

# **Preliminary Consultation Paper**

## **Firearms – Edwards Inquests findings and other legislative proposals**





## Purpose and background

Options to improve the *Firearms Act 1996* (the Act) and *Firearms Regulation 2017* (the Regulation) are being considered in response to the Coroner's findings from the Inquest into the deaths of John, Jack and Jennifer Edwards (Edwards), the Audit Office report and changes to Firearms Registry online systems.

The NSW Government has responded to the recommendations from the Edwards Inquest, where all legislative proposals have been supported or supported in principle. This provides an opportunity to potentially include amendments addressing other issues.

In the first instance, this paper has been prepared on a confidential basis for preliminary consultation with FRCC members and their executives only. The options put forward are not exclusive – we welcome any further suggestions to address the outlined issues.

Please provide your written comments to this paper to [legpol@police.nsw.gov.au](mailto:legpol@police.nsw.gov.au) by **28 January 2022**.

Please contact Victor Chang, Legislation and Policy Branch ([chan1vic@police.nsw.gov.au](mailto:chan1vic@police.nsw.gov.au)) if you have any questions.

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## Edwards Inquest – legislative recommendations

### Edwards Recommendation 6

That the NSW Government take steps to update the list of prescribed offences in cl. 5 of the Firearms Regulation 2017 to include any personal violence offences or domestic violence offences defined in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

#### Government response

In response to this recommendation, the NSW Government said:

**Support in principle:** *The NSW Government will take steps to incorporate consideration of any personal violence offences and domestic violence offences, as defined in the Crimes (Domestic and Personal Violence) Act 2007 that are not already listed as disqualifying offences in clause 5 of the Firearms Regulation into licencing and permitting decisions under the Act.*

#### Discussion

Clause 5 of the Regulation outlines the offences which disqualifies a person from obtaining a licence or permit (if convicted within the last 10 years). In the Edwards Inquest, Counsel assisting observed that domestic violence related common assault is not a disqualifying offence.

This proposal would add all ‘personal violence offences’ and ‘domestic violence offences’, as defined in the *Crimes (Domestic and Personal Violence) Act 2007*, to the list of disqualifying offences in clause 5 of the Regulation. This would mean that a person who has been convicted of a personal violence offence or domestic violence offence within the period of 10 years before the application for the licence was made would be refused the licence.

The Coroner has considered the argument submitted that this expansion will also include “the most minor personal violence offence, which may not even involve the infliction of any physical contact between parties”. She is of the view that these offences are already appropriately framed so as to exclude offences of this kind and are appropriate to disqualify a person from obtaining a licence or permit.

The full list of offences which are personal violence offences is attached at the end of this document as Annexure A.

#### Options

1. Include any personal violence offences or domestic violence offences defined in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) as disqualifying offences under clause 5 of the Regulation.



## Edwards Recommendation 9

That the NSW Government take steps to remove the language "other than an order that has been revoked" in s. 11(5)(c) of the *Firearms Act 1996* (NSW).

### Government response to recommendation:

In response to this recommendation, the NSW Government said:

***Support in principle:** The NSW Government will take steps to incorporate consideration of apprehended violence orders and interim apprehended violence orders which have been revoked into licensing and permitting decisions under the Act.*

### Discussion

The Act disqualifies a person from obtaining a firearms licence if that person was subject to an Apprehended Violence Order (AVO) (other than one that has been revoked) in the last 10 years. This proposal would mandatorily disqualify people who had an AVO revoked in the last 10 years from obtaining a licence.

The Coroner noted there could be a risk of AVOs being revoked on request of protected person acting under duress of the subject. The Coroner acknowledges that there are genuine reasons for revoking AVOs (including false or vexatious claims) but that alone is not enough to maintain status quo.

Further, the Coroner was not of the view that a person subject to an AVO that was revoked does not pose a risk, particularly where the AVO was revoked because of the death, or changing in personal circumstances, of the person in need of protection.

Some members of the Firearms Registry Consultative Council raised strong opposition to this recommendation due to the possibility of AVOs being made on the basis of false, misleading or vexatious claims. The Coroner noted that consideration could be given to whether there ought to be any exceptions to the recommended disqualification.

### Options

1. Provide that a person subject to an AVO that has been revoked within the last 10 years is disqualified from obtaining a firearms licence.

Or

2. Provide that a person subject to an AVO that has been revoked within the last 10 years is disqualified from obtaining a firearms licence, except in exceptional circumstances (i.e. where the AVO was revoked because the court found the AVO was made on the basis of a false, misleading or vexatious claim).

Or

3. Provide that revoked AVOs must be considered as part of the fit and proper test.

### Edwards Recommendations 16-18

Recommendations 16-18 are dependent on an information sharing arrangement between NSWPF and the Federal Circuit and Family Court of Australia (the Family Court). As the arrangement is still being developed, any proposed legislative amendments are likely premature.

NSWPF will consult the FRCC once an information sharing arrangement is agreed upon with the Family Court and amendments can be proposed. For reference, recommendations 16-18 are copied below.

**16** – That the NSW Government take steps to amend the regulatory regime in relation to firearms licensing so that the occurrence of a federal DV event (as defined in Recommendation 15) gives rise to:

- (a) a suspension of the processing of a licence application or of an existing licence; and
- (b) consideration as to whether the information relating to the federal DV event has any bearing on the suitability of the applicant or licence holder pursuant to s. 11 of the *Firearms Act 1996* (NSW).

**17** – That the NSW Government take steps to amend the regulatory regime in relation to firearms licensing so that where the NSWPF is notified of a federal DV event (as defined in Recommendation 15) in relation to a person who is either an applicant for a firearms licence or permit, or the holder of a firearms licence or permit, the NSWPF or the Firearms Registry must automatically notify the relevant federal family law court of that fact (so that the court will inform the parties of the application or current licence).

**18** – That the NSW Government take steps to amend the regulatory scheme in relation to firearms licensing so that a person engaged in family law proceedings is required to disclose this to the Firearms Registry when applying for a firearms licence or permit.

### **Government response**

The NSW Government has supported recommendations 16-18.

### **Options**

Nil – NSWPF will consult the FRCC once an information sharing arrangement is agreed upon with the Family Court and amendments can be proposed.

## Edwards Recommendation 20

That the NSW Government take steps to revoke the use of the P650 form (which currently allows an unlicensed person to undergo firearms training without involvement or vetting by the Firearms Registry), with the view to amending cl. 129 of the Firearms Regulation 2017 and implementing an alternative scheme which provides for adequate verification of information and oversight by the Firearms Registry.

### Government response

In response to this recommendation, the NSW Government said:

***Supported in principle:*** The NSW Government will consider amendments to require a permit to be able to undertake unlicensed shooting while participating in a firearms safety course.

*The Firearms Registry is taking measures under the existing law including enhancing the use of digital licence and permits to give greater transparency to the process and greater oversight by the Registry.*

### Discussion

Currently, section 6B of the Act exempts people from being required to hold licence or a permit to use firearms when undertaking a firearms safety training course or supervised shooting on approved ranges ("try shooting"). A P650 form must be satisfactorily completed but no probity checking by police is required. As the legislation stands, people who would be refused a firearms licence could obtain access to use a firearm through the section 6B exemption.

FRCC members have raised that clubs depend on try shooting as a source of income and that many try shooters book events on short notice (i.e. in the matter of days). If try shooters require a full probity check to obtain a permit, it is likely that short notice bookings would not be feasible.

Accordingly, NSWPF proposes that the P650 form be revoked for the firearms safety training course only. This would mean a permit (and full probity check by police) would be required by an unlicensed person to undertaking a firearms safety training course. Try shooting will remain unchanged, meaning unlicensed people will be able to participate after completing a P650 form.

This proposal would require police to assess whether a person is suitable to obtain a permit to use a firearm without a licence the same way suitability for a firearms licence is currently assessed (i.e. whether they are a fit and proper person). As people who undertake a firearms safety training course are likely to subsequently apply for a licence, the probity check for that licence would be fast tracked.

### Options

1. Revoke the use of the P650 form for unlicensed shooting while participating in a firearms safety course and require a permit instead.

Or

2. Revoke the use of the P650 form for all unlicensed shooting and require a permit instead.



### Edwards Recommendation 21

That the NSW Government take steps to implement a regulatory change under which gun clubs are under an obligation to inform the Firearms Registry if they have refused a person membership, and the reasons for that refusal.

#### **Government response**

In response to this recommendation, the NSW Government said:

***Supported:** The NSW Government will take steps to implement a regulatory change under which gun clubs are under an obligation to inform the Firearms Registry if they have refused a person membership, and the reasons for that refusal.*

#### **Discussion**

Currently, only pistol and collector clubs have an obligation under the Regulation to notify NSWPF if they refused membership and why.

This proposal would replicate this obligation on all clubs, irrespective of the type of club. The proposal is in the interest of public safety and would assist NSWPF in administering the scheme.

The NSW Government has supported this recommendation.

#### **Option**

1. Require all firearm clubs to inform the Firearms Registry if they have refused a person membership, and the reasons for that refusal.



### Edwards Recommendation 22a

That the NSW Government take steps to amend cl. 101 of the Firearms Regulation 2017 to impose the mandatory reporting obligation therein on any type of gun club (not only a pistol club).

#### Government response

In response to this recommendation, the NSW Government said:

***Supported:** The NSW Government will take steps to implement a regulatory change under which gun clubs are under an obligation to inform the Firearms Registry if they have refused a person membership, and the reasons for that refusal.*

#### Discussion

The mandatory reporting obligations in clause 101 require pistol clubs to notify NSWPF if they cancel or suspend a person's membership and why. Additionally, the secretary or other relevant office holder of a pistol club is required to notify NSWPF if they are of the opinion that a member, or a person who has applied to be a member, may pose a threat to public safety (or a threat to the person's own safety) if in possession of a firearm.

This proposal would duplicate these obligations on all clubs, irrespective of the type of club. The proposal is in the interest of public safety and would assist NSWPF in administering the scheme.

FRCC members have raised concerns about the liability of the person disclosing information pursuant to this recommendation. As such, NSWPF propose that an indemnity be included for the purpose of meeting this obligation in good faith.

The NSW Government has supported this recommendation.

#### Option

1. Require the secretary or other relevant office holder of a club to notify NSWPF:
  - a. if they have cancelled or suspended a person membership and why,
  - b. if they think a member, or person who applied to be a member, may pose a threat to the public or themselves if they are in possession of a firearm,and indemnify the secretary or other relevant office holder in discharging this duty in good faith from civil liability.

## Other issues not related to the Edwards Inquest

### Item 1 – number of firearms owned by a licence holder

#### Issue

The Audit Office of NSW report on firearms regulation found that it is unclear what a good reason is for a single licence holder to own in excess of 50 to 100 firearms. Excess amounts of firearms in one location presents a significant public safety risk.

#### Discussion

Currently, there is no statutory cap that generally limits the number of firearms a licence holder can possess. The number of firearms already owned by a licence holder is not considered as part of an application for a permit to acquire a firearm.

To issue a permit to acquire (PTA) a firearm under section 31 of the Act, the Commissioner must be satisfied that the applicant has a “good reason” for acquiring the firearm. However, the legislation does not provide any guidance as to what a “good reason” is. Guidance provided by the Firearms Registry only require that the good reason must be related to the genuine reason for holding the licence.

Placing reasonable restrictions on the number of firearms a licence holder can possess may be appropriate to balance the public safety interest and the individual interests of licence holders. Consideration is to be given as to whether it would be appropriate to limit the amount to a number, or whether it should be dealt on a case-by-case basis by way of assessing good reasons. In either case, further consultation and assessment is required to determine an appropriate limit or to determine the appropriate considerations to be made in assessing good reasons.

#### Options

1. Create a Regulation making power to prescribe considerations that must be given when determining whether there is a good reason in an application for a permit to acquire a firearm.

or

2. Introduce statutory limit on number of firearms that can be owned by a licence holder.



## Item 2 – deceased estates

### Issue

- The Audit Office report into firearms regulation found the Registry is not effectively retrieving firearms held by deceased estates after a six-month statutory period.
- The relevant recommendation was *“to ensure safety of the public and police, NSW Police Force (Firearms Registry) should ... implement strategies for prompt retrieval of firearms from deceased estates after expiry of the six-month statutory period.”*
- Police have difficulty determining whether there is an executor when a licensee dies. Further, there are concerns about unsuitable people gaining access to firearms in their capacity as executor.
- Police do not have a general power to seize firearms upon the death of the licence holder.

### Discussion

Under the Act, executors can be responsible for the disposal or safe storage of the firearms in a deceased estate for up to six months. The Firearms Registry promptly cancels licences and tracks firearms in a deceased estate when it becomes aware that a licence holder has died.

After the six-months statutory period, and where firearms remain in possession of the deceased estate, NSWPF are to seize the firearms. The Audit Office report into firearms regulation found the Firearms Registry is not effectively retrieving firearms held by deceased estates after a six-month statutory period.

This issue could be addressed by placing the responsibility on police, rather than executors.

Police do not have the power to seize firearms following the death of the owner. Section 25(2) of the Act provides police to power to seize firearms when a licence is no longer in force, but the Crown Solicitor’s Office has advised this power cannot be used following a licensee’s death, despite their licence becoming no longer in force.

Where a licence holder has no close family or friends and dies intestate, the immediate security of firearms is an issue. The security issue could be addressed by provide police a general power to seize firearms following the death of the licence holder.

### Options

1. Require NSWPF, in consultation with the next-of-kin, to arrange for the safe storage of firearms following notification of the owner’s death. Options for safe storage include storing firearms with a nominated eligible licensee, a dealer, or NSWPF.  
**and**
2. Provide police with the general power to seize firearms registered to the licence holder following the licence holder death.

### Item 3 – limit on supervised unlicensed shooting

#### **Issue**

Currently, there is no restriction in the Act on the number of times a person can participate in supervised unlicensed shooting at an approved ranged (“try shooting”). The issue is related to the Coroner’s Recommendation 20 in the Edwards Inquest.

#### **Discussion**

The rationale behind exempting try shooters from obtaining permits is to facilitate an avenue for unlicensed people to be introduced to the sport before deciding to obtain a licence. It is also to facilitate one-off kinds of events like bucks’ or hens’ parties.

Consideration is given to the policy rationale that a person should be required to obtain a firearms licence (with the required training and probity check) if they frequently use firearms.

#### **Options**

1. Restrict the number of unlicensed shooting a club can provide to a person to 5 occasions within a 12-month period.

**or**

2. Restrict the number of unlicensed shooting a club can provide to a person to a number occasions within a 12-month period that is prescribed by the Regulation.



## Item 4 – fingerprinting

### Issue

Currently, police can only request fingerprints of a person as part of their licence application if there is reasonable doubt about their identity and where their identity cannot be confirmed by any other reasonable means. The ability to check fingerprints against the National Automated Fingerprint Identification System can create an extra layer of probity checking for more restricted firearms licences.

### Discussion

In the Victorian firearms legislation, fingerprints are required to obtain Category D and Category E long arms, a handgun licence or firearms collectors licence (s 32(b) *Firearms Act* (VIC)) or dealers licence (s 64, 65). Fingerprints are required to be provided to obtain security industry licences in NSW.

Under the Act, police can only request fingerprints of a person as part of their licence application if there is reasonable doubt about their identity and where their identity cannot be confirmed by any other reasonable means.

Consideration is given to require a person to give fingerprints in all Category D licence applications so that police can check them against the National Automated Fingerprint Identification System (NAFIS) to ensure that only fit and proper persons are issued Category D licences. Consideration can also be given to require the same for Category H firearms.

This would address the real risk of identity fraud (e.g. where a person changes their identity to avoid detection and obtain licences for which they would otherwise be ineligible). It would also avoid mistaken identity issues, for example where there are multiple CNI entries in the police operating systems by linking licences to fingerprints.

### Options

1. Require a person to provide their fingerprints to NSWPF in order to obtain a Category D firearms licence.
- or**
2. Require a person to provide their fingerprints to NSWPF in order to obtain a Category D and a Category H firearms licence.

## Item 5 – medical fitness to use firearms

### Issue

There is no requirement for licensees to be determined as medically fit to handle a firearm when they reach a certain age. To retain a driver licence after the age of 75, for example, requires an annual medical assessment and a practical assessment every two years after the age of 85. The absence of similar assessments in the firearms regime could present a preventable danger to the community.

### Discussion

To be issued a firearms licence, s 11 of the Act requires (among other things) that a person to be a fit and proper person. Additionally, the person must be able to be trusted to possess firearms without danger to public safety or to the peace. It follows that a person may not meet this requirement due to medical fitness.

Under section 19 of the Act, the Commissioner has the power to impose “such conditions as the Commissioner thinks fit” to any firearms licence. While the Commissioner may already have the power to impose a licence condition requiring medical and practical assessments after a certain age, it may be appropriate to grant the Commissioner explicit power to impose conditions on licences held by people based on age.

Further consultation and assessment is required before a determination can be made as to the what medical and practical tests are appropriate and at what age and frequency they are to be imposed.

### Options

1. Grant the Commissioner the explicit power to create licence conditions for licence holders above a certain age.