



The reality of independent state and territory gun laws compared to the 1996 National Firearms Agreement

October 2017

Executive Summary

This is the official response to the report *Firearm Legislation in Australia: 21 years after the National Firearms Agreement* (NFA) on behalf of the national, state and territory branches of the Sporting Shooters' Association of Australia (SSAA). Commissioned by the anti-gun lobby group, Gun Control Australia (GCA) and authored by known anti-gun writer Philip Alpers and Amelie Rossetti, an author for Mr Alpers' website www.GunPolicy.org, the report contains observations about supposed variations from the original 1996 Agreement. **The 1996 Agreement is obsolete.** The current version was updated by the Australian Government following an 18-month review and adopted in February 2017. Therefore, **the report was already outdated before it was released in October 2017.**

Both the 1996 and 2017 versions of the NFA are **non-binding guides**. It is an **in-principle agreement, not federal legislation**. The state and territory governments are **independently responsible for gun laws** and hold **the residual-power for the majority of firearm-related controls**. Justice Minister Michael Keenan, the minister responsible for firearms at a federal level, has repeatedly and explicitly stated to the SSAA that the NFA "is not legally binding upon jurisdictions". He has stated in ministerial communications that: "It remains up to the states and territories to determine how they will regulate firearms in accordance with the updated Agreement. This remains the same as it was for the 1996 Agreement." Attorney-General George Brandis has also acknowledged that the NFA is a "reference"¹.

The report authors' use of terms such as "compliance", "watering down" and "divergence" in reference to state-based laws in comparison to the NFA, are misleading: **the states did not secede the power to regulate and legislate firearms to the federal government post-1996**. Criminologists have observed that adapting national guidelines to suit the unique circumstances of each jurisdiction is unsurprising and, in fact, necessary. Constituents expect governments to review and adapt laws; this is a key purpose and function of government².

The table on the following pages responds directly to the key observations made in the report in relation to each jurisdiction's firearms legislation and regulations. Observations in regards to South Australia and New South Wales are outdated; both have adopted new legislation, regulations or both. Furthermore, the report, **which has not been peer-reviewed and contains obvious errors, is nothing more than an opinion piece and should be treated as such**. It must be said that the authors appear to lack a fundamental understanding of firearms in general, including the mechanics required to manage them effectively. The authors demonstrate an obvious repugnance towards private firearms ownership.

Commentary praising some jurisdictions for introducing licence categories in addition to those outlined in the NFA, describing these changes as "within the spirit of the resolution", but criticising other adaptations from the original NFA as unacceptable (in the author's eyes), further shows that the report is an opinion piece. Observations that some jurisdictions do not adhere to the NFA in regards to Category D firearms appear to be based on the view that this category was designed to ban these types of firearms. This is a false premise. Category D firearms are accessible to appropriate people. They are not banned and the intention of the NFA was never to ban these firearms.

The SSAA and our 187,000-plus members take offence to the author's insinuation that young shooters represent a public safety risk if they handle a firearm before the age of 18. Commentary in relation to "children and guns" is disingenuous and fails to acknowledge that in every state and territory, juniors must be supervised by a licensed adult when handling a firearm. A person under the age of 18 cannot purchase a firearm or ammunition and safety courses are mandatory.

It is true that the SSAA supports the involvement of our youth in the proud tradition of hunting and sports shooting, as this trains the future generation of competitive sporting shooters, hunter-gatherers and cullers, while instilling basic firearms safety. This is an aspiration of most sporting bodies and the SSAA is no exception. We make no apologies for making the safe, fun and all-abilities sport accessible to people from all walks of life.

¹ Australia, Senate Estimates 2017. *Legal and Constitutional Affairs Legislation Committee Estimates*, 24 May, p. 69

² Fay-Ramirez, S & Belgrove, E 2017, 'Oversimplifying gun control issues can pose a real threat to community safety', *The Conversation*, viewed 20 October 2017 < <https://theconversation.com/oversimplifying-gun-control-issues-can-pose-a-real-threat-to-community-safety-85244>>

Sports shooting and hunting are legitimate activities that are tightly regulated across Australia. All jurisdictions adhere to the general principles of the NFA in terms of licensing, registration, storage, restrictions on self-loading firearms, genuine use requirements and firearm categories. The fact that the different state and territory governments have adapted the guidelines to suit their constituents is nothing to be scared of. The SSAA condemns the attempt by the report authors to vilify the most law-abiding section of Australia's population and for trying to create a sense of fear by deliberately misrepresenting the reality of our gun laws.

Additional statements from SSAA branches

SSAA Western Australia points out that the NFA template has overregulated the industry, hindering opportunities for legitimate sporting achievements and has become a red tape nightmare for all engaged in the process.

SSAA South Australia requests that the authors correct the entire document purporting to reflect the situation in South Australia, when it is clearly inaccurate due to the new laws.

SSAA Queensland has dismissed the report as being fundamentally flawed and inaccurate and reiterates that the NFA is a guideline which can be and is interpreted differently by each state to suit their needs. Queensland shooters comply with the NFA as the Queensland Government interprets it.

SSAA New South Wales noted that some of the claims were not properly referenced or sourced and appear subjective rather than fact. The authors of the report should have provided more information with regard to context and reference to enable a detailed response to some of their claims.

Jurisdiction and report's observation of laws versus original NFA	Comment: True, False, Misleading with explanation of the actual situation
South Australia	
Authorises the possession of a pistol or revolver during the first six months of a handgun licence.	False: SA does not allow the possession of a handgun until six months has elapsed with a Category H licence as per Regulations 2017 14 (3) (e) (ii).
Does not fully comply with the licensing resolutions of 2002 to regulate pistol club members.	False: SA fully complies with the 2002 resolutions, as per above Regulations and all (3) (4) and (5).
Production of a valid firearm licence is not mandatory for the purchase of ammunition.	False: SA makes it an offence to supply or purchase ammunition without the correct licence, as per SA <i>Firearms Act 2015</i> Part 5: Acquisition and Possession of Ammunition.
A 'genuine need' for a Category B licence is still not generally required in South Australia.	False: SA follows <i>Firearms Act 2015</i> 23 (3) (d) (i) and (ii) requiring a statement of 'genuine need' as well as the PD306 form, Permit to Acquire, clearly needing justification for Category B firearms.
South Australia permits the use of fully automatic and self-loading firearms.	False: SA does not permit automatic firearms and self-loading firearms are only permitted under the terms of the NFA.
Western Australia	
Gun owner safety training is not required by law, except for handgun licences.	False: Safety training is done by a test.
Permits to acquire second or further firearms are exempt from the 28-day 'cooling off' period.	True: However, the applications generally take three months for approval so it exceeds this period considerably.
Firearm sales are not limited to licensed firearm dealers, and not all particulars must be recorded.	Mischievous and misleading: Yes, WA can sell a gun to another but it must be done via a dealer or via WAPOL with the correct documentation.
Although interstate mail order firearm transfers are prohibited except for licensed firearm dealers, non-dealer firearm mail orders do not appear to be prohibited within the State.	False: It is illegal.
Does not require that collector's firearms be rendered permanently inoperable.	True: However, depending on the firearms type, they must have the trigger lock or firing pin removed. Higher category firearms must be rendered inoperable.
Does not fully comply with the licensing resolutions of 2002 to regulate pistol club members.	False: WA far exceeds the resolutions of 2002, particularly attendance rates.
Specifies in legislation no limit on the quantity of ammunition which may be purchased.	True: However, this is limited to ammunition for the types of firearms owned. To buy in bulk, the person must show cause as to why and the Act does define this. All components of ammunition are deemed to be ammunition, including empty cases and projectiles. If caught with an empty 9mm case without a licence, then this is breaking the law.
Australian Capital Territory	
Does not comply with a range of NFA resolutions on Category D prohibited firearms.	Subjective and false: The report itself observes that the ACT exceeds the licence period for Category D firearms recommended in the NFA; in fact, the NFA states a five-year period for Category D licenses. The ACT has a two-year period for Category D licenses, which is under the recommended NFA period.

New South Wales

Now allows the use of firearm silencers, which are a prohibited weapon.

Misleading: A permit for a sound suppressor/moderator can only be issued if there is a genuine reason. For sporting shooters, the permit is only issued if the licensee can demonstrate that their recreational or sporting activity requires the possession and use of a suppressor. A genuine reason may be established to possess or use a suppressor which falls under a separate and specific prohibited weapons permit, for example a prohibited weapons dealer, theatrical armourer, collector or museum. Prohibited weapons are not referenced in the NFA.

Exempts all antique firearms except revolvers from firearm registration.

True: However, a licence or permit is required if a person wishes to **use** an antique firearm. Generally, antique firearms are deactivated i.e. not operational. It is defined by section 6A(7) of the *Firearms Act 1996* as a firearm manufactured before 1900 that, in the case of a firearm other than a pistol, is not capable of discharging breech-loaded metallic cartridges; or a firearm for which ammunition is not commercially available. In the case of a pistol, it cannot be capable of discharging breech-loaded metallic cartridges. All persons in possession of a firearm, regardless of whether or not they hold a licence or permit, must comply with the general requirements for safe keeping.

Extends permission for the use of semi-automatic firearms to shooters whose occupation is not pest control.

Misleading: Semi-automatic firearms belong to Category C and Category D and a licence may only be issued for primary production under Category C or vertebrate pest animal control under Category D. Applicants are required to demonstrate a special need to substantiate the reason a Category A or B firearm is not sufficient for the purpose. Section 17(a) of the Act provides special provisions relating to Category C licences issued for clay target shooting purposes. This provision is referenced in the NFA.

Permits people to be trained in the use of firearms without undergoing firearm licensing.

True: However, section 35(a)ii of the NFA references training prior to obtaining a licence. It does not refer to those who may wish to try shooting, but not pursue a licence. Successful completion of training is required before a firearms licence can be applied for. An exemption exists for unlicensed persons to possess and use firearms under supervision without a licence or permit while shooting on an approved range or while participating in an approved firearms safety training course under section 6B of the Act. Written consent is required for a person aged between 12 and 18 years. Photographic identification of the parent or legal guardian must be supplied to the club official, range official or instructor.

<p>Permits people to use firearms on safari tours without undergoing firearm licensing.</p>	<p>Misleading: Clause 66 of the <i>Firearms Regulation 2017</i> prescribes that the Commissioner may issue a permit that authorises the possession and use of Category A and B firearms only, for the purpose of participating in an organised safari tour conducted by an authorised safari tour operator or hunting activities conducted by an approved hunting club. The permit is available only for persons who are NOT residents of Australia. The permit does not authorise the purchase of any firearms. NSW residents must be licensed. NSW firearms licences are not available to non-residents. There is no reference to safari tours in the NFA.</p>
<p>Exempts from firearm licensing children 12 years of age or over, shooting under supervision.</p>	<p>Misleading: A person must be 18 or over to obtain a firearms licence. However, under section 32 of the Act, a Minor’s Permit is available for persons aged 12 to 18 years for the purpose of receiving instruction in the safe use of firearms or participating in shooting events. The permit authorises the minor to possess and use firearms under the supervision of a firearms licence holder. The permit does not authorise the acquisition of firearms or the purchase of ammunition.</p>
<p>Adds membership of a hunting club as a ‘genuine reason’ for firearm possession.</p>	<p>Misleading: Any person wishing to acquire a firearm in NSW must be the holder of a current firearms licence or permit authorising possession of that type of firearm, and must make application to the NSW Firearms Registry for a Permit to Acquire (PTA). A licence or permit holder may only acquire a particular type of firearm if they hold the corresponding category of licence or permit authorising possession of that firearm. The appropriate background checks are conducted for each and every application. Being a member of a hunting club does not guarantee approval of a PTA.</p>
<p>Exempts from the NFA’s 28-day ‘cooling off’ period a permit to acquire second or subsequent A or B category firearms.</p>	<p>True: For the initial PTA in a category, there is a mandatory 28-day waiting period from receipt of the application to the date the PTA can be issued. For second and subsequent PTAs for the same type of firearm as one already registered to the applicant, there is no waiting period. The appropriate background checks are conducted for each and every PTA application.</p>
<p>Does not require good reason for a permit to acquire more firearms of a category already held.</p>	<p>False: Section 31(3)(c) of the Act prescribes that the Commissioner must not issue a permit authorising a person to acquire a firearm unless the Commissioner is satisfied that the applicant has a good reason for acquiring the firearm concerned. The good reason must be directly related to the reason for the issue of a firearm licence. All firearms purchased relate directly back to the genuine reason for holding a firearms licence. The appropriate background checks are conducted for each and every PTA application.</p>

Permits the use of pistols of higher calibre than the NFA allows in two handgun competitions.	Misleading: High-calibre handguns may only be used in Metallic Silhouette and Single Action matches. This is consistent with item 14(c) of the 2017 NFA.
Specifies in legislation no limit on the quantity of ammunition which may be purchased.	True: However, section 19(2)(d) of the Act prescribes that the licensee must not possess, at any one time, any amount of ammunition that exceeds the amount (if any) prescribed by the Regulations, unless authorised in writing by the Commissioner. The Regulations do not currently specify any limit on the amount of ammunition.
NSW permits the use of prohibited firearms more widely than do other jurisdictions.	False: Prohibited firearms are the most strictly controlled of all firearms.
Northern Territory	
Authorises the possession of a pistol or revolver during the first six months of a handgun licence.	False: Under section 35A, the Commissioner must not grant to the holder of a Category H sports shooter's licence a permit to purchase or acquire a firearm unless the holder has, at all times during the six months before the application for the permit, held one or the other of the following: (a) a Category H sports shooter's licence; (b) a shooter's licence authorising the possession and use of a Category H firearm that was granted for (or partially for) the genuine reason of sports shooting.
Permits to acquire second or further firearms may be exempt from the 28-day waiting period.	True: However, the Commissioner may only grant a permit to a person to purchase or acquire a firearm before the 28-day period expires if the person holds a licence and owns a registered firearm and has established a genuine need for owning the firearm to be purchased or acquired; and the prescribed checks have been completed.
Although personal protection is not regarded as a genuine reason for owning, possessing or using a firearm in any jurisdiction, this is still not stated in Northern Territory legislation.	Misleading: The assertion in the report is correct, however it would seem ridiculous and bordering on impossible for the <i>Northern Territory Firearms Act</i> to contain a statement of all non-genuine reasons. Only the applicable genuine reasons are stated.
A 'genuine need' for a Category B licence is still not generally required in the Northern Territory.	False: The Commissioner is not to grant a licence unless satisfied that the applicant has a genuine reason for possessing and using firearms. This clause clearly refers to ALL categories of licence in the Northern Territory. 'Genuine Reason' is also referenced in the <i>Northern Territory Firearms Regulations</i> with regard to Clause 26 - Particulars in License.

Queensland	
Firearm licensing proof of identity and photographic identification procedures are less stringent.	False: A person applying for a firearms licence has to show proof of identity and requires a guarantor.
The 10-year licence validity period for Category A and B is double that agreed in the NFA.	True: However, this was introduced as part of a red tape reduction initiative across several areas (not just shooting). This was also to help ease administrative duties on staff in the Firearms Department. The licence can still be revoked or cancelled at any time, if required. Northern Territory also has 10-year licences.
Category C weapons may be stored in the minimum security conditions for category A and B.	Misleading: Although the same storage applies for Category A, B, C, E and M weapons, this still complies with Category C storage requirements outlined in the NFA. The only difference is that the container can be solid timber OR steel, not just steel.
Production of a valid firearm licence is not mandatory for the purchase of ammunition	False: The purchaser must provide a valid firearms licence or explosives licence.
Authorises the possession of a pistol or revolver during the first six months of a handgun licence.	Misleading: Police permission is required to even join a pistol club with a minimum six months of membership/shoots at the club before being able to even apply for a Category H licence. A Permit to Acquire (PTA) is required for each gun, which also requires a supporting letter from the club for use at the range. A Category H licensee is checked by the police at least three times before being allowed to own a handgun: firstly when joining a club, secondly when applying for a licence and thirdly when lodging a PTA application. s131 of the Act says in the first year of acquiring a handgun licence, a person must not acquire more than one air pistol (not an actual firearm) and one other handgun (cartridge or black powder).
Specifies in legislation no limit on the quantity of ammunition which may be purchased.	True: However, the person must be able to store the ammunition correctly as per the <i>Explosives Act</i> and for more than 10,000 safety cartridges in a secured area, a classification sign (class 1.4S) must be displayed.
Although personal protection is not regarded as a genuine reason for owning, possessing or using a firearm in any jurisdiction, this is still not explicitly stated in Queensland legislation.	Misleading: Genuine reasons for a firearms licence does not allow for personal or self protection at all, even if it is not explicitly stated.
Queensland only poorly complies with the NFA conditions for Category D prohibited firearms.	False: Access to functioning Category D weapons is restricted to professional pest controllers, a small handful of primary producers with very serious vertebrate pest problems, gun dealers, and armourers. Collectors may own permanently inoperable Category D firearms, but they must still be kept locked in a secure gun vault.

Tasmania

Does not comply with any of the licensing resolutions of 2002 to regulate pistol club members.

False: The key club requirement is to sign off on a Permit to Acquire (after specified periods) and specify the disciplines it will be used for. Clubs are not responsible for checking storage; this is clearly and sensibly the role of Tasmania Police who will undertake checks and have the legal authority to do so.

Tasmania Police has all the information about previous clubs, other firearms held, etc. Regulation does occur accordance with the principles; it is just implemented in a more sensible way.

Tasmania does not forbid the use of prohibited firearms for competitive shooting.

Misleading: As the report says: “The Act does not specifically prohibit the use of prohibited firearms for competitive shooting (s.38), but it does not authorise the granting of a category C or D licence for this purpose (ss. 31 and 32).”

By and large, it is impossible to get a prohibited firearm for competition shooting, except perhaps a member of the ACTA with a demonstrated need, at the Commissioners discretion. This is in the original NFA.

There is no specific legal right establishing availability, so in practice this is very tightly controlled.

Tasmania does not comply with a range of other NFA Category D prohibited firearm conditions.

Misleading to false: It is virtually impossible for anyone other than a government employee to get a Category D firearm for animal control, which is a specific licence type. Collectors can hold Category D but only under conditions of deactivation and strict storage conditions.

Victoria

Permits to acquire second or further firearms are exempt from the 28-day 'cooling off' period.

Misleading: The Act states that when an application for a permit to acquire (PTA) has been made by a person who does not possess a registered firearm, the Chief Commissioner must not issue the permit until 28 days after the application. However, if the applicant already owns a firearm, the Commissioner can issue the permit, but not until sufficient time has expired to allow the Commissioner to consider the application properly. Clearly, the Commissioner is not limited to 28 days but to a period which is sensible and assessed on its merits.

Authorises the possession of a pistol or revolver during the first six months of a handgun licence.

Misleading: Under section 58A of the Act, the Commissioner may grant a provisional handgun licence to a member of an approved handgun target shooting club, who does not hold a handgun target shooting licence, to carry or use the classes of general category handguns specified in the provisional licence. This is subject to the condition that the handgun must not be carried or used except for the purpose of the holder of the licence making a decision as to whether to, in the course of applying for a general category handgun licence for the reason of target shooting, purchase the handgun; and make an application to the Commissioner for an authorisation under section 7A for the handgun. A provisional general category handgun licence can be issued but this does not allow the person to buy or own a handgun. After the expiry of six months on a provisional, a person can then apply for a general category handgun licence and then they can buy or own a handgun.

Specifies in legislation no limit on the quantity of ammunition which may be purchased.

True: However, there are certain requirements under the *Dangerous Goods Act 1985*, including not possessing cartridge ammunition unless that person licensed under this Act, or a holds a permit under section 58A; or is the holder of a licence to keep explosives for sale and to sell explosives; or is not required to have a licence under this Act in order to possess a firearm. The holder of a licence under this Act (other than a firearms ammunition collectors licence) must not possess cartridge ammunition which is not suitable for use in the category of firearms that that person is authorised to possess, carry or use under the licence. There are requirements under the *Dangerous Goods Act* for a special licence for more than 40,000 rounds of cartridge ammunition and other limits on primers and powder.

A 'genuine need' for a Category B licence is still not generally required in Victoria.

False: It is clearly outlined in the Act that to apply for a permit to acquire a Category B longarm, the applicant must demonstrate a genuine need to possess, carry or use a Category B longarm.

<p>Victoria allows private ownership of automatic handguns.</p>	<p>Misleading: While technically it is possible to own an automatic handgun under a Category E licence, in reality, the only people who have Category E licences are dealers. Automatic handguns are rare and the chance of the police granting a Category E licence is also rare.</p> <p>No police-approved shooting match uses an automatic pistol. Security guards aren't allowed automatic handguns either. The proposition that Victoria allows private ownership of automatic handguns is a distortion and a half-truth.</p>
<p>Victoria does not comply with a range of other NFA Category D prohibited firearm conditions</p>	<p>Misleading: Under the Act, applicants for Category D longarms must prove that they require it for professional hunting purposes and that they cannot carry out the activity with another lesser category firearm. This is in accordance with Category D being available for professional shooters.</p>