

Firearms Discussion Paper 2007

April 2007

Justice Policy

DEPARTMENT
OF JUSTICE

State Government
Victoria

FIREARMS DISCUSSION PAPER 2007

PURPOSE

The purpose of this discussion paper is to provide firearms stakeholders with information regarding current issues in firearms regulation and to identify any additional issues concerning the operation of the Victorian *Firearms Act 1996* ('the Act'). It is intended that this discussion paper will facilitate discussion between firearms stakeholders and the Department of Justice regarding the best means of addressing currently identified issues.

Issues identified in the discussion paper fall within the following broad categories:

- Handgun target shooting and clubs;
- Paintball markers and gaming;
- Firearms storage;
- Private security industry firearms;
- Hunting related amendments;
- Firearms collectors;
- Firearms dealers;
- 'Prohibited persons' under the Act;
- Investigation, enforcement and disciplinary processes;
- Disposal and seizure of firearms;
- Recognition of interstate firearms licences and permits;
- Regulation of imitation firearms;
- Carriage, use and possession of firearms for hunting; and
- Miscellaneous technical and remedial issues in relation to the Act.

Whether the above issues will be addressed by legislative amendments will be determined following consultation with stakeholders. It should be noted, however, the Victorian Government is unlikely to contemplate any amendments to the Act that could contravene the national firearms agreements (discussed below) or reduce the effectiveness of the Act in ensuring public safety and peace.

The Department appreciates the assistance provided by members of the Victorian Firearms Consultative Committee (VFCC) in both identifying several issues discussed herein and making a number of constructive proposals throughout Committee and Sub-Committee meetings. The Department would also like to take this opportunity to thank the licensees who have brought issues to the Department's attention over the course of the preceding twelve months.

The Department welcomes the views of stakeholders regarding the issues and proposals discussed in this paper. Any comments should be provided in writing to the Justice Policy unit of the Victorian Department of Justice by **23 April 2007**. The contact details for Justice Policy are as follows:

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BACKGROUND TO THE FIREARMS ACT & RECENT AMENDMENTS

The *Firearms Act 1996* regulates the possession, carriage and use of firearms in Victoria. The Minister for Police & Emergency services is responsible for this legislation. Victoria Police is responsible for the regulation of firearms under the Act.

The primary purpose of the Act is to give effect to the principle that the possession, carriage, use, acquisition and disposal of firearms are conditional on the need to ensure public safety and peace. The Act seeks to achieve this purpose through a number of mechanisms such as the establishment of a firearms register, the creation of a system of licensing for firearms owners and users, and the setting of conditions for the secure carriage and storage of firearms.

The Act has been amended over time to reflect changing community attitudes towards the regulation of firearms, developments in firearms technology and specific incidents involving the misuse of firearms.

In particular, shootings at Port Arthur in 1996 and Monash University in 2002 led to national agreements such as the 1996 National Firearms Agreement ('NFA'), the 2002 National Firearms Trafficking Policy Agreement ('NFTPA') and the 2002 National Handgun Control Agreement ('NHCA'). These agreements were entered into by the Commonwealth Government and all State and Territory Governments through the mechanism of the Australasian Police Ministers' Council ('APMC'). Some agreements, such as the NFA and the NHCA, have also been endorsed by the Council of Australian Governments ('COAG'). Through these agreements, State and Territory Governments have adopted a broadly consistent national approach to the regulation of firearms. The Victorian Act reflects the terms of these national agreements.

The amendments to the Act necessary to implement the NHCA in Victoria were made in 2003 by the *Firearms (Trafficking and Handgun Control) Act 2003* ('the Handgun Control Act'). Following extensive consultation, the *Firearms (Further Amendment) Act 2005* (the 'Amendment Act') was enacted to address some of the issues that were identified in the operation of the 2003 amendments.

The Amendment Act introduced changes in the following areas:

- Clarification of the minimum participation requirements for handgun target shooters who own a handgun. These minimum participation requirements no longer applied to handgun target shooters who do not own a handgun. The Amendment Act also simplified the concept of an 'approved handgun shooting match';
- Creation of a new category of licence for antique handgun collectors. This licence is only available to those persons who collect pre-1900 percussion handguns. An amnesty has been granted with respect to compliance with the requirements of this licence until 31 March 2007 to give firearms collectors time to comply with the requirements of the Act;
- Introduction of a new class of licence for the possession, carriage and use of paintball markers. This licence is only required by individuals who wish to acquire a paintball marker.

Individuals who only wish to participate in paintball games at approved locations do not require a firearms licence;

- Implementation of resolutions made by the APMC in 2004 regarding the regulation of firearms in the security industry. In particular, firearms used in the security industry are to be registered to security industry employers, are restricted to those used by Australian police services and all ammunition needs to be factory manufactured or loaded. However, the use of 'over-calibre' security handguns and restricted ammunition is permitted by security licence holders who are granted an exemption by the Chief Commissioner of Police during a transitional period prior to 1 July 2008;
- Introduction of new controls to ensure that rifles are not used in combination with high-capacity detachable magazines other than in exceptional circumstances.

Following commencement of the Amendment Act, the Department has consulted extensively with the VFCC¹ and Victoria Police regarding operational issues arising from the new provisions. As a result, a number of operational and enforcement issues arising from the Amendment Act were identified. These issues, along with a number of other matters related to the regulation of firearms in Victoria, are discussed below in more detail.

¹ The Victorian Firearms Consultative Committee was established in 2005 as a representative body of organisations interested in the regulation of firearms in Victoria. The role of the committee is to provide advice to the Minister for Police & Emergency Services, who is responsible for the administration of the *Firearms Act 1996*, on firearms related issues on which the Minister requires additional policy advice. More information on the Committee and its members can be found on the Department of Justice website (www.justice.vic.gov.au) by selecting the links to Community Safety, Weapons then Firearms Consultative Committee.

ISSUES & PROPOSALS FOR DISCUSSION

The issues and proposals discussed below relate to the following broad groups:

- a. Handgun target shooting and clubs;
- b. Paintball markers and gaming;
- c. Firearms storage;
- d. Private security industry firearms;
- e. Firearms collectors;
- f. Firearms dealers;
- g. 'Prohibited persons' under the Act;
- h. Investigation, enforcement and disciplinary processes;
- i. Disposal and seizure of firearms
- j. Recognition of interstate firearms licences and permits;
- k. Regulation of imitation firearms;
- l. Carriage, use and possession of firearms for hunting on Crown land; and
- m. Miscellaneous technical and remedial issues in relation to the Act.

HANDGUN TARGET SHOOTING & CLUBS AMENDMENTS

Handgun Target Shooter Participation Requirements

Background

1. The NHCA requires all handgun target shooters to satisfy annual minimum participation requirements. Specifically, the NHCA requires that in each year:
 - a sports shooter must participate in a minimum of six club organised competitive shooting matches; and
 - for each different type of handgun owned for different events, the sporting shooter must undertake at least four club organised shoots.
2. The intention of the NHCA minimum handgun participation requirements is to ensure that only genuine, committed handgun target shooters are able to retain their handgun target shooting licences. Victoria's legislation already contained a minimum requirement for handgun target shooters to participate in a shoot on at least 10 days of each year. The Amendment Act sought to particularise the shoots to meet the NHCA requirements but also to ensure Victoria's previous minimum participation requirements were not diminished.
3. The NHCA minimum participation requirements are implemented in s.16 of the Act. The Amendment Act altered s.16(5)(d) of the Act to provide that a handgun target shooter must participate in a minimum of 6 approved matches **and** 4 target shoots *or* approved matches on at least 10 separate days. The requirement may be satisfied by means of participation in

either a ‘handgun target shoot’ [defined in s.16(8)] *or* an ‘approved handgun target shooting match’ (defined in s.3). In addition, s.16(5)(c) provides a handgun target shooter must participate at least 4 times per class of handgun owned on at least 4 separate days.

Issue

4. The policy intention of the amendments to the minimum participation requirements was to enable this participation to take the form of either a handgun target shoot or an approved handgun target shooting match.
5. In the process of implementing the new handgun participation requirements, interpretative issues were raised regarding the new requirements under section 16(5)(c). In particular, as s.16(5)(c) only refers to a ‘handgun target shoot’, there was uncertainty regarding whether ‘approved handgun target shooting matches’ may also be counted for the purposes of s.16(5)(c).
6. The intention of the amendment to s.16(5)(c) was to make it more practicable for handgun target shooters to comply with minimum participation requirements by enabling them to count handgun target shoots as well as competitive handgun target shooting matches.
7. Accordingly, Victoria Police has adopted a policy of allowing participation in ‘approved handgun target shooting matches’ to be counted for the purposes of s.16(5)(c). However, the removal of any ambiguity regarding the interpretation and implementation of s.16(5)(c) may be desirable.

Proposal

8. It is proposed that s.16(5)(c) be amended to clarify that participation for the purposes of s.16(5)(c) may take the form of either a handgun target shoot [as defined in s.16(8)] or an approved handgun target shooting match (as defined in s.3).

Handgun Target Shooting Reporting Requirements

Background

9. The NHCA requires all handgun target shooters to satisfy annual minimum participation requirements. The intention of the NHCA minimum handgun participation requirements is to ensure that only genuine, committed handgun target shooters are able to retain their handgun target shooting licences. The details of minimum participation requirements are further discussed at section 3.1.1 of this discussion paper.

10. Section 123B of the Act requires approved handgun target shooting clubs to keep details of their members and records of the participation by their members in handgun target shooting matches and handgun target shoots conducted by the club.
11. Section 123C of the Act requires approved handgun target shooting clubs to submit a report to the Chief Commissioner within 3 months after the end of each calendar year. This report must contain details of the handgun target shooting matches and shoots conducted by the club, club membership details and participation details regarding each club member.

Issue

12. Section 123C is intended to provide Victoria Police with information to enable an assessment of whether the holders of general category handgun licences issued for the reason of target shooting have satisfied the minimum participation requirements in s.16 of the Act. However, s.123C currently imposes a very significant reporting and assessment burden upon approved handgun target shooting clubs and Victoria Police. In addition, Victoria Police experiences difficulty determining whether handgun target shooters have satisfied the minimum participation requirements due to the vast volume of data provided by handgun target shooting clubs which varies as to its quality.
13. A more efficient and effective means of addressing non-compliance with the handgun target shooting minimum participation requirements may be to enable reporting of participation by exception. That is, approved handgun target shooting clubs could only be required to report to Victoria Police any actual, or reasonably suspected, instances of non-compliance with handgun target shooting minimum participation requirements by club members. This would enable both clubs and Victoria Police to focus their resources upon actual or suspected non-compliant licence holders. The exception based reporting approach has been discussed with stakeholders and Victoria Police and conceptually appears well supported.
14. The above approach would still require approved handgun target shooting clubs and members to record all participation by licensed shooters under s.123B of the Act. Victoria Police would also retain the power under s.123B(3) to require production of club records at any reasonable time to enable independent auditing of membership and participation. A participation reporting by exception approach would be predicated on the understanding that any substantive failure of reporting by approved handgun target shooting clubs is an offence under s.123C, and may result in cancellation of the club's approval under s.123V. In addition, s.123B could be amended to provide that it is an offence for approved handgun target shooting clubs to fail to keep accurate and legible records required by that section in a reasonably timely manner.

Proposal

15. It is proposed that s.123C of the Act be amended to only require approved handgun target shooting clubs to report to Victoria Police any actual or reasonably suspected instances of non-compliance with handgun target shooting minimum participation requirements by club members. In addition, s.123B could be amended to provide that it is an offence for approved handgun target shooting clubs to fail to keep accurate and legible records required by that section in a reasonably timely manner.

Obligation to Give Notice When a Handgun Target Shooter Receives Instruction

Background

16. Items 4 and 5A of Schedule 3 of the Act exempt a person from holding a licence under the Act if they are receiving instruction in the use of a general category handgun under certain conditions that include immediate supervision by a licence holder.
17. Section 54(2) of the Act requires that the Chief Commissioner be notified of each occasion on which a person receives instruction in the use of a firearm. This notification is necessary as a person may only receive instruction without a licence on a limited number of occasions.
18. The Amendment Act altered s.54(2) of the Act to change the onus of reporting instruction on the use of a general category handgun from the person receiving the instruction to the person delivering the instruction. This reflects the case that a person providing firearms instruction should be familiar with the requirements of the Act, Victoria Police processes and the necessity to ensure the probity of firearms users.
19. Sections 54(3) and (4) prescribe the information that must be provided in a notification to the Chief Commissioner that a person has received instruction in the use of a firearm. This includes information regarding the identity of the person, whether or not a person is a 'prohibited person' under the Act, and the number of occasions a person has previously received instruction in the use of a general category handgun.

Issue

20. Following the Amendment Act's changes to s.54(2), however, there is some ambiguity as to whether details regarding the instructor, the person receiving instruction, or both must be provide the prescribed notice under ss.(3) and (4).

21. It is intended that information regarding the identity of both the instructor and the person receiving instruction be provided to the Chief Commissioner. It is unreasonable to require the instructor, who gives the notification, to definitively declare whether the person receiving instruction is a prohibited person or on how many previous occasions they have received instruction. Instead, it is intended that the instructor make reasonable enquiries with the person being instructed to enable provision of information to the Chief Commissioner on the basis of the instructor's reasonable belief.

Proposals

22. It is proposed that section 54(3)(a) be amended to clarify that information regarding the identity of both the instructor and the person receiving instruction be provided to the Chief Commissioner.

23. It is proposed that section 54(4) be amended to require that the instructor giving notification must declare that they have made reasonable enquiries of the person being instructed regarding their 'prohibited person' status and previous instances of instruction. On the basis of those enquiries and any other information available to the instructor, the instructor must then declare their belief regarding the 'prohibited person' status of the person being instructed, and the number of previous occasions on which the student has received instruction.

24. It is proposed that section 54(5) be amended to additionally provide that it is an offence for the person receiving instruction to give false information regarding their identity, 'prohibited person' status or previous instances of instruction to the instructor who notifies the Chief Commissioner of the instruction. The existing maximum penalty in section 54(5) of 120 penalty units or 2 years imprisonment would appear to be appropriate.

Handgun Target Shooting Club Requirements

Background

25. The Amendment Act inserted s.123D(1A) into the Act. This section requires an approved handgun target shooting club to take prescribed measures to ensure that a holder of a provisional general category handgun licence, whose provisional licence has been cancelled or suspended, does not take part in a handgun target shooting match conducted by the club.

26. In the process of implementing the Amendment Act, stakeholders questioned whether this obligation imposed on clubs was intended to apply to handgun target shoots as well as handgun target shooting matches.

27. The Explanatory Memorandum for the Amendment Act states that this new provision ‘mirrors that contained in section 123D(1) of the Principal Act in relation to holders of handgun target shooting licences.’ The prescribed measures in s. 123D(1) also only refer to handgun target shooting matches.

Issue

28. As a matter of policy, the requirements imposed on clubs with respect to ensuring that both provisional general category handgun licensees and general category handgun licensees have not had their licence suspended or cancelled, should apply to participation in both handgun target shoots and handgun target matches. Similar issues of community safety arise in both circumstances.

Proposal

29. It is proposed that ss.123D(1) and (1A) be amended to clarify that these sections apply to both handgun target shooting matches and handgun target shoots.

Notification to Clubs or Employers of Suspension or Cancellation Licences

Background

30. The Act does not currently enable the Chief Commissioner to advise a suspended or cancelled licence holders’ club or employer of the suspension or cancellation of a firearms licence.

Issue

31. Employment may be relevant to the genuine reasons for holding a firearms licence, such as employment in the security industry, corrections or primary production. This places the person’s club or employer in jeopardy if they inadvertently permit the suspended or cancelled licence holder to possess firearms for recreational or occupational purposes.

Proposal

32. It is proposed that Division 9 of Part 2 of the Act be amended to impose a requirement on the Chief Commissioner to notify the licence holder’s club and/or employer when a licence is suspended and any subsequent re-instatement or cancellation. Such a requirement should only apply to clubs or employers that the Chief Commissioner is aware are related to the licence holder’s genuine reasons for holding a firearms licence.

PAINTBALL MARKER & GAMING AMENDMENTS

Use of Paintball Markers for Non-Recreational Purposes

Background

33. Victoria Police has received paintball marker licence applications from persons who seek to use paintball markers for farming activities and the production of artwork.
34. Section 9(6) of the Act provides that the Chief Commissioner of Police may licence a person to possess, carry or use a registered paintball marker for the reasons specified in the licence. Section 13A requires that a paintball licence demonstrate that the licence is required for the purpose of engaging in activities that require the use of paintball markers at a location approved by the Chief Commissioner of Police.

Issue

35. The Second Reading Speech and the Explanatory Memorandum for the Amendment Act do not specifically address the grounds for the possession a paintball marker or whether the possession of the marker was intended only for recreational activities.
36. Therefore, the Act does not explicitly preclude the Chief Commissioner of Police from issuing a paintball marker licence to an applicant for a non-recreational purpose, provided that the location where the relevant activities occur is approved by the Chief Commissioner. In addition, an applicant would need to demonstrate that a paintball marker licence is actually required for the purpose of engaging in such non-recreational activities
37. Initial consultation with stakeholders suggests that the use of paintball markers for farming or other non-recreational purposes occurs very rarely.

Proposal

38. As paintball markers do not appear to be genuinely required for any non-recreational purposes, it is proposed that the Act specifically prohibit the grant of paintball licences for any purpose other than paintball gaming at a location approved by the Chief Commissioner of Police.

Paintball Marker Storage Requirements

Background

39. Prior to the passage of the Amendment Act in 2005, the Act required a person wishing to carry or use a paintball marker to participate in paintball gaming to obtain a 'category A' longarm licence for the reason of sport or target shooting.
40. The Amendment Act created a new category of firearms licence – a 'paintball marker licence'. A paintball marker licence is now only required by persons wishing to acquire a paintball marker. Persons wishing to participate in paintball gaming, but who do not wish to acquire a paintball marker, are exempt from the requirement to hold a paintball marker licence (or any other form of firearms licence) when using or carrying a paintball marker for the purpose of engaging in paintball activities at a location approved by the Chief Commissioner of Police.
41. Sections 121 and 126 of the Act provide for specific storage and transportation requirements relating to category of firearm licence. Prior to the introduction of the separate paintball marker licence, paintball markers were subject to the storage and transportation requirements which applied to firearms held under a category A longarm licence.
42. Item 1 of Schedule 4 of the Act prescribed the storage requirements applicable to category A & B longarms. These firearms must be stored in a receptacle –
- which is constructed of hard or steel that is not easily penetrable; and
 - which, if it weighs less than 150 kilograms when it is empty, must be fixed to the frame of the floor or the wall of the premises where the firearm is kept in such a manner that it is not easily removable; and
 - which, when any firearm is stored in it, is locked with a lock of sturdy construction.
43. In addition, Item 1 of Schedule 4 requires premises to be fitted with an 'effective alarm system' if more than 15 category A or B longarms are stored on the premises.

Issue

44. Following the Amendment Act, paintball markers were no longer considered category A firearms and were therefore not subject to the storage and transportation requirements which apply to category A firearms pursuant to ss.121 and 126.
45. The Act's absence of storage and transportations requirements due to the new 'paintball marker' definition was not intended. As an interim measure, Victoria Police has imposed appropriate storage and transportation standards as licence conditions for paintball marker licence holders. This is not considered a permanent solution as it is desirable that paintball

marker storage standards be explicitly stated in the Act, as is the case with all other firearms.

Proposal

46. It is proposed that ss.121 and 126 and Schedule 4 of the Act be amended to explicitly include paintball markers and prescribe storage and transportation requirements.
47. As paintball markers were previously subject to the same storage and transportation requirements as category A and B longarms, it is proposed that the requirements under Item 1 of Schedule 4 be prescribed as an appropriate ongoing storage and transportation standard for paintball markers.

FIREARMS STORAGE AMENDMENTS

Storage & ‘Effective Alarm’ System Requirements

Background

48. Section 121 the Act provides for specific storage requirements relating to each category of firearm licence. Schedule 4 of the Act specifically prescribes the level of security required, which varies according to the category and number of firearms stored on particular premises. There remains, however, a discretion in s.121 for the Chief Commissioner to approve the storage of firearms in a manner other than that prescribed in Schedule 4 if she is satisfied that this alternate manner is as secure as the manner provided for in Schedule 4.
49. Items 1(2) and 2(2) of Schedule 4 provides that if category A, B, C or D longarm or handgun licence holders store more than 15 firearms on a premise, the premises must be fitted with an “effective alarm system”.
50. Item 3(2) of Schedule 4 provides that that if firearms collector licence holders store more than 15 antique handguns or, in any other case, more than 5 firearms, on a premises, the premises must be fitted with an “effective alarm system of a class approved by the Chief Commissioner”.

Issues

51. The ways in which “effective alarm” and other safe storage requirements are imposed upon longarm and handgun licence holders on the one hand, and firearms collector licence holders on the other hand, are inconsistent and not necessarily appropriate in light of risks to community safety.

52. As item 3(2) requires firearms collector licence holders to install an effective alarm if they have more than 5 firearms that are not antique handguns, this may result in stricter storage conditions being imposed upon collectors than category A, B, C or D longarm or handgun licence holders. While this lower threshold may be justified upon grounds that longarms held by collectors are generally valuable, the manner of securing firearms due to their value alone is a matter for the collector. Although longarms held by collectors may pose a threat to community safety, they are unlikely to pose a greater threat than category A, B, C or D longarms or general category handguns. Therefore, it is considered appropriate for firearms collector licence holders to be subject to the same effective alarm requirement threshold as that which applies to other licence holders.
53. The Australian Institute of Criminology released a report in 2006 regarding the theft of firearms in Australia. This report emphasised the need for firearms owners to be more vigilant in safely storing and securing their firearms. The report concluded that the fact that most thefts involved firearms that were legally stored suggests that current security requirements may be ineffective in preventing theft. Finally, the report noted that a holistic approach to firearms security should be adopted to ensure that firearms and the premises in which they are stored are kept secure.
54. In light of the Australian Institute of Criminology report, it is considered appropriate to clarify the storage standards that apply to category A, B, C and D longarm, general category handgun and firearm collector licence holders. The Department is mindful however of past stakeholder criticisms of the effective alarm policy as being ineffective in regional areas – due to both “black spots” and the remoteness factors. Alternatively, other enhancements to the security of firearms could be considered. The Department notes that the costs, benefits and effectiveness of any enhancement to safe storage standards will need to be carefully considered.
55. Items 1(2) and 2(2) of Schedule 4 currently refer to an “effective alarm”. This term is not defined in the Act. By contrast, item 3(2) specifies in the case of firearm collectors that an effective alarm must be “of a class approved by the Chief Commissioner”.
56. To provide some certainty to all firearms regarding effective alarm requirements, Victoria Police has adopted the following policy:

An effective alarm for the purposes of item 3(2) is an intruder alarm system, the installation, maintenance and operation of which complies with the Australian Standards AS 2201.1-1998 ‘Intruder Alarm Systems – Part 1: Systems installed in client’s premises’. In the event of an intrusion, the alarm should -

- a. activate an audible alarm warning device; and*
- b. activate an external visible alarm warning light.*

Where the Chief Commissioner is satisfied that extraordinary circumstances exist that make it technically or practically unfeasible for a licence holder to install, maintain or operate the class of effective alarm system approved above, the Chief Commissioner may approve an alternate effective alarm system on a case-by-case basis.

Where an alarm system exceeds these minimum requirements (e.g. back-to-base monitoring in addition to the audible alarm and warning light), special approval is not required. Where an alarm system has additional features but does not satisfy the minimum requirements, such as back-to-base monitoring instead of a visible warning light, special approval from the Chief Commissioner will still be required.

This definition of an “effective alarm” is also to be utilised for the purposes of the remainder of Schedule 4, specifically items 1(2) and 2(2).

Collectors who satisfy the requirements of section 122(1A) may continue to store firearms in accordance with the requirements of item 3A of Schedule 4.

57. The Victoria Police policy does not currently require that an “effective alarm” include a back-to-base monitoring system in some or all circumstances. Monitored alarms are arguably more effective in ensuring the security of firearms, particularly when combined with a private security alarm-response service. As mentioned earlier, however, the utility of such systems is significantly diminished in regional/rural areas. Such measures do, however, result in the occupier of premises incurring ongoing alarm monitoring and response service costs. The amount of these costs varies according to the provider of monitoring services but may amount to as little as around \$1.00 per day or \$365.00 per year.

Proposals

58. Stakeholder submissions are sought on three alternative proposals

Proposal A

Vary the existing alarm requirements for owners of Category A, B, C and D longarms and general category handguns so that if licence holders in these categories store five or more firearms on premises those premises must be fitted with an “effective alarm system” which is to be defined as:

- “an intruder alarm system, the installation, maintenance and operation of which complies with the Australian Standards AS 2201.1-1998 ‘Intruder Alarm Systems – Part 1: Systems installed in client’s premises’ (as amended from time to time). In the event of an intrusion, the alarm should -
- a. activate an audible alarm warning device; and
 - b. activate an external visible alarm warning light.”

This will place the existing definition of ‘effective alarm’ used by Victoria Police on a legislative basis.

Proposal B

Vary the existing alarm requirements applying to longarm collectors so that an effective alarm is required where fifteen or more firearms are stored premises. An “effective alarm” is to be defined as above. This will place the existing definition of ‘effective alarm’ used by Victoria Police on a legislative basis and impose the same alarm requirements on all licence holders who store 15 or more firearms on premises.

Proposal C

Vary the existing alarm requirements that apply to category C or category D longarms and general category handguns so that an effective alarm is required where five or more firearms are stored on premises. Category A or B longarms would remain subject to a requirement that an effective alarm be installed when 15 more firearms are stored on premises. Firearms collectors would remain subject to a requirement that an effective alarm be stored when 15 more antique handguns, or 5 firearms, are stored on premises. An “effective alarm” is to be defined as above. This will place the existing definition of ‘effective alarm’ used by Victoria Police on a legislative basis and impose the alarm requirements on the basis of the risk to public safety posed by different categories of firearm.

Notification of Change of Licence or Permit Holder or Firearms Storage Address

Background

59. Section 139 of the Act requires the holder of a licence or permit under the Act to notify the Chief Commissioner of any change of the address which appears on the licence or permit.

Issues

60. There are, however, a number of addresses that the Chief Commissioner requires details of to ensure public safety and efficient administration of the Act. In particular, Victoria Police requires accurate details of a licence or permit holder’s residential, postal and firearms-related-business addresses. In addition, Victoria Police require details of the address at which each registered firearm is usually stored. Section 139 does not currently meet all these requirements.

Proposals

61. It is proposed that section 139 be amended to provide that the holder of a licence or permit under the Act must notify the Chief Commissioner in writing of any change of the address which appears on the licence or permit or any change to their residential, postal, firearms-related-business addresses within 14 days after the change occurs.
62. In addition, it is proposed that section 139 be amended to require that the Chief Commissioner be advised if the location at which a registered firearm is ordinarily stored changes within 14 days of that change.
63. It is proposed that section 106 of the Act be amended to specifically provide that a person applying for a permit to acquire a firearm must advise the Chief Commissioner of the location at which the firearm will ordinarily be stored.
64. It is proposed that section 113(3) of the Act be amended to provide that the Chief Commissioner's register of firearms must include details of the location at which a registered firearm is ordinarily stored.

Safe Storage of Deceased Estate Firearms

Background

65. Section 180 of the Act enables the executor or administrator of a person who has died in possession of firearms to possess those firearms for a period of 6 months for the purpose of disposing of them without the appropriate licence or safekeeping requirements.

Issue

66. The Act does not, however, impose safe storage requirements on the executor or administrator in relation to the firearms that form part of a deceased estate. Given that safe storage requirements are imposed upon firearms licence holders, it is inappropriate that potentially unlicensed executors or administrators be permitted to store firearms in a less secure manner.
67. In addition, section 180(2) provides that the executor or administrator must notify the Chief Commissioner of the death of the person who possessed the firearm. The Act does not, however, provide any guidance as to the time in which such notification must be provided to the Chief Commissioner. Given that failure to provide such advice is an offence with a penalty of 10 penalty units, this lack of any guidance regarding the timing of notification is undesirable.

Proposals

68. It is proposed that section 180 of the Act be amended to provide that a firearm possessed by an executor or administrator under this section must be stored in accordance with the storage provisions in part 6 of the Act as if the executor or administrator held a relevant firearms licence. Alternatively, the executor or administrator should be permitted to arrange for a licensed firearms dealer or a person who holds a current firearms licence that permits possession of the firearm in question to store the firearm on behalf of the executor or administrator in accordance with part 6 of the Act.
69. It is proposed that section 180(2) of the Act be amended to provide that notification must be provided to the Chief Commissioner by the executor or administrator as soon as is reasonably practicable upon the executor or administrator becoming aware of the death of the person who possessed the firearm.

PRIVATE SECURITY FIREARMS AMENDMENTS

Use of Restricted Ammunition by Security Guards

Background

70. On 30 June 2004 the APMC agreed that jurisdictions should, taking into account training needs, limit the calibre, characteristics and appearance of firearms used in the security industry to those used generally by Australian police services (eg. 38 calibre, 9mm, 40 calibre) and require that ammunition used be factory manufactured or loaded. This agreement is intended to restrict the use of ammunition that may pose a risk to the community in the context of the environment in which private security personnel operate.
71. The Amendment Act inserted provisions to implement the above APMC agreement. Section 210 of the Act provides that the holder of a handgun security guard licence must be authorised by the Chief Commissioner of Police to possess, carry or use 'restricted ammunition'. Section 3 of the Act defines 'restricted ammunition' to include ammunition which is not factory manufactured, is not recommended for use by the manufacturer of a handgun, is a magnum load or is a full metal case projectile. On 1 July 2008, s.57A of the Amendment Act will commence and it will only be possible for the Chief Commissioner to authorise the use of restricted ammunition by security personnel in exceptional circumstances.

Issue

72. Sections 210 and 57A are consistent with the policy of phasing out restricted ammunition in the private security industry.
73. However, handgun security licence holders currently use non-factory manufactured ammunition, such as reloaded ammunition, for training or re-qualification purposes because it is significantly less expensive than factory-loaded ammunition.
74. Victoria Police has received a number of applications from handgun security licence holders seeking authorisation to use reloaded ammunition for training or re-qualification purposes. Victoria Police has issued a 'blanket authorisation' enabling all handgun security licence holders to use reloaded ammunition for the purposes of security training or re-qualification at approved shooting ranges until 1 July 2008. This blanket authorisation is intended to avoid imposing additional costs and inconvenience upon the private security industry while this policy issue is being contemplated.
75. The APMC resolution of June 2004 states that implementation of the agreement to restrict ammunition used by private security personnel should take into account training needs. Therefore, it may be appropriate for the Act to generally permit the use of non-factory manufactured ammunition, such as reloaded ammunition, for training or re-qualification purposes if this does not undermine community safety or professional practices in the security industry.

Proposal

76. It is proposed that the Act be amended to enable private security handgun licence holders to be able to possess, carry and use reloaded or non-factory loaded ammunition for training and re-qualification purposes (but not otherwise in the course of security guard duties).
77. It is not proposed to broaden the ability of security handgun licence holders to use over-calibre, non-recommended, magnum or full metal case projectile ammunition without a specific individual authorisation in exceptional circumstances.

Possession of Multiple Firearms by Security Firms & Personnel

Background

78. The safe possession, use and storage of security guards' firearms is of particular importance to the integrity of the firearms licensing system, the professionalism of the private security industry and the maintenance of community safety.

79. In 2004 APMC resolved that firearms used in the security industry are to be owned by, or registered in the name of, security industry employers. In addition, the APMC agreed that the number of firearms held by security industry employers should be commensurate with genuine commercial needs. The intention of these resolutions is to place reasonable limits on the number of firearms held by the security industry and put a greater onus on security firms to ensure that all legal requirements in relation to firearms are satisfied.
80. The Amendment Act implemented the above APMC resolutions by introducing section 15(4) to the Act. Section 15(4)(a) provides that a security handgun licence must not be issued for more than one general category handgun. This ensures that private security guards do not use more than one handgun during the course of their duties. Section 15(4)(b) provides that when a licence holder is employed as a security guard, the licence must only be issued for use of a handgun that is registered to the employer. Therefore, security businesses with handgun licences are responsible for the safe management of handguns used by the business.

Issue

81. Section 15(4)(a) has the unintended effect of preventing a security business that holds a handgun security guard licence from holding more than one handgun under the licence. This was not the intention of the provision, does not encourage responsible security industry practices, and undermines the requirement under section 15(4)(b), that security industry firearms be registered to the employer.
82. It would be preferable for handgun security business licence holders to be permitted to own, possess and use a number of firearms that is commensurate with the genuine commercial needs of the business. This would reflect current responsible security industry practices. Victoria Police recognises that handgun security business licence holders generally require more handguns than the number of security guards that are employed. This allows for some firearms to be used on duty whilst others may be held at the security business' premises for replacement, repair or training purposes.

Proposal

83. It is proposed that section 15(4) of the Act be amended to explicitly provide that a person who operates a security business and holds a handgun security licence may possess, carry or use a number of handguns that are, in the opinion of the Chief Commissioner, commensurate with the genuine needs of the business. These handguns must be registered to the security business. It is not proposed that security guard employees of security businesses be permitted to possess, carry or use more than one handgun for private security purposes.

Issue Of Handgun Licences for Occupational Purposes When Compensation Was Paid For Surrender

Background

84. The NHCA provides that compensation may be paid to a person who elects to retire from sport shooting or who can no longer comply with the requirements that apply for a post-1946 historical collector under the Act. Under the NHCA, a person who accepted compensation for all of his or her legal handguns and surrenders their licence cannot possess a general category handgun licence for a minimum of five years after receiving the compensation and surrendering the licence.
85. Regulation 17A of the Firearms Regulations 1997 implements the above aspect of the NHCA by providing that the Chief Commissioner must not issue a general category handgun licence to a person who has relinquished their general category handgun licence, surrendered their handguns and received compensation for their handguns for a period of five years following the relinquishment and surrender.

Issue

86. This provision prevents re-application for a handgun licence for any reason. Therefore, a person who meets the criteria in regulation 17A cannot currently reapply for a handgun licence for occupational reasons, such as licensed private security guard activities. The purpose of regulation 17A is to prevent persons from abusing the national handgun buyback scheme. It was not the intention of the NHCA or regulation 17A to restrict the issue of handgun licences for necessary and legitimate occupational purposes.

Proposal

87. It is proposed that regulation 17A be replaced by a provision of the Act that prevents persons from abusing the national handgun buyback scheme but does not restrict the issue of handgun licences for necessary and legitimate occupational purposes. It is desirable that this provision be located in the Act, rather than the Regulations, to ensure consistency with the remainder of the Act's provisions that prescribe when a licence may be granted.

Evidence of Security Guard or Prison Officer Employment For Purposes of Issue of General Category Handgun or Category A & B Longarm Licences

Background

88. Section 15(2)(a) of the Act places requirements on natural person licence applicants when applying for a security guard or prison guard handgun licence to supply evidence of employment.
89. Section 15(2)(a)(i) of the Act provides that an applicant for a security handgun licence must hold a licence under the Private Security Act 2004.

Issues

90. There is no requirement for corporate security guard or prison guard handgun licence applicants to supply evidence of employment. This has resulted in self employed or security firms refusing to provide evidence of requirement to carry handgun in course of duties.
91. There are a number of licences under the Private Security Act that do not relate to security guard duties. In addition, security guard licence holders must complete specific training units in order to be authorised to carry out armed guard or cash-in-transit security guard activities under the Private Security Act. It is not desirable that private security licence holders, other than those who have been authorised to carry out armed guard or cash-in-transit security guard activities following appropriate training, be granted security handgun licences.

Proposals

92. It is proposed that section 15(2)(a) of the Act be amended to require all natural person and corporate security guard or prison officer, contractor or sub-contractor applicants to supply evidence of a genuine need for a handgun in a form and manner approved by the Chief Commissioner
93. It is proposed that section 15(2)(a)(i) of the Act be amended to provide that an applicant for a security handgun licence must hold a licence under the Private Security Act that authorises them to carry on armed guard or cash-in-transit security guard activities.
94. It is similarly proposed that section 90(2)(d)(i) of the Act be amended to provide that an applicant for a category A or B longarm licence for the genuine reason of the occupation of security guard must hold a licence under the Private Security Act that authorises them to carry on armed guard or cash-in-transit security guard activities.

Storage of Security Firearms

Background

95. Section 121 the Act provides for specific storage requirements relating to each category of firearm licence. Schedule 4 of the Act specifically prescribes the level of security required, which varies according to the category and number of firearms stored on particular premises. There remains, however, a discretion in s.121 for the Chief Commissioner to approve the storage of firearms in a manner other than that prescribed in Schedule 4 if she is satisfied that this alternate manner is as secure as the manner provided for in Schedule 4.
96. Schedule 4 of the Act provides details of the manner in which general category handguns must be stored. While items 1 and 2 of Schedule 4 provides details of the manner in which longarms and handguns are to be stored, the Act does not specify exactly where a firearms licence holder may store a firearm.
97. Section 15(4)(b) of the Act provides that when a licence holder is employed as a security guard, the licence must only be issued for use of a handgun that is registered to the employer. Therefore, security businesses with handgun licences are responsible for the safe management of handguns used by the business.

Issue

98. Victoria Police currently imposes a condition on security firearms licence holders that requires them to store their firearms on their business premises unless they are issued with an authority by the Chief Commissioner to store the firearms elsewhere. The policy objective of s.15(4)(b) and the APMC resolutions is to ensure that employers take greater responsibility for the safe storage and management of firearms. Therefore, it is desirable that the requirement for private security firearms to be stored on the employer's premises be explicitly provided for in the Act.

Proposal

99. It is proposed that items 1 and 2 of Schedule 4 of the Act be amended to provide that handguns or longarms possessed, carried or used under a licence for the reason of the occupation of security guard must be stored at the premises of the person who employs the licence holder as a security guard and to whom the firearm is registered by virtue of s.15(4)(b).

100. It is intended that the provisions of s.121 that enable the storage of firearms in a manner that does not accord, but has been approved by the Chief Commissioner, will remain applicable to private security firearms. Therefore, security firearms licence holders will be able to apply to store firearms at premises other than those of the employer on a case-by-case basis.

HUNTING- RELATED AMENDMENTS

Access By Hunters To Crown Land

Background

101. Section 131 of the Act provides that it is an offence for a person to possess, carry or use a firearm on private property or to discharge a shot, bullet or other missile from a firearm onto or across private property without the consent of the owner or occupier of the property. The Act does not define “private property”.

Issues

102. Much hunting in Victoria is conducted on Crown land. Some Crown land is leased while other Crown land, including water frontages and unused roads, is licensed for a variety of purposes. As of 2002, there were in excess of 40,000 Crown land licences. The majority of these were issued under the Land Act 1958. Some Crown land licences are issued under the Forests Act 1958, Crown Land (Reserves) Act 1978, Wildlife Act 1975 and the National Parks Act 1975. The Department of Sustainability & Environment (‘DSE’) has advised that Crown land licences do not confer on the licence holder a general right to exclude others from the land. However, some lessees and licensees use Crown land for purposes that render hunting on that land inappropriate or unsafe.

103. Some stakeholders are uncertain regarding when, and from whom, hunters are required to seek consent when using or carrying a firearm on Crown land which may be the subject of a licence or lease. Similar uncertainties exist amongst some hunters who wish to access State Game Reserves that are surrounded by (“landlocked”) licensed or leased Crown land.

104. The Department has obtained legal advice which provides that:

- Crown land held under a lease or licence under Part 1 of the *Land Act 1958* is ‘private property’ for the purposes of the *Firearms Act 1996*;
- Crown land held under a lease or licence under the *Forests Act 1958* or the *Crown Land (Reserves) Act 1978* is not ‘private property’ for the purposes of the *Firearms Act 1996*;

- Crown land held under a licence under the *Wildlife Act 1975* or the *National Parks Act 1975* is not ‘private property’ for the purpose of the *Firearms Act 1996*.
- There remains some legal ambiguity surrounding the status of licences issued over Crown land water frontages.

105. Victoria Police and DSE currently advise hunters that:

- They must obtain the consent of the lessee before hunting on leased Crown land;
- They must obtain the consent of the licensee before hunting on Crown land that is subject to a license under the *Land Act 1958*;
- They should obtain the consent of water frontage licensees before accessing the property for hunting purposes;
- They do not require the consent of the licensee before hunting on Crown land that is subject to a license, other than a licence under the *Land Act 1958* or a water frontage licence.

106. It would be helpful to firearms stakeholders and Crown land lessees and licence holders if “private property” was defined in the Act for the purposes of s.131. This may alleviate uncertainties and ambiguities regarding when a hunter must seek consent from the “owner or occupier” of property under s.131. As some lessees and licensees use Crown land for purposes that render hunting on that land inappropriate or unsafe, it would be inappropriate to remove the right of all lessees and some licensees to refuse consent to hunt on Crown land that they occupy.

107. A hunter who wishes to enter or hunt on Crown land may contact DSE to determine the legal status of the land. If consent is required before land Crown land is entered or hunted on, DSE may be able to advise the hunter of the identity of the lessee or licensee.

108. Crown land which is subject to a lease is generally identifiable by DSE. A database is held by DSE which records the details of licensed land. However, the publicly available information from this database does not differentiate between the Acts under which various licences have been granted. Without such a differentiation between Acts, it is difficult for DSE to advise hunters whether they should seek consent from the owner or occupier because the Crown land in question is subject to a Land Act 1958 or water frontage licence.

109. In addition, it is important that DSE, owners or occupiers, and hunters are able to accurately identify the geographic boundaries of Crown land. Such information is necessary to enable hunters to actually determine where they are hunting or wish to do so. The availability and accuracy of such geographic information regarding Crown land is variable.

110. Therefore, there are both legal and operational aspects to the issue of access by hunters to Crown land. A definition of “private property” in s.131 may remove uncertainty regarding when the consent of an occupier of Crown land must be obtained. Such an amendment would not, however, resolve the challenge of determining the actual legal status, occupier’s identity or precise geographic boundaries of particular areas of Crown land on which a person wishes to enter or hunt.

Proposals

111. It is proposed that the Act could be amended to define “private property” for the purposes of s.131. It is proposed to amend s.131 of the Act to provide that land subject to a licence under the Land Act is not private property under the Firearms Act if firearms are possessed or carried across that land for the purpose of using the firearms to hunt on land adjacent to the land that is subject to a Land Act licence.

112. In addition, it is proposed that s.131 exclude from the definition of private property land constituting a road or other DSE-designated public access to a State Game Reserve for the purposes of possessing or carrying a firearm with the intention of hunting in that State Game Reserve.

113. The Department would also like to emphasise that all access issues referred to in this section strictly refers to the possession and carriage of firearms over land licensed under the *Land Act* 1958 and does not refer to the use of a firearm while accessing such land.

114. In conjunction with the above proposed amendment to define “private land” under the Act, the Department of Justice and the Department of Sustainability and Environment will be further consulting with the Victorian Firearms Consultative Committee, the Victorian Hunting Advisory Committee and the peak bodies they represent to alleviate some access issues faced by hunters.

Hunting Under Instruction

Background

115. The Act enables a person who does not hold a firearms licence to use a firearm under instruction on a limited number of occasions at an approved shooting range. This enables persons to ‘try out’ firearms before determining whether they wish to apply for a licence and acquire a firearm.

Issue

116. It is not currently possible for a person to ‘try out’ a firearm for the purpose of determining whether they wish to obtain a licence for the purpose of hunting. It is desirable that persons be able to ‘try out’ hunting when they are under supervision, are members of a hunting club and have completed firearms safety training. This may ensure consistency with other ‘try out’ provisions of the Act. Such a provision may also enable persons to avoid unnecessarily obtaining firearms licences and firearms by providing them with an opportunity to try out hunting before they make further commitments.

Proposal

117. It is proposed that Schedule 3 of the Act be amended to provide an exemption for non-prohibited person from holding a firearms licence under Part 2 of the Act if the person is over the age of 18 years and is receiving instruction in the use of a category A or B longarm. The use of the longarm by such a person must be by or under the immediate supervision of the holder of a category A or B longarm licence that is held for the genuine reason of hunting (the instructor). The instructor must be a member of a shooting club or shooting organisation which is approved by the Chief Commissioner under s.10(2)(b)(ia). The use of a longarm by such a person must be for the purposes of obtaining a longarm licence for the reason of hunting as set out in s.10(1)(b). The person must not have received such instruction on more than nine previous occasions. The circumstances in which this exemption will apply are when carrying or using a category A or B longarm for the purpose of hunting on land which the instructor has consent, permission or authorisation to hunt on.
118. It is proposed that s.54 of the Act be amended to require notification to the Chief Commissioner of relevant details when a person is instructed in the use of a category A or B longarm for the purposes of hunting set out in the new exemption above.

Target Shooting by Hunters

119. A licence issued for the purpose of hunting does not allow the licence holder to undertake target shooting. This prevents hunters from ‘sighting in’ their weapons. ‘Sighting in’ a firearm facilitates the humane hunting of game and pest animals. To facilitate this, it is desirable that hunters can undertake target shooting in the field.

Proposal

120. That Item 1 of Schedule 2 to the Firearms Act be amended to allow the holder of a licence issued for the purpose of hunting to engage in target shooting on land owned by the licence holder, or on land not owned by the licence holder, where the owner has given permission for the carrying out of the activity and the activity is conducted in accordance with the Regulations.

FIREARMS COLLECTOR AMENDMENTS

Antique Handguns For Which Cartridge Ammunition is Commercially Available

Background

121. Section 3 of the Act defines an ‘antique handgun’ as a handgun that was manufactured before 1 January 1900 that uses percussion as a means of ignition.
122. A person who collects antique handguns must apply for an antique handgun collectors licence under s.21B of the Act.
123. Antique handgun collectors licence applicants are not required to provide their fingerprints to police as part of the licence application process. In addition, they are subject to less stringent storage and display requirements than those which apply to category 1 and 2 firearms collector licence holders.

Issues

124. Whether cartridge ammunition is commercially available significantly affects the extent to which an antique firearm represents a risk to public safety. An antique handgun which takes cartridge ammunition and for which the cartridge ammunition that it takes is commercially available may pose a similar risk to public safety as that posed by more modern handguns. Conversely, antique handguns which do not take cartridge ammunition, or for which cartridge ammunition is not available, pose a lesser risk to public safety.

Proposal

125. It is proposed that the definition of ‘antique handgun’ in s.3 of the Act be amended to exclude a handgun which takes cartridge ammunition and for which the cartridge ammunition that it takes is commercially available is not to be treated as an antique handgun.

126. Therefore, a handgun manufactured before 1 January 1900 that uses percussion as a means of ignition and which takes cartridge ammunition and for which the cartridge ammunition that it takes is commercially available will be treated as general category handgun. Collectors of such handguns will be required to obtain a category 1 collectors licence, be fingerprinted and comply with more rigorous storage and display requirements than those which apply to antique handgun collectors. Further submissions are sought as to an appropriate definition of 'commercially available' ammunition. There may be ammunition manufactured for particular weapons in very small quantities which is only be available through specialist or overseas web sites. Technically, this ammunition is commercially available but the risk to public safety may be minimal. One option to address this issue may be the approach taken in New South Wales, where if in the opinion of the Chief Commissioner, ammunition is commercially available in respect of a particular handgun that handgun is treated as a general category handgun with the more stringent licence conditions applying.

Single Licence Requirement for Firearms Collectors

Background

127. The Act currently regulates firearms collectors by means of three different licences – the category 1 licence, the category 2 licence and the antique handgun collectors licence.

128. A person who collects longarms (of any manufacture date) or handguns manufactured between 1 January 1900 and 31 December 1946 must apply for a category 1 firearms collectors licence under s.21 of the Act. If the amendment suggested above regarding handguns manufactured pre-1900 for which cartridge ammunition is commercially available is adopted, such handguns would also fall within the scope of a category 1 firearms collectors licence.

129. A person who collects handguns manufactured on or after 1 January 1947 must apply for a category 2 firearms collectors licence under s.22 of the Act.

130. A person who collects antique handguns (manufactured before 1 January 1900 that use percussion as a means of ignition) must apply for an antique handgun collectors licence under s.21B of the Act.

131. A person who collects single shot antique handguns (antique handguns that are black powder handguns that are capable of firing only one shot before reloading) does not require a licence under the Act due to the operation of s.3(4)(b).

132. The current system of licensing firearms collectors imposes increasingly strict eligibility criteria and storage requirements in accordance with the increasing risk to public safety that is potentially posed by more modern firearms. Similar probity checks are conducted on licence applicants by Victoria Police, although antique handgun collector licence applicants are not subject to fingerprinting if they do not hold other forms of firearms licence.

Issue

133. Some collectors hold multiple types of firearms that were manufactured before 1900, between 1900 and 1947, and after 1947. Such collectors are currently required to hold (and pay for) two or three firearms collector licences.

134. For example, a person's collection could include 5 antique handguns, 7 longarms manufactured after 1 January 1900, 11 handguns manufactured between 1 January 1900 and 31 December 1946, and 6 handguns manufactured on or after 1 January 1947. This person would be required to hold a category 1 licence, a category 2 licence and an antique handgun collectors licence.

135. Firearms collector stakeholders have expressed the view that the requirement to hold multiple licences in such circumstances contributes little to public safety and is disproportionate to the risk posed by firearms held in collections. The requirement to hold two or three licences in relation to the same collection adds to the licensing costs and regulatory burdens incurred by collectors and Victoria Police.

Proposals

136. It is proposed that the Act be amended to provide that firearms collectors who hold a category 2 licence are not required to continue to hold a category 1 licence or antique handgun collectors licence if they wish to collect the firearms regulated under these licence types. Therefore, a category 2 licence holder will be permitted to possess or carry, for the purpose of collecting:

- longarms of any manufacture date;
- handguns manufactured between 1 January 1900 and 31 December 1946;
- handguns manufactured on or after 1 January 1947;
- handguns manufactured pre-1900 for which cartridge ammunition is commercially available;
- antique handguns; and
- firearms that are not regulated by the Act (such as single-shot antique handguns).

137. It is proposed that the Act be amended to provide that a person who holds a category 1 licence will not be required to continue to hold an antique handgun collectors licence if they wish to collect antique handguns regulated under this licence type. Therefore, a category 1 licence holder will be permitted to possess or carry, for the purpose of collecting:

- longarms of any manufacture date;
- handguns manufactured between 1 January 1900 and 31 December 1946;
- handguns manufactured pre-1900 for which cartridge ammunition is commercially available;
- antique handguns; and
- firearms that are not regulated by the Act (such as single-shot antique handguns).

138. It is not proposed that persons who only hold antique handgun collector licences be permitted to possess or carry a broader range of firearms under that licence. Therefore, a antique handgun collector licence holder will continue to be permitted to possess or carry, for the purpose of collecting:

- antique handguns (but not handguns manufactured pre-1900 for which cartridge ammunition is commercially available); and
- firearms that are not regulated by the Act (such as single-shot antique handguns).

139. It is not proposed that the general conditions, special conditions or storage standards which currently apply to firearms collectors be altered by the above amendments.

140. It is not proposed that the current regime of firearms heirloom licences or firearms ammunition collector licences be modified as these licence types exist for different purposes, and entail different eligibility criteria, to the firearm collector licences discussed above.

Carriage & Use of Firearms Under A Collectors Licence

Background

141. Section 58 of the Act currently restricts the carriage and use of a “collectible” category A, B or C longarm or a general category handgun held under the licence at a commemorative or historical event approved by the Chief Commissioner, and sponsored by an approved organisation of firearms collectors and held at an approved range.

Issue

142. This results in numerous applications by individuals being submitted to Victoria Police every time a club decides to hold an event. This process is time consuming and arguably makes little contribution to public safety.
143. It is important that Victoria Police is aware of the details of commemorative or historical events at which firearms collectors carry or use collectible firearms so as to ensure the event is held at an appropriate location and managed in a responsible manner. There is little enhancement to public safety, however, in requiring that Victoria Police issue a specific permit to each collector who wishes to carry or use a firearm at such an event. Such collectors will already have been scrutinised by Victoria Police at the point when their collectors licence was issued. It is appropriate that the organisers of commemorative or historical events determine which firearms should be carried or used at these events and by whom.

Proposals

144. It is proposed that section 58(1) of the Act be amended to provide that an approved organisation of firearms collectors may apply to the Chief Commissioner to enable the holders of collectors licences to carry or use any category A, B or C longarm or a general category handguns held under a licence at a specific commemorative or historical event at an approved range. Individual permits are not to be required in such circumstances as a general permit for the event would now be obtained by the approved organisation of firearms collectors that is sponsoring the event.
145. It is proposed that the remainder of s.58 be amended to reflect that a general permit for the event would now be issued rather than individual permits.

Requirement for 6 Months or More Club Membership

Background

146. Antique handgun collector licence applicants must currently demonstrate that they are and have been, for at least 6 months, a member of an approved firearms collectors club that deals with the classes of firearms the person proposes to collect before a licence is issued.

Issue

147. Victoria Police and firearms collectors have advised that the requirement that club be established for at least 6 months prior to the applications contributes little to public safety and serves as a disincentive for persons who currently hold antique handguns to become compliant with the Act.

Proposal

148. It is proposed that s. 21B(2)(a) of the Act be amended to provide that while an antique handgun licence applicant must be a member of an approved firearms collectors club, they do not have to be a member for 6 months or more prior to the application.
149. This proposal is not intended to remove the requirement that a category 1 firearms collector be a member of an approved firearms collectors club for at least six months prior to the grant of a category 1 licence. The firearms collected by category 1 licence holders pose a higher level of risk to community safety than antique handguns, therefore justifying the stricter application standards that apply to category 1 collectors.

FIREARMS DEALER AMENDMENTS

Retention of Firearms Register of Transactions

Background

150. Section 87(5) of the Act currently provides that a licensed firearms dealer must ensure that any entry into their register of transaction is retained for five years after the entry is made in the register.

Issue

151. It arguable that once a person is no longer a licensed firearms dealer, they are no longer required to retain entries in their register and could conceivably destroy them upon ceasing business. This may hamper investigations by police.

Proposal

152. It is proposed that s.87(5) of the Act be amended to provide that a person whose firearms dealer licence has expired, been suspended or been cancelled must ensure that any entry into their register of transaction is retained for five years after the entry is made in the register. These entries must be made available upon demand to police in a manner similar to that which currently exists under s.89. Alternatively, a person whose firearms dealer licence has expired, been suspended or been cancelled may be compelled, or provided with the option of, surrendering the register of transactions to the Chief Commissioner at the time that the licence ceases to be current or at any time in the five years following cessation of the licence.

Hiring & Lending of Firearms by Dealers

Background

153. Licensed firearms dealers sometimes hire or loan firearms to firearms licence holders.

Issue

154. Victoria Police has become aware that hire or loan arrangements are used by some persons to evade the need to obtain a permit to acquire a firearm from the Chief Commissioner and wait 28 days before such a permit is issued for the first time. The practice of firearms dealers hiring or lending firearms may undermine public safety by enabling persons to obtain firearms before expiry of the ‘cooling off’ period in the Act. In addition, failure to enter details of hire or loan arrangements in a dealer’s register of transactions reduces the ability of police to determine the location of firearms for law enforcement purposes.

Proposal

155. It is proposed that the Act be amended to provide that it is an offence for a licensed firearms dealer to hire or lend a firearm to a person if the person does not already possess a registered firearm under a licence under the Act and 28 days have not yet expired since the person was issued with the licence that authorises the person to possess, carry or use the firearm that is hired or loaned to the person. The penalties for breach of this offence should be consistent with those regarding disposal of firearms by a dealer. In addition, the Act will be amended to specifically require that a firearms dealer must record in their register of transactions the details of the hiring or lending of firearms by the dealer.

PROHIBITED PERSON AMENDMENTS

Prohibited Persons & Intervention Orders

Background

156. The National Firearms Agreement (NFA) specifies a range of circumstances in which licence applications are to be refused or licences are to be cancelled. These circumstances include where the applicant or licensee has been the subject of an Apprehended Violence Order (AVO), Domestic Violence Order (DVO), restraining order, or conviction for assault with a weapon or aggravated assault within the past five years. The National Handgun Control Agreement (NHCA) requires suspension or cancellation of licences and seizure of firearms immediately upon the issue of a DVO or an AVO to a firearms licence holder.
157. The Firearms Act 1996 (the Act) implements the principles of the Agreements in Victoria through the “prohibited person” regime. “Prohibited person” is defined in section 3 of the Act and includes a persons who is subject to an intervention order under section 4 of the Crimes (Family Violence) Act 1987 or a corresponding order made in another State or Territory.
158. Under section 46 of the Act, the Chief Commissioner must cancel a firearms licence immediately upon becoming aware that the licence holder is a prohibited person. If the licence holder is a body corporate, the licence is cancelled if any officer of the body corporate becomes a prohibited person. The Chief Commissioner is required to serve notice of the licence cancellation upon the holder personally or by post. If the notice is served personally, the licence holder’s firearms must immediately be surrendered under section 53(1)(a), or if notice is served by post the licence holder has seven days in which to surrender their firearms under section 53(1)(b).
159. The Act provides that the former licence holder continues to own the surrendered or seized firearm, notwithstanding they are not in physical possession of it, and is obliged to dispose of it to a licensed firearms dealer within 28 or 56 days depending on the nature of the order made.

160. Under section 189 of the Act, a person who is subject to an intervention order, or has been subject to one within the last five years, can apply to the Court for a declaration that their prohibited person status does not apply either fully or for limited purposes only. The Registrar of the Court, the Chief Commissioner of Police, and the person in whose favour the intervention order was made must be given 28 days written notice of the application. The Chief Commissioner, and the person in whose favour the intervention order was made, may appear before the Court to be heard in relation to the application. This process ensures that the Court, in making a decision on any application for relief from a prohibited person status, is fully informed. The Department of Justice understands that most applications under section 189 to overturn prohibited person status are successful.

Issue

161. There is currently no capacity under the Act for a Court to intervene in the prohibited person process because prohibition is an automatic consequence of a finding of guilt for certain offences or the making of an intervention order. The regime of immediate licence cancellation currently in the Act means that there is no opportunity for the Court or Victoria Police to use any discretion in relation to persons who become prohibited as a consequence of being subject to an intervention order. This process ensures public safety and provides certainty to the person in whose favour the intervention order was made. The Department appreciates, however, that in some cases the immediate cancellation of a firearms licence and seizure of any related firearms may seem disproportionate to a licence holder who is subject to an intervention order and intends to make an application under section 189.

162. In making an intervention order, the Court must obviously be of the view that there are relevant public or personal safety concerns relating to the subject of the order. There remains a need to balance the legitimate public and personal safety concerns that lead to the granting of intervention orders by the Court with the desire of persons who are subject to intervention order to retain their firearms licences and firearms. The best means of assessing the balance of these interests is for the Court to consider the submissions of all interested parties in the course of a section 189 application.

Proposal

163. It is proposed that the Act be amended to provide that where a person becomes prohibited as a result of being subject to an intervention order, their licence will be suspended for a period of 3 months then cancelled unless they lodge a section 189 application within that 3 month period. If a section 189 application is lodged within the 3 month period, the applicant's licence would then remain suspended until the application is finally determined by a Court. If the Court declares that the person is not deemed to be a prohibited person, their licence may be reinstated if this is appropriate. If the Court declines to declare that the s.189 applicant is not a prohibited person, their previously suspended licence would become automatically cancelled.
164. This would allow an opportunity for the person subject to an intervention order to challenge the prohibition and reinstate their licence. While the person's firearms would still be seized by Victoria Police upon the granting of an intervention order under this proposal, the requirement to sell the firearms would be deferred until the outcome of the section 189 application made within the 3 month period is known. This proposal would prevent the immediate cancellation of licences and sale of firearms prior to the determination of section 189 applications. Licence holders who are aggrieved regarding the effect of an intervention order on their firearms licence will be provided with an opportunity make a section 189 application and retain their licence in a suspended status until the application is resolved. By prescribing a period of 3 months in which a section 189 application must be made to take advantage of the ongoing suspension provisions, licence holders are provided with a reasonable time to make such an application but not so long that the objectives of the prohibited persons regime would be frustrated. It is the Department's view that this approach may address the concerns of both firearms licence holders and persons in whose favour intervention orders are made while fulfilling the intention of the National Agreements.
165. It should also be noted that sections 5(1)(h), (1A) and (1B) of the Crimes (Family Violence) Act 1987 enables a Court to revoke any licence, permit or other authority to possess, carry or use firearms. If such an order is made, the subject of the order will be disqualified holding a firearms licence for five years after the expiry of the order. Section 5(3) of the Crimes (Family Violence) Act 1987 provides that an order under s.5(1)(h) takes precedence over any provisions of the Firearms Act. Such a person may also be considered a 'prohibited person' under section 3 of the Firearms Act. It is not proposed that this Bill will amend the provisions of the Crimes (Family Violence) Act 1987.

Definition Of ‘Prohibited Person’

Background

166. The current definition of “prohibited person” in section 3 of the Act includes persons who because of either a conviction, finding of guilt recorded, or intervention orders are prohibited for varying periods from obtaining a firearms licence.

Issue

167. The definition does not include offenders who may constitute a threat to public safety because they have shown a propensity to illegally possess non-firearm weapons. Therefore, persons who have been found guilty of serious offences under the Control of Weapons Act 1990 are not currently prohibited from obtaining or retaining a firearms licence.

Proposal

168. It is proposed that paragraph (d) of the definition of ‘prohibited person’ in section 3 of the Act be amended to include persons in respect of whom a finding of guilt has been made with respect to an offence under the *Control of Weapons Act 1990* in relation to which it was open to the court to impose a term of imprisonment.

INVESTIGATION, ENFORCEMENT & DISCIPLINARY PROCESS AMENDMENTS

Written Submissions and Calling of Hearings by Chief Commissioner

Background

169. Under the Act the Chief Commissioner has authority to refuse licences, impose or vary conditions etc.

Issue

170. If the Chief Commissioner makes a decision contrary to the applicants or licence holders desires there is a requirement to notify the applicant in writing of the result of the application. In many cases this leads to appeals to the Firearms Appeals Committee (FAC) being lodged. If aggrieved by the FAC decision the applicant then has the right to have the matter heard by the Victorian Civil and Administrative Appeal Tribunal (VCAT)

171. Under the Private Security Act 2004 there is provision for the regulating authority to invite the applicant for a private security licence to make a written submission in support of the application. After receiving the submission the regulating authority then has the power to convene a hearing to receive consider further submissions.
172. The ability by the regulating authority to call for written submissions and convene hearings provides a transparency to processes and reduces the time and cost associated with the appearances at the FAC and VCAT by the applicant, the Chief Commissioner's delegate and witnesses.

Proposals

173. It is proposed that the Act be amended to provide that the Chief Commissioner must notify an applicant if it is proposed that their application for a licence or permit will be refused and invite them to make a written submission in support of the application (similar to s.27 of the Private Security Act 2004).
174. It is further proposed that the Act be amended to provide that after receiving such a submission, the Chief Commission may call a hearing to consider further matters in relation to an application (similar to ss.28 & 29 of the *Private Security Act 2004*).
175. These proposed amendments will not affect the right of the applicant to appeal the Chief Commissioner's ultimate decision to the Firearms Appeals Committee. Rather, it will clarify the procedural steps that must be taken by the Chief Commissioner before making a decision to refuse a licence or permit.

Voluntary Surrender of Licences

Background

176. The Act currently makes no provision for the voluntary surrender of a licence by a licence holder due to circumstances such as ill health, change of circumstances or movement interstate.

Issue

177. The only way the Chief Commissioner can action a request for the voluntary surrender of a licence is to cancel the licence. This cancellation can have an adverse affect on the licence holder should they at a later stage wish to re-licence.

Proposal

178. It is proposed that section 39 of the Act be amended to provide that licences are valid for the period specified in the licence unless surrendered, suspended or cancelled prior to the expiry of that period.

Requirement To Advise Chief Commissioner Upon Cessation Of Genuine Reason To Use Firearms

Background

179. Part 2 of the Act requires applicants for firearms licences to demonstrate that they require a licence for a genuine reason. Relevant genuine reasons vary according to the category of firearm that a person wishes to possess, carry or use.

180. Section 49(1)(a) provides that the Chief Commissioner may cancel a licence if the holder of a licence no longer has the reason specified in the licence for holding the licence. Section 49(1)(d) provides that the Chief Commissioner may cancel a licence if the holder has contravened or failed to comply with a condition of the licence.

181. Sections 14, 16, 19, 22, and 30 apply general conditions to each class of firearms licence. The details of these general conditions are prescribed in Schedules 1 and 2 of the Act. Item 3 of Schedule 1, which applies to all licence classes, provides that firearms used under a licence cannot be used for any reason other than the reasons authorised under the licence. Under s.36, it is an offence to breach a condition of a licence.

Issue

182. The Act clearly intends that a person who does not have a genuine reason to use a firearm should not hold a licence. There is not, however, a provision that requires a current licence holder to advise the Chief Commissioner if they cease to have a genuine reason to possess, carry or use a firearm. Victoria Police may obtain information regarding the currency of a person's genuine reasons for holding a firearms licence from a variety of sources. Greater consistency and efficiency in ensuring that only persons with genuine reasons continue to hold firearms licences would be attained by a requirement that the licence holder advise Victoria Police if any of the genuine reasons for which they were granted a firearms licence cease to exist.

183. The genuine reason provided by applicants for firearms licences often relate to membership of a shooting club that has been approved by the Chief Commissioner. Therefore, shooting clubs are in an ideal position to advise the Chief Commissioner

when a licence holder's genuine reason to hold a licence that is based on club membership ceases to exist.

184. While ss.123E(2) and 123K(2) provide for reporting to the Chief Commissioner of the cancellation or suspension of a club member, these provisions are located within sections that relate to club members who become unfit to possess, carry or use a firearm. It is not entirely clear whether these reporting provisions apply in cases where a club member voluntarily resigns their membership or ceases to be a member for reasons other than their fitness to possess, carry or use a firearm.

Proposal

185. It is proposed that Schedule 1 of the Act be amended to provide that if any genuine reason for holding a firearms licence alters or ceases to exist, the licence holder must notify the Chief Commissioner of this fact within 14 days of becoming aware of this fact.

Indictable Firearms Offences

Background

186. Section 189A sets out a list of indictable offences under the Act. Any offence contained in the Act and not listed in s. 189A is deemed to be a summary offence.
187. In general, an offence can be identified to be summary or indictable through its prescribed penalty level. Section 113A of the Sentencing Act 1991 indicates that where a person is convicted of a summary offence which carries a penalty of more than 2 years imprisonment, the court may only impose a sentence of up to 2 years. This section recognises that while a provision may create a summary offence with a maximum penalty of more than 2 years, the relevant maximum penalty is limited to 2 years.

Issue

188. The offences set out under ss.121(3A), 129A and 140A(1) of the Act contain penalties of 240 penalty units or 4 years imprisonment, but are not listed under s.189A of the Act as indictable offences. This means that, by operation of law, they are deemed to be summary offences, and therefore notwithstanding the maximum penalty set out in the Act they can only be dealt with by the Court as summary offences with a penalty level of no greater than 2 years. This frustrates the intended operation of the Act, that these offences are to be indictable given their prescribed maximum penalty.

Proposal

189. It is proposed that s.189A of the Act be amended to include ss.121(3A), 129A and 140A(1) as indictable offences. Consequently, Schedule 4 of the Magistrates' Court Act 1989 will be amended to include these offences in the list of indictable offences triable summarily. This will not vary the penalty for these offences under the Act, rather it will enable Courts to impose the full range of penalties that the legislature intended to be available under the Act.

Validation of Service of Notices

Background

190. A number of provisions in the Act provide for postal service of notices related to a person's entitlement to hold a firearms licence or possess firearms. For example, sections 47 and 52 envisage service of notices related to the suspension or cancellation of firearms licences.

Issue

191. Victoria Police sometimes experiences difficulty serving notices on persons who deliberately evade personal service and deny receipt of notices served by post. This may serve to frustrate attempts to Victoria Police to administer the disciplinary and public safety provisions of the Act.

Proposal

192. It is proposed that the Act be amended to clarify that a notice served under the Act is valid if it is sent by post addressed to the person at the person's last known place of residence or business. Subject to evidence to the contrary, and despite anything to the contrary in s.49 of the Interpretation of Legislation Act 1984, a notice served in accordance with such a process could be deemed to be served 14 days after the date of the notice sent by Victoria Police. It is suggested that s.12 of the *Infringements Act 2006* could serve as a guide or model for this provision.

False or Misleading Statements in Support of Applications

Background

193. Section 140A of the Act makes provision for offences relating to making a false or misleading statement by an applicant in an application under the Act. Many applications place a requirement on the applicant to provide supporting documentation such as training certificates, authority to hunt on private land etc.

Issue

194. Since the introduction of the Act, Victoria Police has detected examples of persons providing false documentation in support of applications. This has also included documentation provided by instructors purporting that a person has completed a training course, when in fact they have not.

Proposal

195. It is proposed that section 140A of the Act be amended to provide that it is also an offence to make a false or misleading statement in support of an application under the Act.

Information Regarding Silencers, Prescribed Items & Manufactured Firearms or Parts

Background

196. Section 119 of the Act allows the Chief Commissioner to request information in relation to the acquisition, disposal or possession of firearms and firearms parts held on a licence but makes no provision for a silencer held on a permit issued under the provisions of section 57.

Issue

197. Silencer permits are issued to firearm dealers, government agencies and professional hunters. Similarly, s.119 makes no provision of information relating to firearms, firearm parts or silencer manufactured under a licence or a permit. Victoria Police may require such information silencers for investigative or administrative purposes.

Proposal

198. It is proposed that section 119 of the Act be amended to allow the Chief Commissioner to request information regarding silencers or prescribed items. Similarly, it is proposed that section 119 of the Act be amended to allow the Chief Commissioner to request information regarding firearms, firearm parts and silencers that have been manufactured by the licence or permit holder.

Power to Search for Silencers or Prescribed Items

Background

199. Section 149 of the Act allows a member of the police force to search persons, vehicles, packages and things in the possession of persons without warrant where there are reasonable grounds to suspect the person may be in possession of firearms and ammunition contrary to the Act. It also allows the seizure of firearms and cartridge ammunition found during the search.

Issue

200. The Act does not make a similar provision for the search and seizure of silencers or prescribed items (under s.47) when a member of the police force has reasonable grounds for believing a person may possess them contrary to the Act.

Proposal

201. It is proposed that s.149 be amended to provided that police may exercise search and seizure powers under this section in relation to silencers and prescribed items.

Possession of Firearms Parts that Could Be Use To Modify a Firearm to an Unauthorised Category

Background

202. Sections 134, 134A, 134B and 134C of the Act provide that it is an offence to modify firearms in ways that change their category, calibre, barrel length, operability or identifying symbols.

Issue

203. The Act does not current prohibit the possession of firearms parts that could be used by some persons to easily modify the category of a firearm to one that the person is not authorised to possess, carry or use.

204. Victoria Police has identified that this capacity to readily modify the category of a firearm poses a risk to public safety and the effective regulation of firearms. For example, a person may possess firearms parts that could be used to easily modify the magazine capacity or rate of fire of a firearm. Therefore, there is a need to prohibit persons from carrying, possessing or using firearms parts that could be used to modify a firearm to enhance its capabilities to a point where it is converted to a different category of firearm that the person is not entitled to hold.

Proposal

205. It is proposed that Part 7 of the Act be amended to add a provision to the effect that it is an offence for a person to possess, carry or use (without the consent of the Chief Commissioner) firearm parts that could reasonably be used to change the category of a firearm in the person's possession, carriage or use; or a firearm that is registered to the person under s.113, to a category of firearm that the person is not authorised to possess, carry or use.

DISPOSAL & SEIZURE OF FIREARMS AMENDMENTS

Disposal of Handguns Surrendered Where Certain Conditions of Category 1 or 2 Firearms Collectors Licence Not Complied With

Background

206. Sections 52B and 53B of the Act makes provision for the surrender of handguns because the category 1 or 2 licence holder has failed to comply with s.22(2)(a). Section 22(2)(a) provides that category 1 or 2 licence holders must not possess or carry firearms that they are not authorised to possess or use under the licence.

Issue

207. These sections are currently silent regarding whether the licence holder has to dispose of the handguns or if and how he can obtain the return of the handguns. This may be compared with s.53A(4) that provides such guidance in relation to a general handgun licence holder's failure to comply with participation requirements.

Proposal

208. It is proposed that s.53B of the Act be amended to provide that if a person has surrendered a handgun or ammunition under s.53B or if a handgun or ammunition has been seized under that section, that person must dispose of that handgun or ammunition to a licensed firearms dealer within 56 days of service of the notice from the Chief Commissioner under s.52B. It is suggested that s.53A(4) may serve as an guide or model for this section.

Verifiable Destruction of Firearms

Background

209. The Act does not prohibit or regulate an individual destroying his own private property, namely a firearm he/she owns.

Issue

210. Some firearms owners utilise methods of destroying their own firearms that are unable to be substantiated and result in the accuracy of the register of firearms maintained by the Chief Commissioner being diminished.

Proposal

211. It is proposed that s.134 of the Act be amended to add a requirement that a person must not render inoperable or destroy a firearm, firearm part, silencer or prescribed item unless the form and manner of doing so is approved by the Chief Commissioner. Such an approval may be subject to conditions, such as provision of evidence of the destruction of the firearm in question.

Powers of Forfeiture or Seizure of Silencers & Prescribed Items

Background

212. Section 151 of the Act enables a court to make an order relating to the disposal of firearms and cartridge ammunition that have been subject to the court proceedings.

Issue

213. The Act does not currently make similar provisions in relation to the disposal of silencers or prescribed items (under s.47). An explicit power for the court to deal with these firearms-related items is desirable.

Proposals

214. It is proposed that s.151(1) of the Act be amended to provide that the court may also order the forfeiture of any silencer or prescribed item in the possession of the court or used or carried by the person.
215. It is proposed that section 153 of the Act be amended to provide that the court may make an order relating to the disposal of silencers or prescribed items that have been subject to the court proceedings after their surrender or seizure if the owner cannot be found or it is otherwise necessary for it to be disposed of.
216. It is proposed that s.153A of the Act be amended to provide that authorised officers under the Conservation, Forests and Land Act 1987, the Wildlife Act 1975 or the Fisheries Act 1995 may seize silencers or prescribed items.
217. It is proposed that s.153C of the Act be amended to require that the number of silencers or prescribed items found during searches without warrant under sections 149 and 153A be the subject of a report to the Minister.

INTERSTATE LICENCE RECOGNITION AMENDMENTS

Mutual Recognition of Paintball Marker Licences

Background

218. Persons who participate in competitive paintball tournaments often desire to use their own paintball markers during competition. The Act requires that a person who wishes to acquire and own their own paintball marker must hold a paintball marker licence.
219. The Department understands that competitive paintball tournaments may be held in Victoria during 2007. Such competitive tournaments are likely to attract players from interstate who will wish to bring their own paintball markers into Victoria for tournament use.

Issue

220. The Victorian Act does not currently provide for the mutual recognition of paintball marker licences issued in other jurisdictions. Therefore, interstate paintball marker licensees are unable to bring their own paintball markers into Victoria for the purpose of participating in paintball tournaments. This situation is unnecessarily restrictive for paintball tournament competitors and potentially places Victorian paintball venue operators at a commercial disadvantage compared with paintball operators in other jurisdictions.

221. It was not intended that the Amendment Act would prevent mutual recognition of interstate paintball marker licences in Victoria. While ss.185, 186A and 187 of the Act provide for mutual recognition of interstate category A and B firearms licences or permits, these sections cannot currently be applied to interstate paintball marker licences or permits.

Proposal

222. It is proposed that ss.185 and 187 of the Act be amended to enable interstate paintball marker licences to be recognised in Victoria for the purposes of taking part in paintball gaming at a location approved by the Chief Commissioner of Police.

Recognition of Interstate Licences and Permits and Exemptions

Background

223. Section 185 of the Act provides that various firearms licences and permits issued by other Australian jurisdictions will be deemed to be an equivalent Victorian licence or permit under certain circumstances.

224. Section 186 of the Act provides that persons who ordinarily reside outside Australia may apply to the Chief Commissioner for a permit to possess, carry or use a firearm in Victoria. Such a permit may be issued subject to any condition that the Chief Commissioner thinks fit.

225. Section 186A of the Act provides that persons who ordinarily reside outside Australia and hold a permit issued under the law of another State or Territory of a kind specified in the Firearms Regulations does not commit an offence under sections 6 or 7 of the Act.

Issue

226. There have been instances in which interstate or international firearms licence or permit holders have wished to enter Victoria to take part in shooting sports or historical display activities that do not fall within the scope of the temporary visitor provisions in section 185 and 186A. In such circumstances Victoria Police has experienced difficulty in facilitating participation in legitimate shooting sports and historical display activities that pose little or no risk to public safety.

Proposals

227. It is proposed that s.185 of the Act be amended to provide that a person who holds a licence or permit to possess, carry or use a firearm in another State or Territory may apply to the Chief Commissioner for a permit to possess, carry or use that firearm in Victoria in the same manner that they are authorised to do so in that other State or Territory.
228. It is similarly proposed that s.185 of the Act be amended to provide that a person who is exempt from holding a licence or permit to possess, carry or use a firearm in another State or Territory may apply to the Chief Commissioner for a permit to possess, carry or use that firearm in Victoria in the same manner that they are authorised to do so in that other State or Territory.
229. It is proposed that the Chief Commissioner may issue such a permit and impose upon it any conditions that the Chief Commissioner thinks fit. The Chief Commissioner would specifically be required to consider the issues in s.17 of the Act prior to issuing such a permit. The holder of a permit under this new section would not commit an offence against sections 6 or 7 of the Act while acting under and in accordance with the permit. It would be an offence for the holder of the permit to fail to comply with the permit.
230. The Chief Commissioner would be required to annually report on the number of such permits that were applied for, how many were granted, and for what reasons.
231. This proposed amendment would enable Victoria Police to issue permits to accommodate participation in legitimate shooting sports and historical display activities that poses little or no risk to public safety when the permit applicant already holds an appropriate firearms licence or permit in another State or Territory.

IMITATION FIREARMS

Clarification of Imitation Firearms Exemptions

Background

232. Section 3 of the Act defines a 'firearm' as including a device that has the appearance of a firearm. Section 3(2) provides that the Act does not apply to any device that has the appearance of a longarm but which is not designed or adapted to discharge a shot and is not capable of being made to do so.

Issue

233. The combined effect of section 3 is that imitation longarms are not regulated by the Act whereas imitation handguns are regulated. Therefore a person who owns an imitation handgun must register that handgun under Part 5 of the Act. A person who possesses, carries or uses an imitation handgun must hold an appropriate licence under the Act. The same does not apply in the case of imitation longarms.
234. There have been incidents in Victoria and other jurisdictions in which imitation handguns and longarms which closely resemble functioning firearms have been used in the course of crimes and other incidents causing public alarm. In such circumstances, the possession and use of imitation handguns, but not longarms, may be an offence under the Act. The risks to public safety posed by use of imitation handguns and longarms in such circumstances are similar.
235. There have also been incidents in which devices that are not functioning firearms, such as brightly coloured water pistols, have been brought to the attention of Victoria Police. In these instances there has been uncertainty as to whether the toy handguns have the 'appearance' of a functioning firearm (as defined in s.3). Such uncertainty is undesirable.

Proposal

236. It is proposed that s.3(2) of the Act be amended to provide that the Act does not apply to any device whose appearance could not reasonably be mistaken for that of an operable longarm or handgun and which is not designed or adapted in the manner described in paragraph (a) of the definition of firearm and which is not capable of being made to be so.
237. The effect of this amendment will be to ensure that imitation handguns and longarms which closely resemble functioning firearms will be regulated under the Act as if they were operable firearms. On the other hand, imitation handguns and longarms that could not reasonably be mistaken for operable firearms will be clearly excluded from regulation under the Act.

Imitation Firearms and Armed Offences – Crimes Act s.31A

Background

238. Section 31B of the Crimes Act 1958 provides, inter alia, that a person who, with criminal intent, is armed with an imitation firearm is guilty of an indictable offence. An ‘imitation firearm’ is defined for the purposes of s. 31B in the same way as it is defined in s.29(3)(b) of the Crimes Act. This section defines an ‘imitation firearm’ as anything which has the appearance of a firearm whether or not it is capable of discharging any shot or missile.

239. Section 31A of the Crimes Act provides that if a person is found guilty of an indictable offence and carried a firearm (within the meaning of the Firearms Act) when committing the offence is guilty of an additional offence. The manner in which the Firearms Act defines and regulates imitation firearms is narrower than the definition of ‘imitation firearm’ in s.29(3)(b) of the Crimes Act. In particular, the s.3(2) of the Firearms Act provides that the Act does not apply to imitation longarms.

Issue

240. There have been a number of instances in which imitation firearms were used in the commission of offences. Under s.31A of the Crimes Act, a person who uses an imitation handgun will be subject to that section’s additional penalty. However, a person who uses an imitation longarm in commissioning the same offence will not be subject to the additional s.31A penalty. There does not appear to be any basis for the application of s.31A to be dependant on whether an imitation handgun or longarm is used.

Proposal

241. It is proposed that s.31A of the Crimes Act be amended to provide that it applies regardless of whether the ‘firearm’ used is a firearm within the definition of the Firearms Act or an imitation firearm as defined in s.29(3)(b) of the Crimes Act.

MISCELLANEOUS AMENDMENTS

Refusal to Issue a Licence Due to Applicant's Failure to Comply with Requirements

Background

242. Non-complaint firearms licence applications are regularly received at the Victoria Police Licensing Services Division. The applications are deemed to be non-compliant because the applicant has failed to accurately or fully complete the application form or has failed to supply supporting documentation.

Issue

243. Non-compliant applications require either verbal or written follow up with the applicant, sometimes on many occasions, and can take extended periods of time to complete. This affects upon the ability of Licensing Services Division to provide service to other customers because staff have to be specifically assigned to deal with these non-compliant applications over protracted periods of time.

Proposal

244. It is proposed that the Act be amended to provide that the Chief Commissioner may refuse to make a decision in relation to an application for any licence, permit or authority under the Act if the applicant does not comply with any requirement of the Act, Regulations or Chief Commissioner in relation to the application within 60 days of the request being made.

Exemption of Industrial Tools from the Definition of a Firearm

Background

245. Industrial tools that are powered by cartridges containing gunpowder which is designed and intended for use for fixing fasteners or plugs or for similar purposes is current exempt from being considered a 'firearm' under the Act.

Issue

246. There are a number of new generation industrial power tools that meet the definition of a firearm, do not pose a risk to public safety when used for the industrial purposes they are intended, but do not fall within the existing exemption for industrial power tools. For example, many nails guns use compressed air to discharge nails but do not currently fall within the exemption from the definition of a 'firearm' as they do not utilise cartridges containing gunpowder.

Proposals

247. It is proposed that item (c) of the definition of a 'firearm' in section 3 of the Act be amended to provide that industrial tools which used cartridges containing gunpowder or compressed air or other gases for fixing fasteners or plugs, cutting, or for similar purposes are not considered to be firearms under the Act.

248. It should also be noted that industrial tools that are carried with the intention that they be used as a weapon are likely to constitute 'dangerous articles' under the Control of Weapons Act 1990. It is an offence under s.7 of that act to possess or carry a dangerous article in a public place or non-government school without a lawful excuse.

249. In addition, it is the Department's intention to review whether some of the devices that are currently exempted from the definition of a 'firearm' in s.3 of the Firearms Act, such as captive humane bolt killers, should be prescribed in the Control of Weapons Regulations as 'controlled weapons'. This would subject to dangerous devices that are exempted from being defined as firearms to a more rigorous regulatory regime than 'dangerous articles' under the Control of Weapons Act.

Categorisation of Firearms

Background

250. The Act categorises firearms according to their technical features and the risks that they pose to public safety. Emerging forms of firearms technology, such as firearms that have a high rate of fire due to technological innovations, may result in firearms being inappropriately categorised under the Act.

Issue

251. While the Act enables firearms to be prescribed in the Regulations into higher categories (category D and E), the process of prescription is time-consuming. The delay between Victoria Police becoming aware of new firearms technology and that technology being prescribed in the Regulations (if necessary) may pose a risk to public safety. Victoria Police requires a capacity to appropriately categorise emerging firearms technologies in a timely manner before they enter the community.

Proposal

252. It is proposed that the Act be amended to provide that the Chief Commissioner may declare that a firearm or handgun is a category D longarm, category E longarm or category E handgun under the Act despite the fact that that firearm or handgun is not currently prescribed in the Regulations for the purposes of the definition of these categories in s.3. Such a declaration may be made if the Chief Commissioner is of the opinion that the category under s.3 that the firearm or handgun would ordinarily fall into is unclear or does not appropriately reflect the risk to public safety potentially posed by the firearm or handgun in question.

253. The Chief Commissioner's declaration will be effective for a period of 12 months, must be published in the Government Gazette, and will not be capable of being made more than once in relation to the same firearm or handgun. It is anticipated that a declaration by the Chief Commissioner will ordinarily be followed by prescription in the Regulations of the firearm or handgun in question for the purposes of the category definitions in s.3.

Clarification of Firearms Register Requirements

Background

254. Section 113(1) of the Act provides that the Chief Commissioner must keep a register of all firearms kept within the State. Section 113(3) provides that details of the firearm, the name of the person who possesses the firearm, particulars of the licence under which the firearm is possessed and any other prescribed information must be included in the firearms register against the firearm to which they apply.

255. Section 117 of the Act provides that immediately upon registering a firearm, the Chief Commissioner must issue a certificate of registration for that firearm to the person who possesses the firearm which sets out details of the registration, the name of the person who possess the firearm and any other prescribed information.

Issue

256. The intention of the Act, as expressed by s.113(1) and the Second reading Speech, is that all firearms in Victoria be registered regardless of whether details of a relevant licence holder are known to the Chief Commissioner.
257. Despite this intention, Victoria Police has received legal advice that the absence of owner or licensee details will frustrate the registration process. This advice is based on the view that the combined effect of ss.113(3) and 117 is to require entry of the name of the person who possesses the firearm and particulars of the licence under which the firearm is possessed before the firearm can be entered into the firearms register.
258. There are some instances in which firearms come to the attention of police but details of the name of the person who possesses the firearm or particulars of the licence under which the firearm is possessed are unknown. For example, police may find an abandoned firearm at a crime scene, be provided with a firearm that has been found by an unlicensed person, or seize a firearm from a person who is unlicensed. In addition, some persons (such as police) are permitted to possess, carry and use firearms without holding a firearms licence.
259. To enable Victorian and other Australian policing agencies to accurately track firearms for public safety and law enforcement purposes, it is important that all firearms in Victoria be registered. Failure to register firearms due to a lack of possessor or licensee information risks police duplicating firearms tracking data or failing to track some firearms at all.

Proposals

260. It is proposed that s.113(3) of the Act be amended to provide that details of the firearm, the name of the person who possesses the firearm, particulars of the licence under which the firearm is possessed and any other prescribed information must be included in the firearms register against the firearm to which they apply to the extent that such information is known by the Chief Commissioner.
261. It is intended that the lack of any of the information required by s.113(3) will not serve to prevent registration of a firearm. Instead, it will be made clear that a firearm may be registered by Victoria Police with some or all of the information required by s.113(3).
262. It is also proposed that s.117 of the Act be amended to provide that a certificate of registration does not have to be issued by the Chief Commissioner if the person who possesses the firearm or particulars of the licence under which the firearm is possessed is not known to the Chief Commissioner.

SUBMISSIONS

The Department welcomes the views of stakeholders regarding the issues and proposals discussed in this paper. Any comments should be provided in writing to the Justice Policy unit of the Victorian Department of Justice by **23 April 2007**. The contact details for Justice Policy are as follows:

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