Firearms Submissions
Office for Police, Department of Justice
GPO Box 5434
SYDNEY NSW 2001

31 July 2017

The Shooters, Fishers and Farmers Party represents more than 229,911* licensed firearm owners as part of our broader constituency in New South Wales.

The NSW Department of Justice, Office for Police, through the *proposed* Firearms Regulation 2017 and *proposed* Weapons Prohibition Regulation 2017 is seeking to impose unnecessary regulation that:

- is punitive, and appears to be politically motivated;
- is **not** supported by evidence;
- fails to comply with the NSW Guide to Better Regulation, October 2016; and
- cannot be shown to improve public safety.

The Regulatory Impact Statement (RIS) asserts the review is intended to ensure the Regulations are up to date, adhere to the Government's better regulation principles, are in plain English, reduce red tape wherever possible, protect public safety, and, to help ensure the remade Regulations reflect the needs of the NSW community.

However, these stated intentions have clearly not been met.

We request further consultation on our attached submissions.

Yours faithfully

Shooters, Fishers and Farmers Party
David Cook

Chairman

Attach.
*as at 31 January 2017

Firearms Regulation 2017 – Public Consultation Draft

3 Definitions

Comment

The definition of ***paint-ball gun*** incorrectly describes the device which propels a 'paintball' as a "gun". This is incorrect description is inconsistent with the widely accepted terminology and more accurate description of these devices as a 'paint ball marker'[1]

4 Things declared not to be firearms

Comment

We note:

1. the principles of the Firearms Act are *inter alia* to improve public safety (section 3(1)(b)) and facilitate a national approach to the control of firearms (section 3(1)(c));

2. the list of things declared **not** to be firearms include: *"a tool or device that is used to drive a stud, pin, dowel screw, rivet, spike or other object against, into or through a substance by means of an explosive"* (cl.4(a)) and *"a tool designed to discharge a nail, spike or other fastener into or through material by means of compressed air or carbon dioxide (such as a nail gun)"* (cl. 4(k)).

3. Similarly, the devices that propel a 'paintball' (a soft gelatin ball) prompts one to ponder why these devices **are** called "guns", and included in the schedule 1 of the Act (Prohibited Firearms). Clearly, the devices that propel soft gelatine paintballs have dramatically less potential lethality than devices which propel metal projectiles.

4. Given the considerations above, paintball markers should be:

- added to clause 4 of the regulation, and
- removed from Schedule 1 of the Act.

5 Offences that disqualify applicants

Comment

1 (a) Offences relating to firearms or weapons

The definition of "Firearm Part" in the Act is ambiguous - "... or reasonably capable of forming, PART of a firearm" and should be amended to remove "PART" from the definition. As it stands, the definition is a circular definition and confusing.

The finding of an offence can be made on trivial breaches such as not having a single round of low-powered or inert ammunition (22 rimfire or air rifle pellet) stored in a locked container.

Disqualification of a licence for such a trivial offence is disproportionate (Better Regulation Principle 4)[2] and would not improve public safety; it should be removed.

[1] The Australian Paintball Association describes Paintball as a game in which the aim is to eliminate opponents by hitting them with capsules containing paint (referred to as paintballs) from a device called a **paintball marker** - http://paintball.org.au/FAQs.

[2] NSW Guide to Better Regulation, October 2016.

8 Term of licence

Comment

The limitation on the term of 2 years for a new licence applicant is unnecessarily restrictive and imposes unnecessary red tape on licence applicants.

It also imposes an unnecessary financial burden on the licence applicant due to the application fee being $100 for a 2 year licence and $200 for a 5 year licence.

In addition, the 2 year term requires unnecessary additional burden when renewing the licence sooner that would otherwise be required when issued for an initial 5 year term.

11 Additional discretionary ground for refusal of licence

Comment

The phrase "whether or not the person has been prosecuted for or convicted of an offence…" is excessive and disproportionate. It is also unwarranted – the provisions of the 'fit and proper person' test and the 'public interest' test provide adequate means to protect public safety.

The claim that the 'fit and proper person' test and the 'public interest' test may not be as effective is not correct as a licence may still be refused (if truly necessary) under both of these tests. Furthermore, this additional ground is not supported by any provided evidence.

This clause is not justified on the ground that a need for additional government action, beyond the current provisions has not been demonstrated (Better Regulation Principle 1) and should be removed.

13 (2) Discretionary grounds for refusal of permit

Comment

The phrase "whether or not the person has been prosecuted for or convicted of an offence…" is excessive and disproportionate. It is also unwarranted – the provisions of the 'fit and proper person' test and the 'public interest' test provide adequate means to protect public safety.

The claim that the 'fit and proper person' test and the 'public interest' test may not be as effective is not correct as a licence may still be refused (if truly necessary) under both of these tests. Furthermore, this additional ground is not supported by any provided evidence.

This clause is not justified on the ground that a need for additional government action beyond the current provisions has not been demonstrated (Better Regulation Principle 1) and should be removed.

18 (1)(c) and 18(3)(c) Requirement to notify Commissioner of address where firearms are kept

Comment

In circumstances where a licence holder stores his firearms at commercial premises (e.g. firearms dealer) it is unreasonable to expect the *licence* holder to *certify* that those premises comply with the safe keeping requirements of the Act.

The onus for certifying that commercial premises comply with the Act clearly rests with proprietor of those commercial premises, not the licence holder.

20 Pending application for subsequent licence or permit

Comment

Clause 20(2) places the onus on the applicant to "collect" a subsequent licence or permit.

However, under the arrangements of the Firearms and Weapons Legislation Amendment Bill 2017, licences and permits cannot be "collected" in person, they are to be **mailed out**.

It is therefore manifestly unreasonable to place the onus for actual delivery of the licence/permit upon the applicant when he has no control whatsoever over this.

The recent revelation that firearm licences have been mailed to the wrong address by Service NSW is a stark reminder of what can (and does) go wrong when the option is not provided to applicants to collect their licence/permit in person.

21 Revocation of licence—licence not in the public interest

Comment

The terms "not in the public interest" and "not a fit and proper person" are open to abuse by the Commissioner's delegate who invariably is an unsworn employee of the NSW Police Force.

As the political voice for all licensed firearm owners in this state, the Shooter's Fishers and Farmers Party receives large numbers of complaints regarding decisions made by the NSW Police Firearms Registry. In some cases the decisions by the Registry are fair and reasonable; in many others however they are not, and indicate that Registry staff make their *own* interpretation of the Act and Regulations as they go along. This is simply unacceptable.

Correspondence we receive from firearm licence holders, plus the increasing number of applications to the NSW Civil and Administrative Tribunal for review of Firearms Registry decisions, are testament that many decisions are not being made on their merits, nor are they fair and reasonable.

We strongly urge the NSW Department of Justice to require **all staff** at the NSW Firearms Registry, including Police Officers, managers and administrative staff to undertake ongoing structured training in firearms knowledge, legislation and their responsibilities under the Police Act.

23 (1)(d) Revocation of permit—additional reasons

Comment

The phrase "whether or not the person has been prosecuted for or convicted of an offence…" is excessive, unjustified and disproportionate. It breaches the fundamental legal principle that a person is innocent until proven guilty.

The existing clauses in the Regulation specifying the conditions when a permit or licence may be refused or revoked are entirely clear and contrary to the claim in the RIS require no further clarity.

This clause is not justified on the ground that a need for additional government action, beyond the current provisions has not been demonstrated (Better Regulation Principle 1) and should be removed.

28 (6) Recognition of interstate licences

Comment

The definition of ***recognised licence*** fails to include category C licence holders who have been issued their licence on the ground that the applicant has a medical condition or disability that prevents the applicant from using a Category A or Category rifle or shotgun.- . This unnecessarily precludes interstate Category C licence holders in other states or territories from participating in competitions in NSW.

There is no justification for excluding Category C licence holders from sub-clause 28(6) and no evidence is provided in the RIS the grounds of protecting public safety.

32 Recreational hunting/vermin control—permission to shoot on rural land

Comment

First, the option in the 2006 Regulation of producing a Statutory Declaration as proof of permission to shoot on rural has been removed from this clause.

The Regulatory Impact Statement makes no mention of the proposed amendments to clause 32 and provides no justification. Nor is there any statement acknowledging the impacts of the proposed changes in the Regulatory Impact Statement.

It is clear "the approved form" will be interpreted by NSW Police as the 'Letter of Authority/Permission to Shoot' form posted on the NSW Police Firearms Registry website (http://www.police.nsw.gov.au/__data/assets/pdf_file/0019/131194/RHVC_Authority_1.1_March_2012.pdf)

The use of this form introduces a huge risk to the personal safety of rural landowners and exposes them to potential identity theft if the completed form is inadvertently lost by the licence holder to whom written permission to shoot has been given.

The personal information requested of the landowner is manifestly excessive and intrudes on privacy and reduces public safety.

The option to provide a Statutory Declaration should be retained in the Regulation.

Comment
The requirement in clause 32(3)(b) that written permission be produced within 48 hours is unreasonably short e.g. if a licence holder is shooting in far western NSW it would take at least 24 hours to safely return by car (allowing breaks from driving every 2 hours) to Sydney where a Statutory Declaration could be produced and submitted to police; even longer if the shooter was visiting NSW from interstate. There is no public safety gain in requiring proof of permission to shoot to be produced within 48 hours.

This should be increased to 14 days to be consistent with other clauses in the regulation where a time period is specified, for example to notify:

- a change of address (14 days);
- lost, stolen or destroyed licence (14 days);
- cessation of genuine reason (14 days);
- change of particulars other than address (14 days);
- the address where firearms are kept (14 days) etc.

34 Members of approved hunting clubs—restriction on authority conferred by licence
Comment
The same comments for clause 32 apply to this clause.

35 Licences and permits extend to authorise sighting in, patterning and related activities
Comment
Re: clause 35(3)(b) range approval conditions which limit or restrict activities to certain matches should be removed. Range approvals should be general range approvals based on public safety considerations, not what competition matches may or may not be undertaken.

Any dispute over the eligibility of a club to conduct a certain match is a commercial / intellectual property issue and should be settled between the parties – the NSW Police Firearms Registry should **not** be intervening in these matters, nor specifying which matches may or may not be conducted.

38 Firearms collections
Comment
In clause 38(2)(e) the phrase "without detracting from the external appearance of the firearm" is absurd and non-sensical - the firearm has already been rendered permanently inoperable under subclauses (a) - (d) and its appearance has therefore already been detracted.

Clause 38(5)(d) requires any nipple of a firearm must be welded so that it is blocked. As for the comment on 38(e)(2), this is absurdly excessive as the firearm has already been rendered totally and permanently inoperable by clause 38(3)(a)-(d).

There is a strong case for **not** welding the nipple to aid education and understanding how the flash from the percussion cap travels through the nipple to the powder charge.

40 Requirements for storage of firearms on residential premises

Comment

This proposed requirement that firearms can only be stored at a principal place of residence is problematic and unworkable.

For example, where a rural landowner has multiple worker / manager cottages on the property, the owner of the property may not hold a firearms licence and may not wish the worker / manager's firearms to be stored in the principal residence i.e. property owner's family home.

As another example, many (licensed) fathers store their son's firearms at their residence.

41 Additional restrictions in relation to issuing firearms dealer licences

Comment

Restricting the issue of firearm dealers licences only to those conducting a "genuine commercial enterprise" is unnecessarily restrictive and would prohibit otherwise qualified enthusiasts from providing a valuable service to club members or others, such as bedding actions, fitting recoil pads, mounting scopes, adjusting triggers, re-polishing stocks etc.

It precludes non-commercial dealers who may for example wish to provide a free service of repairing or restoring firearms, or club armorers who repair club firearms at no cost to the club.

44 Offences that prevent persons from being involved in firearms dealing business

Comment

Clause 44(1)(a) is overly severe and manifestly punitive. An innocent and minor breach in ammunition storage (e.g. a single round of 22 ammunition or even an air rifle pellet not stored in a locked container) should not prevent a person from being involved in a firearms dealing business.

Similarly, for a firearm 'part', such as a trigger, not being locked in a safe should not preclude a person from being involved in a firearms business.

The words "or a firearm part or ammunition" should be removed from cl. 44(1)(a).

54 Death of firearms dealer

Comment

This clause is no doubt this is meant to cover a wife/husband or member of the family. However if business is owned solely by the dealer then on death a person must obtain probate or letters of Administration of the estate. Until this grant is issued the Executor or Administrator has no legal right to interfere in the estate. The administration of the estate vests in the Public Trustee until Probate obtained. Therefore as he has control, must the Public Trustee notify the Police and be subject to their direction? This clause needs more work.

Comment
On the proposal in cl.54(1)(a) to notify a police officer of the death of the dealer within 24 hours, this is unreasonably short and insensitive, particularly where the death of the dealer was unexpected or in tragic circumstances. It would be an unreasonable intrusion and burden on a grieving spouse or family member to have to deal with on the same day as the death.

61 Heirloom permit
Comment
In cl. 61(3) the phrase "but not use" is redundant due to clause 61(2)(b) and should be deleted.

Clause 61(5) limits an heirloom permit holder to a *single* or *matched pair* of firearms - this is unnecessarily restrictive and provides no public safety benefit, considering heirlooms must be rendered permanently inoperable cl. 61(2)(b).
Family members often inherit multiple firearms (e.g a rifle and a shotgun) that have sentimental value. As these must rendered inoperable, as per 61(2)(b), there is no rational reason to limit the number to **one** firearm or a **matched pair**.

This restriction on number of (permanently deactivated) firearms permitted by an heirloom permit holder is nonsensical considering there is no limitation on the number of (functioning) firearms permitted under a Category A or B licence, and provided the heirloom (deactivated) firearms are held under appropriate storage requirements.

62 Museum firearms permit
Comment
Clause 62(4)(a) proposes that any pistol or any prohibited firearm that is part of the collection (being a firearm to which a category C or category D licence applies) must be rendered permanently inoperable. This is inconsistent with the 2017 National Firearms Agreement:

* The 2017 NFA requires that for Collectors category H firearms (pistols) must be rendered temporarily not permanently inoperable under clause 19(b)(v) of the NFA;

* Similarly, the 2017 NFA requires that category C (semi-auto) firearms must be rendered temporarily inoperable under clause 19(b)(iii) of the NFA.

* Under the 2017 NFA only category D firearms are to be rendered permanently inoperable, when held under a Collectors licence.

64 International visitor's competition permit
Comment
This qualification of sub-clause 64(6) "or such shorter period" is overly restrictive and does not allow for the international visitor's competition permit to be EXTENDED, in circumstances where the international visitor, upon arriving in NSW, becomes aware of other matches in which he might wish to compete, or to accommodate itinerary/flight changes.

Deletion of the word "shorter" still allows the Commissioner the discretion and flexibility to shorten, but adds flexibility to lengthen the term of the permit if required.

69 Safari/hunting participation permit

Comment

Clause 69(4) should also authorise the permit holder to participate in sighting the firearm, tuning of the firearm, familiarisation with or testing ammunition, practising on stationary targets, pursuant to sub-clause 35(1) and (2).

The RIS acknowledges (page 17) that the practice of 'sighting in' is considered an essential practice, and this activity should not be excluded from holders of Safari/hunting participation permits.

72 Permit for powerhead for protection from shark attack

Comment

Powerhead permits should not be restricted to persons for business or employment purposes only, as purposed as proposed in cl.72(2). This proposal risks the safety of recreational spearfishers by removing the means to protect themselves, and others, from shark attack.

Recreational spearfishers also are "reasonably likely" to have a need to protect themselves, and other persons against shark attack, and should not be excluded from holding a powerhead permit.

Clause 72(4)(b) – Insert "or hand spear" after spear gun

Removal of Open Day Permit (cl. 66 Firearms Regulation 2006)

The removal of 'Open Day Permits' previously available under clause 66 of the Firearms Regulation 2006 (allowing a club or a shooting range to conduct an open day at the club or range) from the new regulation is unjustified.

The RIS states that applications for Open Day permits have "declined significantly" and that this is an "unused provision" yet provides no evidence, other than an unsubstantiated statement, to support discontinuation of Open Day permits.

Open-Day Permits should be retained in the Firearms Regulation 2017.

94 Offences relating to shooting ranges

Comment

Clause 94(2)(c) proposes the arbitrary requirement for a shooting range to be "approved" for a particular shooting events or competitions. This is an overly bureaucratic proposal and has no bearing on public safety; it is not supported and should not be included in the final regulation.

Whether a club is affiliated with, and permitted to shoot any particular discipline or match, is a civil matter between the club and the copyright owner of that match or event, not the NSW Police Firearm Registry.

Comment
To provide absolute clarity and certainty that shooting ranges (and not just persons with authority conferred by a licence) are approved for the activities authorised in clause 35 the following new subclause (4) should be inserted: *"Nothing in sub-clause 1-3, affects the use of an approved shooting range for sighting-in, patterning or practising on stationary targets or other activities permitted under clause 35, by appropriately licensed persons."*

98 Revocation of approval of shooting range
Comment
First, subclause 98(1) provides the Commissioner (or more often his delegate) authority to revoke a range approval for (any) such reason as he "thinks fit". This is an extraordinary power is open to abuse.

We are aware of cases where shooting ranges in NSW have been summarily closed at the whim of untrained, unqualified and unsworn bureaucrats within the NSW Firearms Registry citing "breaches" or non-compliance with the *Range Users Guide*.

In *Blacktown Pistol Club v Commissioner of Police, NSW Police Force [2013] NSWADTAP 55*[3] Magistrate Hennessy said this of the NSW Firearm Registry's *Range Users Guide*:

> ***"The requirements, as set out in the Range Users Guide, are not the law. It is not a statutory instrument and there is nothing in the legislation that requires a club to obtain either a permissive shooting rights letter or to own or lease the land covered by the Range Danger Area."***

The *Range Users Guide* should be replaced with individual risk assessments undertaken by fully qualified risk assessment professionals.

Comment
Subclause 98(2)(c) provides grounds for the Commissioner to revoke approval of a shooting range if the range approval holder is convicted or found guilty of an offence under the Act, the Weapons Prohibition Act or their respective regulations.

This is manifestly unjust on range users who, through no fault of their own, bear the full burden of a range closure, including:

- inability or extreme difficulty in fulfilling range attendance requirements;
- increase compliance costs if the next closest range is a substantial distance away, requiring greater additional travel costs. This would be especially true in remote rural locations where ranges are more sparsely distributed.

This clause should be amended to ensure that the burden for any (substantive) breach or contravention of the Acts or regulations by the range approval holder does not fall upon range users.

[3] Blacktown Pistol Club v Commissioner of Police, NSW Police Force [2013] NSWADTAP

100 Approval of club

Comment

Clause 100(7) proposes that approval of a club be limited to 5 years, or shorter if specified by the Commissioner. There is no justification for imposing a maximum period for club registration. Provided clubs continue to meet the approval conditions their approval should also continue.

Specifying a 5-year term for club approval is not justified with any explanation in the RIS. This would impose an unnecessary compliance burden on the volunteers in the hundreds of shooting and hunting clubs.

102 Members convicted of disqualifying offences not permitted to take part in club activities involving firearms

Comment

This clause requires careful consideration and re-wording to make it clear whether the penalty is to be applied to the club official or the club member. In its current form, this is not readily apparent.

It manifestly unreasonable to place the absolute responsibility ("must") on the club official to prevent the club member from participating in any club activity involving the possession or use of firearms. This could potentially involve an element of risk to the personal safety club official.

103 Conditions of approval of club

Current

The proposal in clause 103(2)(b) to *"notify the Commissioner, at the end of each calendar month…"* (emphasis added) would:

- confer no improvement in public safety,
- introduce additional red tape
- impose additional compliance burden on clubs' officers
- increase club costs (postage, phone calls etc.).

Frankly, it is impossible to comprehend how the NSW Department of Justice, through RIS could possibly claim that *"There is a direct reduction in cost to clubs who comply to benefit club administrators* (sic) *and the Firearms Registry by reducing red tape and administrative burdens."* (emphasis added).

We can only assume that a fundamental error or misunderstanding has occurred in the drafting of this clause; that a critical wording in the RIS is missing; or that the 'impact' statement belongs to some other clause.

104 Special conditions relating to approved pistol clubs

Comment

Sub-clause 104(a)(ii) is a nonsensical and unworkable condition. It should be deleted. How in Earth is the Secretary to know whether the applicant is, or is not, telling the truth when the applicant is asked, are you a member of any other pistol club.

To hold the club accountable, if the applicant does not answer truthfully, is manifestly unjust.

108 Definitions

Comment

compliance period

The proposal to impose individualised "compliance periods" for each club member would impose an enormous administrative and financial burden on clubs when reporting member participation requirements.

The majority of clubs are run by volunteers; they have neither the personnel, financial nor hardware resources to comply with the proposed requirement. It makes administrative sense to align the compliance period for all club members to commence on the same date (e.g. 1 January)

Comment

shooting activity

Insert after subclause 108(c) a new subclause 108(d): “any of the activities conducted under the authority conferred by clause 35.”

111 Participation requirements for member of approved hunting club

Comment

To provide clarity and certainty that activities in clause 35 will count towards participation requirements, insert before subclause 111(3) new subclause 111(3) “Any of the activities conducted under the authority conferred by clause 35.”

Re-number current subclause 111(3) to 111(4).

Amend the definition of ***hunting club event***: add “any of the activities conducted under the authority conferred by clause 35” after ‘…hunting, shooting or firearms safety training.’

113 Participation requirements for category C licences issued for clay target shooting purposes

Comment

The proposed requirement that holders of a category C licence, issued under section 17A of the Act because of physical reasons such as lack of strength or dexterity "must" participate in 4 target shooting competitions makes no allowance for the difficulties these licence holders face, over and above able-bodied shooters.

Under clause 110, able-bodied shooters are required only to participate in 4 **shooting activities**, not the more physically and mentally challenging **target shooting competitions**.

Target shooting competitions place an unnecessary burden over and above that required for **shooting activities** for category C licence holders who "lack the physical strength or dexterity".

This proposal is not only manifestly unjust, it is discriminatory.

116 Exemption, waiver or refund of fees

Comment

Eligible pensioners or Disability card holders who hold Category C firearm licence under Section 17A(4)(b) of the Act (i.e. because of physical reasons such as lack of strength or dexterity, needs to have a self-loading or pump action shotgun in order to participate in clay target shooting competitions) are financially disadvantaged by sub-clause 116(2)(a).

This is manifestly unjust. Holders of Category C licences, issued under s.17A of the Act should also be exempt from initial and subsequent licence fees. Insert "C" after B in sub-clause 116(2)(a)

Comment

Removal of subclause 100(5) of the Firearms Regulation 2006, from the proposed Firearms Regulation 2017 will impose an additional financial burden on clubs.

Reinstating the small financial incentive to clubs to appoint and retain a Club Armourer would have community safety benefits by allowing the armourer to perform firearm safety assessments as required, facilitate the purchase of ammunition by club members etc..

Insert subclause (5) "A person who is the club armourer of a club is exempt from the requirement to pay an application fee under clause 115(1)(i) for an initial firearms dealer licence but only if it is established to the satisfaction of the Commissioner that there has never been a club armourer for that club.

128 Exemption for unlicensed persons shooting on approved ranges

Comment

The phrase "so that the person supervising supervises one person only" is at odds with the scope of supervision requirements permitted under cl.155(2)(b) which states: "supervision is to be at a level that the supervisor reasonably considers to be adequate taking into account relevant factors under this clause."

Delete “direct”

Delete “(so that the person supervising supervises one person only)”

130 Exemption relating to off-duty police officers

Comment

The exemptions afforded to police officers under this clause 130(2) are a loophole that could be exploited and present a dangerous threat to public safety. This loophole should be closed.

There is no justifiable reason, not even demands by the NSW Police Association, to justify the weakening of firearm security that this clause provides.

If the Department of Justice is serious about firearm security, then no exemptions should be provided to NSW Police officers which increase the risk of service firearms being stolen or becoming “lost”.

This issue is especially important now that (some) NSW Police Officers will soon be armed with high-powered, highly-lethal, deadly-accurate, rapid-fire, high magazine capacity, military grade, assault rifles.

132 Exemption in relation to ammunition for interstate licence/permit holders

Comment

The proposal in subclause 132(5)(b) is inconsistent with Section 65(1A)(a) of the Act which simply requires the ammunition purchaser to produce their licence **or** permit for a firearm which takes that ammunition.

Subclause 132(5)(b) places the unnecessary burden on interstate licence holders by requiring them to carry **both** their licence/permit **and** certificate of registration for each firearm they have brought into NSW.

This is an unnecessary burden and encumbers any interstate licence holder travelling into NSW with unnecessary red tape.

133 Exemption in relation to supply of ammunition by club armourers

Comment

Clause 133(a), by stating that ammunition supplied by a club armourer can **only** be used "in a competitive shooting match" is manifestly restrictive. It is an unworkable restriction that is unenforceable.

There is no rational reason why ammunition supplied by a club armourer should not be used for sighting-in, patterning, tuning the firearm, familiarisation with or testing ammunition, practising on stationary targets etc. as permitted under clause 35.

Comment

Similarly, clause 133(b) stating that ammunition purchased from the club armourer, is not to be removed from those premises, is absurd and unenforceable. It is akin to stating that golf balls purchased from the Pymble Golf Club cannot be used at the Chatswood Golf Club.

Clauses 133(a) and 133(b) serve no useful purpose, provide no additional community safety advantage and should be deleted.

135 Exemptions relating to international visitors

Comment

Clause 135(2)(a) should include the additional authorisation to allow the interstate safari tour permit holder, to undertake the activities referred to in Clause 35 - sighting in the firearm, tuning the firearm, familiarisation with or testing the firearm, practising at stationary targets.

This would provide additional safety and animal welfare benefits by ensuring that the firearm is indeed correctly sighted in, after it has been transported from the other State into NSW, and reduce the possibility of missed shots.

The RIS recognises in cl. 35 that the practice of ‘sighting-in’ is an essential practice.

148 Requirements for non-commercial transportation of Category A and B firearms
Comment
The new proposal in clause 148(1)(b)(ii) requiring that category A and category B firearms be kept in a **locked container** (the same as for commercial transportation in cl. 146) while being conveyed is excessive and burdensome. This proposal is inconsistent with the National Firearms Agreement which, in clause 57, makes no such requirement for category A or category B firearms to be transported in a locked container.

It is important for regulators to understand that commercial carriers of firearms make multiple deliveries to both firearm dealers and other general businesses in a day. Commercial carriers are at much greater risk of theft from their vehicles because the vehicle is left unattended while the driver makes deliveries, and the vehicle is not unmarked. Commercial carrier vehicles are known to contains items of value.

In contrast, firearm owners do not convey firearms in commercial carrier vehicles, but ordinary unmarked every-day passenger vehicles. Firearm owners do not make frequent stops, nor are the transported firearms left unsupervised.

The RIS provides no evidence, such as data on theft of firearms from vehicles, to support this proposal. Nor does the proposal meet the required standard of the NSW Government's *Guide to Better Regulation*:

- Principle 1: The need for government action should be established
- Principle 4: Government action should be effective and proportional
- Principle 5: Consultation with business and the community should inform regulatory development

150 Numbering of firearms and spare barrels
Comment
Removal of the subclause clarifying when an offence is **not** committed under Clause 150 [i.e. sub-clause 128(4) of the Firearms Regulation 2006] would re-introduce an element of confusion and reduce clarity, and lead to innocent and inadvertent breaches by firearm dealers.

The imposition of any penalty resulting from the removal of this subclause would be manifestly unjust.

Clause 128(4) in the current regulation should be inserted as subclause 150(4) in the new regulation.

Typographical Errors

116 Exemption, waiver or refund of fees
Typographical error
Replace "am" in cl.116(2) line one with "an"

158 Savings

Typographical error

Replace "(2)" with “(1)” in the first line of subclause 158(2)

Schedule 1 Penalty notice offences

Provision of this Regulation

Typographical errors

Replace:

Clause 13	with	“Clause 14”
Clause 15	with	“Clause 16”
Clause 16	with	“Clause 17”
Clause 17	with	“Clause 18”
Clause 31(3)	with	“Clause 32”
Clause 105	with	“Clause 106”
Clause 121	with	“Clause 122”

5 Offences that disqualify applicants

Comment

1 (a) Offences relating to firearms or weapons

The finding of an offence can be made on trivial breaches such as not having a single round of low-powered or inert ammunition (·22 rimfire or air rifle pellet) stored in a locked container.

Similarly, the finding of an offence for not having a "trigger mechanism" (see definition of ***firearm part*** in the Firearms Act) stored in a locked container is absurd. A trigger mechanism, in and of itself is benign, and should not be required to be stored to the same security level as a firearm or prohibited weapon.

Disqualification of a licence for such trivial offences would be disproportionate to any miniscule risk the offences above might provide to public safety (Better Regulation Principle 4) and would not improve public safety.

6 Additional grounds for refusal or revocation of permit

Comment

The phrase "whether or not the person has been prosecuted for or convicted of an offence…" is excessive and disproportionate. It is also unwarranted – the provisions of the 'fit and proper person' test and the 'public interest' test provide adequate means to protect public safety.

The claim in the Regulatory Impact Statement (RIS) that the 'fit and proper person' test and the 'public interest' test may not be as effective is not correct as a permit may still be refused (if truly necessary) under these tests (cl. 6). Furthermore, this additional ground is not established nor supported by any evidence in the RIS as required by Better Regulation Principle 1.

This clause is not justified on the ground that a need for additional government action, beyond the current provisions has not been demonstrated; it should be removed.

10 Pending application for subsequent permit

Comment

Clause 10(2) places the onus on the applicant to "collect" a subsequent licence or permit.

However, under the arrangements of the Firearms and Weapons Legislation Amendment Bill 2017, licences and permits cannot be "collected" in person, they are to be mailed out.

It is therefore manifestly unreasonable to place the onus for actual delivery of the licence/permit upon the applicant when he has no control whatsoever over this.

The recent revelation that firearm licences and permits have been mailed to the wrong address by Service NSW is a stark reminder of what can (and does) go wrong when the option is not provided to applicants to collect their licence/permit in person.

25 Heirloom permit

Comment

There are multiple inconsistencies between the requirements for an heirloom permit issued under the WP Act and the Firearms Act.

Clause 25(3) limits an heirloom permit holder to a **single** prohibited weapon, whereas the Firearms Act heirloom permit allows the holder a **single** firearm or a **matched pair** of firearms.

As stated in our comments on clause 61 of the Firearms Regulation, this arbitrary limit on the number of firearm/weapons held under authority of an Heirloom licence/permit is unnecessarily restrictive and provides no public safety benefit, especially considering that heirlooms must be rendered permanently inoperable under cl. 61(2)(b) of the Firearms Regulation.

Family members often inherit multiple firearms (e.g. a rifle *and* a shotgun) that have sentimental value. As these must rendered inoperable, as per 61(2)(b), there is no rational reason to limit the number to **one** firearm or a **matched pair**.

This restriction on number of (permanently deactivated) firearms / prohibited weapons permitted by an heirloom permit holder is nonsensical considering there is no limitation on the number of **functioning** firearms permitted under a Category A or B licence, and provided the heirloom (deactivated) firearms are held under appropriate storage requirements.

28 Leaving Australia permit

Comment

Clause 28(3)(b) limits the term of a permit to just 7 days. This very short term is manifestly unreasonable, unworkable and fails to take into consideration:

- Firearms Registry staff rarely process permits immediately
- backlogs, processing delays, public holidays, Registry staff on leave etc.
- that permits are mailed out, not collected in person
- delays in delivery of mail by Australia Post
- extension in the itinerary of an overseas visitor
- delayed / cancelled flights

The term of these permits needs to be extended to a reasonable and workable period.

33 Death of firearms dealer

Comment

See comments for clause 54 of the Firearms Regulation.

35 Additional restrictions on issuing permit

Clause (1)(c)(i) requires that the permit holder demonstrate that he or she has *"actively participated in the business of theatrical weapons armoury for a significant proportion of the term of that permit."*

This shows a complete lack of understanding of the theatrical and film production businesses. The demand for theatrical weapons is very intermittent, cannot be predicted and depends on the popularity and genre of the television, film and theatre productions that are planned by the producers.

The requirement to demonstrate that the theatrical weapons armourer has "actively participated" for "a significant proportion" of the term of their permit is unnecessarily restrictive, provides no public safety benefit and stifles business.

37 Requirement to keep register of prohibited weapons

Comment

Clause 37 is a duplication of clause 19(6), except for the additional words in brackets in c.19(6)(b).

It makes sense to re-format the regulation to remove the duplication of this clause.

38 Change of premises

Comment

Clause 38 is largely a duplication of cl. 32, except for a minor difference in wording in subclause (1).

It makes sense to re-format the regulation to remove the duplication of this clause.

39 Approved clubs for genuine reasons

Comment

Clause 39 is inconsistent with clause 99 in the Firearms Regulation.

As it stands, cl.39 unnecessarily excludes shooting clubs and hunting clubs from being approved for the 'genuine reasons' provision. There is logical reason for this exclusion.

Insert two additional genuine reasons:

(c) a shooting club—for the purposes of the genuine reason of sport/target shooting, or
(d) a hunting club—for the purposes of the genuine reason of recreational hunting/vermin control.

47 Notification of lost, stolen or destroyed prohibited weapons

Comment

Clause 47 requires that notification must be made **within 24 hours**. This very short time frame imposes unreasonable burden in notifying the Commissioner in writing especially if the person is away from home, in a remote part of the state, without access to electronic communications.

Furthermore, the requirement for notification within 24 hours is inconsistent with the requirement in cl. 9 to notify the Commissioner in writing **within 14 days**.

The timeframe in clause 47 for notification of the Commissioner should be changed to 14 days.

10 Possession and use of laser pointers

Comment

The inclusion of ***laser pointers*** in Schedule 1 of the Act is on the basis of the real risk these devices can pose to aircraft pilots and passengers.

Unfortunately, legitimate sporting devices and training aids (e.g. the Faezor Biathlon System or other laser powered firearm training / sighting devices) that contain low powered lasers are captured by the broad and non-specific definition of 'laser pointer' in Schedule 1 of the Act.

The restriction placed on these legitimate laser devices is substantial and includes reducing the ability of NSW competitors to train and compete on equal footing on the world stage.

We propose that the definition of "laser pointer" in Schedule 1 of the Act and clause 10 of the Regulation be appropriately amended to allow the use of legitimate sporting equipment without undue hindrance.

Regulatory Impact Statement

The Regulatory Impact Statement (RIS) falls far short of the requirements specified in the NSW Guide to Better Regulation, October 2016.

Rather than provide a detailed list of all concerns, we provide the following summary of the major weaknesses with the Regulatory Impact Statement and this review of the two regulations.

1. **Lack of meaningful consultation**

The lack of consultation with affected stakeholders, especially the NSW Police Force Firearms Registry Stakeholder Committee, reinforces the widely held view among licensed firearm owners in this state that they are held in contempt by the NSW Government and the NSW Police Force Firearms Registry.

2. **Confused and Inconsistent Instruction to Stakeholders**

Regrettably there were conflicting instructions provided to intending respondents, on which documents feedback would, and would not, be accepted:

- announcement in the Government Gazette on 7 July 2017
- email from Ministry of Police and Emergency services on 7 July 2017
- instruction in the Regulatory Impact Statement

3. **Lack of compliance with Due Process**

The RIS has paid no regard whatsoever to the expectations and mandatory requirements for developing regulation contained of the *NSW Guide to Better Regulation*.

Despite the minimum consultation period of 28 days not being provided (only 24 days were provided) a written complaint and request to the NSW Department of Justice for an extension of the deadline for submissions was flatly refused.