

Northern Territory Police



# Northern Territory Police Force

SUBMISSION

to the

LEGISLATION SCRUTINY COMMITTEE

**Inquiry into the Firearms Legislation Amendment  
Bill 2020**

The NTPF strongly opposes this Bill on three grounds:

- a) The Bill undermines the Government's commitment to the National Firearms Agreement;
- b) There are insufficient safeguards within the Bill; and
- c) There are technical issues with the Bill.

### **Appropriateness of the Bill**

The Bill proposes to create a new category of firearm licences allowing the use of category D firearms for recreation purposes, namely the discharge of such firearms on approved ranges, termed a 'firearms range licence'. This is fundamentally inconsistent with the National Firearms Agreement ('the Agreement') and nationwide agreed standards of firearms regulation.

Category D firearms are the most restricted category of firearm available and there are stringent controls on their purchase and possession. This category of firearm, in addition to .50 calibre firearms, includes self-loading centre fire rifles and self-loading shotguns. These weapons have a high rate of fire that present significant risk to community safety, warranting their strict control. This has been evidenced by the use of this category of firearms in mass casualty events in Australia and throughout the world. .50 calibre firearms are anti-material weapons, primarily used for military purposes, which have no practical application or justification for civilian use.

The Agreement was a part of the national response to firearm related law reform following mass shooter incidents, including Port Arthur in 1996, after recognising the risk category D firearms (amongst others) could pose to the community. The Agreement committed all States and Territories to a firearms registration scheme and licensing of persons in order to legally possess and use firearms. The Agreement outlined the minimum requirements in relation to firearm regulation and was recommitted to by the Council of Australian Governments, including the Northern Territory (NT) Government in February of 2017.

The Agreement requires licence holders to demonstrate a genuine reason for acquiring, possessing or using a firearm and restricted these reasons to specific categories of firearms. It stipulates that only category A and B firearms be allowed for recreational purposes, which was adopted into the NT Legislation.

The NT implemented the following into the *Firearms Act 1997* ('the Act'):

#### **11 Genuine reason for licence (Emphasis added)**

- (1) The Commissioner is not to grant a licence:
  - (a) unless satisfied that *the applicant has a genuine reason for possessing and using firearms*; and
  - (b) *in respect of a category C firearm, category D firearm or category H firearm, unless satisfied that the applicant has a genuine need for possessing and using firearms of that category*; and
  - (c) unless satisfied that the applicant meets the requirements under this Act in respect of that reason or need.
- (2) The genuine reasons for possessing or using firearms are any of the following:
  - (a) sports shooting;

- (b) recreational shooting or hunting;
  - (c) primary production;
  - (d) vertebrate pest animal control;
  - (e) business or employment;
  - (f) occupational requirements;
  - (g) animal welfare;
  - (h) firearms collection;
  - (j) museum display;
  - (k) inheritance;
  - (m) instruction in firearms use and safety;
  - (n) paintball operator or employee.
- (3) The Regulations may provide that the genuine reasons for possessing or using a specified category of firearm are limited to only one or some of the reasons specified in subsection (2).

Regulation 13 of the *Firearms Regulations 1997* ('the Regulations') limits the categories that are deemed genuine reasons in respect of category D as follows:

**13 Restrictions on granting licences for category D firearms (Emphasis added)**

- (1) The Commissioner is not to grant a licence authorising the possession or use of category D firearms unless:
- (a) *the genuine reason established by the applicant for the licence is:*
    - (i) *vertebrate pest animal control;*
    - (ii) *primary production;*
    - (iii) *firearms collection;*
    - (iv) *museum display; or*
    - (v) *instruction in firearms use and safety; and*
  - (b) *the applicant produces evidence to the Commissioner's satisfaction that there is a genuine need for the applicant to possess or use category D firearms.*

The NTPF submits that there is no genuine need for anyone to possess and use a category D firearm for recreational purposes. The NTPF submits that it is irresponsible and damaging to the NT's firearms regulatory framework to equate 'fun' with a genuine need to possess the most restricted category of weapons. At present, this category are only licensed to individuals in exceptionally limited circumstances where there is a genuine need.

## Scope of the proposal

The purpose of the Bill is to allow recreational and training businesses to use and possess .50 calibre firearms. The proposed amendment under 30BA authorises the possession of any category D firearms other than firearms less than 70cm in length and inoperable machine guns. Section 30BB(2) further clarifies that s30BA will permit the possession and use of .50 Calibre firearms. There is no further limitation to the scope of category D firearms permitted under s30BA. Whilst the intent of this legislation is to allow .50 calibre firearms to be utilised for recreational purposes at ranges, the Bill would in effect allow all Category D firearms to be used for this purpose, including self-loading centrefire rifles and self-loading shotguns.

The NTPF submits that if this proposal is to be passed, the Bill should be amended to only apply to .50 calibre firearms. There is no justification nor reason for having the Bill apply to all types of category D firearms.

The NTPF submits that it is wholly inappropriate that the proposed 'firearms range licence' would allow children as young as 16 years of age to use category D firearms. If the proposal were to proceed the Bill should be amended to only allow persons over the age of 18 to use these firearms.

## Insufficient Safeguards

The NTPF is very concerned with the lack of sufficient safeguards implemented in this Bill. The NTPF draws comparisons with this Bill and the *Firearms Amendment (Paintball) Bill 2007* ('Paintball Bill'). The Paintball Bill was significantly more detailed than the Bill currently before the Scrutiny Committee. The NTPF is concerned that the proposed Bill is significantly briefer than the Paintball Bill, especially considering that the Paintball Bill was dealing with a significantly less dangerous weapon than the firearms encompassed by the Bill currently before the Scrutiny Committee. The Paintball Bill was considered holistically within the current operational context of the Act, and integrated within the regulatory framework in a manner in which the current Bill fails to do.

## Genuine Reason/Need

Licences are issued pursuant to Part 3 Division 1 of the Act, however the different types of licences are governed by Part 3 Division 3. The genuine reason test pursuant to section 11 of the Act only allows licences to be issued where the applicant has established a genuine reason for the licence. Genuine reasons in respect of Category D firearms are prescribed in regulation 13 of the *Firearm Regulations 1997* (Regulations). Under regulation 13, the Commissioner cannot grant any licence for a category D firearm unless the genuine reason is for vertebrate pest animal control, primary production, firearms collection, museum display or instruction in firearm use and safety. The application also needs to satisfy the Commissioner that, in addition to the genuine reason for the use and possession of a category D firearm, the applicant also has a genuine need for the use and possession of a category D firearm. The regulation states that if the genuine reason for the licence is primary production, the applicant needs to satisfy the Commissioner that the culling of large feral animals could not be achieved by any other means, including the possession and use of a different category of firearm.

The Bill ignores the implications of regulation 13 and simply seeks to insert regulation 13A. Proposed section 30BB(6) states that carrying out a business of operating a category D firearm range for the purpose of training and recreational shooting is to be a genuine reason for the possession and use of category D firearms. This conflicts with the limitation on the grant of a licence under regulation 13.

Regardless of whether an applicant can satisfy the Commissioner of the matters outlined in regulation 13A, the NTPF submits that an applicant would be unable to satisfy the genuine reason or genuine need tests under regulation 13 empowered by section 11 of the Act. The NTPF further submits that any amendment seeking to include recreational use as a genuine reason for the possession of category D firearms is wholly inconsistent with the Act and would erode legitimate safety regulations currently encompassed in the Act.

### **Licences for Operator/Employees**

This Bill does not include a provision requiring all category D firearms range licences to be held by a body corporate, although the Bill does make reference to a representative at sections 9(8A) and 30BB(1).

The proposed licence should require a body corporate licence. This is consistent with section 10(7) of the Act which prohibits an individual from being granted a firearms dealer licence, firearms museum licence, firearms club licence, firearms corporate licence or paintball operator licence. The NTPF submits that the proposed category D firearm range licence logically should be subject to the same restriction.

When the *Firearms Amendment (Paintball) Act 2007* was introduced in 2007, the second reading speech included the following:

There are a number of grounds for restricting the grant of the licence to a body corporate as opposed to granting a licence to an individual.

Firearms licences are not transferable under the Act, so were paintball licences to be held by individuals it would mean the paintball operators licence and firearms registration associated with the business would be automatically revoked when the individual owner ceased operating the business. But with licences vested in a body corporate, the business can be sold along with the licence with the purchasers becoming the new directors and members of the body corporate. Restricting the grant of a licence to the body corporate will also allow the Police Commissioner to maximise his enforcement of power under the Act. This is intended to ensure that the holder of an operator's licence conducts the business responsibly and in the public interest. The grant of a licence or permit will be subject to stringent conditions aimed at promoting the operator's safety obligations although the Police Commissioner may impose specific conditions on the paintball operator's licence. For example, differing conditions might be placed on an indoor operation as opposed to an outdoor operation.

These justifications for limiting paintball operator licences to body corporates is even more relevant to the proposed category D firearms range licences.

It is also appropriate that section 10A should apply to category D firearm range licences. This provision mandates that the Commissioner may refuse to grant a firearms corporate licence, firearms museum licence or a firearms club licence if the representative does not hold a licence or if the Commissioner is not satisfied that the representative would be granted a licence under section 10 if the representative were to apply for one. The NTPF submits that this type of safeguarding is necessary to ensure that representatives for these

types of licences are the sorts of people who would otherwise be eligible for a firearms licence.

Proposed section 30BB(1) currently states that the possession of a category D firearm would be lawful for the purpose of carrying on the business of operating the range. This is ambiguous as possession of a licence for business or employment purposes are currently separate genuine reasons under section 11(e) of the Act.

This provision appears to be modelled from s30D of the Act, however s30D relates to paintball operator licences which must be held by body corporates (and therefore will always have a representative). The NTPF notes that the Paintball Bill distinguished between Paintball operator licences and paintball employee licences (at sections 30D and 30E). To improve clarity of this section, if the Bill were to proceed this section should be constructed so that it is clear that the authorisation encapsulated in section 30BB(1) applies to the operator of the category D firearms range.

The Bill should be clear that employees of such a business are either subject to requirements under section 27 or alternatively the Bill could provide for specific category D firearms range employee licences modelled on section 30E and 30F. The NTPF submits that it is preferable for separate strict safeguards be drafted for employees of category D firearms ranges. Either way, the Bill needs to provide appropriate safeguards in relation to employees or prospective employees. The NTPF again reminds the Scrutiny Committee that the proposal is dealing with the most dangerous category of firearms. It is vital that access to these firearms is appropriately safeguarded.

At the very least, the Bill should include provisions modelled on section 30G of the Paintball Bill for the disclosure of information by the Commissioner to an approved paintball operator. Section 30G empowers the Commissioner to provide information to a paintball operator about an employee or prospective employee in relation to whether the person has had a firearms licence, permit or certificate of registration suspended, refuse or revoked, or whether the operator is prohibited from employing the person and why.

The NTPF can see no reason why these types of safeguards have not been included into the Bill. The NTPF submits that this Bill deals with a more dangerous category of firearm than the Paintball Bill did when section 30G was enacted. The NTPF are disappointed that this Bill has less safeguards than the safeguards applicable to paintball operators. It is vital that if the Bill were to proceed, these types of safeguards are incorporated into the proposal at a minimum to ensure community safety.

### **Restrictions on grant of operator licence**

Section 9(7) should be amended so that it applies to category D firearm range licences. Section 9(7) requires applicants of firearms dealer licences or paintball operator licences to specify the name and address of each person who is a close associate of the applicant and particulars of the nature of the person's association with the applicant. Providing information about close associates is an important safeguard under the Act to ensure all relevant information is before the Commissioner. Section 3(3A) also requires amendment to include reference to category D firearm range licences.

The Paintball Bill inserted a provision regarding the restriction of the grant of a paintball operator licence at section 10AD. The NTPF acknowledges that an equivalent of section 10AD(b) is not required (because section 3(d) would apply) and section 10AD(c) has been addressed by the Bill at section 30BB(3). However, the Bill does not propose any equivalent provision to section 10AD(a), namely that the Commissioner must not grant a paintball operator licence unless:

the Commissioner is satisfied each person who is or will be a close associate of the applicant is a fit and proper person to be a close associate of the holder of a paintball operator licence;

The NTPF find it shocking that this level of safeguarding is applicable to paintball operators but there is no proposal for an equivalent requirement for operators of category D firearm ranges. To be consistent with the Act, and better provide appropriate safeguards in the use and possession of category D firearms, if the Bill were to proceed it ought to insert a provision at section 10AE specifying the restrictions specific to the grant of a category D firearm range licence. The NTPF notes that specific restrictions are legislated for category H sports shooter's licences, firearms dealer licences, firearms collector licences and paintball operator licences. The NTPF is concerned that category D firearm ranges are being proposed with less restrictions than other licences under the Act, despite them being the most dangerous category of firearms.

### **Automatic revocation of licence, permit or registration**

Section 40 of the Act outlines the situations that would result in an automatic revocation of a licence, permit or registration. The Bill fails to amend section 40(3) to provide for the automatic revocation of a category D firearms range operator licence if the operator is no longer entitled to use the approved premises or no longer carries on the business of the category D firearms. The NTPF again notes that it is concerning that safeguards in place for firearms dealer licences, firearms armourer licences, firearms collector licences, firearms corporate licences and paintball operator licences have not been extended to the proposed category D firearms range licence.

### **Approved Premises**

Section 49 provides for the approval of a premises for shooting activities. 49A inserted specific requirements for a paintball range. The NTPF submits that if the Bill were to proceed a specific provision should be inserted regulating the approval of category D firearm ranges including requirements that all necessary approvals are obtained, that the premises are suitable for the intended use, and that the use of firearms on the premises will not constitute a danger to persons on the premises or to the public in the vicinity of the premises.

The NTPF notes that ranges are approved in relation to specific calibres of firearms. The NTPF again submits that if this proposal is to be supported, the Bill should be limited to the .50 calibre firearms that the Bill intended to permit.

## Offence provisions

Despite increasing access to category D firearms, the Bill fails to implement any relevant offence provisions to better safeguard against inappropriate usage. The NTPF submits that the Scrutiny Committee should be concerned about weakening longstanding limitations on the use and possession of category D firearms without sufficient deterrence against misuse. The NTPF submits that it is insufficient to rely on pre-existing offence penalties under the Act. The NTPF submits that specific offences are required to ensure compliance and to deter inappropriate use of category D firearms.

The NTPF again notes that the Paintball Bill implemented a raft of paintball specific offences. This was necessary because the Paintball Bill was allowing for the use of a category C firearm for recreation. The NTPF is again concerned that the current Bill fails to include any offence despite seeking to allow recreational use of significantly more dangerous firearms. The NTPF has identified the following areas where amendment is needed at a minimum:

**Section 48** prohibits a person who is a member of the management committee of a firearms club from using, or knowingly permitting another person to use, a firearm on premises occupied by the firearms club unless the premises are approved under section 49. This section should include a similar offence relating to use of a category D firearms range.

**Section 58A** creates obligations on a holder of a firearms licence that is supervising a person. The NTPF submits that an offence provision should be included specifically to regulate the proper use of category D firearms at a category D firearms range.

**Section 58B** requires a firearms club to not allow a member to use a firearm if informed by the Commissioner that the member is subject to a suspension or revocation of their licence. The NTPF submits that a similar provision must, at a minimum, be included that category D firearms range operators are prohibited from allowing a person to possess or use a firearm at their premises if informed by the Commissioner that any of the reasons listed at section 58(5) applies.

**Provisions equivalent to Part 11 Division 2B Offences relating to paintball** – If the Bill is to proceed, it should, at a minimum, include offences equivalent to the offence provision included by the Paintball Bill, namely section 60B-60H, and 60K-60L, namely:

60B Definition

60C Prohibition of carrying on business of paintball operator without authority

60D Information about close associates, representatives and employees

60E Records and returns

60F Prohibition on employing certain persons

60G Production of firearms

60H Possession and use of paintball firearm only at approved paintball range

60K Paintball player must sign declaration and give identification

60L Certain persons prohibited from playing paintball

**107A Offences by representatives of licence and permit holders** is a deeming provision that holds a representative equally liable for an offence committed by the licence holder, irrespective of whether the licence holder is also charged with the offence. This type of provisions is not uncommon for offences that apply to body corporates. It is necessary to ensure that a representative is equally liable and therefore motivated to ensure the licence holder does not commit any offences. If the Bill is to proceed section 107A should be amended to apply to category D firearm.

### **Notification of change of representative of licence holder**

Section 91A requires holder of a firearms corporate licence, a firearms museum licence, a firearms club licence or a paintball operator licence or permit to inform the Commissioner of a change in representative within 14 days. If the Bill is to proceed this provision must be amended to also apply to category D firearms range licences.

### **Conditions of licence or permit**

The Bill should include equivalent provisions to regulation 39D which was inserted to ensure proper regulation of paintball operator licences and permit. The granting of a category D firearm range licence should be subject to at least this level of regulation. These regulations include:

A prohibition on altering the premises without written approval of the Commissioner.

An obligation to give written notice to the Commissioner about a change in the operator's business within 7 days and to provide all documents relating to the change.

An obligation to ensure that employees personally supervise the possession and use of firearms by customers of the range.

A duty to ensure that the operator and employees exercise all reasonable care and precaution and give necessary directions to any person to prevent danger of injury.

To allow a police officer to inspect the range at any reasonable time to ensure compliance with the Act.

### **Review**

Noting the concerns about the weakening of legitimate safeguards within the Act, the NTPF submits there would be a requirement for review if the Bill were to proceed. This review would need to encompass a review of the implementation of the changes and any issues that arose as a consequence. If the Bill is passed, there should be a provision requiring the Commissioner to conduct a review of category D firearms range licences and for the report of the review to be given to the Minister. The Minister must, within 7 sitting days after receiving the report table a copy of it in the Legislative Assembly. The NTPF suggests that a review be conducted 2 years after commencement.

## Technical Issues with the Bill

The NTPF submits that there are many technical issues with the Bill. The Bill is not drafted to be consistent with the provisions of the Act. The NTPF again draws comparisons with this Bill and the Paintball Bill. The Paintball Bill was significantly more detailed than the Bill currently before the Scrutiny Committee. This detail was necessary due to the complexity of the Act. Provisions relating to licences, permits, registration and offences are woven throughout the Act. Any Bill seeking to introduce a new form of licence needs to address a variety of provisions to ensure that the proposal achieves its purpose and that there are not unintended consequences as is the case with this Bill.

## Training vs Instruction

A further function of this Bill is to allow for training in the use of category D firearms. It appears the intention is specifically for training persons in the use of category D firearms to allow for recreational use at the category D firearms range. The term training is used throughout the Bill at clauses 4, 7 and 9.

The proposal to allow for a special category of licence for training in the use of category D firearms is an unnecessary duplication of existing provisions. Persons with a genuine reasons and genuine need to instruct others in the proper use of category D firearms are already eligible under section 30C of the Act.

### **Division 13 Firearms instructor licence**

#### **30C Firearms instructor licence**

A firearms instructor licence authorises the holder to possess and use firearms of a category specified in the licence for the purpose of conducting approved firearms training and safety courses.

### ***Firearms Regulations 1997***

#### **13 Restrictions on granting licences for category D firearms**

- (1) The Commissioner is not to grant a licence authorising the possession or use of category D firearms unless:
  - (a) the genuine reason established by the applicant for the licence is:
    - ...
    - (v) instruction in firearms use and safety; and
  - (b) the applicant produces evidence to the Commissioner's satisfaction that there is a genuine need for the applicant to possess or use category D firearms.

If there is a genuine reason and genuine need for a person to instruct others in category D firearm usage and safety, the person can apply for a firearm instructor licence. It is unnecessary to create a new form of licence.

The terminology used in the Bill is not consistent with the Act, which refers to 'training' rather than instruction in firearms use and safety. Allowing two different terms without definition to be used to encompass the same meaning risks confusion and may result in unnecessary attempts to distinguish between the two terms. As there are already provisions for instruction in firearm use and safety for Category D firearms, it is recommended that should the Bill proceed, any reference to training is removed.

### **Clause 5**

Clause 5 inserts a new section 9(8A) in respect of category D firearms range licences. This placement is illogical because section 9(8) and 9(9) both refer to paintball operator licences. If this clause is to be inserted, it should come after subsection 9(9).

### **Conclusion**

Category D firearms require the most stringent regulation due to the risks they pose to community safety. They are the most restricted category of firearms and particular caution must be exercised when proposing legislative reform which would weaken the current regulatory framework relating to their control. The current Bill is insufficient to provide the level of regulation and the safeguards necessary to allow unlicensed and un-vetted persons access to category D firearms. The NTPF submits that it would not be possible to provide such sufficient safeguards to allow unlicensed persons access to category D firearms for recreational purposes.

The NTPF submits that irrespective of any amendments being made to this Bill, this proposal undermines the robust and necessary firearms regulation that ensure public safety and community confidence in firearms possession and use. The proposed Bill undermines the National Firearms Agreement and if legislated would place the NT out of step with every other jurisdiction in Australia who do not allow category D firearms to be used for recreational purposes. The NTPF is strongly opposed to the weakening of any regulations relating to the control of category D firearms.

If the proposal is nevertheless supported by Government, the NTPF submits that the Bill should not be accepted in its current state and due to its significant drafting deficiencies would need to be rewritten in its entirety. Any rewrite should be developed in consultation with the NTPF to ensure that people with sufficient expertise in the administration of the Act are able to advise on the legislative requirements for such a Bill.