

## Regulatory Impact Statement

# Firearms Regulation 2017

# Weapons Prohibition Regulation 2017

July 2017

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## 1. EXECUTIVE SUMMARY

This Regulatory Impact Statement (RIS) has been released for the 2017 remake of the *Firearms Regulation 2006* (the FR) and the *Weapons Prohibition Regulation 2009* (WPR).

It is acknowledged that some of the proposed amendments may incur an additional initial cost to firearms licence holders, or prohibited weapons permit holders but ultimately will improve service provision. While the cost to individual persons is difficult to quantify in total; no increase in fees is being considered as part of the review.

The review is intended to ensure the Regulations are up to date, adhere to the Government's better regulation principles, are in plain English, reduce red tape wherever possible, and protect public safety.

The remake will not consider any roll back of the 2017 National Firearms Agreement.

Feedback on the issues raised in this RIS will be used to develop revised Regulations.

Comment from firearm licence holders, government agencies and other interested parties is sought to help ensure the remade Regulations reflect the needs of the NSW community.

The issues raised in this RIS have been presented to correspond to the structure of the current Regulations for ease of reference.

## 2. THE REGULATORY IMPACT STATEMENT PROCESS

The *Subordinate Legislation Act 1989* provides that regulations are to be automatically repealed five years after commencement.

The repeal of the *Firearms Regulation 2006* (FR) has been previously postponed and is now due to be repealed on 1 September 2017 unless remade. The *Weapons Prohibition Regulation 2009* (WPR) is being remade at the same time on the basis that it closely mirrors the provisions in the FR.

The issues canvassed in this RIS do not represent the final Government position on the amendments, but provide an opportunity for discussion with firearms stakeholders, law enforcement agencies and the general community.

Comments should be directed to the RIS or the terms of the current Regulations.

The Government will use your submissions and feedback to develop a FR and WPR to meet the requirements of the *Subordinate Legislation Act 1989*.

## 3. LEGISLATIVE AND REGULATORY BACKGROUND

### The regulation of firearms and prohibited weapons in NSW

The regulation of firearms and prohibited weapons in NSW is currently governed by the *Firearms Act 1996*, the *Firearms Regulation 2006*, the *Weapons Prohibition Act 1998* and the *Weapons Prohibition Regulation 2009*.

The Acts and Regulations can be viewed and/or downloaded from the NSW Government's legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

The NSW firearms legislation (and that of all Australian jurisdictions) is underpinned by the 2017 National Firearms Agreement. The National Firearms Agreement was updated in 2017 with technical amendments and now includes the 2002 Handgun Agreement.

The legislation is administered by the Minister for Police. The NSW Police Force administers the regulation of prohibited weapons, firearms, including licensing, registration and permits, through the NSW Firearms Registry.

### *Firearms Act 1996*

The principles and objects of the *Firearms Act 1996* are set out at section 3.

### *The Firearms Regulation 2006*

The Regulation supports the operation of the Act by providing significant regulatory detail underpinning almost all aspects of the Act. This includes detailed provisions for:

- licences and permits;
- firearms dealers;
- minor's permits;
- security guards;
- approval of shooting ranges;
- approval of clubs;
- fees;
- registration of firearms;
- exemptions; and
- miscellaneous provisions.

### ***Weapons Prohibition Act 1998***

The principles and objects of the *Weapons Prohibition Act 1998* are set out at section 3.

### ***Weapons Prohibition Regulation 2009***

The Regulation supports the operation of the Act by providing significant regulatory detail underpinning almost all aspects of the Act. This includes detailed provisions for:

- permits;
- approval of clubs;
- exemptions; and
- miscellaneous provisions.

## 4. OVERALL AIM TO REMAKE THE REGULATION

This Regulatory Impact Statement examines three options relating to the remaking of the existing FR, which is due to be repealed:

- a) Do nothing and allow the Regulation to lapse
- b) Re-make the Regulation without amendments
- c) Re-make the Regulation with amendments (the proposed Regulation)

The 'costs' and 'benefits' of each option are outlined below. These are not explained in monetary value. The costs and benefits are discussed in terms of community safety and administrative efficiency.

### Option (a): Do nothing

If the Regulation is not made, the existing Regulation will lapse on 1 September 2017.

#### **Costs**

If the Regulation lapses, current licensed firearm holders, firearms permit holders, firearms dealers, shooting range operators, staff of the NSW Firearms Registry and the general public will not have access to clear legislative rules under which legal firearms can be possessed and used.

Given the risks involved with firearm use and the great responsibility that comes with owning a firearm, it is considered that to allow such a regulation to lapse would raise significant, probably irreparable, public safety issues.

In addition, in the absence of explicit regulation, many of the procedures, requirements and obligations imposed by the Regulation could not be replaced by another legislative or non-legislative mechanism. This means these procedures requirements and obligations would no longer apply, making the administration of the firearms legislative framework ineffectual.

It is important that all firearms stakeholders have clear legislative guidelines. Similarly, the NSW Police Force need to have a legislative framework by which they monitor and control firearm possession and use in NSW.

#### **Benefits**

There does not appear to be any readily identifiable benefit in allowing the existing Regulation to lapse.

#### **Conclusion**

It is proposed that this option not be adopted.

### Option (b): Remake the Regulation without amendments

#### **Costs**

By remaking the existing Regulation without amendments, a number of identified issues and restrictions would not be addressed, impeding a modern efficiency to the way firearms are regulated in NSW.

For instance: a number of the proposed changes attempt to align the Regulation with provisions in the Act; other changes are aimed at ensuring the Regulation is functioning in a manner that reduces red tape and is consistent with the Government's better regulation principles.

In addition, technical amendments that update terminology used or references to the names of organisations or legislation that have changed would not occur if the Regulation was remade without amendment.

The Firearms Registry IT systems are currently being upgraded, which will automate a number of existing processes. If the Regulation is remade without amendment it would not accommodate any resulting changes in processes.

### **Benefits**

The existing Regulation has successfully operated since it was made in 2006, providing the necessary procedural and administrative details for the effective administration of firearms licences and permits in NSW. This would continue.

Remaking the Regulation without amendments would have a detrimental effect on stakeholders, where the amendments are required to improve and continue the effective operation of the Regulation.

### **Conclusion**

It is proposed that this option not be adopted.

### **Option (c): Re-make the existing Regulation with amendment**

The existing Regulation provides much of the necessary administrative and procedural detail to enable the *Firearms Act* to operate effectively. However, the Department of Justice, in consultation with the NSWPF, has identified a number of operational issues and outdated terminology in the existing Regulation that could potentially be the subject of amendment.

The specific clauses that have been identified for amendment are outlined below. Where appropriate, the costs and benefits of the proposed amendment are identified.

For many proposals, the costs and benefits are not monetary, but are described qualitatively to guide the consultation process.

For some of the proposals it is difficult to determine whether there will be an increase in costs associated with a change to the Regulation. However, it is important to note that no increase in fees is proposed as part of the review of the Regulation.

### **Conclusion**

It is proposed that this option – re-make the existing Regulation with amendment - be adopted.



## 5. ISSUES FOR CONSIDERATION AND COMMENT

The Government is regularly provided with feedback from a number of peak stakeholder organisations and government agencies on how the regulation of firearms could be changed or improved.

Targeted comment is now sought on the specific issues that have been raised with the Government about the Regulations; they **do not** represent the position of the Government.

The proposed Regulations include some technical or machinery amendments, which have not been detailed in this Statement. Such amendments merely fine-tune the Regulations to update the language or references.

With one exception, amendments that were approved by Parliament with the passage of the recent Firearms and Weapons Legislation Amendment Act 2017, are not detailed in this RIS. These will remain as drafted in that Act.

The exception is the new Part 9A, which deals with participation requirements for club members. While the Government is committed to the approach to participation set out in the 2017 Act, it invites stakeholder comments on how the provisions would apply in practice and whether they could be improved.

References in the RIS to the clause number relates to the Exposure Draft FR and Exposure Draft WPR, NOT the current Regulations.

As the majority of proposed amendments to the WPR mirror those in the FR, and the policy rationale for including them is the same, these are listed with the corresponding clause in the FR.

To improve the operation of the Regulations the change on the following pages are proposed.

## FIREARMS REGULATION 2017

### WEAPONS PROHIBITION REGULATION 2017

#### Part 1 Preliminary - Part 1 Preliminary

Clarifying definitions have been included in this part.

##### **WPR Clause 2: Commencement**

The commencement of this Regulation is 1 September 2017. However, some clauses were included in the *Firearms and Weapons Legislation Act 2017* which is not commencing until 1 November 2017, to provide for a transition period to implement all the provisions in that amending Act.

This is a usual practice in legislative processes and no comment is required.

#### Part 2 Licences and Permits – general provisions

##### **Part 2 General provisions relating to permits**

Amendments to the general provisions are proposed.

##### **FR Clause 5: Offences that disqualify applicants – additional offences**

##### **WPR Clause 5: Offences that disqualify applicants – additional offences**

###### **Proposal**

It is proposed that clause 5(1) be amended to include a number of additional offences that would disqualify applicants for a firearms licence. Such offences include:

- those relating to ammunition and firearm parts;
- offences of riot and affray, and assault police;
- sexual related offences that have been enacted in the *Crimes Act 1900* including the offences of sexual servitude, inciting a sexual assault and drink/food spiking;
- the offence of consorting in section 93X of the *Crimes Act 1900*.
- Lower the current prescribed penalties required for offences involving drugs
- include all assaults where any term of imprisonment has been imposed
- Offences that apply to ‘prescribed person’s under s44A of the *Firearms Act*.

###### **Impact**

Any financial impact of this proposed amendment would be reliant on the penalty imposed by the judiciary if a matter proceeds to court. Also, depending on the licence or permit held by a firearms licensee, the cost of forfeiting the licence type would be borne by the licence holder, as well as the value of their firearm which they may be required to surrender. The proposed amendments will improve public safety and provide consistency between the *Firearms Act* and the Regulation.

##### **Recognition of Community Service Orders (CSO) as a penalty for the purposes of prescribed offences**

###### **Proposal**

It is proposed that CSOs be recognised as a penalty for the purpose of prescribed offences. CSOs are non-custodial sentences and may be ordered on an offender who has committed an offence punishable by imprisonment.

A person who is convicted and sentenced to a CSO for up to 500 hours are not currently excluded from obtaining firearm licence on a mandatory basis. However, a CSO order is a serious and substantial penalty, and therefore it is proposed that it be included as a penalty threshold that attracts mandatory disqualification.

### **Impact**

The financial impact of this proposed amendment would, depending on the licence or permit held by a firearms licensee, be the cost of forfeiting the licence type as well as the value of their firearm which they may be required to surrender. However, the proposed amendments are aimed at improving public safety.

### *Recognition of section 9 good behaviour bonds*

#### **Proposal**

It is proposed that a reference to a good behaviour bond be added to clause 5(1)(b), (d) and (f). Note that subclause 5(2) does not require any change and that a good behaviour bond under s.10 of the *Crimes (Sentencing Procedure) Act* are imposed “(w)ithout proceeding to a conviction” so they are not covered by subclause (1) which only applies to convictions.

A person who is convicted of any offence referred to in (1) for which a good behaviour bond is imposed will be disqualified under both s.11(5)(d) of the Act during the term of the good behaviour bond and for 10 years under s.11(5)(b).

A person who receives a good behaviour bond for an offence referred to in (1) where there has been no conviction will only be disqualified under s.11(5)(d) of the Act during the term of the good behaviour bond.

### **Impact**

There would be significant impact of this proposed amendment on those people who have a good behaviour bond imposed and who hold or wish to hold a firearms licence. However, the proposed amendments aim to improve public safety.

### *Lower the current prescribed penalties required for offences involving drugs*

#### *Lower the penalty relating to an offence involving violence*

#### **Proposal**

Clause 5 of the regulation currently requires an individual to receive a penalty of imprisonment for 6 months or more, or a penalty of \$2,200 or more in relation to certain offences involving violence or prohibited drugs before they are disqualified from obtaining a firearms licence. The proposal would lower this threshold to any term of imprisonment, with the aim of better reflecting the seriousness of an offence where an individual is sentenced to a term of imprisonment.

### **Impact**

A clear nexus exists between 'drug related' offences and the assessment as to a person's appropriateness to be licensed. The proposed lowering of the current thresholds for drug and violence offences is aimed at providing a public safety benefit by stipulating that those who commit these offences, and are given a sentence of imprisonment as a result, are disqualified from obtaining a firearms licence.

#### ***FR Clauses 7 and 21: Application for a licence or permit***

##### ***WPR Clause 7: Application for a permit***

###### ***Proposal***

The current wording is cumbersome in relation to electronic processing of applications. It is proposed to amend the clauses to support the progression towards online processing and make it clear that applications may be submitted electronically.

###### ***Impact***

There are significant positive benefit for applicants to be able to apply on line or use other electronic means to provide information or sign documents in the future. The proposed amendments will streamline processes and make application times more efficient.

##### ***FR Clause 8A: Term of subsequent licence that are renewals of category A and B licences that expire in 2008***

These provisions are now redundant and are being omitted. The 'flat lining' project to reduce 'peak' renewal periods to which these provision relate has concluded.

#### ***FR Clause 11: Additional discretionary grounds for refusal of a licence***

#### ***FR Clause 12: Mandatory grounds for refusal of permit for a pistol***

#### ***FR Clause 13: Discretionary grounds for refusal of a permit***

##### ***WPR Clause 6: Additional grounds for refusal or revocation of permit***

###### ***Proposals***

To provide abundant clarity, to apply the same principles that applies to licences, and to ensure consistency between the Act and Regulations, it is proposed to amend the clauses that set out grounds on which the Commissioner may refuse to issue licences and permits.

This includes if the applicant contravenes a provision in the Act or Regulation. Without making this clear in the Regulation, the Firearms Registry has to rely on other refusal grounds such as the fit and proper and public interest tests, which may not be as effective, nor provide an adequate level of transparency to applicants.

**In relation to the WPR:** This clause has been amended to bring the grounds for refusal and revocation of a permit into line with parallel provisions for permits under the Firearms Act.

The fact that s.18(2)(a) of the Act confers a discretionary ground of refusal does not affect the fact that the grounds in subclause (2) are automatically grounds for revocation under s.18(2)(a) - which is not the same as an automatic revocation. Another way to express this would be to provide that a ground on which the Commissioner would decide to refuse a

permit under subclause (2) becomes a ground on which the Commissioner may revoke a permit under s.18(2)(a).

**Impact**

The significant impact is on an applicant who is not successful in obtaining or retaining a licence or permit because of these new grounds. These amendments would provide clarity and consistency between the provisions relating to permits and licences, thereby providing guidance to the Firearms Registry and to the NCAT, as well as aiming to improve public safety.

**FR Clause 16: Requirements to notify Commissioner if reason for possessing firearm ceases**  
**Proposal**

There are circumstances where a person's genuine reason for a particular category of licence can no longer be demonstrated. It is proposed that a provision be inserted that enables the NSWPF to administratively cancel a particular genuine reason in circumstances where other genuine reasons will continue to support the issuance of a firearms licence.

This would mean that the licence would not be cancelled outright, but continue under the authority of the remaining genuine reason.

**Impact**

The proposed amendment will provide clarity and certainty about the genuine reasons supporting a licence including as they change over time.

**FR Clause 17 and Part 11: Requirement to notify change of particulars other than address (replacement licence)**

**WPR Clause 11 and Clause 14: Application for duplicate permit**

**Proposal**

There are instances where a replacement licence is required. For example, where a person has changed their name or where special conditions have been imposed on the licensee.

Issuing these licence is a financial burden on the Firearms Registry. It is proposed that a fee be prescribed in these circumstances as they fall outside the scope of a duplicate licence which is required when a licence has been lost, stolen, destroyed, defaced or mutilated. It is proposed that new Part 11 also be amended to include the fee for this licence.

The clause has also been extended to include where there is a change on the genuine reason or which the licence was issued.

**Impact**

There will be the additional cost of the replacement licence but should effect only a very small number of licence holders. The amendment provides consistency in the fee structure.

**FR Clause 18: Requirement to notify Commissioner of address where firearms are kept**  
**Proposal**

This clause requires a licence holder who purchases a firearm to advise the Commissioner within 14 days of the purchase of the address at which the firearm is to be held, and the safe storage arrangements that have been made at that address. The requirement can be accommodated as part of applying for a 'permit to acquire'. A separate notification could be required only where there is a change of address or change in other arrangements for the safekeeping of firearms.

Currently, a person is not required to 'certify' that the premises at which their firearms will be kept will comply with safe storage requirements. They are only required to notify the Commissioner of the safe storage arrangements. It is proposed to including a requirement that the licence holder, in their notification, also makes a signed statement, that is 'certifies', that the safe storage requirements comply with the Act and Regulations.

**Impact**

The proposed amendment will provide significant benefits to applicants by removing the 2-step process of notification and include certification. It reduces red tape and provides clarity.

**FR Clause 20: Pending application for subsequent licence or permit**

**WPR Clause 10: Pending application for subsequent permit**

**Proposal**

The current clause relating to the continued authority of licences and/or permits is considered unclear. It is proposed to rewrite the relevant clause to provide clarity regarding licences and permits.

**Impact**

The proposed amendment will provide clarity.

**FR Clause 22 - Revocation of licence - exemption for defence force personnel posted outside State**

**Proposal**

To provide absolute clarity, the Regulation will be amended to expressly provide an exemption from the automatic licence revocation for Defence Force personnel who are outside NSW. Defence Force personnel can continue to be licensed when deployed overseas or interstate.

**Impact**

The proposed amendment will benefit Defence Force personnel and provide certainty.

**FR Clause 23 - Revocation of permit – additional reasons**

**Proposal**

The Firearms Act provides for the automatic revocation of a firearms licence in a number of circumstances, and for any reason for which the licensee would be refused a licence. It has been proposed to insert a similar provision in the Regulation with respect to permits. To provide clarity and consistency, the Regulation will be amended to expressly provide for the

revocation of a permit where a permit holder contravenes a provision of the Act or *Weapons Prohibition Act*

**Impact**

The proposed amendment will provide consistency with regard to the provisions for a licence and a permit, providing clarity and certainty.

**FR Clause 24: Application for a Permit – proof of identity**

**Proposal**

A licence applicant must provide to the Firearms Registry proof of his or her identity in accordance with the requirements under the *Financial Transaction Reports Act 1998*; however, the same is not the case for a permit applicant. It is proposed to require a permit applicant to provide proof of the applicant's identity in accordance with the above Act.

**Impact**

The proposed amendment will provide consistency with regard to the provisions for a licence and a permit, providing clarity and certainty.

**FR Clause 27: Conditions of Permit**

**Proposal**

An additional component of the conditions of a permit is being proposed that a person must comply with the conditions of the permit and imposes a penalty if they do not. Currently, the regulation provides that there may be conditions, but, confusingly, is silent on the impact on a permit holder of not complying with those conditions.

**Impact**

There will be a direct impact of this proposed amendment on anyone who does not comply with the conditions of the permit which they are issued.

**FR Clause 28: Recognition of interstate licences**

**Proposal**

It is proposed to make changes to the clause to be clear about when an interstate licensee may possess and use a firearm in NSW. This amendment allows an appropriate recognition of interstate licences by holders of interstate equivalent licences.

**Impact**

The amendment will provide consistency with regard to interstate licences and ensure that licence holders from other jurisdictions can legally use their firearms in NSW.

**FR Clause 29: Licences or permits held by government agencies and their employees**

**Proposal**

The Regulation provides that in some circumstances, the Commissioner may authorise the possession of a firearm by a Government employee between periods of duty. It is proposed to omit the words "as far as is reasonably practical in the circumstances" to provide that the firearm must be stored in accordance with the requirements of Part 4 of the Act.

Furthermore, reference an 'appropriately qualified person' to service a firearm used by a government agency will be replaced by a 'licensed firearms dealer', as these are the only licence holders authorised to repair, maintain or service firearms. Lastly, to ensure high standards are maintained, it is proposed to provide for the completion of an annual training accreditation by Government employees to align the training requirements with that of security guards.

***Impact***

These amendments may impose additional costs in ensuring safe storage, seeking repairs to firearms or training. However, Government employees much adhere to the requirements all firearms licence holders do. It is a matter of public safety to ensure consistency across all licence holders and adhere to the same standards.



### **Part 3 Licences – additional provisions**

The following issues have been raised in relation specifically to licences in this part of the Regulation.

#### ***FR Clause 35: Licences and permits extend to authorise sighting in, patterning and related activities***

##### ***Proposal***

Currently, a licence holder may use an approved range for the purpose of sighting in a firearm. The practice of 'sighting in' is considered an essential practice, including in the field. Additionally, the use of clay target machines is generally considered an appropriate method by which to sight a shotgun. However, the Regulation is ambiguous about their use on private property.

It is proposed to amend the Regulation to enable further categories of licence holders to 'sight in'; to take place in the field as well as on a range; to make clear that clay target machines may be used for patterning in the field on private property and create an offence to misuse clay target machines where the conduct can reasonably be taken as being that which falls outside of patterning.

##### ***Impact***

There is significant benefit to shooters to enable 'sighting in' to occur on private property and for a greater range of licence holders. Amending the Regulation to be clear that clay target machines may be used for patterning should not expose the community to any greater risk.

#### ***FR Clause 38 – Firearms collections***

##### ***Proposal***

There is currently no clear authority for firearms collectors to take their firearms to a collector club meeting to display them – or at an arms fair. It is proposed that amendments be made to this clause to specifically allow for this.

##### ***Impact***

There is significant benefit in ensuring the Regulation is consistent with accepted practice, without jeopardising public safety. The proposal will benefit collectors who wish to participate in club meetings or expo type events.

#### ***FR Clause 38 – Arrangement for inspection of firearms***

##### ***Proposal***

This is a proposal to make sure the requirements relating to safe storage are met and that there are consequences if the person fails to allow a police officer to inspect their storage arrangements.

##### ***Impact***

There is no direct impact of this amendment unless a licence holder fails to allow an inspection. It is consistent with the recent amendments to provide for penalty notices for safe storage breaches of a minor nature.

### *FR Clause 40 – Requirements for storage of firearms on residential premises*

#### **Proposal**

It is proposed that licence holders store their firearms at their primary property.

This proposal aims to address theft from unattended second properties, such as hobby farms. These properties can be left unattended for extended periods, and this can result in an increased risk of theft. While there remain risks in ferrying firearms between properties, this risk is lower than firearms being stored away from the licence holder's main property.

#### **Impact**

There will be some cost for those licence holders with multiple firearms. Licence holders will need to make transport arrangements relative to the location and number of firearms they own. However, the proposal aims to benefit public safety.

## Part 4 Firearms dealers – special provisions

### Part 4 Weapons dealers permit – special provisions

This part of the Regulations outlines a number of special provisions that relate to firearms and weapons dealers.

#### *FR Clause 41: Additional restrictions in relation to issuing firearms dealers licences*

#### *WPR Clause 30: Additional restrictions in relation to issuing weapons dealer permits*

##### **Proposal**

It is important that a dealer's licence or permit is only issued to a person actually dealing in firearms and not simply collecting them. It is proposed to add clarity to ensure that persons with a dealer's licence/permit are either in the genuine business of dealing firearms, are a club armourer, or a theatrical armourer. Currently, there is ambiguity as to whether the Commissioner has the ability to seek evidence from the applicant that they have received approval from the local consent authority confirming the premises are suitable to conduct the business of a firearms dealer. It is proposed to amend the Regulation to require an applicant to provide approval from the local consent authority (if required by that authority) and a current public liability insurance certificate (if required by the authority) to conduct the business.

##### **Impact**

This proposal aims to ensure that only legitimate dealers who take their responsibilities seriously have dealer's licences or permits, and they have approval from their local consent authority. This will ensure that only enterprises being conducted as approved businesses are granted a dealer's licence, and enhance the integrity of the dealer industry.

#### *FR Clause 43: Authority conferred by firearms dealer extends to certain employees*

##### **Proposal**

Currently, minors are allowed to work in a firearms dealership. The legislation is silent on the minimum age of these employees or the level of management type supervision they require while working in the store. It is proposed that this clause be amended to require that where a minor is employed, that they must not be the sole employee in the dealership, and they are to be accompanied at all times by the licensee or an authorised employee who is over 18 years of age.

##### **Impact**

Dealers need to ensure an appropriate level of skill in their staff. An indirect cost is the wage discrimination for employees under 18 and over 18. This amendment ensure employees managing firearms and potentially exposed to difficult (or threatening situations in an attempted theft) have a level of maturity to cope with the environment.

#### *FR Clause 44: Offences that prevent persons from being involved in a firearms dealers business*

##### **Proposal**

This clause has been reworked for consistency with clause 5.

##### **Impact**

This amendment ensures consistency in the Regulation

*FR Clause 45: Requirement for public liability insurance*

*WPR Clause 31: Requirement for public liability insurance*

**Proposal**

The current provisions to support a dealer's licence include only very limited information requirements. To further support an application for a dealer's licence or permit it is proposed that a dealer shows that they have public liability insurance for the activities to be carried on under the licence/permit and that they are operating a genuine commercial enterprise.

**Impact**

Those wishing to become dealers will have to pay the requisite fees and potentially show evidence of their insurance. The proposal aims to ensure that only legitimate dealers who take their responsibilities seriously are issued licences and permits.

*FR Clause 54: Death of a firearms dealer*

*WPR Clause 33: Death of a firearms dealer*

**Proposal**

Police have general powers to enter premises; however, in cases where a firearms or weapons dealer has died, there is no power for police to enter the dealership and audit the firearms and weapons. The security of large amounts of stock may be compromised and thefts occur prior to the executor of dealer's will making arrangements. It is proposed that police should be informed within 24 hours of the death and a full audit completed by police to confirm records of all firearms and weapons in stock.

It is proposed to provide for actions to be taken following the death of a dealer, including permitting access for police to audit dealer's stock and records.

**Impact**

The executor of the will may need to assist police. The proposal aims to provide a public safety benefit in properly auditing and securing firearms and weapons kept in a dealership that is not under current daily control.

## Part 5 Minor's firearms permits – special provisions

### *FR Clauses 54-58:*

#### **Proposal**

There are a small number of clarifying amendments proposed in this Part.

#### **Impact**

These amendments provide clarity and consistency between and within the Act and Regulation.

## Part 6 Additional types of permits

Permits are issued where a legitimate reason exists for the possession or use of a firearm or ammunition in specific circumstances that fall outside the requirements of the licensing scheme.

### *FR Clause 60: Permit to acquire non-prohibited firearms on leaving Australia*

#### *WPR Clause 28: Leaving Australia permit*

##### **Proposal**

Currently, when a permit holder imports a firearm or weapon from overseas the transaction is via a licensed dealer. Conversely, on export of a firearm or weapon, a permit holder, is entrusted with conveying the firearm from the dealer to the Australian **Customs and Border Protection Service ('Customs')**. This creates a potential gap in the ability of law enforcement to track firearms and weapons and is an opportunity for diversion into the illicit market.

It is proposed to amend this clause to clarify that the items should not be physically possessed by the permit holder; rather a dealer would deliver possession to Customs.

##### **Impact**

A cost will be the fee to the dealers for managing the transaction; however, this proposal aims to ensure there are no gaps in the handling of firearms or weapons at any stage of the process to reduce the potential for leakage into the illicit market.

### *FR Clause 61: Heirloom Permit*

##### **Proposal**

The intention of an heirloom permit is to enable a person who has inherited a treasured firearm, but who is not a shooter, to retain it. It differs from a 'collection' by restricting heirloom permits to a single firearm or matched pair. The limitation on the permit is ineffective unless a restriction is applied on the number of permits that may be issued. It is proposed that the number of permits authorised to be issued be limited to one.

##### **Impact**

This amendment gives effect to both current practice and the intent of the legislation to provide a "one-off" heirloom permit for people who are otherwise not interested in a firearms collection. It removes the loophole of using heirloom permits to fashion a collection.

### *FR Clause 62: Museum firearms permit*

#### *WPR Clause 21: Public Museum permit*

##### **For comment**

During the discussions regarding the National Firearms Amnesty, the issue arose as to whether items surrendered for destruction could be held for a museum if they were of significant historical interest and whether the provisions as drafted are sufficient to provide for this.

Comments are sought on this and other issues such as: should museum firearms be registered (before or after being donated to museum) and are permits to acquire required for acquisition of firearms by a museum?

Are there any further amendments needed to this clause to ensure that museums can acquire firearms appropriately?

### ***FR Clause 63 - Firearms used in film, television or theatrical production***

#### ***WPR Part 5 – Theatrical weapons armourer permit***

##### ***Proposal***

Under this clause, the permit authorises the permit holder to possess and use the firearms to which the permit relates - but only in connection with the production concerned. However, it is ambiguous under the current permit whether firearms can only be provided by a theatrical armourer. It is proposed that this be clarified in the legislation.

A note to the clause has been added to make it clear that a theatrical permit is not limited to firearms provided by a theatrical armourer, but includes a firearm for which a permit to acquire has been granted.

##### ***Impact***

This proposal aims to provide clarity to both those involved in film, television and theatrical production and the NSWPF Firearms Registry about the authority of the permit.

### ***FR Clause 68: Safari tour permit***

##### ***Proposal***

It is proposed that safari tour operators submit the permission of the land owner at the time of applying for the permit to conduct a safari tour.

##### ***Impact***

By placing the onus on the applicant to seek the owner's permission for inclusion in the application, there may be indirect cost in obtaining that permission. This proposal aims to provide certainty for landowners who might otherwise not be aware a safari is occurring on their land. It ensures that those who could be found responsible in the unlikely event of an accident had provided clear permission for a firearms event to take place on their land.

### ***FR Clause 70: Historical re-enactment organiser's permit***

##### ***Proposal***

The current provision is not clear as to whose firearms – the participants' or the re-enactment event co-ordinators - may be used in an historical re-enactment event. It is common practice that a coordinator of historical re-enactment events has a pool of firearms that can be used by participants. Similarly, participants can use their own firearms acquired under an appropriate licence in an historical re-enactment event. The proposals will provide clarity regarding acquired firearms, participation and possession of imitation firearms.

This clause will now provide that the permit authorises the permit holder to possess and use firearms for the purposes of historical re-enactment. It has also been assumed that firearms will not be acquired by or registered to the historical re-enactment organisation itself.

The note to the clause has been added to make it clear that the authority, for the purposes of participating in an historical re-enactment event, extends to a firearm that is registered in the name of another person (including the historical re-enactment permit holder).

### ***Impact***

This amendment provides clarity and a sensible approach to which firearms may be used in historical re-enactments.

### ***FR Clause 73: Starting Pistol Permits***

#### ***Proposal***

It is proposed to amend the clause relating to starting pistol permits to allow for third party authority. This will allow a holder of a permit for a starting pistol to authorise other persons chosen by the permit holder to use the pistol. This amendment is based on the practical realities involved in the relevant events.

### ***Impact***

The proposed amendment will benefit people at sports carnivals and events by allowing the permit holder to allow someone else to use a starting pistol to start an event.

### ***FR Clause 74: Arms Fair Permits***

#### ***Proposal***

Often pre-existing ammunition permit holders seek to be authorised to participate in Arms Fairs. It is proposed to clarify that permit holder are able to participate in an arms fair.

### ***Impact***

The direct cost of this amendment is to those seeking a permit who wish to engage in an arms fair, however this may primarily be those who are already permit holders. This proposal aims to provide clarity.

### ***Current FR Clause 66 – Permits relating to open days***

Section 6B of the Act provides an exemption for unlicensed persons shooting on approved ranges, and for persons undertaking firearms safety training courses, so that these persons do not require a licence or permit to possess or use a firearm in these circumstances. Prior to the insertion of section 6B, some ranges held open days where unlicensed shooters could try the sport of shooting. Given that section 6B now provides for unlicensed shooting at ranges, applications for permits for open days have significantly declined.

**It is therefore proposed to remove current clause 66 from the Regulation.** All unlicensed shooting at ranges would then be authorised via section 6B. Clause 88 would also require amendment if this proposal is supported.



**Impact**

This amendment removes an unused provision. **Please note there is no clause in the draft firearms regulation 2017 relating to this issue.**

**FR Clause 75: Scientific purposes permit****Proposal**

This proposal aims to expand clause 75 to allow expert witnesses to conduct forensic investigation or examination regarding firearms where required. It is proposed to insert wording to the effect of: “other than forensic analysis associated with legal proceedings” after “research about firearms” in the Regulation to make it abundantly clear that this research is permitted.

**Impact**

This amendment provides clarity for expert witnesses and is of significant benefit to legal proceedings involving firearms.

**FR Clause 79: Large calibre pistol permit****Proposal**

The Regulation implies that one permit is required for each large calibre pistol. It is not considered necessary for a licence holder to have a permit for each pistol. Amendment of regulation required to pluralise ‘pistol’ thus enabling a single permit to cover multiple firearms (subject to the PTA process).

**Impact**

The direct cost of this amendment is reduced as multiple permits will not be required, benefiting pistol shooters and the administrative burden on the Firearms Registry, which should in turn improve their processes.

## Part 7 Security guards – special provisions

The Regulation includes a substantive part relating to the use of firearms by security guards.

### *FR Clause 81: Restrictions on authority conferred by licence issued to security guard*

#### **Proposal**

Currently, a technical breach occurs in circumstances where an armed security guard is requested by the master licensee to transport more than one pistol to a licensed firearms dealer for servicing. It is proposed to amend the clause to permit the carriage of more than one firearm where firearms are being transported for surrender, servicing and maintenance.

#### **Impact**

The direct cost of this amendment is reduced as a permit application will not be required. Security guards who will not be in breach of the clause by carrying multiple firearms for surrender, servicing or maintenance. It reduces the administrative burden on the Firearms Registry.

### *FR Clause 82: Special requirements in relation to ammunition and firearms*

#### **Proposal**

In drafting the Exposure Regulation three subclauses were identified as potentially outdated or unclear. One has been amended and comment is sought on the other two.

It is proposed to delete the words “manufacturer’s recommended explosive material load” and provide that an armed security guard may only possess ammunition that is appropriate for the firearm in clause 82(1).

It is not proposed to amend clause 82(2) and 82(3) in the exposure draft regulation; however, comment is sought on whether these descriptors are still valid with advice on why and if the terminology could be clarified. There is no intent to change the nature of the clause, merely to improve the language.

#### **Impact**

There is no direct impact of this amendment as it is aimed at clarifying and updated language of the regulation

### *FR Clause 90: Registers to be kept by security guard employers*

#### **Proposal**

The handling and transporting firearms is a serious undertaking, exposing all involved to risks. If the firearms are stolen during transit, it is vital there be an accurate record of the transaction. It is proposed to remove the term ‘if appropriate’ and make it a mandatory requirement for a security firm to record when a firearm is being transferred and returned.

#### **Impact**

Security firms would need to develop mechanism for maintaining the record. The proposed amendment aims to benefit security firms by ensuring the integrity of their management

systems and it would aid police if the firearms are lost, stolen or there are complaints about the transaction.

#### ***FR Clause 92: Additional requirements relating to security guards***

##### ***Proposal***

Currently clause 83(1) provides that the Commissioner *may* refuse to issue a licence to a person who is employed as a security guard unless the person meets a number of requirements. It is proposed to amend the clause to use terminology that indicates it is a mandatory requirement, by omitting reference to *may* and insert instead *must*.

##### ***Impact***

The indirect cost of this amendment for a security guard who cannot meet the requirements would be significant in that they would not be able to undertake any work requiring a licence. However, this proposed amendment aims to benefit the community by ensuring the highest level of scrutiny and integrity of security guards having access to firearms.

#### ***FR Clause 93: Number of firearms to be held by security firms***

##### ***Proposal***

The current clause 84(2) details what information a security firm may be required to provide to the Commissioner. The current list is appropriate, but it does not include any context to the application for a particular number of firearms. To enable the Commissioner to make an informed decision, it is proposed to require a security firm to submit a risk assessment to support the claim for the number of firearms sought. This could apply to: new licence applications, licence renewals and existing (in force licences).

##### ***Impact***

Security firms will need to develop a risk assessment process and reporting that may have some indirect costs, at least in time. This proposed amendment may benefit security firms by allowing for the further provision of information to support their application that may have been otherwise rejected. It aims to benefit the community by adding a layer of scrutiny over security firms that have a need for firearms in larger numbers.

## Part 8 Approval of shooting ranges

Amendments to Part 8 have been made to update the language in some clauses and feedback is sought on the following issues.

### *FR Clause 96: Approval of shooting range*

#### **Proposal**

A range approval is issued for five years (see current clause 87(5)); therefore it is appropriate that provision be made to continue the authority of the range approval in circumstances where the subsequent application has been made prior to the expiry date.

#### **Impact**

There is a direct reduction in cost where a range approval is continued. This amendment will benefit range operators and the Firearms Registry by reducing red tape and administrative burdens.

## Part 9 Approval of clubs

### Part 6 Approval of clubs

The National Firearms Agreement encourages club membership as a means of promoting responsible firearms use. Participation in an approved club is a licensing requirement for a number of firearm licences. Part 9 outlines the requirements for club approvals, conditions of approval including those specific to pistol clubs and collector's societies and member participation requirements.

#### *FR Clause 100: Approval of club*

##### **Proposal**

A club may apply to the Commissioner to become an approved Club under current clause 91 of the Regulation. Clubs seeking approval must meet a number of requirements outlined in the clause. Two additional requirements are now proposed: that the club must be established for 3 months and that the approval is in force for 5 years.

##### **Impact**

Some administrative processes will need to be followed every 5 years.

#### *FR Clause 103: Conditions of approval of club*

##### **Proposal**

Current clause 93 requires that an annual return be submitted. These requirements relating to club compliance are an administrative burden on clubs, with the inclusion of such compliance activities as mandatory shoots by club members. The proposal is aimed to assist in reducing this burden by requiring the reporting of non-compliance rather than compliance.

##### **Impact**

There is a direct reduction in cost to clubs who comply to benefit club administrators and the Firearms Registry by reducing red tape and administrative burdens.

#### *FR Clause 103: Special conditions relating to approved pistol clubs*

##### **Proposal**

This clause will now require that a person is not able to shoot at a club without a full licence except under section 6B.

##### **Impact**

This proposed amendment aims to benefit club administrators by providing clarity and ensure the safety of the club users.

## Part 10 Participation requirements for club members

### *FR Clauses 108 - 114*

#### **Proposal**

This new part replaces current clause 96 to clearly set out that a person's membership of an approved club is subject to the requirement that they participate in a certain number of club events each year.

These provisions have raised confusion among pistol shooters and it is proposed to provide clarity about the requirements. To simplify this complex arrangement, it is proposed to insert the participation requirements into the new Part 10.

These provisions mirror that of the current clauses but provide greater detail in line with the guidance currently provided by the Firearms Registry.

#### **Impact**

There may be costs relating to the events; however, the proposed amendments aim to provide clarity in relation to the requirements. They should also benefit club members, shooter and administrators by reducing the number of required events and providing that a greater number of events 'count' towards meeting the requirements.

## Part 11 Fees

This Part of the Regulation provides for the fee structure of the regulatory system.

### *FR Clause 115*

### *WPR Clause 14*

#### ***Proposal***

The numbering has been reordered and one additional fee included:

The fee for the issue of a replacement licence or permit required by the change in the particulars specified in the licence or permit is proposed to be \$75

## Part 12 Registration of Firearms

This Part of the Regulation supports the operation of Part 3 of the Act, which sets out the requirements for the registration of firearms in NSW.

There are no additional proposals, but some language has been updated for consistency with the Act.

## Part 13: Exemptions

This part of the Regulation sets out a number of exemptions to the requirements of the Act.

### *FR New Clause 126: Exemption for holder of prohibited weapons permit for silencer*

#### **Proposal**

A silencer, otherwise known as a moderator or suppressor, is a prohibited weapon and requires a permit to possess and use. In circumstances where a silencer is attached to a firearm, schedule 1 of the *Firearms Act 1996* reclassifies the firearm to be a prohibited firearm. The result is such that persons who have demonstrated a legitimate need to possess and use a silencer must be authorised by three separate authorities – their firearms licence, their prohibited weapons permit and their prohibited firearms permit.

It is proposed to insert an exemption from the requirement to obtain a ‘prohibited firearm permit’ in circumstances where a firearms licensee is simultaneously authorised by a prohibited weapon permit to possess and use a silencer.

#### **Impact**

The cost will be reduced, as the permit would no longer be required and the proposal streamlines the process and reduces red tape for both the applicant and the Firearms Registry. The legitimate need test will not be altered under this proposal.

### *FR Clause 128: Exemption for unlicensed persons shooting on approved ranges*

#### **Proposal**

This clause supports the operation of section 6B of the Act, which provides an exemption from licensing or permit requirements to possess or use a firearm when a person is shooting under direct supervision at an approved shooting range, or participating in a firearms safety training course.

It is proposed to make an amendment to clarify what constitutes mental illness for the purposes of the clause. Stakeholders have previously raised concerns that the current wording is unclear in that it requires the applicant to determine if their own mental health status would pose a risk to them undertaking shooting at an approved shooting range.

#### **Impact**

The greatest impact of this proposed amendment will be to persons who may be unable to make the required declaration on the form and prohibited from shooting at a range. There may also be more administrative burdens for range administrators. However, it may be said



that this is balanced by the need to ensure, as far as is possible, that a person is not using a range for unauthorised purposes.

***Current clauses 114 and 115: Exemptions in relation to certain student police officers and custodial officers***

This clause duplicates provisions in section 6 of the Act and is being omitted.

***FR Clause 132: Exemptions in relation to sales of ammunition by firearms dealers***

***Proposal***

A small number of dealers have indicated that they are uncertain as to whether they are permitted to sell ammunition to interstate licensees.

This new clause enables interstate licence holders to acquire and possess ammunition in NSW.

***Impact***

This proposed amendment aims to provide clarity and a reasonable approach to possession and use of ammunition by interstate licensees.

***FR Clause 135: Exemptions relating to international visitors***

***Proposal***

Currently, persons issued with the equivalent of an *international (temporary) visitors permit – competitions* in another State or Territory are afforded the ability to possess but not use their firearms if subsequently travelling to NSW.

It is consistent that international visitors who may be authorised in another State or Territory to participate in competitions or safari activities in that jurisdiction, should be able to seek to participate in competitions or safaris in NSW without having to seek another authority in NSW.

It is proposed to amend the clause so overseas persons who have been issued a permit authorising them to participate in shooting activities or organised safari tours in another jurisdiction are exempt from the need to apply for a licence or permit in NSW to participate here.

***Impact***

This proposed amendment aims to provide clarity and a reasonable approach to how the permit is used. Applicants in possession of interjurisdictional permits will have reassurance they are not breaching NSW law.

## **Part 14 Amnesties**

This Part of the Regulation are the provisions contained within the *Firearms and Weapons Legislation Amendment Act 2017*, which commenced these schedules on 1 July 2017

They support the operation of the National Firearms Amnesty.

As these provisions have been passed by Parliament and the Amnesty commenced, no comment is required.

## Part 15 Miscellaneous provisions

### Part 7 Miscellaneous provisions

As with many regulations, this part sets out a number of miscellaneous provisions that are not appropriate for inclusion in the rest of the Regulation.

#### *FR Clause 148: Requirements for non-commercial transportation of Category A and B firearms*

##### **Proposal**

The current clause 126 only prescribes the required safety measures to be undertaken when transporting prohibited firearms or pistols. For clarity and consistency, it is proposed that the regulation should also prescribe the safety requirements for transporting 'non-prohibited' Category A and B firearms.

##### **Impact**

There is cost associated with transportation and this proposed amendment may increase the cost for those transporting firearms. This proposed amendment aims to provide clarity, certainty, and significant public safety and theft reduction benefits.

#### *FR Clause 155: Supervision requirements*

##### **Proposal**

This new clause is proposed to provide greater clarity to what level of supervision is required and to provide range officials with factors to consider in determining the supervision.

##### **Impact**

This proposed amendment aims to provide clarity, certainty, and significant public safety benefit.

## 6. FURTHER ISSUES FOR CONSIDERATION AND COMMENT

### *New provision: clarify that a Spyderco c14 Rescue Knife is a prohibited weapon (flick knife) and provide an exemption for emergency services personnel to possess and use one*

It has been proposed that emergency services personnel should be exempt from the need for a prohibited weapon permit to possess and use the Spyderco C14 Rescue Knife. This is supported. However, this assumes that the knife falls under the definition of a flick knife and is therefore a prohibited weapon.

It has also been proposed that being designed to allow for one-handed opening, or fast opening, does not make it a flick knife. Looking at the definition of “flick knife” in the WP Act, it may be considered that the C14 does not have a blade that “opens automatically by gravity or centrifugal force or by any pressure applied to a button, spring or device in or attached to the handle of the knife” and so does not satisfy the definition of a prohibited weapon

Comments are sought on whether this knife has been sold as a flick knife or not – that is, do all who currently possess one have a prohibited weapon permit? And do dealers sell it as such?

### *New deletion: delete the example of a Trunion gun from things declared to not be firearms, thereby making it a firearm*

It has been proposed to delete the example in clause 4(i) of a thing declared not to be a firearm of a Trunion gun and thereby making a Trunion gun a firearm

It is not clear the number of guns that are currently in possession and what would be the impact of deleting this example. Comments are sought on how many owners are there with Trunion guns and would they be able to apply for a firearms licence if these were declared firearms.

### *Clarification: Spear guns in Weapons Prohibition Regulation?*

In drafting the Exposure Regulation, a proposal was made to remove all spear gun provisions to the Weapons Prohibition Regulation rather than in the Firearms Regulation.

There was concern that this may be more unclear as the treatment of spear guns >45cm in the WPR will have to be different from other spear guns. The Firearms Act has a specific regulation-making power for spear guns but the Weapons Prohibition Act does not. Comments are invited on this issue.

## 7 HOW TO MAKE A SUBMISSION ON THIS RIS

There is no set format for submissions; however short comment with reference to the part or clause of the Draft Regulation to which the issue relates is encouraged. Detailed submissions without reference to the Draft Regulations have increased likelihood of key issues being missed.

Only comments relating to the Draft Regulations will be considered. Not all comments may be incorporated into the final Regulations.

If you wish to keep your comments private, please mark your submission as confidential.

Submissions can be made by email or post, however, posted submission must reach the Office for Police by the close of submission date. Email is the preferred option.

### Email:

firearms@mpes.nsw.gov.au

### Post:

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

Submissions must be received no later than **5.00pm Monday 31 July 2017**.