

Chapter 4

Regulation of firearms

4.1 An overview of Australia's current regulatory framework was set out in chapter 1. This chapter examines issues relating to the regulation of legal firearms, including the need to regulate firearm parts, accessories and ammunition; the adequacy of the current storage requirements for firearms; the effectiveness of firearm amnesties; and the security of data with regards to firearm ownership.

4.2 The overarching theme with respect to all of these issues is whether there is a need for greater consistency between the various jurisdictions and in particular, an expansion of the Commonwealth's role in regulating firearms.

National consistency

4.3 As discussed in chapter 1, traditionally the Commonwealth played a minor role in the regulation of firearms. After 1996 this changed and a more consistent approach was taken with the development of the National Firearms Agreement (NFA).

4.4 As a result of this agreement, the Commonwealth is responsible for matters relating to import and export, while the states and territories retain control over all matters relating to the manufacture, possession, licensing and use of firearms.¹

Challenges arising out of shared state–Commonwealth responsibility for firearms

4.5 A number of submitters referred to difficulties encountered given the differences in legislation across the various jurisdictions. In particular, firearm owners discussed confusion about interstate trade of firearms. The challenges associated with incomplete and incomparable data from different states and territories were also raised (see chapter 2).

4.6 Shooting Australia summarised these difficulties thus:

Shooting Australia and its Member Bodies are extremely well acquainted with the difficulties and unnecessary frustrations experienced by law abiding licensed shooters due to the anomalies in federal, state and territory laws regarding the ownership, sale, storage and transit across state boundaries of legal firearms.²

4.7 Mr Britton, from the NSW Firearms Dealers Association Inc, stated that as a firearm dealer he has to be across nine sets of legislation when dealing interstate:

All the firearms that I bring in, and that all the others bring in, are under permit. We have to get a permit from the state of New South Wales. The type of permit depends on the firearm type—whether it is a long-arm gun or a handgun. Other permits come under the [Attorney-General]. They are different permits again—for category D weapons, predominantly feral pest

1 Attorney-General's Department (AGD), *Submission 42*, p. 2.

2 Shooting Australia, *Submission 60*, p. 5.

destruction, semiautomatic weapons. In New South Wales it is taking 28 days to get a permit. Commercially, that is a long time. In Victoria it is between 24 and 48 hours. An issue for us in New South Wales is that I am dealing predominantly with European based businesses who are not, with great respect to them, the sharpest tools in the shed as far as getting their ducks in a row is concerned. They often have wrong serial numbers, which means I have to get the permit reissued. The red tape when the firearms come into Australia is massive. If we have to go for a secondary import permit—if something is wrong on the permit—it is a new application. From an import perspective, it would be great to have one all-encompassing body that looked after state and federal issues, but then they would be judge, jury and executioner.³

4.8 The NSW Police Force noted that the confusion over interstate trade has led to issues with dealers not recording sales correctly:

...we embarked on a recent audit of a prominent Sydney gun dealership—a shop as opposed to a private sale. I can report that, at the conclusion of the audit of the gun shop, there were errors found in their record-keeping for some 44 firearms. I think they were able to rectify those anomalies within a 24-hour period, indicating that some of those guns had in fact been sold interstate.⁴

4.9 Victoria Police gave evidence that a more nationally consistent approach would assist in preventing the illegal importation of firearms:

This is where I would suggest it comes back to a national approach and uniformity across all of the states in relation to regulation. That would cover situations such as the internet or online trade of illicit firearms. Currently they are imported into Australia via online and through parcel post. I am talking about the one-off purchasers or two-off purchasers, possibly in the dark net side of the internet. They are imported into Australia and may be able to bypass screening, or may not be detected in screening, and then they go out to the recipients who have ordered them online.⁵

4.10 The Law Institute of Victoria (LIV) stated that jurisdictional inconsistencies 'cause significant confusion among both individuals and law enforcement agencies, particularly for those who often travel across different jurisdictions'.⁶ The LIV also stated that 'such confusion would undermine the efforts to regulate firearms and thus eliminate gun-related violence on a national scale'.⁷

3 Mr Paul Britton, Vice President, NSW Firearms Dealers Association Inc., *Committee Hansard*, 13 October 2014, p. 25.

4 Detective Acting Superintendent Jason Herbert, Commander, State Crime Command, Firearms and Organised Crime Squad, NSW Police, *Committee Hansard*, 13 October 2014, p. 50.

5 Detective Superintendent Peter De Santo APM, Commander, State Anti-Gangs Division, Victoria Police, *Committee Hansard*, 13 October 2014, p. 57.

6 Law Institute of Victoria (LIV), *Submission 124*, p. 2.

7 LIV, *Submission 124*, p. 2.

4.11 In 2008, the Australian Institute of Criminology (AIC) conducted a review of both federal and state and territory legislation in order to evaluate the progress that had been made in implementing the reforms specified under the various firearm agreements (see chapter 1).⁸ Overall, the AIC found there was general compliance but that 'opportunities to divert firearms were inadvertently facilitated by legislative loopholes or oversights and/or a general lack of deterrence based on the offences prescribed and the maximum penalties attached'.⁹

4.12 As part of its 2012 report concerning firearm trafficking, the AIC re-examined the various legislative schemes. The AIC found that while significant progress had been made, a number of inconsistencies still existed.¹⁰ In particular, stronger provisions with regard to dealerships and the registration and manufacture of firearms were identified as key areas requiring change.¹¹ The AIC noted the dangers of gaps in the law and the need for better solutions with respect to firearm dealers:

For example, it has been suggested by stakeholders consulted for this project that dealers who are involved in the illegal diversion of firearms will continue to test the legislation to identify avenues for exploitation (Project stakeholders personal communication 4 May 2011; 28 November 2011). These avenues may not be detected by law enforcement agencies until after the fact, such as occurred with the Queensland 'deactivation' and New South Wales 'firearm receiver' loopholes described previously.

...Resolutions specified in the National Firearm Trafficking Policy Agreement (2002) aimed to deter dealer involvement in the illicit market by prohibiting certain persons being employed in dealerships, requiring the provision of close associate information, enabling better scrutiny of firearm dealings (through mandatory recording and provision of transaction records) and making it an offence to wilfully record a false or misleading entry in records on firearm and firearm part transactions. Strengthening provisions around false entries, such as recording false disposal or sales notices, false interstate transfer or failure to record receipt of goods, may deter (some) dealers from making wilful false entries to conceal the diversion of firearms. The maximum penalty for this offence, usually a relatively minimal fine, may not produce the adequate deterrence to offset the temptation to falsify records.¹²

8 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology (AIC), Research and Public Policy Series no. 116, June 2012, p. 11, <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp116.html> (accessed 2 October 2014).

9 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, p. 21.

10 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, p. 21.

11 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, p. 21.

12 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, pp 21–22.

4.13 The AIC also identified that:

State and territory firearms laws are not completely consistent in the legal definition of a firearm or what constitutes a major firearm component or part (and hence requires registration)...[and although the] registration of all firearm parts has not been judged a feasible option (eg the registration of components would require considerable resources and technical expertise to implement properly)...uniform regulation of major parts (including spare receivers and frames) would prevent diversion opportunities as witnessed in New South Wales with non-registrable receivers. The vulnerability of firearm parts to the illicit trade additionally recommends the uniform adoption of an offence to illegally manufacture parts, not just complete firearms, which is presently only an offence in South Australia.¹³

The need for reform

4.14 Given the proposals from the various state and territory police forces it seems there are both a need and some appetite for reform.

4.15 The Attorney-General's Department (AGD) gave evidence that the NFA had been effective in removing a number of inconsistencies that had previously existed:

The department believes that, broadly, the National Firearms Agreement has brought significant consistency—particularly in the key areas, such as possession, use, storage and what weapons are and are not prohibited. So, in that sense, we really do have a consistent agreement. The inconsistencies that we refer to tend to be around the edges; they tend to be around quite minor issues, such as whether a state or territory prints a licensee's address on the licence. That is a requirement of the NFA, but a lot of states do not do that.

You might understand why some states do not do that, because if that licence is then lost that would indicate where someone might have a firearm. Some states and territories have moved away from doing that. So there are minor inconsistencies around the edges. But as we said in our opening statement, we really believe that, broadly, the NFA sets up a good, robust framework for consistent legislation and regulation around firearms.¹⁴

4.16 Overall, AGD did not support the idea of the Commonwealth having greater responsibility for firearm regulation:

Although there are sometimes calls for the Commonwealth to take over the entire regulation of firearms and firearm-related articles to remove all differences, experience has shown that state and territory governments are the most appropriate level of government to manage the regulation of firearm and firearm-related articles. This provides the states and territories

13 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, p. 22.

14 Mr Andrew Warnes, Director, Firearms Section, AGD, *Committee Hansard*, 31 October 2014, p. 53.

with flexibility to ensure that their laws and regulations are most appropriate for the local circumstances.¹⁵

4.17 However, AGD did suggest some areas where national consistency could be improved, such as the accountability of deactivation standards and agreed firearm descriptors.¹⁶ AGD also recommended that the technical elements of the NFA be updated, which would include:

- regulation of magazines, firearm parts and accessories;
- principles for dealing with interstate transactions, particularly dealers operating in more than one state or territory;
- the classification of new technology with regards to:
 - ballistic performance
 - rate of fire
 - appearance
- more explicit guidance on the NFA's genuine reasons for owning, possessing or using a firearm; and
- technological changes with respect to the issuing of licences and permits to acquire.¹⁷

4.18 The LIV suggested three possible avenues for reform: the adoption of a uniform firearms code, the National Electricity Law model (a lead jurisdiction may enact a statute which is then adopted as law by the implementing Acts of other jurisdictions) or to simply update the technical elements of the NFA.¹⁸ The AFP noted that since the NFA was established in 1996 'there have been quite significant advancements in firearms technologies'.¹⁹

4.19 Submitters also discussed the influence of the Firearms and Weapons Policy Working Group (FWPWG) in helping to identify gaps in firearm legislation and make recommendations. The AFP noted that the measures in the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014 relating to the extension of existing cross-border disposal or acquisition firearms offences were a result of a gap identified by the FWPWG.²⁰

4.20 The AFP referred to the ongoing measures of the FWPWG in its submission:

15 AGD, *Submission 42*, p. 5.

16 AGD, *Submission 42*, p. 5.

17 AGD, *Submission 42*, p. 5.

18 Mr Albert Yu, Co-chair, Young Lawyers Section, Law Reform Committee, LIV, *Committee Hansard*, 14 October 2014, pp 10–11.

19 Assistant Commissioner Julian Slater, National Manager, Forensics, Australian Federal Police (AFP), *Committee Hansard*, 31 October 2014, p. 71.

20 Assistant Commissioner Slater, AFP, *Committee Hansard*, 31 October 2014, p. 57.

- ensuring the AFP Firearm Deactivation Standard is adopted across all jurisdictions;
- developing a national minimum standard of recorded information for destroyed firearms;
- considering the benefits and costs of categorising firearm dealers;
- considering the introduction of aggravated offence provisions for certain firearm offences; and
- considering the benefits and costs of requiring dealers to record sales of ammunition.²¹

Registration of firearm parts, accessories, ammunition and imitations

Firearm parts and accessories

4.21 As discussed above, even after the introduction of the various intergovernmental agreements, inconsistencies remain in state and territory firearm laws, in some instances leading to loopholes in the legislation.²² One of these areas is the registration of firearm parts.

4.22 In its submission, the AIC referred to a situation where handguns were able to be diverted to the illicit market part by part due to inconsistencies regarding registration:

Prior to the implementation of the *Firearms Amendment (Trafficking) Act 2001 No 24* (NSW), a technical error in the definition of a handgun in New South Wales legislation enabled the diversion of many handguns to the illicit market (Project stakeholder personal communication 24 September 2010). The *Firearms Act 1996* (NSW) as originally enacted, required firearm barrels, but not frames or receivers, to be registered under Part 3 (Registration of Firearms) of the Act. The exemption of frames and receivers meant handguns without barrels could be sold without having to observe regulations on firearm disposal and frames/receivers could be purchased without need to register them. This opened up opportunities to convert or build up new handguns using non-registrable parts purchased in New South Wales with parts purchased elsewhere (Project stakeholder personal communication 24 September 2010). Among the amendments prescribed in the *Firearms Amendment (Trafficking) Act 2001 No 24* (NSW) was the stipulation that registration now 'applies to every firearm frame and firearm receiver in the same way as it applies to a firearm' (s 93(1)).²³

4.23 While the registration of firearm parts was not required under the NFA, scenarios such as the one discussed above demonstrate the need for careful monitoring

21 AFP, *Submission 182*, pp 3-4.

22 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, pp 21–22.

23 AIC, *Submission 76*, p. 18.

of at least all major firearm parts (for example frames and receivers). The AIC opined that registration of firearm parts in all jurisdictions 'would enable police to more easily trace ownership history and the movement of firearms constructed illegally from firearm parts'.²⁴

4.24 Currently Queensland, South Australia, Northern Territory, New South Wales and Victoria have introduced registration requirements for some firearm parts, though this varies across the different jurisdictions.²⁵

Ammunition

4.25 Some submitters, such as the NSW Police Force, also raised the idea of registering the purchase and sale of ammunition. Currently, New South Wales is the only state to introduce legislation that places restrictions on the sale and purchase of ammunition.²⁶ The NSW Police Force provided evidence regarding the success of these reforms:

I spoke to an inspector from the homicide squad this morning and one of the things he is seeing in a current investigation is that criminals have firearms but they are lacking ammunition. We think that is a good thing, obviously. One of the problems is that when you look at restricting ammunition for handguns and not for long arms, some of the ammunition is compatible. We say the restriction on the sale of ammunition is a good thing. It is not without some problems in terms of the administration of it for the dealer, but it has the effect sometimes, even in terms of counter-terrorist operations, that whilst you may not pick up the sale of ammunition at point of sale, certainly there is an ability to trace that sale back if people are providing details to the dealer. Of course that does not take into consideration people who reload their own ammunition, which is a completely separate issue.²⁷

Imitation firearms

4.26 A number of submitters and witnesses discussed the use of imitation weapons as an important issue and highlighted the inconsistent treatment of these across the states and territories.

4.27 The NSW Firearms Dealers Association Inc. identified imitation weapons as a 'massive issue' for that state.²⁸

24 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, p. 21.

25 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, Australian Institute of Criminology, Research and Public Policy Series no. 116, June 2012, p. 21.

26 See the *Firearms Amendment (Ammunition Control) Act 2012*.

27 Detective Chief Superintendent Ken Finch, Director of the Organised Crime Directorate, NSW Police, *Committee Hansard*, 13 October 2014, p. 51.

28 Mr Britton, NSW Firearms Dealers Association Inc., *Committee Hansard*, 13 October 2014, p. 29.

4.28 Victoria Police raised inconsistencies in the treatment of imitation firearms, stating that 'Victoria is the only state that classifies imitation firearms as a prohibited weapon'.²⁹

4.29 The AFP suggested that imitation firearms are also prohibited in the ACT and explained the need for imitation firearms to be subject to regulation:

...they are very good quality, they are readily mistaken for normal firearms. There are some that function in a way that there are concerns that they could actually be converted to functioning firearms.³⁰

Safe storage

4.30 The safe storage of firearms was a matter of concern to numerous submitters. Generally, submitters were supportive of safe storage requirements. Mr Bill Paterson, Chairman of Field and Game Australia, commented that the principal reason for introducing storage requirements was safety:

Prior to the storage requirements, guns were readily accessible. When I was a boy, my father kept his shotgun in a cardboard box on a shelf in our unlocked garage next to a kerosene tin which held the cartridges. It is difficult to believe now, but that was the common situation. Now guns must be stored so that they cannot be freely accessed by unlicensed persons. By all the evidence available, not only has safe storage been achieved but also secure storage.³¹

Need for nationally consistent storage requirements

4.31 Currently, each state and territory has its own requirements for firearm storage. The LIV referred to some of these in its submission:

For example, in Victoria different storage requirements apply to different categories of firearms. For instance, category A and B long-arms must be stored in a receptacle which is constructed of hardwood and steel. On the other hand, category C and D long-arms and general category handguns must be stored in a steel safe. In Western Australia, on the other hand, the storage requirements do not differ between the categories of firearms—that is, all firearms in Western Australia must be stored in a cabinet or container constructed of steel.³²

4.32 A number of submitters discussed whether a nationally consistent approach should be taken. The National Farmers' Federation, while generally supportive of the

29 Victoria Police, *Submission 389*, p. 5.

30 Assistant Commissioner Slater, AFP, *Committee Hansard*, 31 October 2014, pp 74–75.

31 Mr William Paterson, Chairman, Field and Game Australia, *Committee Hansard*, 13 October 2014, p. 45.

32 Mr Yu, LIV, *Committee Hansard*, 14 October 2014, p. 10.

idea of national consistency, submitted that it was important to understand why the inconsistencies existed.³³

4.33 The Tasmanian Farmers & Graziers Association argued that the current inconsistencies lead to unsafe practices:

We have a ridiculous situation currently where a captive bolt in Victoria and New South Wales is completely legal but in Tasmania it is deemed to be a pistol which is a category E and those found in possession of a captive bolt without the appropriate licence would be charged with a firearm offence. The other issue in relation to storage and simplification of that is—again speaking purely from a Tasmanian perspective—that we find here in Tasmania gun safes being put on sale which do not meet the approved requirements of the legislation. Yet the local police force and other authorities allow these sales to take place. Unfortunately, those who are not completely familiar with the legislation purchase what are advertised as gun safes, put them in their homes and put their guns in them, only to have an inspection take place at some future point and be told they are in breach of the firearms regulations and in some cases potentially being charged. There needs to be a national consistency in only allowing approved gun safes, those which meet the legislative requirements, to be on sale. Anything else should be withdrawn from sale immediately.³⁴

4.34 NSW Police told the committee that in NSW:

...you are able to store firearms in receptacles of a wooden material. It just does not seem to me to make any sense to be able to do that. So I think that, yes, whether it be nationally consistent standards, or legislation that is mirrored in every state, in terms of safe storage, the state borders have something to do with it.³⁵

4.35 NSW Police argued that as a public safety matter, all areas should be concerned with safe storage:

...whether it be nationally consistent standards, or legislation that is mirrored in every state, in terms of safe storage, the state borders have something to do with it. It is a parochial issue in some areas. In some areas of Australia, of course, the attitude to gun ownership and security of guns is different from the attitude of people in metropolitan Sydney, for example. I understand, having lived and worked in rural areas in New South Wales, the reasons for that. That does not mean, however, that the storage requirements should be any less in those areas because, at times, you will see hobby farmers who have safe storage areas in sheds away from the main dwelling. They may not be resident on the premises for weeks or months,

33 Ms Sarah McKinnon, Manager, Workplace Relations and Legal Affairs, National Farmers' Federation (NFF), *Committee Hansard*, 13 October 2014, p. 20.

34 Mr Peter Skillern, Policy Manager, Tasmanian Farmers and Graziers Association, *Committee Hansard*, 13 October 2014, p. 20.

35 Detective Chief Superintendent Finch, NSW Police, *Committee Hansard*, 13 October 2014, p. 48.

and they will then return and find that their firearms have been stolen. We would receive a report, but it might be weeks or months later. That is a problem. The location of the safe storage area away from main dwelling houses is a problem. Often they are in storage sheds stored with angle grinders and other implements that can open the storage areas. We see that regularly.³⁶

Compliance with storage requirements

4.36 Organisations based in regional and rural areas expressed concern over the possibility of stricter requirements being imposed on firearm owners. For example, the Tasmanian Farmers & Graziers Association noted:

...there has been talk about electronic alarms. Again, I can only comment on the Tasmanian context but, within that context—irrespective of whether they are alarms for gun safes, private property or other types of property in a Tasmanian regional sense—it is quite demonstrable that they have not worked. We have numerous instances where police have not arrived for upwards of an hour or an hour and a half by which time the perpetrators have long gone. Even in some of the larger regional towns, due to budgetary constraints and the obvious reduction in police on the beat and particularly over the evening periods and the weekends, sometimes there has not been a response full stop. That is indicative of being a small state and of the current budgetary constraints that the state government finds itself under. So such a solution would really not produce the outcomes that some people are looking for.³⁷

4.37 The NFF argued that the current requirements were onerous enough and the focus should be on encouraging compliance:

I do not have the current cost of gun safes and farm registration, but what I do know is that it is quite difficult to access firearms because of the robust regulatory framework that is already in place. Not only do you have to go through that registration process; there is also then the requirement to procure safes and to make sure that the ammunition and firearms are in separately lockable containers and are secured. So there are set-up costs with access to firearms and then ongoing maintenance, which is well regulated and checked frequently by the authorities. For any farm business, that is a cost. Most farm businesses in Australia are small businesses. Many of them operate in a low cash flow environment. Particularly when things are tighter, any additional cost has an impact on the ability of the farm business to keep going. So any additional cost is a serious concern to us and our members, and that is why we are always interested in alternative solutions.³⁸

36 Detective Chief Superintendent Finch, NSW Police, *Committee Hansard*, 13 October 2014, p. 48.

37 Mr Skillern, Tasmanian Farmers and Graziers Association, *Committee Hansard*, 13 October 2014, p. 17.

38 Ms McKinnon, NFF, *Committee Hansard*, 13 October 2014, p. 13.

4.38 As noted in paragraph 2.27, firearms on farms are often stored away from the main dwelling, in sheds for example, or on properties which are not occupied by the owners full time. NSW Police argued that the storage of firearms in this way, and often together with tools such as angle grinders that can be used to breach a gun safe, increases the opportunity for them to be stolen.³⁹

4.39 Beretta Australia indicated that compliance should be enforced and argued that those firearm owners who did not comply with safe storage requirements should be prosecuted:

We are not saying that we are above the law; we are not saying we are any different from anybody else. As Luca said, we break the law every day—and in saying 'we', I do not necessarily mean the people in this room—by speeding or whatever, and we expect to be punished for it. As firearms owners, why would we not expect to be punished if we broke the law? The fact is: do not reinvent the wheel. If you are worried about firearms theft, enforce the law that is already there. Get some people out there and inspect people's homes, inspect their storage facilities and ensure they are complying with what the police are suggesting is the minimum requirement.⁴⁰

4.40 The AIC agreed that 'a critical factor in the prevention of firearm theft is owner compliance with prescribed firearm storage standards'.⁴¹ As part of its National Firearm Theft Monitoring Program (NFTMP) it looked at issues of storage compliance:

Storage compliance was determined by the data providers. We had a data variable for them to indicate whether the police at the time determined whether they were storage compliant. That again was a range of things. They could have stored their firearm in a cupboard. There were a lot of instances of storing their firearms in cupboards, and what have you—ostensibly locked but in cupboards. Again, they were considered non-storage compliant if the key was within easy access and if the key could be easily found. In some instances—very rare instances—the firearms were left under the beds, in wall cavities and those sorts of things. So that is when there was non-storage compliance. We did find a real issue with vehicles, in particular. I think there might be some confusion, or what have you, about how firearms should be secured when they are being transported in vehicles. We found particularly poor storage compliance when firearms are being transported in vehicles.⁴²

39 Detective Chief Superintendent Finch, NSW Police, *Committee Hansard*, 13 October 2014, p. 48.

40 Ms McKinnon, NFF, *Committee Hansard*, 13 October 2014, p. 42.

41 AIC, *Submission 76*, p. 11.

42 Dr Samantha Bricknell, Research Manager (Violence and Exploitation), AIC, *Committee Hansard*, 31 October 2014, p. 47.

Deactivation of firearms

4.41 Another area that is subject to inconsistencies between jurisdictions is deactivation. In its submission, the AIC explained:

A deactivated (or inoperable) firearm is one which has been rendered incapable of discharging shot, bullets or other projectiles by means of an explosive charge or compressed gas and cannot be returned to its original firing condition (without modifying the appearance of the firearm) (see Customs (Prohibited Imports) Regulations 1956 – Reg 4F).⁴³

4.42 As a result of inconsistencies between jurisdictions regarding the legislative definition of a firearm, some states do not require deactivated firearms to be registered. In NSW, ACT, Victoria, Tasmania and the Northern Territory the legislative definition of firearm is broad enough to include deactivated or inoperable firearms.⁴⁴ Deactivated firearms are considered to remain 'accountable' which means 'that a firearms registration status is not invalidated if it is deactivated and record of the firearm is retained with the relevant firearm register'.⁴⁵

4.43 However, some states have failed to update their legislation:

Deactivated firearms, however, do not fall within the legislative definition of a firearm in South Australia and Western Australia. Deactivated Category H firearms in Queensland are still considered a firearm but not deactivated long-arms. A firearm in these two former states, and a long-arm in Queensland, loses its accountability status on being certified as deactivated.⁴⁶

4.44 Once no longer accountable, deactivated firearms no longer form part of the legal firearm market and may in some circumstances end up being diverted to the illicit market. The AIC identified two ways in which this can occur: through the transfer of the serial number from deactivated firearm to another, operable firearm, with the purpose of concealing the identity of the latter firearm; and through the reactivation of (deliberately) poorly deactivated firearms.⁴⁷ The latter method was found to have been applied to a number of handguns entering the illicit market in Queensland:

A deactivation loophole in Queensland legislation inadvertently led to the deactivation of reportedly thousands of handguns by Queensland-based dealers, and based on firearm seizure data, the transfer of some of these handguns into the national illicit pool (Project stakeholder personal communication, 24 September 2010). Prior to amendments to the *Weapons Act 1990* (Qld) and *Weapons Regulation 1996* (Qld), a handgun if rendered inoperable lost any requirement to remain registered in Queensland.

43 AIC, *Submission 76*, p. 17.

44 AIC, *Submission 76*, p. 17.

45 AIC, *Submission 76*, p. 17.

46 AIC, *Submission 76*, p. 17.

47 AIC, *Submission 76*, p. 17.

Compounding this vulnerability was the lack of inspection of the firearm once the deactivation process had taken place and many thousands of poorly deactivated handguns were reactivated by firearm enthusiasts and criminals, and made their way into the illicit market (Project stakeholder personal communication, 24 September 2010).⁴⁸

4.45 The ACC estimates that 7,500 handguns entered the black market via this method.⁴⁹ While Queensland has amended its legislation to make it an offence 'to reverse the inoperability of a firearm that has been proscribed under the Act to be rendered inoperable', it still does not class deactivated long-arms as firearms.⁵⁰

4.46 The ACC gave evidence that while there are still jurisdictions where such loopholes exist, those jurisdictions are currently in the process of closing these off and 'in the next 12 months to two years, there will be no jurisdiction in Australia where these previous loopholes could exist'.⁵¹ The ACC also emphasised that due to the long life of firearms 'historical diversion methods are still major players in how illicit firearms came into the market, and we should never disregard that'.⁵²

Standard of deactivation

4.47 Another issue raised during the inquiry was the method used to deactivate a firearm. It is now the case that 'state and territory firearm laws... stipulate deactivation standards that generally align with each other and those prescribed in the Australian Federal Police Firearm Deactivation Standards'.⁵³ The AFP noted, however, that this is merely a standard as opposed to a requirement:

We all operate under it, but it is not a specific requirement in terms of 'you all cut a receiver in a particular way' or what have you; it is just the standard to which the firearm must be deactivated. What we are pursuing at the moment is the adoption of a national standard so that all jurisdictions actually deactivate the same way. The AFP standard is being used as a model because it expresses very specifically how that would occur. That is being pursued through the firearms and weapons policy working group.⁵⁴

Security of data in relation to firearm owners

4.48 Data from the AIC's National Firearm Theft Monitoring Program (NFTMP) showed that over the five years between 1 July 2004 and 30 June 2009, around three-quarters of firearm thefts were from private residential premises, with a mix of

48 AIC, *Submission 76*, p. 17.

49 Mr Paul Jevtovic, National Manager, Strategic Intelligence and Strategy, Australian Crime Commission (ACC), *Committee Hansard*, 31 October 2014, pp 34–35.

50 AIC, *Submission 76*, p. 17.

51 Mr Jevtovic, ACC, *Committee Hansard*, 31 October 2014, p. 36.

52 Mr Jevtovic, ACC, *Committee Hansard*, 31 October 2014, p. 37.

53 S Bricknell, *Firearm trafficking and serious and organised crime gangs*, AIC, Research and Public Policy Series no. 116, June 2012, p. 20.

54 Assistant Commissioner Slater, AFP, *Committee Hansard*, 31 October 2014, p. 71.

targeted and opportunistic incidents recorded.⁵⁵ Given the high incidence of thefts from private residential premises, the scarcity of data about firearms was raised as a concern during the course of the inquiry. In particular, submitters and witnesses discussed the accessibility and unlawful use of firearm registries.

Firearm registries

4.49 The Tasmanian Farmers & Graziers Association questioned the security of the various state and territory firearm registries:

Anecdotally, there is significant evidence to suggest that many of the firearm thefts in Tasmania are targeted—that is, they are targeted for the firearms, because often nothing else is taken. So you have to ask how this intelligence is being gathered by criminals in the first place. It is not difficult to see, when individuals are dealing with their firearms—whether it be submitting a form and requesting a new firearm or even when their firearm licence falls due or when they purchase ammunition—they sign registers which other members of the public have access to. These registers have their names and their addresses. The full details are on there for any subsequent person who signs that register, if they are awake, to take note of who the individual is, where they live and often, depending on what sort of register they are signing, what type of firearms they have. We could simply put a stop to many of these thefts by tightening up the security around these sorts of issues.⁵⁶

4.50 The Shooters Union NSW alleged that the NSW firearms database has been accessed unlawfully at times.⁵⁷ Detective Chief Superintendent Finch, from the NSW Police, rejected this assertion:

That area has been traversed many times. In fact, the Firearms Registry has conducted a number of investigations in relation to that. There is simply no evidence that there has been any breach of security or improper release of information in terms of their records and, certainly, I am unaware of any evidence to suggest that operational police have done similar. In fact, regarding the article that commenced that, I spoke to the journalist who wrote it. It was an adlibbed story and his editor seemed to think it was a good idea to run with it—and that was the information I had at the time.⁵⁸

4.51 The NSW Police gave evidence that while targeted theft was more common in rural communities it was not necessarily linked to organised crime:

Our analysis and our practice has shown recently, particularly, that, when thefts occur, very often the thefts are undertaken by people from within the

55 AIC, *Submission 76*, p. 10.

56 Mr Skillern, Tasmanian Farmers and Graziers Association, *Committee Hansard*, 13 October 2014, p. 19.

57 Mr Peter Whelan, President and Treasurer, Shooters Union NSW Inc, *Committee Hansard*, 13 October 2014, p. 32.

58 Detective Chief Superintendent Finch, NSW Police, *Committee Hansard*, 13 October 2014, p. 40.

same communities. We certainly look at and analyse whether there is any more sinister intent—that is, whether groups such as outlaw motor cycles groups have been involved in the thefts or whether they have commissioned those thefts. Again, whilst it would be naive to suggest that has never happened, at this stage there is no conclusive evidence to say that they are involved on any scale.⁵⁹

Shooting clubs and organisations

4.52 Shooting clubs and organisations hold data on their members, including personal information and the types of firearms owned by a member. This data, if accessed by criminal elements, could place members at risk of firearm theft.

4.53 Shooting Australia emphasised the care taken by firearm bodies to protect their information:

Shooting Australia at our level, as I mentioned, has five member bodies. We do not have the details of the 38-odd thousand individuals. The member bodies have that information in different ways. It comes to them from state and club levels. There is a complete understanding by all involved of the need for security of that information and to guard it closely. At the national and state levels, I would suggest that those organisations do not have the details of the numbers and types of firearms but rather have simply who the members are. The details are with the state registries, as Mr Bannister mentioned, and potentially with the clubs that have performed the role of endorsing the particular members' applications et cetera.⁶⁰

4.54 The Shooters Union NSW described the security it uses to protect members' personal information, but simultaneously highlighted weaknesses in its security approach by virtue of the dedicated computer being connected to the internet and membership information being emailed to the firearms registry:

CHAIR: Coming back to security of information, quite a few of the submissions that we received talked about the security of data relating to gun ownership, and I imagine that that is a concern that you all would have. One of the submissions referred to a significant breach in South Australia, where the data about who were members of a gun club was released publicly. This person likened it to a shopping list for criminals who wanted to go out and find where they could get some guns and where there were guns in the community. Mr Whelan, what does your club do to guarantee the security of your membership?

Mr Whelan: Even I do not have access to the membership list. Our secretary, a guy called Daniel Gregg, has it on a dedicated computer that is not linked or connected to anything except when he has to download that and report to the firearms registry. That is done on a spreadsheet annually to

59 Detective Chief Superintendent Finch, NSW Police, *Committee Hansard*, 13 October 2014, pp 42–43.

60 Mrs Catherine Fettell, President, Shooting Australia, *Committee Hansard*, 31 October 2014, p. 20.

review who has kept their membership valid and who has kept their required number of shoots.

CHAIR: So that computer is not connected to the internet at all?

Mr Whelan: No, it is only used to email data to the firearms registry.⁶¹

4.55 Mr Trevor Kenny outlined a specific example in which the South Australian Revolver and Pistol Association Inc. (an "umbrella organisation" with no individual members)⁶² came into possession of information contained in a database of pistol shooters comprising the personal information of individuals and the types of firearms in their possession. Mr Kenny explained:

The South Australian Revolver and Pistol Association Inc. secretary...has been the custodian of the database of pistol shooters for many years. Contained in that database is, not only the personal information of the individuals, but also the types of firearms that are in their possession. S.A.R.P.A. is the parent body of most Pistol Clubs here in South Australia and purports to be the body representing the individual clubs. It argues that club members are NOT members of S.A.R.P.A and one must ask, what they are doing with this information in the first place? Obviously the individual clubs and the Firearms Branch of the South Australian Police are appropriately in possession of such delicate information.⁶³

4.56 The Sporting Shooters' Association of Australia Inc. gave evidence that it would welcome legislation aimed at protecting the security of data:

Interestingly enough, we would actually probably enjoy some additional support in being able to protect our data. There was a case within our own organisation in Western Australia only a few short years ago where an individual took our state association to court to gain access to the membership list and won the case. We resisted it; we lost the case; we could not protect our own data legally.⁶⁴

4.57 The National Farmers' Federation questioned the need for further measures and instead suggested that existing privacy laws should be sufficient:

Much of the information that has been described as accessible is personal information, which is already covered by privacy legislation, and so it is relevant to consider how that law could be applied in this space, where it is not currently being used.⁶⁵

61 Mr Whelan, Shooters Union NSW, *Committee Hansard*, 13 October 2014, p. 38.

62 Crawford Legal, *Response to Submission 144*, p. 2.

63 Mr Trevor Kenny, *Submission 144*, p. 1.

64 Mr Graham Park, President, Shooters Union of Australia, *Committee Hansard*, 31 October 2014, p. 19.

65 Ms McKinnon, NFF, *Committee Hansard*, 13 October 2014, p. 22.

Effectiveness of amnesties

4.58 As discussed in chapter 1, amnesties have been an effective way in which to reduce the size of the illicit firearms market, especially with regards to grey firearms. The Firearms Training and Safety Council submitted that the introduction of a nation-wide amnesty would be an effective way of decreasing the number of grey firearms:

In that respect, we have been calling for a permanent amnesty so that people do not fear that they will be charged in any way, or have their existing firearms licences affected in any way, if in fact they bring forth a grey firearm. Bring forward the firearm, have it taken under the system and have it destroyed if necessary—it does not matter—but institute a permanent amnesty that will give effect to that particular action.⁶⁶

4.59 The NSW Firearm Dealers Association Inc. was supportive of this proposal:

We would like to see a rolling amnesty so that someone can bring a firearm into us and we can then call the police, give them the serial number: 'Is this reported stolen? Has it been used in the commission of a crime?' Yes. We take their details and then take the firearm to a police station for further investigation. If that is not the case, then we will duly register the firearm. In some instances, we have had customers call us and say: 'My father has died. We found a firearm in the garage. Can you do anything with this?' No, I can't help you. And they are like, 'Well, I don't know if the firearm is loaded. I don't know if it is safe to touch.' We say: 'We can't do it. Call the police.' They call the police. The police say, 'We're too busy.' They direct us to go and look at the firearm and bring it back to our office. So it is a very mismatched issue we have got, where the act says we can but the police directive says we cannot.⁶⁷

4.60 The NSW Police discussed some of the problems that arise for law enforcement regarding firearm amnesties:

Amnesties are problematic. Some states continue to run them. One of the problems is that if people hand in firearms under an amnesty and that firearm is then traced to some sort of serious crime, where does that leave us? The volume of firearms that are handed in during an amnesty can also be problematic in terms of tracing. The New South Wales Police Firearms Registry traces all handguns that are handed in to police, as well as all high-risk firearms—that is, the more powerful semiautomatic military-grade weaponry. But to trace every firearm that is handed in is an impossibility at this stage, simply due to resourcing. So, whilst the idea behind an amnesty is very good, I think the practical issues are very difficult to surmount.⁶⁸

66 Mr Gary Bryant, General Manager, Firearm Safety and Training Council, *Committee Hansard*, 13 October 2014, p. 6.

67 Mr Britton, NSW Firearms Dealers Association Inc., *Committee Hansard*, 13 October 2014, p. 23.

68 Detective Chief Superintendent Finch, NSW Police, *Committee Hansard*, 13 October 2014, p. 47.

4.61 Currently Tasmania is the only state to have a permanent firearm amnesty in effect. While people could originally hand in firearms to firearm dealers as well as the Tasmanian Police, this was changed in 2014 to restrict the forfeiture of firearms to the Tasmanian Police.⁶⁹ Firearm dealers seemed to be critical of this change, noting that it discourages people from surrendering their firearms and would mean that more firearms would remain unregistered.⁷⁰ By contrast, Gun Control Australia described the reforms to Tasmania's gun amnesty laws positively, stating '[a]nything that takes guns out of the black or grey market is a good thing'.⁷¹

69 T Nightingale, 'Tasmanian gun dealers cool on amnesty changes', *ABC News*, 13 February 2014, available: <http://www.abc.net.au/news/2014-02-12/tasmanian-gun-dealers-cool-on-amnesty-changes/5256262> (accessed 22 March 2015).

70 T Nightingale, 'Tasmanian gun dealers cool on amnesty changes', *ABC News*, 13 February 2014.

71 T Nightingale, 'Tasmanian gun dealers cool on amnesty changes', *ABC News*, 13 February 2014.