

# Chapter 1

## Introduction and Background

### Referral of the inquiry

1.1 On 19 June 2014, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 2 October 2014:

The ability of Australian law enforcement authorities to eliminate gun-related violence in the community, with reference to:

(a) the estimated number, distribution and lethality of illegal guns, including both outlawed and stolen guns, in Australia;

(b) the operation and consequences of the illicit firearms trade, including both outlawed and stolen guns within Australia;

(c) the adequacy of current laws and resourcing to enable law enforcement authorities to respond to technological advances in gun technology, including firearms made from parts which have been imported separately or covertly to avoid detection, and firearms made with the use of 3D printers;

(d) the extent to which the number and types of guns stolen each year in Australia increase the risk posed to the safety of police and the community, including the proportion of gun-related crime involving legal firearms which are illegally held;

(e) the effect banning semi-automatic handguns would have on the number of illegally held firearms in Australia;

(f) stricter storage requirements and the use of electronic alarm systems for guns stored in homes;

(g) the extent to which there exist anomalies in federal, state and territory laws regarding the ownership, sale, storage and transit across state boundaries of legal firearms, and how these laws relate to one another; and

(h) any related matters.<sup>1</sup>

1.2 On 2 September 2014, the Senate extended the committee's reporting date to 2 December 2014.<sup>2</sup> On 24 November 2014, the Senate granted a further extension of time for reporting until 26 March 2015.<sup>3</sup>

### Conduct of the inquiry

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to a number of organisations and individual stakeholders inviting

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1 *Journals of the Senate*, 19 June 2014, pp 920–921.

2 *Journals of the Senate*, 2 September 2014, p. 1390.

3 *Journals of the Senate*, 24 November 2014, p. 1827.

submissions by 15 August 2014. Details of the inquiry were made available on the committee's website at [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon)

1.4 The committee received 427 submissions, which are listed at Appendix 1. Public hearings were held in Sydney, Melbourne and Canberra on 13, 14 and 31 October 2014. A list of witnesses who appeared before the committee at the hearings is at Appendix 2.

### ***Site visit***

1.5 On 17 February 2015 the committee visited the Australian Customs and Border Protections Detector Dog Program Facility and Objective 3D's manufacturing facility, both based in Victoria. The committee thanks both of these organisations for assisting the committee with its inquiry.

### **Acknowledgment**

1.6 The committee thanks all those who made submissions and gave evidence at its public hearings.

### **Note on references**

1.7 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

### **Structure of the report**

1.8 This report is comprised of seven chapters.

1.9 Chapter 1 provides an overview of the history of firearm regulation in Australia and a summary of current regulatory regimes.

1.10 Chapter 2 examines the composition of the illicit firearms market in Australia, and the various pathways by which firearms are diverted from the licit to the illicit market.

1.11 Chapter 3 considers the impact illicit firearms and firearm-related crime has on the Australian community.

1.12 Chapter 4 evaluates the current regulatory framework. In particular, it discusses issues relating to the regulation of the legal firearms market, including the need to regulate ammunition, firearm parts and accessories; the adequacy of the current storage requirements for firearms; the effectiveness of firearm amnesties; and the security of firearm ownership data.

1.13 Chapter 5 examines the effectiveness of existing registration and licensing arrangements for firearms.

1.14 Chapter 6 discusses the emergence of 3D manufacturing technology and regulatory concerns surrounding the development of 3D printed firearms.

1.15 Chapter 7 outlines the committee's views and recommendations.

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## Clarification of the purpose of this inquiry

1.16 In response to this inquiry, the committee received over 400 submissions, many of which were concerned about the impact the inquiry might have on the ownership and use of firearms.

1.17 It is important to clarify from the outset that the main focus of this inquiry was on illicit firearms in Australia. While some of the terms of reference refer to regulation of registered firearms that are legally held, this is in the context of ensuring that these are not diverted to the illicit market. The committee appreciates that the majority of firearm owners comply with the relevant legislation and acknowledges the work of the various firearms organisations in promoting the safe use and storage of firearms. The committee also recognises the number of Australians who participate in the sport of shooting.

1.18 The committee would also like to clarify the terminology used throughout this inquiry. As noted by the Attorney-General's Department (AGD) in its submission, firearms and firearm-related articles are not in themselves either legal or illegal:

...regardless of the type of firearm or firearm-related article, there will always be a situation in which it is able to be lawfully possessed in Australia. For example, although certain firearms (such as fully automatic firearms) are generally unable to be possessed or used by civilians, they are able to be possessed by law enforcement, the military and private companies engaged in activities such as research and development.

It is more accurate to state that a person's possession or use of a particular firearm or firearm-related article is legal or illegal. Generally, illegal possession or use would involve either possession without a licence, without a licence that authorises possession of that particular firearm type or possession or use in contravention of licence conditions.<sup>4</sup>

1.19 In using the term 'illicit firearms', the committee is referring to those firearms that 'were illegally imported into or illegally manufactured in Australia, diverted from the licit market or moved from the grey market'.<sup>5</sup>

## Background and overview of firearm regulation in Australia

### *Pre-1996 situation*

1.20 Prior to the incident at Port Arthur on 28 April 1996, in which 35 people were killed and 23 wounded by a gunman using a range of semi-automatic weapons, gun laws in Australia were less restrictive than current laws.

1.21 In its submission, the Attorney-General's Department (AGD) discussed the situation pre-1996, noting that a number of inconsistencies existed between the various jurisdictions with regards to the regulation of firearms.<sup>6</sup>

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4 Attorney-General's Department (AGD), *Submission 42*, p. 4.

5 Australian Institute of Criminology (AIC), *Submission 76*, p. 4.

6 AGD, *Submission 42*, p. 3.

1.22 AGD stated that:

One of the most significant consequences of the lack of a uniform approach to gun control in Australia was the opportunity for firearms to be diverted to the illicit market. This was facilitated to an extent by loopholes in legislation and regulation, lack of oversight, and low penalties that were applied to firearm offences.<sup>7</sup>

1.23 On 9 August 1987, a mass shooting took place on Hoddle Street, Clifton Hill which resulted in the deaths of seven people, and serious injury to 19 others. Less than five months later, another mass shooting took place in Melbourne at the Queen Street post office, which resulted in nine fatalities and five people being injured. As a result of these incidents, the government formed the National Committee on Violence (NCV). In its final report, released in 1990, the NCV included a recommendation that national firearm laws be implemented.<sup>8</sup> This recommendation was not acted upon until the establishment of the 1996 National Firearms Agreement.

***The 1996 National Firearms Agreement***

1.24 After the events at Port Arthur, the Australasian Police Ministers' Council (APMC) adopted the National Agreement on Firearms (NFA), which consisted of 10 resolutions which formed a nationwide plan for the regulation of firearms. The NFA contained the following changes:

- a ban on automatic and semi-automatic long-arms other than in exceptional circumstances;
- nationwide registration of all firearms (expanding the existing regulations requiring handguns to be registered to include long-arms as well);
- established categories of firearm types to be used in the licensing of firearms;
- a requirement that applicants for a firearms license demonstrate a 'genuine reason for owning, possessing or using a firearm' (for some licence categories applicants must also demonstrate a genuine need);
- the introduction of basic licence requirements: in addition to the demonstration of 'genuine reason', a licence applicant should be aged 18 years or over, be a fit and proper person, be able to prove identity (have 100 points of original identification) and undertake an adequate safety test;
- a requirement that first time licence applicants complete a safety training course;
- the introduction of grounds for licence refusal or cancellation and seizure of firearms;
- a uniform standard for the security and storage of firearms;
- introduction of firearm permits and a minimum 28-day waiting period; and

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7 AGD, *Submission 42*, p. 3.

8 AGD, *Submission 42*, Attachment A.

- a requirement that firearms sales be conducted only by or through licensed firearm dealers.<sup>9</sup>

1.25 These reforms were implemented by the states and territories, though some inconsistencies still remained.<sup>10</sup>

1.26 The NFA also contained a resolution establishing a 12 month national amnesty period and compensation program, along with a public information campaign.<sup>11</sup> The federal government passed the *National Firearms Program Implementation Act 1996* and the *Medicare Levy Amendment Act 1996*, which established the national firearms buyback program funded by a temporary increase in the Medicare levy.

1.27 Prior to the buyback, there were approximately 3.25 million guns in Australia.<sup>12</sup> The gun buyback scheme ran from 1 October 1996 to 30 September 1997 and resulted in the surrender of approximately 640,000 now-prohibited firearms.<sup>13</sup> The effectiveness of the buyback scheme has remained a subject of debate amongst commentators.<sup>14</sup>

### ***Further agreements***

1.28 In 2002, the APMC developed two new agreements: the National Handgun Agreement 2002 (the Handgun Agreement) and the National Firearms Trafficking Policy Agreement 2002 (the Trafficking Agreement).<sup>15</sup>

1.29 The Trafficking Agreement was agreed to by APMC at its meeting in July 2002 and was aimed at addressing the illegal firearms trade. As noted by AGD in its submission, the agreement 'committed jurisdictions to putting in place additional controls to address the illegal firearms trade, including the introduction of nationally consistent rules for the legal manufacture of firearms and tighter recording and

9 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, AIC, Research and Public Policy Series no. 116, June 2012, pp 7–10, <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp116.html> (accessed 2 October 2014).

10 AGD, *Submission 42*, p. 5; S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012.

11 AGD, *Submission 42*, p. 4.

12 J Phillips, M Park and C Lorimer, *Firearms in Australia: a guide to electronic resources*, Parliamentary Library, 9 August 2007, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/0708/FirearmsAustralia](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0708/FirearmsAustralia) (accessed 2 October 2014).

13 Australian National Audit Office (ANAO), *The Gun Buy-Back Scheme*, December 1997, pp 6–7, [http://www.anao.gov.au/uploads/documents/1997-98\\_audit\\_report\\_25.pdf](http://www.anao.gov.au/uploads/documents/1997-98_audit_report_25.pdf) (accessed 2 October 2014).

14 J Phillips, M Park and C Lorimer, *Firearms in Australia: a guide to electronic resources*, Parliamentary Library, 9 August 2007.

15 AGD, *Submission 42*, Attachments C and D.

reporting provisions for dealer transactions involving firearms and major firearms parts'.<sup>16</sup>

1.30 As a result of a shooting incident causing the death of two students at Monash University in October 2002, the APMC agreed on a series of 28 resolutions aimed at 'restricting the use and availability of handguns through such measures as restricting the possession of handguns based on calibre, barrel length and magazine capacity'.<sup>17</sup> These were adopted by the Council of Australian Governments (COAG) in December 2002 and formed the Handgun Agreement.

1.31 The agreed restrictions were implemented legislatively by the states and territories:

Each state and territory agreed to amend its firearms laws by 1 July 2003 to prevent the purchase, possession and use of prohibited handguns used for sports shooting and also those that are held as part of historical collections. Where legislation was not already in place, the states and territories also agreed to introduce substantial penalties for the illegal possession of a firearm.<sup>18</sup>

1.32 The federal government amended the Customs (Prohibited Imports) Regulations 1956 to reflect the new restrictions and introduced a buyback program for handguns that did not comply with these restrictions. The program resulted in 70,000 handguns being surrendered.<sup>19</sup>

### ***Recent reforms***

1.33 In 2012, the states and territories reached an agreement with the federal government with regards to further reforms. These were aimed at targeting the illicit firearms market and included:

- tougher penalties—including a maximum penalty of life imprisonment for aggravated firearm trafficking;
- national roll-out of the Australian Ballistics Identification Network;
- establishing a National Firearms Interface;
- expanding the Australian Crime Commission's Firearm Tracing Capability;
- establishing a firearm intelligence and targeting team within Customs and Border Protection;
- establishing measures to identify and target vulnerabilities in the international airstream;

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16 AGD, *Submission 42*, p. 4.

17 AGD, *Submission 42*, p. 4.

18 J Phillips, M Park and C Lorimer, *Firearms in Australia: a guide to electronic resources*, Parliamentary Library, 9 August 2007.

19 J Phillips, M Park and C Lorimer, *Firearms in Australia: a guide to electronic resources*, Parliamentary Library, 9 August 2007.

- improving police responses to firearm crime;
- establishing a national campaign on unlicensed firearms; and
- developing an annual illicit firearm intelligence assessment.<sup>20</sup>

1.34 In order to implement these changes, the federal government passed the Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012.<sup>21</sup>

1.35 In 2014, the government introduced the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014, which seeks to 'introduce international firearms trafficking offences and mandatory minimum sentences and extend existing cross-border disposal or acquisition firearms offences'.<sup>22</sup> On 15 February 2015 this Bill was passed with amendments.

### **Current situation regarding firearm regulation**

1.36 The regulation of firearms in Australia is primarily the responsibility of the states and territories, with the federal government's role contained to the import and export of firearms.

#### ***Federal government***

1.37 As noted by AGD, 'the Commonwealth's main role in relation to the regulation of firearms and firearm-related articles is through the control on imports [and] exports and the use of the trade and commerce power in the Constitution in relation to interstate movement'.<sup>23</sup>

1.38 Section 51(i) of the Constitution, which deals with overseas and interstate trade and commerce, has been relied on by the Commonwealth to prohibit the importation of certain firearms into Australia. Regulation 4F and Schedule 6 of the Customs (Prohibited Imports) Regulations 1956 'control the importation of firearms, firearm accessories (silencers, certain types of stocks and devices designed or capable of converting a firearm to semi or fully automatic), firearm parts, firearm magazines, ammunition, components of ammunition and imitation firearms'.<sup>24</sup>

1.39 With regard to the importation of firearms, an importer may be required to get permission from the Australian Customs and Border Protection Service, their state or

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20 Australian Crime Commission (ACC), *Illicit Firearms fact sheet*, 2013, <https://www.crimecommission.gov.au/sites/default/files/ILLICIT%20FIREARMS%20JULY%202013.pdf> (accessed 2 October 2014).

21 See the committee report for further information: Senate Legal and Constitutional Affairs Legislation Committee, *Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012*, March 2013.

22 See the committee report for further information: Senate Legal and Constitutional Affairs Legislation Committee, *Crimes Legislation Amendment (Psychoactive Substances and Other Measures)*, September 2014.

23 AGD, *Submission 42*, p. 7.

24 AGD, *Submission 42*, Attachment E. Further information with regards to import restrictions is set out in AGD's submission at Attachment E.

territory firearms registry or AGD.<sup>25</sup> This depends on what type of firearm they are applying to import. AGD argued in its submission that the current rules regarding importation:

...results in situations where the Commonwealth's role in the regulation of the importation of firearms and firearm-related articles is of limited or no value, creates anomalies and results in more red-tape for legitimate importers.<sup>26</sup>

### *States and territories*

1.40 The states and territories have retained control over the regulation of the sale, purchase, possession and storage of firearms (including imitation firearms). The following relevant legislative instruments currently apply:

- New South Wales: *Firearms Act 1996*, Firearms Regulation 2006, *Weapons Prohibition Act 1998*, Weapons Prohibition Regulation 2009;
- Victoria: *Firearms Act 1996*, Firearms Regulations 2008, *Control of Weapons Act 1990*, Control of Weapons Regulations 2011;
- Queensland: *Weapons Act 1990*, Weapons Regulations 1996, Weapons Categories Regulations 1997;
- Western Australia: *Firearms Act 1973*, Firearms Regulations 1974;
- South Australia: *Firearms Act 1977*, Firearms Regulations 2008;
- Tasmania: *Firearms Act 1996*, Firearms Regulations 2006;
- Northern Territory: *Firearms Act*, Firearms Act Regulations; and
- Australian Capital Territory: *Firearms Act 1996*, Firearms Regulation 2008, *Prohibited Weapons Act 1996*, Prohibited Weapons Regulation 1997.<sup>27</sup>

1.41 There have been a number of recent reforms to state and territory laws.

1.42 In New South Wales, legislation was enacted in June 2012 to place further restrictions on the sale and purchase of ammunition. In December 2012, the New South Wales government announced that it had established a committee to provide advice on proposed new gun control legislation that would tighten restrictions in some areas.

1.43 In South Australia, the state Attorney-General announced a gun amnesty campaign in June 2012, which ran from 1 August to 31 October 2012. It was reported that 2783 weapons were surrendered to authorities during the three-month period.

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25 AGD, *Submission 42*, p. 7.

26 AGD, *Submission 42*, p. 7.

27 The Law Library of Congress, *Firearms-Control Legislation and Policy: Australia*, 16 September 2014, <http://www.loc.gov/law/help/firearms-control/australia.php> (accessed 2 October 2014).



1.44 In Queensland, the police minister established an advisory panel in August 2012 to examine gun laws and licensing with the aim of reducing red tape for licensed firearms owners, generating a strong negative response from the Queensland Police Union.<sup>28</sup> The Queensland government also introduced amending legislation in November 2012 to introduce new mandatory minimum penalties for weapons offences 'in an effort to address the unlawful use of firearms'. At the same time, the government announced a gun amnesty for people to either hand in or register their firearms. The bill was passed in December 2012.<sup>29</sup>

#### *Overseas comparisons*

1.45 Australian laws regarding the regulation of firearms are 'stricter than that of a number of comparable countries':

... in contrast to the position in the United States, there is no legal right to gun ownership. Owning and using a firearm is limited in Australia to people who have a genuine reason and self-protection does not constitute a genuine reason to possess, own or use a firearm. Secondly, the Australian system requires both the licensing of individual shooters and the registration of each firearm. In contrast, countries such as New Zealand and Canada broadly speaking only require shooters to obtain a license, which enables them to freely purchase firearms appropriate to that licence.<sup>30</sup>

1.46 However, the majority of studies examining the NFA's impact on gun violence in Australia have concluded that the reforms 'have been responsible for substantial reductions in the Australian firearm death rate and have also put an end to mass shooting'.<sup>31</sup>

1.47 In examining Australia's firearm reforms, Ms Lauren Hirsh argued that cumulatively these studies provide strong evidence that Australia's firearm reforms have been effective:

The most comprehensive study into the effects of the reforms, conducted by Leigh and Neill in 2010, found a 65% decline in the firearm homicide rate and a 59% decline in the firearm suicide rate in the decade following the implementation of the NFA, with no parallel increase in rates of non-firearm related homicides or suicides. These authors also demonstrated a strong causal relationship between the NFA and these declines. Their research showed that the NFA was responsible for a 36% decline in the firearm homicide rate and a 74% decline in the firearm suicide rate.

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28 The Law Library of Congress, *Firearms-Control Legislation and Policy: Australia*, 16 September 2014.

29 The Law Library of Congress, *Firearms-Control Legislation and Policy: Australia*, 16 September 2014.

30 J Curtis, *Australian gun laws*, Parliamentary Library, 21 December 2012, [http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/2164439/upload\\_binary/2164439.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/2164439/upload_binary/2164439.pdf;fileType=application%2Fpdf) (accessed 2 October 2014).

31 L Hirsh, 'Brothers in Arms Control: Introducing Australian-Style Gun Control in the United States', *Macquarie Law Journal*, 2013, vol. 12, pp 89-91.

Current data reveals that the Australian firearm death rate has today been reduced to 1/100 000, which is less than half of the 1996 rate and one tenth of the current US rate. Likewise, the Australian firearm homicide rate, which was already one fifteenth of the US rate prior to Port Arthur, has been reduced to one twenty-seventh of that rate today.<sup>32</sup>

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32 L Hirsh, 'Brothers in Arms Control: Introducing Australian-Style Gun Control in the United States', *Macquarie Law Journal*, 2013, vol. 12, p. 90.