially in other countries. As no specific provision is made for any home assembly of firearms in the firearms acts,<sup>53</sup> police and shooters alike believe that such shooters sometimes commit at least technical violations of the firearms acts before the finished kits can be presented to police for registration as firearms. Even in the event of the end of registration requirements for long guns in Australia as is recommended in this Report, the problem will continue with respect to black powder pistol kits. The author is not aware of any special safety problems arising in Australia or overseas with respect to firearms assembled from such kits. Therefore it is RECOMMENDED -

50. Provision be made to enable the lawful trade in, and assembly by licensed shooters of, black powder firearms kits. Unassembled black

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<sup>52</sup> Similarly, it is proposed that air guns also continue to be regulated as are firearms, under the various State and Territorial firearms acts. Similar considerations would seem to so require, notwithstanding the fact that many overseas jurisdictions do not regulate air weapons in this fashion.

As a final draft of this Report was being edited, the author reflects that not one interviewee raised the matter of air guns during the course of this study.

<sup>53</sup> Perhaps because, save for black powder kits, the construction of firearms is beyond the technical competence of most home craftsmen.

powder handgun kits should be deemed to be handguns. The possession of such kits should not be deemed to contravene statutory requirements that all firearms be in a safe operating condition at all times.

#### D. Exemptions from Firearms Laws -

Most present Australian firearms acts are consistent in their exemption of certain classes of persons from firearms laws. Most of the usual exemptions are incorporated in the Recommendation which follows. However, the author specifically notes his criticism of a provision unique to the New South Wales statute, whereby a Ministerial permit, issued entirely outside the usual mechanisms of firearms control in that State, can provide a private individual with a broad exemption from the firearms laws.<sup>54</sup>

The author's concern in his study has been centred on firearms in private ownership, comprising the bulk of those firearms now subject to State firearms acts.<sup>55</sup> However, by offering this Recommendation the author only proposes that the possession and use of firearms by public instrumentalities and officers continue to be regulated by laws other than the firearms acts; the author certainly does *not* wish to suggest that the community should fail to review the regulation of state-controlled firearms.

In view of the foregoing it is RECOMMENDED -

51. The following be exempt throughout Australia from the general scheme of laws for the

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<sup>54</sup> Once again, the specific provision in each State and Territory are set out in Fine, *op. cit.* note 10.

<sup>55</sup> As noted previously, the matter of possession of firearms by private security agencies also is beyond the scope of this Report.

regulation of firearms which is recommended in this Report:

a. sworn police personnel and correctional officers of the Commonwealth and of each State and Territory acting in the course of their duties;

b. military personnel of Australia<sup>56</sup> and of such other countries as may be proclaimed for this purpose by the Governor-General-in-Council;

c. museums proclaimed for this purpose by the respective Governors-in-Council, and employees of these museums in the course of their duties;

d. Australian government instrumentalities, and State and Territorial government instrumentalities, proclaimed for this purpose by the respective Governors-, Governor-General-, or Administrators-in-Council (as the case may be), and employees of such instrumentalities acting in the course of their duties<sup>57</sup>; and

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<sup>56</sup> The term "military personnel," as used in this recommendation, is not intended to include members of Defence Act Rifle Clubs. While these organizations clearly served a function closely related to the national defence when they first were organized, this nexus no longer is apparent. Accordingly, it is recommended that the Commonwealth *Defence Act* be amended to abolish certain major exemptions afforded members of such Clubs from provisions of the State and Territorial firearms laws. The effect of such an amendment to Commonwealth law would be to put members of such Clubs in no disadvantage in comparison with other target shooters in the community.

<sup>57</sup> This clause is intended to allow for the exemption of such instrumentalities (along with such of their employees as  
(continued...)

e. masters of ships registered elsewhere than in Australia, with respect to firearms forming a part of the equipment of their ships, but only while such firearms remain in safe keeping aboard their ships.

#### E. Special Classes of Firearms -

Particular provisions are recommended elsewhere in this Report to regulate the private possession of handguns and of fully automatic firearms.<sup>58</sup> These provisions are more stringent than those which have been recommended to govern private possession of long guns. The matter of collectors' firearms, which in many State and Territorial statutes now are regulated on principles fundamentally different from those applied to other firearms and their owners, also has been considered. However, it has been recommended<sup>59</sup> that, in most cases,<sup>60</sup> the usual principles proposed herein apply to collectors and their firearms.

Some Australian States and Territories have enacted special rules prohibiting, or regulating upon especially stringent principles, certain classes of firearms. Some merely require different classes of firearms licences for .22 calibre rimfire rifles, for other rifles, and for shotguns—without applying any fundamentally different criteria to the assessment of applications for each designated class for

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<sup>57</sup>(...continued)  
may be authorized to possess firearms) as ASIO, government railways security units, and conservation departments charged by statute with law enforcement responsibilities.

<sup>58</sup> See Part A of Chapter I, and Part C of Chapter III, respectively.

<sup>59</sup> See Part A of Chapter III.

<sup>60</sup> Special provisions are proposed at with respect to fully automatic firearms, handguns to a type perceived by the community to be especially suited to criminal applications, and amalgamations of more than ten handguns.

firearms licence. Other States apply greater restrictions to the possession of what are termed "high powered" rifles—those which can use a particularly powerful cartridge. Rifles of normal length but fitted with a shape of wooden or plastic stock known as a "pistol grip" have been specially regulated or identified for prohibition. Other States have banned specific types of semi-automatic firearms which are thought specially susceptible to illegal modification by the amateur gunsmith to allow fully automatic fire. Proposals have been made for the prohibition of the private ownership of all semi-automatic firearms.<sup>61</sup>

Criminal statistics are not maintained in Australia which would allow one to judge whether any particular variety of long gun is misused more often than any other. Police have tended to defend their own State's particular rules as being essential to maintain public peace and safety. However, when police in States which do not have any particular idiosyncratic rule regarding a particular type of long gun have been asked what changes they might like to see to their own State's firearms act, they have not related to the author a need to ban or to enact especially stringent rules to regulate any particular types of firearms.

It is suggested that all realistic and beneficial productive steps be taken Australia-wide to assure that only persons competent to use firearms in a manner consistent with the public safety ever be allowed to own or to use any type of firearm. Any firearm is likely to achieve the robber's objective of intimidating and frightening his victim. Even

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<sup>61</sup> Semi-automatic firearms are those in which the energy released by gases given off as each round is fired is used to cause the next round in the firearm's magazine to be moved into firing position. However, unlike an automatic firearm, the user must still pull the trigger manually before each round is fired.

For the particular rules enacted from State to State, see Fine, *op. cit.* note 10.

the least powerful of commonly used rifles, those of the .22 calibre rimfire variety, project ammunition with sufficient force to kill or inflict serious injury at a distance of a kilometre or more. Commonly used varieties of sporting rifles could be used quite successfully by a criminal sniper. The prospect of semi-automatic sporting rifles being used by organized gangs for paramilitary purposes within Australia is at best remote; and any such threat would no doubt be met far more effectively by the state through other, more direct, responses than inclusion of further clauses in a firearms statute.

Based upon information presently available, there does not therefore appear to be good cause to go to the expense and effort of imposing and administering different rules with respect to different classes of long guns at this time. Hence no Recommendations to that effect are made in this Report.

New South Wales is unique in Australia in that it long has had a statute entitled a *Firearms and Dangerous Weapons Act*. It was put to the author by certain senior serving police in that State that, to be of real effectiveness, the law must always regulate firearms along with all other things susceptible of use as especially dangerous weapons. It is not difficult to see that there may be a need to have provisions in New South Wales law dealing with such things as handcuffs, brass knuckles and oriental martial arts devices. However, with all due respect to those police holding the contrary view, the author is not persuaded that there is any advantage gained by addressing the quite distinct concerns of the community regarding such objects in a firearms act, in preference to some other statute. Rather, it would be more advantageous to re-write firearms statutes to be both as concise and as intelligible as possible to firearms users, and to those charged with the administration and enforcement of firearms laws.

F. Aborigines and Firearms -

The author has attempted to assess whether special provisions should be incorporated in firearms laws to accommodate legitimate concerns unique to Aboriginal Australians (including Torres Strait Islanders). So far as he can establish, the only special concerns of Aborigines relate to the day-to-day administration of the firearms laws, rather than to matters which can be addressed through substantive provisions enacted in legislation.

Officers of Aboriginal organizations in northern Australia have noted that few if any of those Aborigines who lead a relatively traditional life-style are capable today of hunting with the traditional weapons of their people. Rifles are used instead. Two concerns of which the author has taken note are that Aborigines be permitted to loan rifles among themselves for purposes of hunting, in view of the collective understanding of ownership and of property special to aboriginal society; and that no prohibition be put upon the use of relatively inexpensive .22 calibre rimfire rifles (as compared with other calibers of rifles) for the hunting of kangaroo.

The form in which the various Recommendations concerning the criteria for firearms licensing and the entitlements of licensees are put in this Report does not appear to necessitate any special provisions to accommodate this first concern of Aboriginal organizations. Like all other licensees, Aborigines meeting the usual criteria for licensing would be able to use one another's long guns for lawful purposes. The second matter raised, which appears to relate only to conservation and animal cruelty matters, is beyond the scope of this Report.

Elsewhere in this Report it is recommended that all firearms licence holders be able to read enough English to understand simple warning notices such as might be en-



countered in field shooting. Should such a requirement prove burdensome to Aborigines leading a traditional life-style in remote areas, it is suggested that Firearms Consultative Committees in any States and Territories where Aborigines are so affected review the requirement, with a view to exempting Aborigines from this literacy requirement in specific and defined circumstances.

The author could learn from representatives of urban Aborigine organizations of no concerns of their members which differed from those of other Australians. Questions were phrased in a non-leading manner to avoid the implication of seeking any particular answers from the officers and members of these organizations - as indeed the author endeavoured to do when conducting all interviews. The concerns of urban Aborigines about firearms which were put by these interviewees related to preventing firearms from coming into the possession of those who would use them in committing acts of violence against others.

Appendix "A" - Distribution of Interviewees<sup>62</sup>Table 1: Geographic -

Australian Capital Territory:	12
New South Wales:	22
New Zealand:	8
Northern Territory:	20
Queensland:	14
South Australia:	9
Tasmania:	5
Victoria:	21
Western Australia:	8

Table 2: Vocational/Avocational -

collectors & curators:	9
dealers & manufacturers:	8
firearms sports:	45
government:	12
other:	19
police:	24
primary producers:	3

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<sup>62</sup> In addition to the formal interviews enumerated in the two Tables in this Appendix, which usually were tape recorded, the author held innumerable shorter and less formal conversations on the topic of firearms laws with persons in most of the jurisdictions, and in each of the vocational/avocational categories listed in Table 2.

Appendix "B" - List of Recommendations<sup>63</sup>I - Licensing CriteriaHandguns (12)

1. The practice be continued of permitting members of organized clubs, affiliated with State and Territorial pistol associations, to possess and use handguns for purposes of competitive target shooting after completion of training courses conducted by their clubs and after vetting by police. (18)

2. Licences to possess handguns for purposes of protection of property continue to be issued only in situations of actual necessity; and such licences henceforth be issued only in circumstances meeting predetermined criteria. Such licences should be issued only to persons who have completed meaningful courses of theoretical and practical instruction in the use and safe handling of handguns. (18)

3. The general practice in Australia of not recognizing the desire to hunt with handguns in the field as a valid reason for the issuance of a handgun licence should be maintained. (18)

4. Measures be taken to assure that no further handgun licences are issued anywhere in Australia to persons of political influence who do not meet the usual criteria for

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<sup>63</sup> References to page numbers in the body of the Report at which the following Recommendations are proposed and explained appear in parentheses in this Appendix.

obtaining such a licence. Necessary steps be taken to assure that any such licences now extant are cancelled. (18)

Long Guns (18)

5. Persons expressing a desire to own firearms for purposes of field shooting should be deemed to have good cause to obtain firearms licences. (20)

6. Persons wishing to own firearms for purposes associated with primary production, including land owners and rural workers, be deemed to have good cause to obtain firearms licences. (21)

Character and Fitness of Licensees (23)

7. The fitness of applicants for firearms licences ought to be verified in every case through a search of records of criminal convictions nation-wide, and through such other means as may appear appropriate and cost-effective in the professional judgment of police officials in each State and Territory. (24)

8. Magistrates and Family Court Judges be given jurisdiction to prohibit or to restrict the entitlements to possess firearms of persons whom they find, after a hearing inter partes, are more likely than not to have committed, or to have threatened seriously to commit, acts of violence against others. Any such order, or the refusal to make such an order, should be subject to the usual rights of appeal. (25)

9. Each State's Firearms Regulatory Authority, in consultation with its Firearms Consultative Committee,

formulate and make public the criteria it will use to determine applicants' fitness to hold firearms licences. (26)

10. Persons visiting in any State or Territory for a period of less than 90 days who hold a firearms licence of any type issued by their State of residence be deemed to hold the nearest equivalent type of firearms licence known to the laws of the State or Territory in which they are visiting. (27)

Safety Education (27)

11. All new applicants for firearms licences be obliged to undergo a course of instruction in firearms safety offered by an approved voluntary organization of shooters in each State and Territory. (31)

12. Necessary public funds be allocated to meet the cost of:

- a. providing educational materials for such courses,
- b. organizing courses State-wide, and
- c. training experienced shooters throughout each State and Territory to be volunteer instructors. (31)

13. The organizations approved in each State to offer such safety courses cooperate with one another, and seek the assistance of the New Zealand Mountain Safety Council, in the production of effective syllabi and educational materials, and in planning training courses for volunteer instructors. (31)

14. An ability to read simple warning notices in the English language should be a requirement for obtaining a firearms licence. (32)

15. Firearms licence holders be required to submit medical certificates of their fitness to use firearms biennially, after attaining age 65. The firearms licensing authorities in each State be entitled to require any shooter to undergo a physical or visual examination by a medical or optometric practitioner nominated by that authority. (32)

Entitlements of Firearms Licence Holders (32)

16. Firearms licences be valid until revoked by a court following conviction for a crime or by order of the Firearms Consultative Committee, or until the licensee attains age 65. Licences of persons age 65 or over be valid for periods of two years, and then be renewable without fee, upon production of a certificate of medical fitness to use firearms. (34)

17. A licensee whose firearms licence is endorsed to authorize his or her use of target handguns in organized competition ordinarily be entitled to own up to ten handguns suitable for use in nationally or internationally sanctioned competitions. Upon proof of regular participation in more than five types of competitions allowing the use of different types of handguns, such a licensee may be authorized to own up to two handguns of each such type. (34)

18. There be no fee payable for the issuance of a firearms licence. (35)

19. The fee for endorsing or periodically re-endorsing a firearms licence to reflect ownership of any number of handguns be \$15 through the year 1990. Thereafter this fee should not rise at a rate greater than the rate of inflation affecting consumer prices generally. (36)

II - Safe Keeping (37)

20. As a precondition to the issuance of a new firearms licence, the Authority inspect the place at which firearms are to be stored when not in use, to assure that adequate facilities exist to assure their safe keeping. (38)

21. Upon being informed of a firearms owner's change of address, the licensing Authority similarly should inspect the owner's new home. If adequate provision for safe keeping is not found at the new location, the owner should be obliged to deposit his firearms with a licensed dealer within 48 hours. (39)

22. Firearms Regulatory Authorities, following consultation with State Firearms Consultative Committees, promulgate practical minimum standards and practictices for the safe keeping of all privately owned firearms. (39)

23. The minimum safe keeping standard for all privately owned hand guns be the provision of a steel pistol safe bolted to the structure of the building. (39)

24. Should a firearms owner so wish, he may provide safe keeping through other physical security devices than those specifically approved. The owner shall have the burden of persuading the Firearms Consultative Committee that he can afford a level of security not less than that offered by the relevant approved practices. (39)

25. The minimum standard of safe keeping for a rifle or shotgun ordinarily should be the storage of it within a closet or a built-in wardrobe, having stout walls, a solid door, a dead bolt lock or keyed "entry set" of door knobs, and hinge pins on the door which cannot be removed as a means of gaining entry. Firearms Consultative Committees also should evaluate other security devices which firearms owners may choose to use and which afford a similar or greater level

of safe keeping for long guns; and the Committees should publish and make available lists of such approved devices. (40)

III - Collectors of Firearms (44)

26. Firearms collectors be entitled to hold a firearms licence, subject to the usual conditions and requirements pertaining to such a licence. (47)

27. A firearms licensee be entitled, if desirous of maintaining a collection of firearms of historical or technological significance, to have endorsed on her or his firearms licence the particulars of not more than ten handguns. (47)

28. Unless the licensee also is a member in good standing of a recognized firearms club which maintains appropriate facilities and requires its members to acquire and maintain proficiency in the safe use of handguns, it is to be endorsed on the licence that these handguns may not be discharged. (48)

Special Collectors (48)

29. The following classes of firearms may only be owned (and may not be discharged) by holders of a firearms licence endorsed with the legend "SPECIAL COLLECTOR":

- a. fully automatic firearms, and
- b. handguns of a type not suitable for use in any nationally or internationally sanctioned target competition. (50)



30. A "SPECIAL COLLECTOR" endorsement also should be required on the firearms licence of any collector desirous of owning more than ten handguns. (50)

31. The full particulars of all dealings by Special Collectors in handguns and fully automatic firearms should be both recorded in a register kept with those firearms, and sent forthwith to the Firearms Regulatory Authority. (50)

32. Applicants who are denied Special Collector endorsements or whose endorsements the Authority proposes to cancel may appeal such decisions to the Firearms Consultative Committee. Such appeals shall be allowed if applicants can establish (upon the usual civil standard of proof) that:

a. they can provide adequate safe keeping facilities for firearms of the number and type which they collect, or propose to collect;

b. these firearms comprise or will comprise, in whole or in conjunction with other firearms or other articles, a collection of significant historical, cultural or technological value to the community; and

c. the possession of more than ten handguns or of fully automatic firearms (as the case may be) does not otherwise endanger the safety of others.

(51)

33. The Authority and sworn police personnel (acting at the direction of a commissioned officer) shall have the right to inspect the registers and all firearms owned by Special Collectors at any time, for any reason, and without need to give notice to the licensee. (51)

Displays (51)

34. The State and Territorial Firearms Consultative Committees, in consultation with appropriate experts and with one another, formulate regulations sanctioning the public exhibition of firearms owned by private persons which are of historical, cultural or technological significance, and assuring the safe keeping of firearms at such exhibitions. (52)

IV. Administration, Appeals and Policy Formulation (53)Administrative Institutions (53)

35. In each State and Territory police functions relating to the administration of firearms laws be transferred to a Firearms Regulatory Authority (described throughout this Report as "the Authority"). (54)

36. The officers of the Authority shall be empowered to call upon the assistance of the police to undertake searches through criminal records, and to enforce orders of the Authority and of the Firearms Consultative Committee (referred to as "the Committee"). (54)

Appeals (60)

37. Each State and Territory provide, through a mechanism appropriate to local conditions, for persons to appeal against decisions of the Firearms Regulatory Authority to a Firearms Consultative Committee. (65)

38. Each such Committee should adopt procedures which will allow applicants to have their cases heard afresh, without regard for the formal legal rules of evidence except in instances in which the Committee believes that compliance with the rules of evidence would be in the interest of justice. (65)

39. Where practical, hearings should be conducted regularly in centres outside of the State's capital city. (65)

40. Oral evidence received at appellate hearings should be tape recorded. These audio tapes, along with physical evidence, should be maintained to facilitate possible appeals from the Committees' decisions to the courts. (66)

41. Decisions of fact made by the Committees should be final. Their decisions and orders should be subject to a right of appeal to a judge of the respective State or Territorial Supreme Courts for error of law, whether or not the alleged error be apparent on the face of the record. (66)

42. The Committee in each State and Territory be composed of equal numbers of:

a. persons -

- i. holding the degree of bachelor of laws attained from a university in a common law jurisdiction, or
- ii. admitted to practice as legal practitioners (howsoever described) before the Supreme Court of that State or Territory;

b. senior officers or retired senior officers of the State's Firearms Regulatory Authority; and

c. persons representative of and selected by local organizations of firearms users. (67)

Policy Formulation (67)

43. State and Territorial Firearms Consultative Committees be charged, in law and in practice, with the responsibility of reviewing the effectiveness of firearms laws and administrative practices, and of evaluating options for reform and change put to them by government or by persons within the community. (68)

V. Registration of Firearms (69)

44. Legislation requiring the obligatory registration of firearms should not be enacted in Australia. States and Territories whose Parliaments have enacted such legislative requirements should repeal them forthwith. The term "registration of firearms" as used in this Recommendation means all schemes, of whatever name, for the compilation of the details of particular rifles and shotguns owned by persons who themselves hold firearms licences. (69)

VI. Subsidiary MattersAmmunition Sales

45. Laws requiring one's possession of a firearms licence or lawful ownership of certain firearms as a condition to the purchase of firearms ammunition be repealed by States which have enacted such laws, and that they not be introduced in other Australian jurisdictions. (85)

Amnesties (85)

46. It shall be an affirmative defence to a charge of being in unlawful possession of a firearm under State and

Territorial firearms laws if one is in possession of that firearm with the intention of surrendering it as soon as is reasonably practical to a lawful authority. The burden of proving such an affirmative defence to a firearms act charge shall rest upon the person so charged. (86)

47. For purposes of Recommendation 46, a "lawful authority" should be deemed to include:

- a) the police,
- b) the Firearms Regulatory Authority, or
- c) a licensed firearms dealer. (87)

48. The museum in each State or Territory housing its principal firearms collection be offered the opportunity (in the option of that museum) either to inspect, or to inspect lists of, all firearms coming into the ownership of the police or Firearms Regulatory Authority and not required for purposes of criminal investigation or evidence in a court of law. (87)

#### Black Powder Firearms (87)

49. Black powder firearms continue to be treated as firearms under Australian firearms laws. (89)

50. Provision be made to enable the lawful trade in, and assembly by licensed shooters of, black powder firearms kits. Unassembled black powder handgun kits should be deemed to be handguns. The possession of such kits should not be deemed to contravene statutory requirements that all firearms be in a safe operating condition at all times. (90)

#### Exemptions from Firearms Laws (90)

51. The following be exempt throughout Australia from

the general scheme of laws for the regulation of firearms which is recommended in this Report:

a. sworn police personnel and correctional officers of the Commonwealth and of each State and Territory acting in the course of their duties;

b. military personnel of Australia and of such other countries as may be proclaimed for this purpose by the Governor-General-in-Council;

c. museums proclaimed for this purpose by the respective Governors-in-Council, and employees of these museums in the course of their duties;

d. Australian government instrumentalities, and State and Territorial government instrumentalities, proclaimed for this purpose by the respective Governors-, Governor-General-, or Administrators-in-Council (as the case may be), and employees of such instrumentalities acting in the course of their duties; and

e. masters of ships registered elsewhere than in Australia, with respect to firearms forming a part of the equipment of their ships, but only while such firearms remain in safe keeping aboard their ships. (92)

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