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# Shooting Tasmanians

## Gun control laws

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*Tasmania has the highest rate of gun ownership per head in Australia, the worst gun death rate the worst gun suicide rate. Will new laws change those statistics?*

The link between gun availability and gun crime, accidents and suicide is well established. International comparisons, case studies of cities and inter-region and inter-city comparisons suggest a clear link between the level of gun crime and gun ownership. A striking example of the former is a comparison by Zimring and Hawkins between Detroit and Northern Ireland. While the population base in each was similar, the number of homicides in Detroit in 1973 exceeded the total number of civilians killed in Northern Ireland over a five-year period from 1969 to 1974.

Racial, cultural and economic factors are undoubtedly also important in the incidence of violent crime, and it is true there are countries, such as Switzerland, where there are low rates of homicide despite high rates of gun ownership. Nevertheless, case studies of single cities, inter-region and inter-city comparisons all point in the same direction.<sup>1</sup> The American findings of a link between gun availability and gun crime is equally valid for Australia.<sup>2</sup>

In New South Wales it has been shown that significantly higher gun availability in rural areas is accompanied by significantly higher rates of gun deaths in those areas.<sup>4</sup> Comparisons of the death rate of victims assaulted by different weapons also suggests fewer guns would mean fewer deaths. Victims are far more likely to die from gun wounds than from attacks with other weapons with lethal intent.<sup>3</sup> The argument that gun control laws will not have any great impact on gun homicides because the really determined killer and the professional criminal will not be prevented by such legislation from obtaining a gun is refuted by Australian studies which suggest the majority of homicides are not carried out by such killers.<sup>4</sup> On the contrary, as Neal suggests, '[t]hey occur in heat of the moment, alcohol charged situations where the availability of a gun makes the difference between life and death'.

### Thinking about guns

The National Committee on Violence considered the arguments in favour of greater and lesser restrictions on the availability and use of guns. It strongly urged a national system of firearms licensing and registration aimed at reducing the number of firearms in Australian society and preventing access by individuals who 'are not fit and proper persons', such as those who have been convicted of violent crime or who have demonstrated a propensity for violence. The Committee recommended that State and Territory governments should undertake the following action:

- Prohibition of all automatic long guns and certain types of ammunition.
- Restriction of semi-automatic long guns to individuals with a specific need.
- Restriction of sales of ammunition by licensed gun shops only, to licensed individuals only, for personal use of a specific firearm.
- Registration: all firearms should be registered in a computerised national firearms registry.

Licensing: ownership or possession of a firearm to be restricted to those possessing a valid licence. A shooter's licence should be limited to applicants over the age of 18 years who are fit and proper persons with good reason for a licence and who demonstrate training, compe-

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tence and safety consciousness to the licensing authority. Hand gun licences should be restricted to authorised security personnel and members of pistol clubs, with weapons stored on the premises.

**Security:** mandatory measures to be introduced for the safe-keeping of all weapons in an inoperable condition in secure storage, both by individuals and businesses, with appropriate penalties for non-compliance.

**Seizure:** mandatory seizure of all weapons in the hands of a licensed owner who gives reason to believe that he or she is no longer a fit and proper person.

- **Restrictions on private sales:** all sales of firearms, including second-hand sales to be made through licensed gun dealers, and changes in registered owners to be notified.
- **Amnesty:** a permanent amnesty for the surrender of unauthorised firearms.

### The new Tasmanian gun laws

There have been a number of attempts to introduce gun control laws in Tasmania. The *Guns Amendment Act 1988* was passed but never proclaimed. In 1990 Dr Bob Brown introduced the *Firearms Control Bill* into the Tasmanian Parliament. This failed to pass. In 1991 the *Guns Bill* was introduced and was passed in October. In June 1992 the date of commencement was fixed for 1 January 1993.

The *Guns Act 1991* (Tas.) contains many of the recommendations of the National Committee on Violence. Prior to these reforms there was very little in the way of gun control legislation. Pistols are regulated under the *Firearms Act 1932* which requires an owner of a firearm with a barrel of less than 420 mm to be licensed and the pistol to be registered. There was no provision for safety testing and training. Access to the use of long guns was virtually unrestricted although such weapons are more lethal than pistols.

#### Licences

The Act introduces a system of licensing and testing of those who wish to use or possess a gun. To qualify for a gun licence a person must be 18 years of age, have the relevant gun safety knowledge and be 'a fit and proper person'. In deciding whether a person is 'fit and proper' the Commissioner of Police is required to take into account the likelihood of the person using the gun for an unlawful purpose or to harm himself or herself and, in particular, to take into account any criminal activity of the applicant, his or her mental and physical condition and any restraint order or interim restraint order made in respect of the person.

The following people cannot be considered 'fit and proper persons' and are accordingly ineligible to hold a licence: a person sentenced to a term of imprisonment for an offence involving violence; a person convicted of a crime of violence in a period of five years immediately preceding the application; a person convicted of carrying a gun with criminal intent, or aggravated assault. A person is also ineligible to obtain a licence or permit if a court order that a person not obtain a licence or order is current. To acquire the required 'gun safety knowledge' an applicant for a gun licence must attend an approved gun safety training course and pass a written gun handling and knowledge test. It would appear that the courses will not involve practical instruction in the use of firearms, but are only designed to teach people safety in the use of firearms.

Separate licences are provided for security agents and security guards. Such licences authorise agents to possess a pistol as well as long guns. The criteria for holding a licence are the same as for gun licences other than the fact that the applicant must be either a licensed security guard or security agent and the approved course is a gun handling course.

#### Gun dealers

Under the *Firearms Act 1932* (Tas.) people who deal in pistols by way of business require a licence. Under the new legislation, dealers and manufacturers of all guns are required to be licensed. For such a licence, a person, or in the case of a corporation, the people controlling the corporation, must be 'fit and proper' within the meaning of the Act. Gun dealers are required to keep records in respect of guns purchased or sold. Such records must be produced to a police officer when required and must be preserved for six years. It is an offence to sell a gun or ammunition to a person who is not authorised to have possession of a gun.

#### Permits

The Act also requires holders of a gun licence to hold permits for pistols, fully automatic guns and prohibited guns. To obtain a pistol permit a person must satisfy the Commissioner that he or she is a member of an approved pistol shooting club, a gun collector, has a pistol which is of special significance as an heirloom or memento, or requires the pistol for protection of life or property. Members of an approved rifle club and gun collectors can obtain a prohibited gun permit. Prohibited guns are 'self loading centre fire rifles other than fully-automatic guns' that have been declared by the Minister to be prohibited. Fully automatic gun permits can be granted to gun collectors and can only be used on an approved range.

#### Registration

Pistols (guns with a barrel length of 410 mm or less) must be registered as a collector's pistol or a user's pistol. There is no authority to use a collector's pistol. Holders of automatic guns and prohibited guns are required to keep a register of all fully automatic guns and prohibited guns in their possession and to allow inspection of the register and guns at any reasonable time. Transfer of ownership of pistols, fully automatic guns and prohibited guns must be notified to the Commissioner within a specified period.

#### Safe storage

Licence holders are required to keep any guns in their possession in a secure place in accordance with the regulations.<sup>5</sup> Guns must be kept in a secure place either without any ammunition capable of being discharged by the gun or must be rendered temporarily inoperable by the removal of part of the firing mechanism. Pistols and firing mechanisms must be kept in a locked metal container or safe which cannot be easily removed from the building. Where more than 20 guns are kept on the same premises the security requirements are more stringent. The storage and security arrangements for fully automatic guns and prohibited guns require that part of the guns firing mechanism be removed and kept in a separate secure place.

#### Use of firearms by people under the age of 18

To qualify for a gun licence a person must be at least 18, recognising that in rural areas some parents instruct their children in the use of firearms, the Act provides that unlicensed people under the age of 18 and over the age of 12 will be permitted to use guns under the direct supervision of an adult licence holder.

### *Cancellation of licences and permits*

The Commissioner has powers to cancel licences and permits in a number of circumstances. Licences or permits must be cancelled if the holder is no longer qualified to hold them. Pistol permits and prohibited gun permits may be cancelled if the holder does not attend at least the prescribed number of range practices or competitions. Failure to comply with safe storage requirements may result in cancellation of a gun licence or gun dealer's licence. Where a person is convicted of an offence under the Act or of any offence involving violence or the threat of violence, the court may order that any licence or permit be cancelled and that the person should not be granted a licence or permit.

### *Offences*

A series of new offences have been created by the Act. Carrying a gun with criminal intent is a crime and assault involving a gun is the crime of aggravated assault. Possession of a loaded gun in a public place is an offence and it is an offence to discharge a gun over a public place or private land without authority of the owner. Discharging a gun recklessly or without due care is an offence and possession of a gun while under the influence of alcohol or any other drug is prohibited by s.67.

### *Permanent amnesty*

The Act contains a permanent amnesty by providing no action be taken against a person who voluntarily brings a gun to a police station and surrenders it to the Commissioner.

### *Police powers*

If the police have reasonable grounds to believe that a person in a public place is in possession of a gun, they may require that person to hand the gun to the police officer for examination. For a suspected breach of the Act there is a power to search premises in accordance with a warrant and to search a person or vehicle without a warrant. Where police believe that a person is threatening to use a gun in circumstances where death or injury is likely, there is a power under s.78 to enter and search premises and to seize and detain any gun, ammunition or person found on those premises.

### *Transitional provisions*

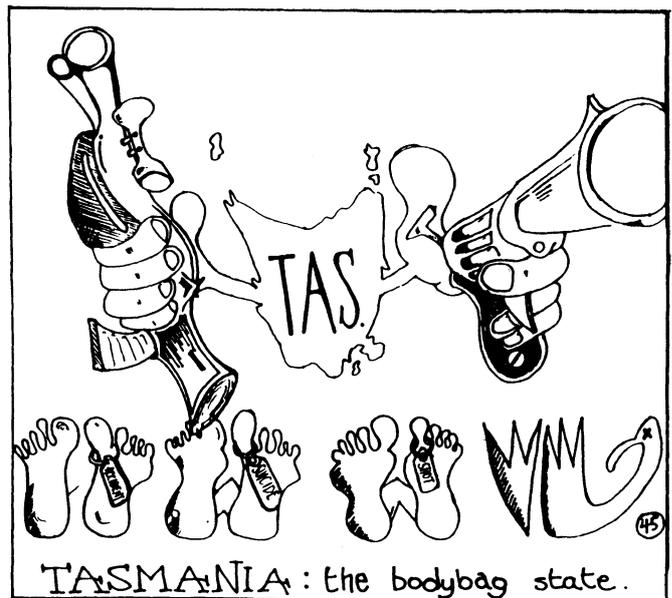
For one year after the commencement of the Act, a person who satisfies the Commissioner that on the date on which the Bill was introduced into Parliament (30 April 1991), they were the owner of a gun other than a pistol, a person who applies for a gun licence does not have to attend a gun safety training course or pass the written gun handling and knowledge test. They will have to satisfy the criteria as to 'fit and proper person'. The rationale for the exemption of existing owners from testing was two-fold. First, the difficulty of the large number of people involved, estimated to be about 50 000. Second, it was thought a large number of existing owners would refuse to apply for a licence if they were required to take a course and test, thus defeating the purpose of the legislation.<sup>5</sup>

### **Will the new laws be effective?**

In his second reading speech, the then Minister for Police and Emergency Services claimed the aim of the system of licensing and training was to reduce deaths from suicides, to reduce the level of violence in homes and in the community, to reduce accidents caused by guns, and to reduce access to guns

by undesirable people and people under the age of 18 years.<sup>6</sup> While supporting the Bill, a number of members doubted whether any licensing or registration requirements would have an impact on the suicide or crime rate.<sup>7</sup>

For some, the legislation did not go far enough. Dr Bob Brown regarded it as but 'a timid step in the right direction',<sup>8</sup> and, with the National Committee on Violence, argued for registration of all firearms as well as licensing. He moved an amendment to the clause listing matters to be specified in a gun licence which added the type of firearms and their identifying marks as a matter to be specified. In favour of registration he argued that it would indicate how many and what sort of goods are in the State; would allow trends in gun ownership to be monitored; and would enable police and other authorities to have a better idea of what they were dealing with if they were called to premises in which a licensed gun owner was threatening to misuse weapons.



Only the Green Independents supported the amendment. Those opposing it claimed registration would be a bureaucratic nightmare and too costly; that it had not been effective in controlling violent crime in New Zealand; that it had also failed in South Australia; and that in Victoria it was unworkable because of non-compliance and was abandoned.<sup>9</sup> It was also argued that registration would not help the police detect crime unless the ballistic signature of each gun was also recorded after bringing in every gun and testing it to discover its ballistic signature.<sup>10</sup>

Registration aside, there are a number of other respects in which the *Guns Act 1991* does not measure up to the recommendations of the National Committee on Violence. Three of these will be considered here.

First, the Act does not prohibit all fully automatic guns. Rather it restricts them to a holder of a gun licence who is a gun collector and who requires a fully automatic gun for the purposes of the collection, and restricts the use of such guns to use on an approved range.

Second, the recommendation of a restriction of semi-automatic guns to individuals with a specific need is only partly implemented. The provisions enabling the Minister to declare any gun or class of gun a prohibited gun and for the issue of permits for prohibited guns were government amendments inserted during the Legislative Council debate.

Following the Strathfield incident in New South Wales there was a move in all states to restrict the possession of military or military-style semi-automatic centre fire rifles. The Australian Police Ministers' Council (APCM) in October 1991 agreed to action prohibiting the sale of such weapons. It appears the provisions relating to 'prohibited guns' were a response to this meeting and were intended to restrict the availability of high powered military-style, semi-automatic firearms to people who are members of an approved rifle club or gun collectors who can demonstrate a need for such a firearm. It was said there would be no restriction on the possession of non-military semi-automatic firearms, for example, semi-automatic sporting guns.<sup>11</sup> After the *Guns Act 1991* was passed, the decisions of the APCM were adopted by the Commonwealth and states as one of the resolutions of the Special Premier's Conference held in November 1991.

The possibility of further restrictions on the availability of semi-automatic weapons has been foreshadowed by the present Tasmanian Government. In a paper entitled *Proposed Amendments to the Guns Act 1991*, it is suggested that the Act be amended to give effect to the APCM decision to require a permit for sporting semi-automatic firearms, specifically non-military or non-military style self loading centre fire rifles with integral magazines or detachable magazines capable of holding no more than five rounds. The paper proposes that permits be restricted to collectors, primary producers who can establish a need for such a firearm on their properties, recreational shooters with appropriate permits, members of approved shooting clubs and professional shooters. The proposed amendment would bring the legislation into line with the recommendation of the National Committee on Violence and the APCM decision.

The proposal has already given rise to controversy. The Tasmanian Firearm Owners Association has rejected the proposals and warned they could lead to many gun owners refusing to apply for licences.<sup>12</sup> On the other hand, the Tasmanian Coalition for Gun Control is reported to support the proposals, but argues they do not go far enough.<sup>13</sup> Following the controversy there appear to be no plans to introduce amendments at this stage.

The third shortcoming of the *Guns Act 1991* addressed here is its failure to make a 'good reason' a prerequisite for obtaining a licence. This was taken up by the APCM which agreed people issued with a gun licence must have a reason to possess a particular type of firearm. Accordingly, the Government has proposed to amend the *Guns Act* to limit the reasons for a gun licence to membership of an approved club, recreational shooting, occupational requirements (e.g. farmers, professional shooters, security guards and security agents).

## Conclusion

Tasmania is said to have the highest rate of gun ownership per head in Australia, the worst gun death rate and the worst gun suicide rate.<sup>14</sup> Research suggests gun deaths and injuries can be reduced by gun laws. Reform has been slow and tortuous. Two previous attempts to introduce new legislation have failed. The legislation has at last been enacted but only partly implemented. Currently the Minister has not declared any guns to be 'prohibited guns'. So other than the need for a gun licence, there are no restrictions on the availability of high-powered semi-automatic firearms. Nor have the proposed amendments in relation to restrictions on non-military semi-automatic

weapons been introduced. It seems Stathfield is easily forgotten. One could be forgiven for suggesting that until another such incident occurs, nothing further will be done.

In conclusion it must be said that adequate laws are not enough. Much will depend on compliance with the legislation and enforcement. The community needs to accept that the ownership of firearms is a privilege and not a right and that strong measures are needed to deal with the incidence of gun fatalities and injuries. As well as community acceptance of the need for legislation and compliance with it, adequate resources need to be devoted to enforcement of the legislation. Whether the new Tasmanian laws will live up to their aim of reducing deaths from suicide, violence in the community and accidents caused by guns will be evaluated by a study funded by the Criminology Research Council. Tasmania is an ideal jurisdiction in which to investigate this because of the change from a system which provided virtually no restrictions on the possession and use of guns other than pistols.

In a small jurisdiction where the amount of data is manageable, it will be possible to compare the trends in all reported offences involving firearms for a period of five years before and after the commencement of the legislation. It will also be possible to assess whether the legislation is effective in keeping firearms out of the hands of 'undesirable persons' and people under the age of 18.

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4. Neal, above, p.20.
5. Second reading speech, *Parliamentary Debates, Tasmania, House of Assembly*, 18 June 1991, p.1821.
6. Second reading speech, *Parliamentary Debates, Tasmania, House of Assembly*, 18 June 1991, p.1819.
7. For example, Mr Robson said it would 'not do an iota of good', *Parliamentary Debates, Tasmania, House of Assembly*, 18 June 1991, p.1836.
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