



Sporting Shooters Association of Australia (Tasmania) Inc

INCORPORATED IN TASMANIA

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Legislation Development & Review Services
Department of Police, Fire and Emergency Management
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Dear Sir / Madam,

In response to the Regulatory Impact Statement (RIS) and proposed Draft Storage Regulations published on your website, the Sporting Shooters Association of Australia (Tasmania), SSAA Tas wish to make a submission as invited.

Given the complexities with the issues, and the number of items we are obliged to address, our submission is be structured into a covering letter and a two part submission, which is attached to this covering letter.

SSAA Tasmania represents 4,500 Tasmanians. Our view remains, as from our previous submissions, that the measures being proposed are largely unnecessary and likely to be ineffectual, burdening our members with increased cost for little real gain, especially given the extremely low rate of firearms theft to firearm ownership in Tasmania.

In the RIS, we had expected to have seen some comprehensive justification of the Government's position. However the RIS, as a justification for a piece of contentious public policy, in our view falls well short of the mark. We believe it draws unfounded conclusions from thin data and doesn't adequately address the risk the regulations may be actually creating for our members and other firearms owners.

We also believe the draft regulations, despite our attempts to provide some pragmatic input since early 2015, contain requirements or drafting that have not been practically thought through. Either outcome may introduce unwarranted sanctions or perverse outcomes whilst continuing to ignore the real concerns of firearms owners.

The Government via your Department is attempting to place an unfair financial burden on firearms owners, to help address an issue that should be addressed by more fundamental proactive policing. Unfortunately what makes many firearms owners skeptical is the incredible waste of public resources that is currently being spent on multiple checking's of firearms storage under the direction of Firearms Services.

If the Government wants these new regulatory measures implemented it should consider assisting with some of the upfront costs of a program that will likely cost well in excess of \$10 million. Put in another context, this is an equivalent of at least a \$25 tax on every licensed vehicle driver in Tasmania. It is an excessive ask of a small group of the community.

To make these regulations even more unpalatable, it has been unable to justify this cost in the public documents it has produced. The proposal to introduce alarms for 10 or more firearms or one handgun is a particular case in point.

The alarm proposal flies in the face of the weight of evidence from;

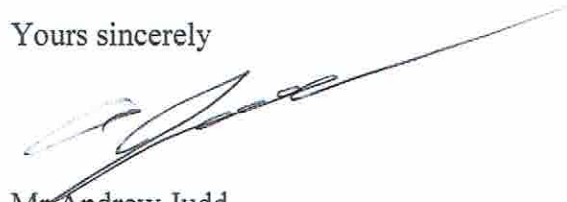
- requirements from other jurisdictions
- from its own document that shows the rate of theft by incident has been quite stable in the range of 3 to 4 firearms and;
- No evidence - no statistics for handgun theft is made available although it is was asserted in Parliamentary debate that these items were favored by criminals.

Unfortunately the proposed alarm requirement seems to have all the hallmarks of an ambit claim that may be used to justify future actions. Coupled with the unwarranted increase in potential penalties for firearms owners that fall into that category, it is little wonder that general mood of the firearms community on these regulations is unsupportive.

Finally I should note that many of the practical installation and drafting issues we have identified in the draft regulations could have been addressed if the Department had a more open view towards stakeholder engagement. Perhaps at some point this may change.

Please consider our accompanying submission.

Yours sincerely



Mr Andrew Judd
President
SSAA (Tasmania) Inc.

December 16, 2016

Sporting Shooters Association of Australia (Tasmania).

Response to Draft Storage Regulations and Regulatory Impact statement.

Part A – Response to Draft Regulations.

The following are our specific issues. They are dealt with in numeric order.

- 1) Regulation 9A should be amended so after the words, “not being used”, the following words should be added “or conveyed”.

This is suggested as the word “use” (see the Interpretation section *Firearms Act 1996*) has a very narrow meaning viz;

use, in relation to a firearm, means

(a) fire the firearm; or

(b) hold it so as to cause a reasonable belief that it will be fired, whether or not it is capable of being fired.

This regulation as drafted actually means that you must take your firearms storage with you! We believe (hope) this is not the intention of the Act or Regulations. Such restrictive language clearly creates a broad uncertainty around the scope of the whole suite of regulations and needs to be addressed.

- 2) Regulation 9A(b) requires the receptacle to be “not easily penetrable”. What is this supposed to mean? This phrase is used in the existing Section 85 of the Act but it provides little meaningful guidance there either.

Regulation 9A (b) should be deleted in its entirety and replaced with the following provision.

(b) Is a receptacle from which the firearm or firearm part can only be removed without destroying the integrity of the receptacle by the use of an unlocking mechanism in accordance with these Regulations.

- 3) Regulation 9A(e)(ii) as worded is a rather convoluted set of words that we think disqualifies currently approved, very secure safes. Given (i) specifically covers "an internal hinging mechanism" then by default, although not specified, (ii) refers to safes with external spindle, pivots or hinges. Requiring the hinged edge to incorporate a "return along its full length" disallows safes constructed like a bank vault door - that is with internal locking bolts that extend past the edge of the safe when the door is closed and

locked. There are also designs incorporating "dogging" latches welded to the inside of the door on the hinge edge that when the door is closed and locked engage the side/front edge of the safe. Both bolts and dogging latches prevent removal of the safe door even if the external hinges are cut/ground off.

- 4) Regulation 9 A(c)(ii) & (iii) should have a caveat to recognize the underlying manufacturing specification of the thickness of metal that is required. These concerns have been made on a number of occasions to your Ministers office and it is disappointing you have either not received or understood our concerns with using an absolute measure in a world that is not often absolute.

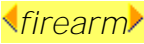
Any metal thickness is manufactured to a specification or tolerance that may be slightly less (a few thousandths of an inch) than the specified number. A piece of 2 mm sheet metal could be 1.9 mm and still described 2mm. Additionally, bending of a material may take it to slightly less than its original thickness. Thus what is described may not be what you purchase through no fault of the purchaser, manufacture etc. In effect the regulation as written would mean that manufacturers would have to use 3 mm steel to ensure that they meet the 2 mm requirement. This would make nonsense of some of the costings in the RIS.

We suggest the interpretation provision should provide a defense for the person who buys what is described as for example a 2mm thickness safe but in actual fact is manufactured to a lesser thickness by including:

“A reference to a specification as to a particular thickness of a metal encompasses metals manufactured within the tolerance of that particular specified thickness.

Additionally the words “at least” should be deleted where they occur in the draft regulations.

- 5) In the debate and speeches around the storage topic the issue of additional bolts was noted. In fact, the Minister said in Parliament on 24/3/15 and to quote from Hansard;

“We are going to ask all category A and B  owners to double mount them, floor and wall.” and *“Category C will also be subject to the double mounting arrangements”*

In fact, the regulation as written requires **all safes less than 150 kg** to be bolted to the floor and wall. The Hansard record did not specify this for Category H safes; it specifically suggested the additional security measures would be addressed by alarms. Thus the regulation appears to **be in contravention of the Ministers statement** and introduces some practical and safety issues for the following reasons.

- Persons with small safes for Cat H or firearms parts are going to be forced to crawl around on the floor to get their firearms? Logically these are probably already **securely** bolted to house fixtures or to other firearms safes and are at comfortable and sensible height for access and in the future should continue to do so.
- Small safes less than 600 mm by 600 mm are going to be hard to mount in a favorable location. If one lives in a wooden frame house with a chipboard or wooden floor that has perhaps a fixed wardrobe in which one would logically place the safe, it may not be possible to do so due to wall stud or floor bearer gaps!
- It is tall safes that are most at risk of being leveraged off a wall, not little ones. Additionally many pistol safes have anti-pry recesses.

We suggest;

In relation to Regulation 9A(f) the following words should be added to the end of that sub regulation:

“Except in the case of receptacles for the purpose of the approved storage of category H firearms or firearms parts and manufactured to have a total dimension of less than 600 mm by 600 mm on the door side in which case they are required to be either attached twice to a wall, or to the floor or to a fixture which fixture is to be bolted to a wall and floor”.

Note we have used the word “attach”, rather than bolted. Regulation 9A(f) uses the word “bolted” which refers to a specific type of attachment, a bolt being;

“A fastener consisting of a threaded pin or rod with a head at one end, designed to be inserted through holes in assembled parts and secured by a mated nut that is tightened by applying torque”.

We submit that in most cases it will not be possible to use a bolt as this requires access to both ends of the fastener. Thus all references to bolt should become “attach”.

- 6) Regulation 9B should be amended so after the words, “not being used”, the following words should be added “or conveyed”.

Although ammunition is not defined in terms of “use” in the Act, the narrow meaning of “use” in relation to firearms could be potentially construed to mean that one must carry ammunition storage to regulation standard at all times, even though we believe this is not the intent of the Regulation.

- 7) Regulation 9B, in the manner and content of its drafting reopens the parliamentary debate of 2015 about storage of ammunition in relation to fire and the like, where undertakings were made to research this more thoroughly. It seems the regulation has been put forward with only minor concessions to what was originally intended.

Additionally, research by one of our members suggest there are **no** moderately priced toolboxes or the like that are easily available to meet this requirement. **The purchase of another safe would be required.** This has not even been considered in the RIS.

In fact, the wooden and light metal receptacles that are to be phased out for firearms storage would be a more satisfactory solution than the proposed regulation. Allowance must be made to meet the manufacture specifications for safe keeping and the principal reason for locking up ammunition should remain to keep it away from the non criminal element that may inadvertently cause harm to themselves or others. In trying to prevent theft, firearms owners' safety and their assets are being potentially compromised.

We also contend some classes of ammunition (as defined in the *Act*), such as propellants and primers, are also less likely to be attractive for theft, requiring further steps to make usable ammunition. Flexibility should be maintained to store as per manufactures recommendations.

We suggest that (b) be deleted as it currently stands and that it be replaced with;

- (b) i. a locked receptacle; or
 ii. a locked cupboard; or
 iii. a locked room

- 8) In relation to regulation 9C there are two issues;

- It would appear that 9C (6) would make more sense as 9C (5)(c) and;
- An additional sub regulation (6) should be added being, the following:

“It is a defence to a prosecution in respect of breach of the provisions of regulation 9C that the license holder took reasonable care to ensure the continuing operation of the electronic security device”.

The introduction of alarms or recording devices has long been a concern of ours, not the least due to the increased complexity of the storage requirement. In principal we remain opposed to this measure.

The “relationship” between a firearm owner and an inert storage container is quite transparent, in that it is a low technology item with an access point (key or combination) that can be easily isolated and controlled by a single person. Fault, if that is evident, can be identified and probably fairly proportioned.

However alarm technology, no matter how simple, brings in the ongoing input of third parties, both those living in premises and those outside the premises maintaining infrastructure. Thus the chance of an inadvertent failure of the device is much higher but the responsibility may be significantly more problematic.

We contend that if a device has failed and failure is not easily apparent to a criminal, the deterrent effect of the device should largely remain. Thus for the Regulation to create an absolute offense is quite unreasonable, especially given the increased penalties for those that are subject to these provisions of the Act. We believe that our proposed sub regulation (6) is a sensible and responsible addition to provide a defense if a reasonable license holder would have been unaware (out of town for example) of the failure of the electronic security device.

Part B – The Regulatory Impact Statement (RIS)

Introduction

The increased storage requirements in the draft regulations have been proposed for sometime on the grounds of necessity to combat an increase in firearms theft. It is well to remember that one of the principal reasons for the mandating locked firearms storage in the 1996 Act was to keep firearms out of the hands of children and the like who may inadvertently harm themselves or others. In this the mandate has been successful, if measured on the number of incidents. Deterrent of theft has generally been also quite reasonable.

However, the argument to increase security levels to prevent theft is simplistically attractive but actually problematic. For instance it probably relies on an assumption that criminals will not adjust their behaviour and methods to suit the changed circumstances. It doesn't look at the reasons for theft and how changes in other areas of policing may assist in the reduction of this. Combined with the cost, the possibility of further prescription creep and even more cost and more penalties, it is unsurprising that SSAA Tasmania, as do many other shooting organisations and individual firearms owners disagree with some of the proposals. This is especially true of introduction of alarms.

In the RIS we had expected to have seen some comprehensive justification of the position. However the RIS, as a justification for a piece of contentious public policy, in our view falls well short of the mark. Further, it has the appearance of background fitted to an existing answer, rather than a paper that draws logical conclusions from strong evidence.

Given the significantly increased penalties for a class of people who generally take their responsibilities in this area quite seriously, firearms owners feel compelled to make strong representations on these matters. In making this response we also feel compelled to set the record straight on some of the data or arguments in this document. Our responses are aligned to the headings in the RIS.

Objective of the RIS

The objectives of the RIS appears to be embodied in the following quotes.

"it is intended to update the minimum storage requirements that have not changed in the 20 years since the Firearms Act 1996 commenced."

"Under the existing storage requirements, an average of 200 firearms are reported stolen per year in Tasmania¹. This is an unacceptable number."

There are two assumptions here that need to be challenged

- Why the implication that because something has not changed in a period time that it should change and;

- What is the measure of “unacceptable”?

Under separate correspondence, we are aware our National body is intending to make a submission to this process. To summarise information they have supplied to us, it can be inferred using available information from this RIS and the public record that the theft rate is only .18% of registered firearms in Tasmania. In terms of theft of anything valuable (as is asserted in the RIS) this is surely very low?

Perhaps the RIS might make more sense if it talked about what is achievable?

The objective section contains a graph relating to theft statistic which is not really the appropriate place for such data.

The authors use it to contend that *“The trend demonstrated is an increasing number of firearms reported stolen each year, with 125 firearms stolen in 2006-07 increasing to 260 firearms stolen in 2015-16.”*

An alternative view of the graph may be that there was a jump in incidents and theft in 2009-10 and the trend has been relatively flat since then. Additionally these statistics don't probably don't take into account new sentencing legislation which may (should) provide a depressing effect on the rate of theft.

Why the sudden jump? It might be surmised that firearm theft seems to have jumped up to a new level around about the time that the drug ICE has become a community issue. It would seem that our members are somehow being implicitly blamed for this small increase in theft when in fact it may well be a result of something that the Police appear to be struggling to control very broadly?

Additionally some simple arithmetic shows since 2006/7 the average number of firearms stolen in each theft incident has remained remarkably constant. In 2006/7 the average was 3.7 firearms stolen per incident dipping to 3.1 in 2008/8, a high of 3.8 in 2010/11 and 3.5 in 2015/16. Theft incident numbers ranging from 40 to nearly 80 are sufficient to conclude there is no evidence suggesting that owners with 10 or more firearms are being targeted or pose any greater actual threat than any other firearm licensee.

As no statistics are available on the actual number of category H firearms stolen one can conclude there is no evidence to support those licensees being targeted to any greater degree than any other licensee? The benefit of requiring alarms to be fitted for 10 or more firearms or a category H firearm seems unsubstantiated. Additionally the risk of unintended consequences occurring because of the alarm requirement seems very real. Some licensees will require tradesman to fit the required alarm, thus providing strangers with details of where firearms owners live and to boot those with 10 or more and category H!

Options

The RIS give four options for implementing the new Regulations. An observation is that options 2 & 3 are pretty much the same.

In the rather fraught TFCC process, firearms stakeholders did agree to phase out of wooden storage and Brownbuilt lockers for long arms, so some change to the status quo, but we are clearly against the other options such as alarms.

We can at least agree on option 4. However we would go further and say that implementation of more stringent requirements may decrease community safety benefits and this needs to be part of any consideration.

Thus our concern is that by perhaps slightly reducing the already low risk of theft by even greater measure, that **risk to our members** might be significantly elevated. How so? An example of how such a perverse outcome may occur is currently being played out in Melbourne, with a spate of car hijackings and aggravated burglaries to as thieves seek to get possession of expensive motor vehicles that have now become impossible to steal by other means. It could happen with firearms. There needs to be a pragmatic balance in keeping a sensible risk balance. It also pays to remember it is not the fault of law abiding citizens for causing the issue by keeping firearms for a variety of purposes, so we are not the ones to punish!

Benefits of Change

Although this section is later in the document, our response will be to address it now, as this would seem to be something that should have been aligned more closely with the objectives of the RIS.

The best thing that can be said about the first paragraph is that it is pure conjecture. There is no evidence for the assertions made; in fact the phrase *“albeit forecasting the difference in numbers is not possible”* would seem to confirm this.

The second paragraph goes onto say *“Improved receptacle standards will inevitably lead to a reduction in the number of firearms stolen”*. Inevitable is an extremely definitive word which suggests a strong body of evidence. Is there any evidence for this? It may help in individual cases but in overall terms may make no difference at all as theft plays out in other ways across the community.

The section then goes onto provides evidence on the benefits of alarms. We contend increasing the number of alarms does not necessarily mean that the benefits of alarms will continue in the same fashion as is argued here. It could even mean that criminals may use the

existence of alarms as indicator of target preference and then develop tactics to circumvent them. They will probably develop tactics at any rate.

Costs and Benefits of Each Option

To address this section with the minimum of discussion we have consolidate our comments into one block.

Firstly to suggest *the “collective cost of this change for firearm owners in Tasmania would be in the range of \$0 ~ \$9 million”* for changes to receptacle specification is a misleading statement, as it will clearly not be zero, so why express it in this fashion? The same comment applies for the alarm analysis as well.

At this point we would note that the statement (page 6) that there are *“1,566 active firearms licence holders with ten or more registered firearms, and 208 Category H firearms holders”* is in our view incorrect.

By our reckoning, it will cost about \$3 million to replace wooden storage and light metal lockers, especially as the figure of \$300 per owner is at the very bottom end for perhaps a 3 long arm receptacle and not an indication of what the average cost is likely to be, probably closer to \$500 when a more realistic assessment of each individuals circumstance is made.

Additionally, there will be;

- Owners who are not counted in the wooden / metal locker category but still don't meet new requirements, as to the best of our knowledge inspections of safes has not included the collection of thickness data. This could amount to a further 10% to 20% of the 30 000 active holders (estimate \$1.5 to \$3.0 million)
- Owners with firearms parts that may not by their nature or quantity be able to be put in an existing safe or may displace other items such as ammunition in an internal compartment. (estimate \$.3 million)
- Modifications to building structures to accommodate extra attachments especially if the wall is Gyprock – stud frame construction and it is difficult to access a solid anchor point such as a stud, particularly if small safes are not given some relief as we have suggested in Part A of this response.
- Cost of the additional storage of ammunition. This is not even addressed in the RIS, but if 50% of owners had to buy another safe (as will be required if the 2 mm spec is adhered to) then this could add \$3 to \$4 million dollars to the bill.

Again we suggest the basic item costs include in the RIS are based on the very the low end of the compliance needs rather than what would be the median impost. We think that the overall cost number would easily exceed the estimate in the RIS especially allowing for the uncosted (in this submission) components of building modification, safe moving to obtain a better

alarm arrangement, compulsory maintenance , or simply to find enough anchor points in a difficult structure. Additionally it will not just be a case of installing an alarm or visual recorder as is where is; for personal privacy or effectiveness reasons a whole rethink of location may be required.

We also note the contradiction between the final statement, on costs on page 6; *“Although this will be an initial up-front cost, given firearms storage requirements have not changed for 20 years, this may effectively be the lifetime costs for the changes for most firearm owners.”* and *“The decision of Parliament to move the specification of storage requirement from the Act to regulations will also assist in the efficient updating of prescribed storage requirements in the future as technology and community expectations change.”*

These contradictions highlight three matters

- Many firearm owners are already facing significant with sunk costs through this requirement to upgrade. At any rate what is likely to be the “lifetime” for “most firearms owners”? Is this just a throw away line?
- New entrants are being further penalised financially, along with currently excessive training and licensing fees and:
- The quote highlights our often made concern that the use of regulations as opposed to placing these requirements in the *Firearms Act 1996* gives a mechanism for excessive and unwarranted prescription creep.

Greatest Net Benefit

In this section are a number of repeated assertions that we have already provided evidence or argument to the contrary. However new supporting evidence appears in the RIS in the form of a graph on “Culpable Homicides.” This is used as evidence to hit up firearms owners with increased cost, in the hope of a reduction in firearm crime and community cost of firearm crime.

The statements; *“however every use of a firearm to progress a criminal endeavour has the potential to result in death or serious injury, and on average there is more than one unlawful homicide”* seems to imply that stolen firearms from licensed owners are actually responsible for 100% of these incidents. The section concludes with the statement *“If reducing firearms thefts can reduce even a handful of deaths over the next twenty years, the costs of the changes will be well and truly justified.”*

Is this the case that firearms stolen from licensed firearms owners are an issue of this magnitude, or should such statements be made with the qualification from the clear evidence given in places like the 2014-15 Federal Senate Inquiry into gun-related violence in the community, that these firearms are not being used by criminals in illegal activities. If there is evidence, please provide it as it makes real difference to any cost benefit argument in the RIS. We believe that the contribution of firearms stolen from licensed firearms owners to such

events may be less than 10% of the total, meaning that changes **are not** “*well and truly justified*”

Stakeholder Consultation

The RIS refers to various amounts of consultation that was had with firearms groups over the previous few years. It was made clear in the legislative process last year by stakeholder groups that this consultation was ad hoc and involved a lot of “telling” when it did happen and not much “listening”. It is agreed that TFCC did agree to improvements in the construction of containers for longarms. They **did not agree** to alarms, changes to ammunition storage or mandatory storage of firearms parts.

In fact the RIS does not even address the proposals for ammunition that are contained in the Regulations even though the Government made a major undertaking to the Legislative Council last year review and consult on what had been originally proposed.

Overall there seems little appetite for consultation; much of what is contained in our submission could have been dealt with prior to this process. It has been well over twelve months since last year’s Parliamentary debate and to the best of our knowledge there has been no attempt in that period to engage directly with those most likely to be impacted, prior to the release of the draft regulations and the RIS.