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R.E. The ability of Australian law enforcement authorities to eliminate gun-related violence in the community.

Australian gun laws, despite the spin and political chest beating we often see reported in the media, are chaotic and convoluted to the point where they fundamentally fail to achieve the primary policy objective which society expects of them; the prevention of misuse of firearms.

This situation is not helped by gun control zealots who disingenuously set out to misinform, deceive and confuse a largely disinterested public with respect to legal versus illegal firearms, the number of legally held sporting firearms versus criminal acts involving illegal firearms, and the theft of long arms from lawful owners versus the almost daily use of illegal handguns by urban criminals, etc.

The intellectual challenge faced by the members of this committee is to ignore the years of very deliberate social engineering which has set out to link the peaceful enjoyment of a heavily regulated sport which enjoys an impressive safety record (pistol shooting) with the illegal activities of organised crime.

Owners of legal firearms generally support tough-on-crime approaches when it is actually targeting illegal firearm use, as opposed to a simplistic tough-on-guns approach which of course usually means more regulations for people who are just wanting to do the right thing.

My intention is not to undermine the need for the sensible regulation of firearms. Indeed its place in public policy is assumed. However, there is need for more critical thought and debate about its appropriateness in various contexts including the way it is designed and enforced.

The estimated number, distribution and lethality of illegal guns, including both outlawed and stolen guns, in Australia.

As a law abiding firearm owner, I have no knowledge of illegal guns and so am unable to comment on this point.

The operation and consequences of the illicit firearms trade, including both outlawed and stolen guns within Australia.

As a law abiding firearm owner, I have no knowledge of the illicit firearm trade and so am unable to comment on this point.

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.

Firearms are simple machines made of a few basic parts. The fundamentals of firearm design have not altered in well over 100 years (including the semi-automatic handguns which are singled out for special attention by this committee).

Where the will exists, working firearms can be produced with only rudimentary knowledge and basic tools, as evidenced by examples confiscated inside prisons, and the home made firearms in use by tribesmen in PNG. As a schoolboy in the 1970's, classmates of mine made functioning firearms during metal work at high school.

The challenge for rule makers is formidable and what often happens is that regulations become so twisted and complex in order to accommodate policy objectives, legitimate needs, anomalies and exceptions that they cease to have any practical effect. “Twisted around the axle” is a term that comes to mind. It might be more effective to concentrate instead on other aspects of the problem.

It is a falsehood to believe that advances in technology alone are responsible for the inability of Australian law enforcement authorities to eliminate gun-related violence from the community, and that this situation can be improved upon by even more ineffective rules. The guns have not changed, but society certainly has.

Solving complex problems

A regulatory approach is suited to problems that are well understood, guided by clear objective standards and which lend themselves to empirical testing. Many problems are not so straightforward. Because of their relative rigidity and permanence, heavy reliance on regulations to solve complex problems needs to be seriously questioned.

Problems that are not well understood

Complex problems are endemic to modern society. Pollution, public health & safety and so on are problems of vast proportion. They have more than one cause, many of which interact with one another and vary in different contexts. At the other end of the spectrum, seemingly simple problems such as graffiti are themselves complex. They involve a great many individuals acting independently and in different contexts (i.e. the community, manufacturers, retailers and public authorities).

Detailed analysis of complex problems is often precluded by political pressures for a 'quick fix'. A regulatory approach is always tempting because it smacks of conclusive action - the problem will be 'solved' if we enforce a new regulation. That may be appropriate if the problem has a known solution but many problems, including illegal and illicit firearms and gun related violence, do not. This is evidenced by the different outcomes being experienced in countries with similar social norms but with different approaches to firearms regulations, such as Australia, New Zealand, Canada and the UK.

In these situations policy makers must choose, whether implicitly or explicitly, some causal theory about what variables are most important (Bardach and Kagan 1982). They may get it wrong (because of simplistic or outmoded premises like firearm registries are good) or target for attention the least significant variables in the causal network such as certain types of firearm actions or magazine capacities.

The real danger however is that we become limited in our ability to apply new policy or depart from it at a later date (West 1985). Flexibility is not an inherent feature of the regulatory approach.

Opinions vary about what to do about complex problems

Because of their complexity, the community rarely agrees on what to do about complex problems, nor fully appreciates the trade-offs involved. And, to make matters more complex, the balance of opinion tends to shift over time as old arguments are disproved and new issues arise.

The most recent example of this is so called 3D printed firearms. Just as the castles of Europe passed their use by dates and became irrelevant as defensive structures, so too the current mindset of “stop guns at the borders and regulate the hell out of the ones that are already here” has reached a watershed moment.

When a controlled item becomes effectively free, untraceable, and as readily available as the print button on a computer, a new paradigm is demanded; one that deals with the actions and intent of the individual rather than the inanimate object of choice. We already do this for knives, cars, cricket bats, why not firearms?

Measuring performance

Complex problems are not always measureable. Consider for example the standard of hygiene in a food handling business. A regulatory approach must resort to a range of proxies that may or may not be sound indicators of the overall standard sought, e.g. number of sinks, size of kitchen, type of ventilation etc.

The danger is that the controls become so detailed to cover all variance that they sound senseless and may miss their objective altogether. At best, chefs resent the intrusion and doubts about their professionalism.

So too, law abiding firearm owners are tired of attempting to comply with increasingly prescriptive firearm laws being promulgated by firearm ignoramuses intent of imposing their version of reality onto others, devoid of any responsibility or obligation to prove the realisation of tangible benefits resulting from their administrative decisions.

Assistant Commissioner Steve Fontana (pictured below) of the Victorian Police gave us a textbook example of this during a recent interview on 3AW. <http://www.youtube.com/watch?v=tLkA63mvfns>

In addition to displaying an astonishing lack of knowledge about firearms for a man in his position (it is clearly not a semi-automatic of some type as was stated), he introduced his personal sense of aesthetics as a new measure of firearm acceptability.



The salient point overlooked in this 3AW interview is that despite all the current regulations which applied to this item from ‘cradle to grave’, recording different stages in the tenure of the firearm’s legal custodianship (e.g. manufacture, import, sale, deactivation or lawful export), this illegal firearm was only discovered by chance when it was seized from a known criminal.

With such a wealth of official data at his disposal, the Assistant Commissioner might reasonably have been able to report on the history of his elaborate stage prop, such as the circumstances leading up to its theft (to contemplate any other scenario is tantamount to admitting that all the existing regulations were completely ineffectual in this instance – did the police approve the initial purchase of this particular firearm or not?).

Instead, he sat idly by whilst an unlicensed person handled the firearm in an unsafe manner, rather than informing and educating the public of how the numerous impositions shouldered by law abiding firearm owners provided him with an audit trail (courtesy of the existing regulations) which allowed his officers to proactively remove this item from illegal circulation.

The committee will note the complete absence of clarifying data when firearm crime is reported. The detail behind the often quoted US gun crime data which shows that the gun crime hot spots are overwhelmingly biased towards those areas with both the strictest gun laws and the highest concentrations of certain ethnic groups is ignored.

The numbers of legal handguns in a certain Australian postcodes will be reported in the same sentence as the total number of all firearms stolen (including long arms) and the (usually small by comparison) number of illegal firearms recovered during the most recent “blitz”. When the language of the whole conversation is based on lies and deceit, one can hardly expect good long term outcomes.

The clear intent of this is scare mongering and social conditioning. Perhaps one of the most pertinent recommendations which this committee might suggest is a requirement for honesty in reporting of such matters by the media; comparing apples with apples, and some basic fact checking.

Unintended consequences

Regulations usually have unintended consequences. Examples are not hard to find. The ACT Governments previous policy of allowing pistol grip bolt action rifles for target shooting but not allowing them to be used for hunting lead to some ACT firearm owners acquiring two firearms in the same calibre when one might have sufficed.

More broadly, the recording of firearm and ownership details in inaccurate firearms registries and the complex paper trail of forms and records which serve as inputs to maintaining those inaccurate registries has created a considerable security risk should those details fall into the wrong hands. Despite frequent denials that firearm registries have been compromised, there can be no doubt that many of the firearms being stolen today are targeted thefts, and the only logical conclusion is that information is leaking somewhere along that paper trail (the actual database itself is but one piece of the overall information repository – think of how many sets of hands the forms pass through before the data is entered, and how that data is secured once printed out for police use during audits).

By introducing the draconian and poorly advised 1996 “uniform national gun laws”, John Howard unintentionally created the grey market of firearms in Australia. The grey market consists of all firearms that were not registered, or surrendered for destruction as demanded during the gun buybacks following the National Firearms Agreement.

The ACC maintains that “grey market firearms are not owned, used or conveyed for criminal purposes” but “may end up in the illicit market”, which of course is dominated by organised crime and illegal drugs. In other words, the outlaw motorcycle gangs of today are being armed in part from a pool of unaccountable firearms unintentionally created by the egotistical actions of John Winston Howard.

Logic suggests that there is a real public benefit in having an easily accessible, legal mechanism for legitimising this unintended pool of grey market guns, and thus turn them into legal, accountable items. Instead, the greens in Tasmania lobbied for this option to be removed, leaving surrender and destruction as the only option and thus unintentionally ensuring that the grey market continues in Tasmania.

By their very nature, unintended consequences are hard to predict. However that doesn't absolve us from carefully examining the seriousness of possible consequences of new regulations. While this seems perfectly obvious you would be surprised how often they receive only cursory attention and how hard it is to abandon regulations once adverse side effects begin to outweigh gains. Not only do they have statutory backing but as a policy tool, they seem to develop a momentum of their own which, once established, is extremely difficult to subvert.

Unenforceable and symbolic regulation

Making rules tends to be easier than implementing them and rule makers usually underestimate the many practical difficulties involved. It is sobering to realise that many firearm regulations are by and large unenforceable either because they are so vague as to be meaningless, or because they set standards that are unattainable. A cynic might say that rules are often just lip service to appease powerful interests - politicians can be seen to be 'doing something about the problem' without posing any real threat to the activities of those affected (or not affected in the case of criminals) by the controls (West 1985).

Just about everyone can list a few unenforceable and symbolic regulations. They offer an apparent short term solution but can cause more harm than good in the longer term by creating conflicting community expectations that deepen social divisions. They also encourage flouting of a law's intent since compliance is closely related to the extent to which people think it can and will be enforced.

There is no better example of this than the NSW ammunition bill, which attempted to restrict the sale of ammunition to those who possess a legal firearm in that specific calibre. The impracticalities of such regulation were pointed out at the time, but it was still passed by a mindless political machine. It can be argued with some credibility that it has comprehensively failed to make one bit of difference to gun crime in western Sydney since it was introduced.

Unreasonable regulations

Individuals are more likely to comply with laws they think are reasonable. At the same time however, unjust or unreasonable regulations have been shown to breed resentment and resistance, even with the threat of enforcement (Bardach and Kagan 1982). This is problem enough but it has the potential to make matters worse by escalating into a vicious cycle of resentment and non-compliance, enhanced mistrust and legalism followed by further non co-operation and resistance.

The disenfranchisement and demonization of large numbers of peaceful, law abiding and honest firearm owners by John Howard in 1996 is still the cause of much bitterness and resentment amongst those who had antique collections, precious family heirlooms and other private property confiscated and destroyed in a futile and costly (in excess of half a BILLION dollars remember!) attempt to appear decisive and courageous to the voting public.

No amount of regulation will achieve universal compliance with laws that are basically unreasonable or unjust.

Over regulation produces under regulation

That over regulation produces under regulation has been noted in many regulatory contexts. Sunstein calls this one of the paradoxes of the regulatory state which he believes has been fuelled by the notion that a safe workplace, or clean air and water are a right to be vindicated rather than a risk to be managed (Sunstein 1990). Whether or not you agree with this statement, it is clear that extremely stringent standards can be ineffectual, even counterproductive.

Extremely stringent standards are a powerful incentive for inaction. First, inaction may reflect enforcement officers' quite plausible belief that the regulation requires them to control an activity to an absurd point (Sunstein 1990). The more prescriptive Australia's firearm laws become, the more onerous the burden of proof becomes upon the enforcement and prosecution, and the more likely that infringements will be overlooked.

Imagine a police officer charging a firearm owner for unsafe storage (where a safe was not bolted to the wall or floor as is required in NSW if the safe weighs less than 150kg). Barrister to Police Officer; "and how did you know the safe in question weighed less than 150 kg, did you check it at the time on your calibrated and quality assured police issued gun safe scales?". Police Officer; "No Sir, we aren't issued with police gun safe scales when we do safe storage inspections...."

Second, inaction may reflect the political backlash that may result from enforcing very stringent standards. Finally, inaction may reflect the need for a great deal of information to support a review of their enforcement action (whether judicial or in-house). Ask any serving police officer how much of their job revolves around the mountain of paper work demanded of them by the nanny state.

The net result may actually be less control over an activity than would result from a more flexible approach to the problem.

Stringent controls also impose heavily on an agency's resources leaving other activities free from regulatory control or attention. In their examination of environmental regulation in the United States, Warren and Marchant (1993) note that by defending overly stringent regulations that provide limited extra benefits at high marginal costs, busy law enforcement agencies expend both resources and precious political capital. Doing so limits their capability to address other, more significant problems. They conclude that the net result is less, not more protection.

The deployment of scarce police resources to maintain inaccurate lists of legal firearms and to undertake multiple safe keeping compliance checks of the law abiding firearm owners at a time when organised crime and gang hostility is rampant cannot be rationally explained. The belief that firearm theft can best be addressed through increases in safe storage standards such as back to base alarms when it takes an ambulance 45 minutes to reach my home under lights and siren in a life threatening situation cannot be rationally explained.

All this against a backdrop where the Australian Crime Commission is reporting that the root cause of many firearm thefts, the illicit drug trade, is out of control. In 2012-13 they reported that there were 101,749 drug related arrests, the highest on record. There were 86,918 drug seizures, the highest on record, and there were 19.6 tonnes of drugs seized, the second highest on record.

How many innocent lives have been ruined by illegal drugs due to the inappropriate diversion of scarce police resources towards auditing the homes of those who have already been officially vetted and deemed to be "fit and proper" persons to hold a firearms license?

As a policy tool, regulation is inherently inefficient because of its focus on means (e.g. firearms) rather than on ends (e.g. law abiding behaviour) and because it consumes vast resources in maintaining an enforcement presence for benefits that are not always assured (law enforcement overwhelmingly get involved in gun violence after the crime has already been committed).

The committee should recognise the inherent failings of regulation and understand how those failings may operate in the particular policy context in which you are working - spending all your resources on enforcement of legal firearms and their owners is not likely to achieve universal compliance or responsible behaviour by criminals who willingly operate outside the law.

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.

Ignoring the obvious paradox as to how an illegal firearm could be legally held (?), and interpreting the rest of the question to being "the extent to which firearms, particularly stolen firearms, represent a risk to police". As the police are far more likely to come into contact with the risk scenario described, we can safely ignore the public risk for the purpose of this exercise as it would be far less than the risk faced by police.

In order to provide context, we must study the overall risk profile of police in order to determine what proportion of the total risk is represented by all firearms, and thence the subset which are stolen firearms.

This topic was recently studied in some depth by Dr Nicole French.

- A total of 16,423 Assault Officer incidents were recorded in NSW between 2005 and 2010, or an average of 2,737 Assault Officer incidents reported per year.
- Where the nature of the assault was recorded, 80% of assault police incidents involved a physical attack (e.g. punch, kick, bite, scratch, etc.) with no weapon being used.
- Where a 'weapon' was used, it was more likely a thrown object (stone, rock, and brick), stabbing or cutting implement (screwdriver, knife, scissors, glass/bottle) or bludgeoning object (hammer, wrench, iron bar).
- Use of a firearm or other prohibited weapon was relatively infrequent in assaults on police.

Other Australian based statistics also suggest that very few law enforcement officers are injured by firearms (Swanton, 1987). When one considers the proportion of stolen firearms in this mix when compared to illegally imported, locally manufactured and all the other sources of illegal firearms, I believe the correct answer to the question is one fifth of bugger all of a very small prime number.

The effect banning semi-automatic handguns would have on the number of illegally held firearms in Australia.

The Australian Institute of Criminology (AIC) records that in September 2008 there were 145,123 registered handguns in Australia. What proportion of these handguns were semi-automatic is not stated. Let us assume based on other data that it is approximately 50%, which equates to some 72,000 items of sporting equipment.

They also state that "a high proportion of firearms seized from SOCG (Serious and Organised Crime Gangs) were restricted" meaning they are not the type currently able to be purchased legally. This includes both long arms and handguns. Of these, 311 were semi-automatic handguns. (Firearm trafficking and serious and organised crime gangs http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp116/04_summary.html)

The ACC recently made a "conservative estimate" that there are more than 250,000 long-arms and 10,000 handguns in the illicit firearms market in Australia. Of these, 44% were not surrendered or registered after the Port Arthur massacre and 12% were stolen or the subject of staged theft. Presumably the other 44% were illegally imported or manufactured locally.

So to answer the question, the ACC numbers speak for themselves;

- An estimated 260,000 illegal firearms in Australia, of which
 - 12% were stolen,
 - 44% or 114,000 of which were illegally imported and thus **are readily replaceable**.
 - 44% or 114,000 of which were not surrendered and now make up John Howards grey market.
- Only 311 illegal handguns seized last year from criminals (the majority of which were restricted items and thus by definition could not have been stolen from legitimate owners).
- Of all firearms stolen, only 3% are recorded as being used in subsequent criminal activity

So, the harsh reality is that from an estimated pool of 260,000 illegal firearms, the removal of all legal semi-automatic handguns as a potential source of replacements for the black market would have no material effect on the number of illegal firearms in circulation, as that number would be orders of magnitude more than the replacements that might otherwise have been sourced from legal owners. The reduction in any additions to the black market due to theft of semi-automatic handguns from legitimate owners pales into insignificance when compared to the numbers sourced from other means.

Removing 50% (all semi autos) of the 2% (all handguns) of the 12% (all illegal firearms that are stolen) still leaves 99.88% of the illegal firearm problem unaddressed. Add to that the fact that only 3% of stolen firearms are subsequently used in crime, leaves us with the astonishing figure of 99.9964% of gun-related violence in the community due to other sources. And remember, these are the ACC's own conservative numbers!

Stricter storage requirements and the use of electronic alarm systems for guns stored in homes.

Some initiatives will work, others won't and we need to find ways of ensuring that it is the good ones that get adopted and not the bad ones. Wishful thinking is no substitute for empirical learning.

We know that total reliance on a mechanical device like a safe cannot guarantee that theft will not occur. We know that adding additional mechanical devices like alarms will not guarantee that theft will not occur. The argument will be put that the two measures working together will introduce a multiplier effect. $1+1=3$.

If that is the case, why have the introduction of firearms licences, background checks, mandatory safety training, firearm registration, permits to acquire, mandatory 28 day "cooling off" periods, calibre, magazine and accessory restrictions, heavily restricted access to Cat C and D and H firearms and suppressors, safe storage inspections, and all the other barriers to entry not achieved the same multiplier effect? We have long passed the point of diminishing returns when it comes to regulating legal firearms and their owners.

If you always do what you always did, you will always get what you always got. We cannot solve our problems with the same thinking we used when we created them. Play the man and not the ball. All wise words in my humble opinion.

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.

One of Australia's premier hunting organisations recently imported an Olympic standard firearm simulation system, at great expense, as a firearm safety training aid for its members. It consists of a screen, a computer and some software, a data projector and a piece of white plastic shaped vaguely like a firearm which the trainee holds whilst being trained.

It differs from the run of the mill arcade game or play station only in its sophistication, scale and cost. Customs inspected it and readily allowed its importation. In Victoria it is classed as a toy. In NSW it required a Police Commissioner's permit as it is considered to be a prohibited weapon.

At the same time, theatrical societies around the country stage productions of "Annie get your gun" with the aid of imitation firearms which are far more realistic than the all-white dummy gun of the simulator, and they do so with apparent impunity.

In the lobby of the Australian Maritime Safety Authority office at 82 Northbourne Avenue in Canberra, there is a ships cannon on public display.

That cannon meets every definition of a firearm under the act. Has the head of the AMSA been charged for unsafe storage, or for being in possession of an unregistered firearm and for being unlicensed?



The anomalies are many and are not limited to the legislative layer. They cascade and multiply down through the regulatory and policy layers, and reverberate through the day to day interpretations by enforcement authorities.

CONCLUSION

My intention has been to flag issues for your consideration, not to undermine the idea of regulation, but to promote more coherent and sophisticated approaches to the growing problem of gun related violence in the community.

Sadly, the ideologically driven terms of reference of committees such as this one are conclusive proof that we are a long way from the level of sophistication required in order to make a real difference.

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