

COMMUNITY LEGAL CENTRES TASMANIA

14 April 2015

The Honourable Jim Wilkinson
President of the Legislative Council
Parliament House
Hobart TAS 7000

Dear Mr Wilkinson,

Re: *Firearms (Miscellaneous Amendments) Bill 2015*

Community Legal Centres Tasmania (CLC Tas) welcomes many of the government's proposed amendments to the *Firearms Act 1996* (Tas).¹ With the most recent statistical data suggesting that approximately 1800 firearms are stolen each year in Australia of which 200 are stolen from Tasmania, this correlates to Tasmania's 2.1 percent of the Australian population responsible for 11 percent of all firearms stolen.² In our opinion, the government's amendments to tighten firearm storage requirements will result in less firearms being stolen and are to be commended.

CLC Tas is the peak body representing the interests of eight community legal centres (CLCs) located throughout Tasmania. We are a member based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

Whilst the improvements to firearm storage requirements will make it harder for firearms to be stolen we urge members of the Legislative Council to support the adoption of Australian best practice in the regulations, which will in turn both prevent and deter firearm theft.

¹ CLC Tas would like to acknowledge the assistance of Amelia Hickman, Olivia Jarvis, Joseph Lee, and Soo-Li who provided the research that underpins our response.

² The figure of 1800 stolen firearms is taken from a submission made by Gun Control Australia to the Legal and Constitutional Affairs References Committee in August 2014. GCA relied on information provided by the Australian Institute of Criminology which recorded 1,570 reported incidents of firearm theft during 2008-09. This figure did not include Western Australia. As found at Australian Institute of Criminology, *Firearm theft in Australia 2008-09* (Monitoring Report No. 16: 2011). As found at http://www.aic.gov.au/media_library/publications/mr/16/mr16.pdf (Accessed 13 April 2015).

We also urge members of the Legislative Council to consider adopting an amendment to the *Firearms (Miscellaneous Amendments) Bill 2015* ('the Bill') that, in our opinion will lead to a safer community. This amendment is:

- the introduction of an offence of being in possession of a firearm with a blood alcohol or illicit drug reading greater than the prescribed concentration.

Finally, we urge the Legislative Council to reject mandatory sentencing.

Firearm Storage Requirements

Strengthening current provisions around firearm storage will reduce offenders' ability to penetrate otherwise secure storage requirements. As long ago as 1988 the Australian Institute of Criminology observed:³

... the vast majority of Australian gun owners are responsible individuals who pose little or no risk to themselves or to their fellow citizens. The challenge facing public officials in Australia is to minimize the availability of firearms to criminal or otherwise irresponsible persons. This will inevitably necessitate some inconvenience to responsible gun owners. This may not be an excessive price to pay for increased public safety.

Again in 2011 the Australian Institute of Criminology concluded that strengthening current provisions around firearm storage could reduce offenders' ability to penetrate otherwise secure storage requirements. The report suggests that formal surveillance (such as burglar alarms and surveillance cameras) and better concealment of firearm safes were measures that could further reduce the rate of firearm theft.

Currently, the Bill does not outline any storage requirements. Nevertheless, the Minister has noted in his Second Reading Speech that the proposed regulations "will see the end of firearms being stored in thin metal lockers and even in wooden receptacles" and that "all firearm safes will be required to be more securely fastened in a manner which deters the possible removal of that safe from the premises".⁴ We are particularly pleased that the proposed regulations will provide for "an additional measure of electronic or audible security".⁵ This will be Australian best practice and we have no doubt will deter and reduce firearm theft.

We call on members of the Legislative Council to support Australian best practice in relation to other aspects of the storage requirements when the regulations are

³ Australian Institute of Criminology, *Firearms and Violence in Australia* (1988) 10 Trends & Issues in Crime and Criminal Justice IC No. 10 1988. As found at <http://www.aic.gov.au/documents/A/8/4/%7BA84819A6-AC46-4A82-A049-841A3F3A9730%7Dti10.pdf> (Accessed 13 April 2015).

⁴ Rene Hidding MP, *Second Reading Speech – Firearms (Miscellaneous Amendments) Bill 2015*. As found at http://www.parliament.tas.gov.au/bills/Bills2015/pdf/notes/3_of_2015-SRS.pdf (Accessed 13 April 2015).

⁵ Rene Hidding MP, *Second Reading Speech – Firearms (Miscellaneous Amendments) Bill 2015*.

tabled. Our overall assessment of the firearm storage requirements demonstrates that the Australian Capital Territory has the most comprehensive legal framework (see Appendix 1 and Appendix 2).

Consumption of Alcohol and other Drugs and Shooting

We support the recommendation of Gun Control Australia for the introduction of an offence of being in possession of a firearm with a blood alcohol or illicit drug reading greater than the prescribed concentration. This is similar to a provision already enacted in the United Kingdom with section 12 of the *Licensing Act 1872* stating:

Every person . . . who is drunk when in possession of any loaded firearms, may be apprehended, and shall be liable to a penalty not exceeding forty shillings, or in the discretion of the court to imprisonment for any term not exceeding one month.

It is perplexing that the police are currently able to undertake breathalyzer analysis of persons driving erratically but not of persons shooting erratically. In our opinion however, the proposed provision should be extended to include both alcohol and other drugs. The current ability of gun owners to drink alcohol and/or consume other drugs and use firearms is particularly egregious when shooting animals, as the risk is greater that concentration, hand-eye coordination and steadiness will be impaired and as a result animals will be maimed and seriously injured.

Mandatory Sentencing

Finally, we reiterate our long-held concerns about mandatory sentencing. First, there is no reliable evidence to suggest that mandatory minimum sentences reduce the incidence of crime.⁶ For example, the Victorian Sentencing Advisory Council has previously found that whilst imprisonment has a small general deterrent effect, there is no conclusive evidence to suggest harsher sentences such as a mandatory minimum sentence reduces crime. Rather, the evidence suggests that it is the certainty of apprehension and punishment that acts as a greater deterrent.⁷

Secondly, mandatory sentencing limits the individual's right to a fair trial as it imposes an arbitrary sentence, which ignores the unique characteristics of the offence and the offender. Inevitably, such sentences lead to disproportionate terms of imprisonment in light of the particular circumstances of the offender and the offence.

⁶ Dato' Param Kumaraswamy, Mandatory sentencing: the individual and social costs (2011) 7(2) *Australian Journal of Human Rights*. As found at <http://www.austlii.edu.au/au/journals/AJHR/2001/14.html> (Accessed 13 April 2015).

⁷ Sentencing Advisory Council, *Does Imprisonment Deter? A Review of the Evidence*, (April 2011: Melbourne, 14, 16. As found at <https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.pdf> (Accessed 13 April 2015).

Finally, mandatory sentencing is likely to result in a redistribution of discretion from the courts to the police and prosecuting authorities in order to circumvent mandatory sentencing laws.⁸ Whilst this may mitigate potential injustices, police and prosecutors do not have the same sentencing expertise as the judiciary. Prosecutorial discretion also creates a nontransparent sentencing process.⁹

If the Legislative Council intends to introduce a harsher sentence for being in possession of a stolen firearm, we recommend that a maximum penalty of one year imprisonment be inserted instead of a mandatory sentence provision. Such an amendment would provide the judiciary with the ability to appropriately sentence the offender taking into account the particular circumstances of the offence and the offender whilst at the same time sending a strong message that being in possession of a stolen firearm has serious consequences.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl

Policy Officer

Community Legal Centres Tasmania

⁸ Queensland Law Society, 'Mandatory sentencing laws policy position' (2014) 1.

⁹ Queensland Law Society, 'Mandatory sentencing laws policy position' (2014) 1.

Appendix 1: Category A and B Firearms: Summary of Storage requirements (by state)

	Queensland	NSW	Western Australia	Tasmania	ACT	Northern Territory	Victoria	South Australia
Type of storage container used to construct storage container	The container must be a rigid structure (solid steel or solid timber)	Sturdily constructed (wooden or steel)	Mild steel cabinet	Locked receptacle	Metal or hardwood, lined by steel sheeting Mild steel or constructed of reinforced concrete, double brick or reinforced besser blocks (10 or more firearms)	Roller/folded edge container	Receptacle constructed of hardwood or steel	Hardwood or steel container
Thickness of storage container	Not specified	Not specified	2 mm thick	Not specified	3 mm thick (10 firearms or more)	3 mm or more	Not specified	Not specified
Type of lock	Sturdy combination lock, a keyed lock or a keyed padlock	Solid metal lock/s Minimum body width of 40 mm, hardened steel shackle and have a minimum of 100 key changes	If the swinging edge of the door is not longer than 500 mm one lock is required Longer than 500 mm but not longer than 1.5 metres: 2 locks	Not specified.	Secured locks of solid metal (approved by the firearms registrar)	Two internal locking points	Not specified	Not specified
Ammunition storage	Secure container or secured area and must be separate from the container that holds the firearm	Not specified	Locked container separate from the receptacle containing the firearms. Separate container within the main storage unit is acceptable	Locked container separate from the receptacle containing the firearms. Separate container within the main storage unit accepted.	Not specified	Not specified	Must be stored in a locked container separate from the receptacle in which the firearm must be stored.	To be kept in a separate to the firearm, must be locked.

<p>Type of door on storage container</p>	<p>Not specified</p>	<p>The door should be fitted with a three point locking mechanism and padlocked (with a hasp and a staple or lever handle)</p>	<p>It should be fitted with a door less than 6 mm thick, swung on either concealed pivots or externally mounted seal end hinges welded to the door and body of the safe</p>	<p>Not specified</p>	<p>Steel door no less than 3 mm thick</p>	<p>The door must be recessed and size to prevent leverage points</p>	<p>Not specified</p>	<p>Not specified</p>
<p>Fixed to wall or floor if over 150 kg?</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>

