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## **CONFERENCE PAPER:**

### **INSIDE OR OUTSIDE THE LAW?**

**Tightening legislation and the principles of firearm ownership**

Jeannie Baker and Samara McPhedran  
Sporting Shooters Association (SA) Inc.

## Inside or Outside the Law?

### Tightening Legislation and the Principles of Firearms Ownership

#### Authors:

Jeanine Baker<sup>1\*</sup> and Samara McPhedran<sup>1</sup>

<sup>1</sup>SSAA (SA) Inc., PO Box 166, Gumeracha, South Australia, 5233

Email: [jb@ssaa.org.au](mailto:jb@ssaa.org.au)

\* Author for correspondence.

#### Abstract:

Legislation, whether national or international, requires acceptance as being ‘socially just’. In order to be effective, legislation must have clearly defined outcomes and procure a high level of compliance from the main group it is directed against. This study examines the effect of Australian firearms legislation and its ramifications if the fundamental principles of controlling illicit firearms are ignored. These principles revolve around the *assumption* that tighter legislation of private ownership reduces firearms misuse and abuse and illicit activities. The results of two surveys undertaken in Australia, which focused on non-firearms- and firearms-owners and their attitudes towards the effectiveness of firearm legislation on prevention of firearms misuse, are presented in relation to perceived differences between the two groups, existing firearm legislation, and private ownership. This research addresses affirmative and negative motivations for compliance with government regulations that may be extrapolated to the wider Pacific region.

## **Introduction**

Despite the tempting simplicity, strict legislation does not necessarily equate to effective legislation. For legislation to be truly effective it must have clearly defined outcomes and it must be able to bring about those outcomes. This means policy development should be based on empirical data, careful evaluation of that empirical data, and community understanding and acceptance of proposed legislation. These simple points form the ‘hallmarks’ of effective legislation.

Firearms legislation, more than any other area, has become emotive and polarised to such an extent that defining ‘positive outcomes’ is now fraught with definitional and practical difficulties, some of which may stem from discrepancies between public perceptions of what the regulation of civilian firearms ownership can hope to achieve and what regulation of private ownership achieves in reality. To overcome this impediment the general public needs to understand the law(s), and any subsequent judgements of the ‘rightness’, or justice, of that legislation must be based upon informed opinion about that law or laws.

If firearms legislation in Australia is evaluated against the hallmarks of effective legislation then the likely outcome may be a reduction in firearms misuse and abuse, particularly in the use of firearms in crime. The desired, and implied, outcome of firearms legislation is to achieve an improvement in overall public health and safety by minimising firearms abuse and misuse, which relies on the concurrent assumption that method substitution will not occur. Troublingly, there is a tendency in the existing literature to define ‘success’ of firearm legislation purely as a reduction in

firearm deaths, the majority of which are suicides. However, this approach is rarely adopted in literature assessing other public health and/or safety issues and must not be permitted to detract attention from the socially important issue of whether overall outcomes, such as a reduction in the total suicide rate, have been achieved by firearm legislation.

It is relatively easy to quantify the level of legislative compliance among private firearms owners, and based upon anecdotal reports from staff in police firearm registries, it is recognised that compliance with legislation is high among members of the shooting community. However, a substantial question mark hangs over whether compliance among private owners has played any role whatsoever in crime reduction, especially since Australian statistics indicate ongoing overall increases in violent crime. Also, given that overall suicide and homicide rates in Australia have remained unaffected by firearms legislation, the paramount question of whether any genuine public health and safety outcomes have been achieved must be addressed when evaluating firearm policy changes over the last decade.

Understanding the issues mentioned above is fundamental if firearm regulation across the wider south Pacific region is to be addressed effectively, and it is to gain the full support of the diverse cultures existing within the region. The principles which revolve around the assumption that tighter legislation of private ownership reduces firearms misuse and abuse and illicit activities are examined in the following paper. The results of two surveys undertaken in Australia, which focused on non-firearms- and firearms-owners and their attitudes towards the effectiveness of firearm legislation on prevention of firearms misuse, are presented in relation to differences in

perceptions between the two groups, existing firearm legislation and private ownership. The results of the research are discussed in the context of the wider Pacific region, with the hope of contributing to genuinely effective policy development.

### **Data source and results**

It is of serious concern that firearms legislation in Australia succumbs to a fundamental flaw of logic. Namely, legislation concerning private ownership is equated with legislation to address criminality. These are two very different issues, and by conflating the principles, the efficacy of current firearms legislation in curbing criminality is seriously undermined. A significant difficulty is that firearms legislation has created an entirely new class of ‘illicit’ behaviour, which is distinctly different to criminality (see “Illegal Firearms in the United Kingdom, Working Paper 1, pp 3-6). For example, the term ‘illegal firearm’ is a broad spectrum description. On one hand, it may be applied to a firearm which has, through legislative change, become ‘illicit’. Namely, it is illegal through ‘technicality’. On the other hand, the term can also apply to a firearm that has been brought into the country by covert means, without passing through customs. Such an instance constitutes deliberate ‘criminality’. Creating classes of ‘technically illicit’ behaviour does little towards addressing criminality. With these problems in mind, we evaluated public perception of firearms legislation in Australia, to ascertain whether the social requirements of effective legislation are fulfilled. Primarily, we wished to discern whether people view firearms legislation as effective in improving overall public safety, and whether their judgements related to knowledge levels.

Two groups were surveyed – adults in the Greater Sydney region, and a Nationwide sample of firearms owners. The results presented focus on the non-shooter Sydney sample, although firearm owners’ results are included as a comparison. Respondents indicated, using a scale ranging from 0 to 10, their level of agreement or disagreement for statements covering areas such as legislative knowledge, firearms and crime, and perceptions of legislation. Higher scores meant higher levels of support or agreement.

### *Knowledge Level*

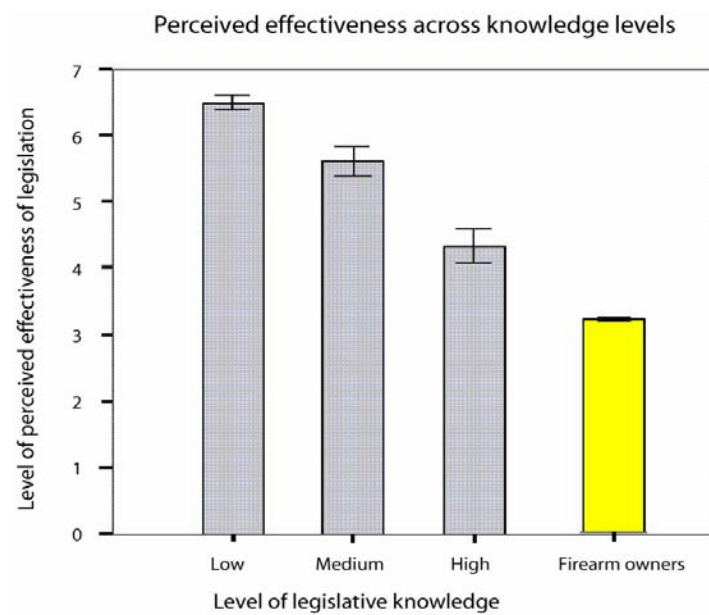
A crucial question was whether non-shooters were equipped with the knowledge to make informed judgments about legislation. This was assessed using questions such as “I understand ‘safe storage’ requirements”. At the outset, it was apparent that non-shooters had, for the most part, limited understanding of firearms legislation, with a mean knowledge level of just 3.8 out of a possible ten. Firearm owners had an extremely high level of legislative knowledge, with a score of 9.22. When respondents were grouped according to knowledge level, over 60% had a low level of knowledge (Table 1).

Table 1: Number and percentage of respondents in each legislative knowledge group

<b>Level of Knowledge</b>	<b>Number of respondents</b>	<b>Percentage of respondents</b>
Low	316	61.6
Medium	79	15.4
High	118	23.0

## *Perceived Effectiveness of Legislation*

The perceived effectiveness of legislation was evaluated using questions such as “firearm legislation protects the public”, and “firearm legislation should be tightened” (Figure 1).



*Figure 1: Perceived effectiveness of legislation across levels of knowledge. The yellow bar shows data from firearm owners. Higher scores indicate a stronger belief that legislation has been effective in improving overall public safety.*

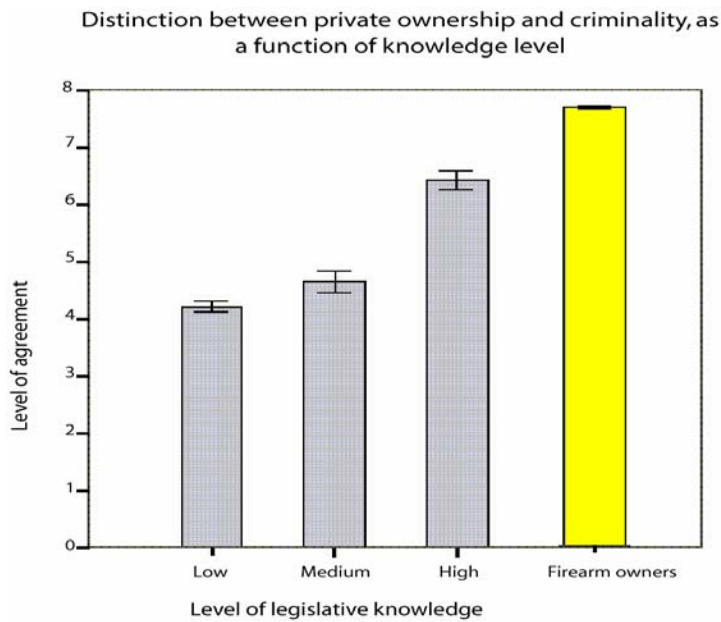
Clearly, as legislative knowledge increased, perceptions of the efficacy of legislation on improving public safety decreased. This suggests that individuals who understand firearms legislation are the least likely to view it as fulfilling the outcome of improving overall public safety. Statistics released by the ABS and AIC indicate an increasing rate of violent crime in Australia (Australian Crime: Facts and Figures series, ABS Recorded Crime 1993-2001). Therefore, the results of the surveys can be

interpreted as indicative of the majority of the public misunderstanding the objectively quantifiable relationship between firearms legislation and overall public safety. This indicates a serious failure of policy development and the resulting legislation, rather than any ‘fault’ of the public.

### *Distinction Between Private Ownership and Criminality*

Firearms legislation in Australia frequently equates restricting private ownership with curbing criminal behaviour. We examined whether there is public understanding of this conflation of principles, or whether the non-shooting public have not been provided with adequate information to discern between private ownership, ‘technically illicit’, and criminality. Questions such as “licensed shooters are not to blame for firearm crime” were used to evaluate this dimension.

Respondents with little understanding of legislation were the most likely to confuse private firearm ownership and criminal behaviour (Figure 2). This result in turn adds clarity to Figure 1 and its interpretation; it appears that if people cannot recognise the distinction between private ownership and criminal behaviour, then they tend to view legislation as effective in improving public safety. However, if the distinction between private ownership and criminality is recognised, legislation of private ownership is not seen as effective in protecting the public from crime.



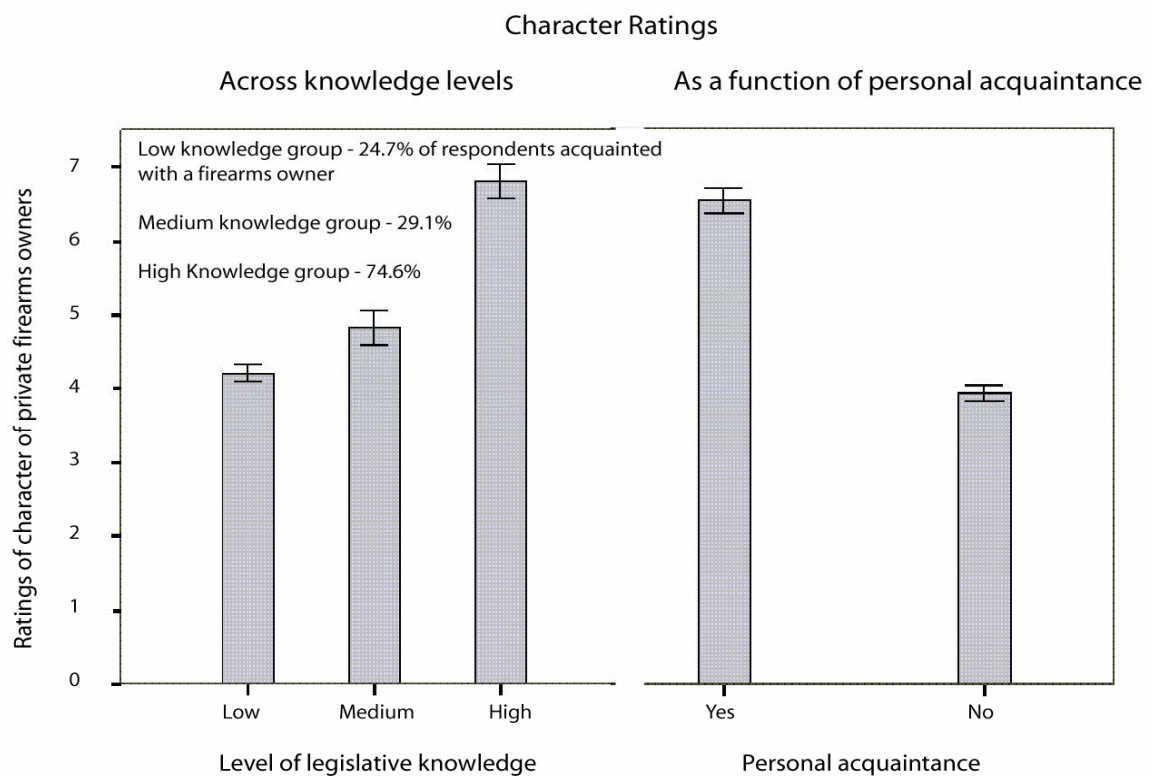
*Figure 2: Distinction between private ownership and criminality. Respondents with limited understanding of legislation were most likely to have low scores when evaluating distinctions between private firearm ownership and criminality; they were least likely to agree that private ownership and criminal behaviour are distinct.*

### *Factors Contributing to Legislative Judgements*

Respondents with limited knowledge nonetheless provided judgements of legislation, raising questions as to the basis upon which their beliefs and perceptions were formed. It was, therefore, hypothesised that opinions about firearms owners may have contributed to other judgements. To assess this, respondents answered a series of very broad “character” statements about firearm owners (for example “shooters have regard for the welfare of others”).

Individuals with the lowest knowledge were also the most likely to provide poor character ratings of firearm owners (Figure 3). However, out of the low knowledge

group, less than 25% of respondents personally knew anyone who owns or has owned firearms. Even when knowledge level was disregarded, people who did not know any firearm owners were likely to attribute negative characteristics to firearms owners (Figure 3). It appears, therefore, that in the absence of knowledge, ratings of the appropriateness and effectiveness of legislation may be based upon the invoking of negative stereotypes, rather than objective evaluations.



*Figure 3: Respondents with the lowest knowledge level were the most likely to provide poor “character ratings” and to attribute negative characteristics to firearms owners. However, out of the low knowledge group, less than 25% of respondents personally knew anyone who owned or owns firearms. The panel on the right shows character ratings across personal acquaintance, with knowledge level disregarded. Respondents who did not know any firearms owners provided low “character ratings”.*

### *Implications of Survey Results*

For non-shooters, those with moderate to high knowledge of legislation did not feel that legislation is particularly effective in reducing criminal behaviour or improving public safety. Respondents most supportive of the legislation were those who understood current laws the least. Those respondents also believed that legislative measures reduced criminal behaviour, a view not shared by individuals who believed they understood the legislation.

People who rate firearms legislation as ineffective may do so because they recognise the division between private ownership and criminality, and understand that current legislation affects private owners. They may make judgements with reference to objective information - namely, that firearms legislation has not produced overall public health and safety outcomes. However, respondents who perceived legislation as effective may have done so as a result of a lack of information, confusion between private ownership and criminal behaviour, and reference to subjective indicators, such as negative stereotypes about firearm owners.

The results highlight a fundamental flaw of firearms legislation; that of the conflation of private ownership, technically illicit, and criminality. This conflation creates an atmosphere of misunderstanding. Consequently, a substantial percentage of the public believe they are protected from criminal behaviour by legislation alone, and simultaneously are unaware that the majority of legislation they support does not address existing problems of criminal activity and violent crime. Nor does the legislation address causal factors underlying crime. In this regard, Australian firearms

legislation is failing the public not only because it has not reduced criminal behaviour and violent crime overall, but because it fails the requirement of widespread understanding. This results in erroneous perceptions and negative stereotyping underlying assessments of effectiveness and social justice. Current firearms legislation may be strict, but it does not fulfil the requirements of effective legislation.

### *Comparison of Australian and New Zealand Models of Firearms Legislation*

To examine whether the Australian legislative model produces unique benefits we examined the trends for suicide and homicide in Australia and New Zealand over a comparable time period. The Australian and New Zealand models have fundamentally different philosophies and, on the basis of their substantial differences in approach to firearms regulation, could be assumed to produce different outcomes in firearms misuse. Based on the survey results, the Australian model appears to create confusion between what can be controlled by legislation and what cannot. However, the New Zealand model recognises that the bulk of firearm legislation impacts on the legal compliant owner and not on the individual who owns an illicit firearm. This is clearly evidenced by the New Zealand decision that long arms, with the exception of semi-automatic military style long arms and machine guns, do not need to be registered.

The two countries have similar cultural backgrounds and living standards. A comprehensive examination of the legislative differences between Australia and New Zealand exceeded the scope of this study; however an outline of some of the major differences between firearm legislation in both countries follows. The Australian

model has a system based around individual licences, 28 day waiting periods, and registration for every firearm. Firearms are assigned to 'classes', such as long arm, centrefire, rimfire and air, and the police in each State administer the licensing and registration. The Australian system has police background checks and extensive compulsory training prior to the police approving a firearm licence. The New Zealand system also includes a police check (of national crime and intelligence databases), which is followed by a personal interview with the applicant. Other personal interviews follow with the spouse or life partner, and with referees, along with a visit to the home of the applicant. In New Zealand there is no compulsory training, although training in various aspects of firearm ownership is offered through the Mountain Safety Council and is encouraged.

Licence classifications are less complex in New Zealand than they are in Australia. Instead of multiple categories and classes of licences there are simply: the Basic Licence ("A" licence), which covers sporting long arms and the Theatrical Licence, where the holder may only use blanks. This licence is usually an endorsed "A" licence. There is also a dealers licence, which is required if one is to deal in firearms ("D" Licence). The following endorsements may be added to the basic "A" licence: handguns for target shooting ("B" endorsement - carriage to/from and use on a Police approved range only), handguns for collecting ("C" endorsement - cannot be fired), machine guns ("C" endorsement and firearms must always have a vital part removed), and military Style Semi-Automatic ("E" endorsement for long guns, i.e. rifles and/or shotguns). A new endorsement is the "F" endorsement for employees of Dealers. This allows those individuals to handle handguns, military style semi-automatics and machine guns as a part of the Dealers business.

In summary, the Australian system is complex, resource intensive, and administratively demanding on police and firearms clubs. It focuses on ‘types’ of firearms, and emphasises a ‘restrictive’ approach to firearms ownership. In contrast, the New Zealand system aims to screen firearms owners before licensing, but once the background and community checks are complete there is the recognition that the applicant will fall into the majority – that of the responsible and compliant licensee. The New Zealand model emphasises the importance of screening and ‘personal responsibility’ rather than restriction of firearms ownership.

#### *Comparison of Suicide and Homicide Data*

Given the two very different approaches to firearm legislation between Australia and New Zealand, it would be reasonable to expect corresponding differences in the impact of the legislation on suicide and violent crime rates. Presumably, if the complexity and restrictiveness of legislation bears a relationship to suicide and violent crime rates, then Australia would be likely to exhibit lower rates of firearm misuse per head of population than New Zealand.

The first parameter examined was suicide rates from 1992 to 2002 in New Zealand and Australia (Figure 4). The data for firearm and total suicide (ABS Series, Statistics New Zealand, New Zealand Health Information Service, New Zealand Police Statistics) were standardised as suicide rates per 100,000 population, according to Segi's world population. Transforming the data this way provided the opportunity to compare the trends observed in each country by standardising the demographics. The

firearm suicide rates in each country were surprisingly similar (Figure 4). It is necessary to acknowledge that for such short time series, random fluctuations are expected, but with that caution in mind, it appears that both countries experienced a similar decline in firearms suicides. New Zealand appears to have experienced a sharper decline in overall suicide rates than Australia in recent years, although obtaining the most recent data for New Zealand suicide was not possible.

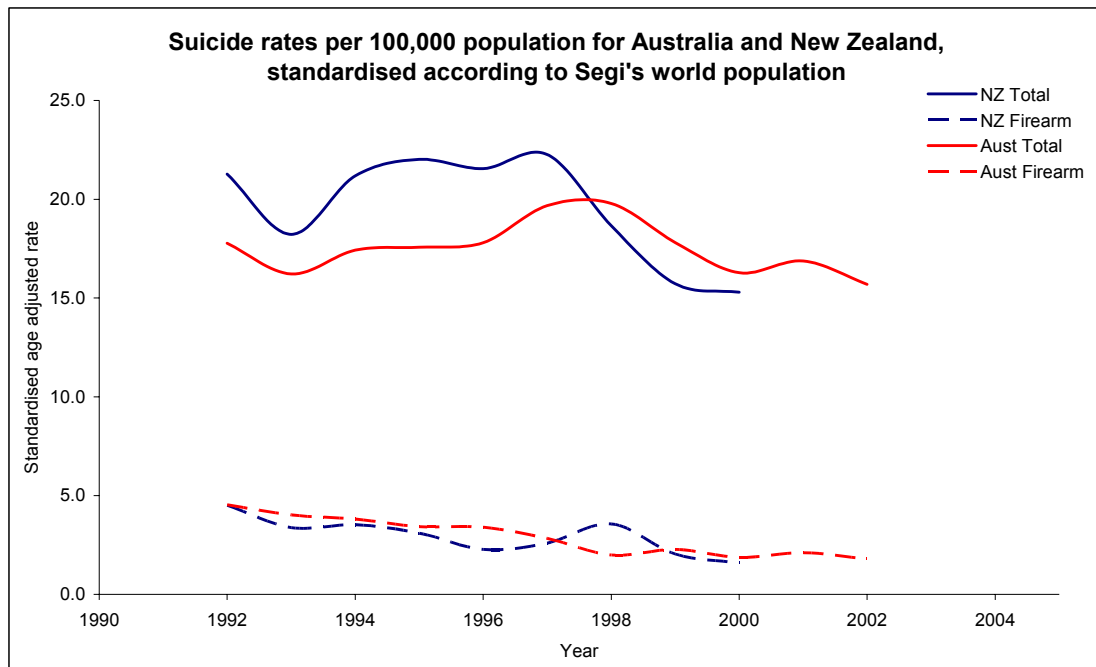


Figure 4: Suicide rates per 100,000 population for Australia and New Zealand, standardised according to Segi's world population.

This result is particularly striking in light of the higher rate of firearm density in New Zealand and the costly 'buyback' of semi-automatic long arms, from the semi-automatic .22 rifle through to pump action shotguns, which occurred as part of the National Firearms Agreement introduced in Australia in 1996. Neither model appears to have a greater influence on firearm suicide rates than the other.

Homicides are also interesting, although the time series shown runs from 1995 to 2003, not from 1992 (Figure 5). The early data for New Zealand could not be obtained, nor could the New Zealand data for the year 2001. The age breakdown for homicides in New Zealand was not available, so the data is presented as crude rate per 100,000 population, which makes direct comparisons between countries less robust. However, total homicides in New Zealand tended to be lower than Australia, although there appears to be a similar, overall slow downward trend. Firearm homicide in New Zealand was also lower than that observed in Australia. Again, despite the expensive buybacks within Australia during 1996/97 and the higher firearms density in New Zealand both the Australian and New Zealand models show similar trends.

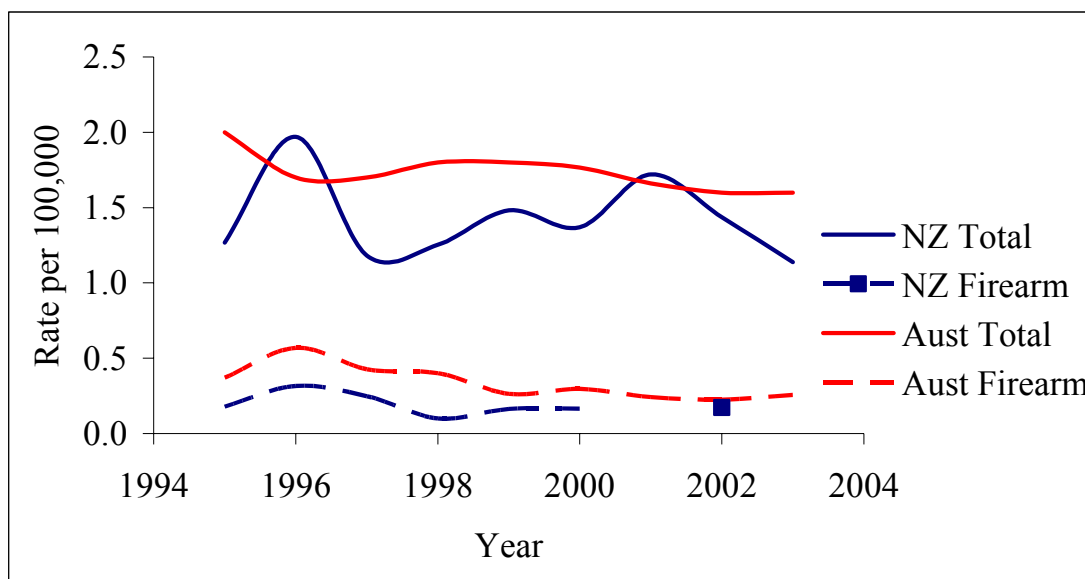


Figure 5: Homicide rates per 100,000 population for Australia and New Zealand.

In summary, despite the differences in the way the models approach firearms ownership and the massive buyback of firearms in Australia in 1996/97 there was little difference in the trends for homicide and suicide between the countries. With

this in mind, the implications for the wider South Pacific region in terms of addressing firearms violence and violence overall must be considered.

### *Firearm Legislation in the South Pacific*

The countries that make up the South Pacific currently have strict legislation controlling civilian firearms ownership. However, many of the countries also have inadequate resources for the safe storage of military and police firearms, and the lack of adequate resources to enforce existing laws. The lack of resources is compounded by, in the case of Papua New Guinea, a long land border across which smuggling can occur virtually unchecked because of the physical terrain. It is considered impossible to police the border in the highlands. Capie (2002, 2003) investigated the problem of escalating violence, including firearm violence, in great depth. The conclusion was that the overall rate of firearm violence in the region is very low and associated with a minority of countries where there is internal conflict. The violence occurs in conjunction with other significant social problems such as poverty, poor health infrastructure, high unemployment, and official corruption.

Developing effective legislation to cope with civilian firearms ownership in the face of these issues is a daunting task. However, if the legislation creates an atmosphere of misunderstanding by implying that the public will be protected from criminality and violence through ever increasing restrictions on compliant firearms owners then that firearms legislation will fail the public. The following anecdote comes from New Zealand, when New Zealand was reviewing its firearms laws in the 1980's, and encapsulates the issues for developing legislation in the South Pacific. The tale

focuses on a number of influential key stakeholders, gathered in a room and discussing how difficult to make getting a firearms licence. One Maori elder stood up and said:

*“Your ideas about tough gun licences are noble. In my town there are a lot of good people who could never jump through those hoops. Some can’t read and some have no idea of sitting tests. They are good people, they are safe people; they are used to firearms and hunting. They won’t have your new licence, but they will still have their guns. Is that your idea? Is that what you want from this law?”*

In essence, legislation which is ineffective and unwieldy, or unenforceable, merely creates a ‘technically illicit’ class of criminal, without providing any corresponding impact on firearm violence or misuse. This is particularly pertinent in regions where firearms are used in subsistence hunting.

### *Summary and Conclusions*

In summary, there are several models that can be utilised for firearms legislation aimed at complaint civilian owners, but it has been demonstrated that there was no difference in suicide or homicide in Australia and New Zealand over the last 2 decades, despite the fundamentally different approaches to legislation and several expensive and contentious legislative changes in Australia since 1996. This observation, coupled with the insight of an indigenous New Zealander in regard to local communities, leads to the conclusion that if legislation in the South Pacific is to

work, then the laws must have the respect of, and in turn respect, responsible firearms owners.

If high levels of compliance are to be achieved, those individuals must also be able to understand the legislation and have the resources to enable them to comply. It must also be considered that compliance will not necessarily result in overall impacts on public safety. Also, while understanding of the laws and compliance is high among Australian firearms owners, it is crucial to understand and be sensitive to the major differences in educational opportunities, literacy, social factors, and economics, between Australia and parts of the wider Pacific region. More importantly, the group most affected by the legislation must support the aims and objectives of that legislation. In instances where the aims and objectives are not clearly defined, or are subject to ongoing reinterpretation, this remains a difficult goal. It is further complicated when differences between private ownership, 'technically illicit' and 'criminality' are conflated or simply not recognised. Finally, and perhaps most crucially, the laws must encompass adequate safe storage for firearms when they are not in use.

Future challenges for the South Pacific region are to recognise that effective legislation is a two way mutual obligation. The affected group, the private firearms owner, must be able to comply with a legislative framework they respect as being socially just, and legislation must enforce the principles of social justice by respecting the compliant group. Legislation must also aim to achieve overall public health and safety benefits, and 'success' must always be defined as the ability to meet those outcomes, rather than just a single subset of outcomes at the expense of the larger

framework . Failure to consider this critical facet runs the risk of engendering growing disappointment from all sectors of the community, particularly if the implementation of the legislation required, or requires, substantial and ongoing financial expenditure. For the same reason, legislators must also be able acknowledge the difference between ‘criminality’ and ‘technically illicit’. Lastly, for legislation to be accepted, respected and understood by the entire community, information about the aims, objectives, and precise requirements must be disseminated in order to achieve widespread understanding.

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