



31 July 2017

Firearms Submissions
Department of Justice - Office for Police
By Email: firearms@mpes.nsw.gov.au

Dear Sir/Madam,

Re: Firearms Regulation 2017 Remake

Please find enclosed our comments relating to the draft Regulation and the Regulatory Impact Statement (RIS).

I am concerned that sections of this draft Regulation substantially affect and potentially cripple the security industry (a provider of armed security services). It is no exaggeration to point out that mismanagement of this sensitive issue can have a direct and dire impact on national security. There is significant history of this to date.

I note with grave concern that this consultation has been deliberately rushed and there has been no reasonable period for responses to be drafted. I refer to my earlier correspondence (10 July) with your office seeking an extension of the period and advice (unsigned) that this was not possible.

I note also that the period allowed (roughly three weeks) is less than than 28 days (itself inadequate) prescribed as the minimum consultation period per NSW Guide to Better Regulation, Department of Finance, Services and Innovation, Oct 2016.

I note with further concern that several amendments to the Regulation were not mentioned in the RIS and this gives the worrying appearance that Ministry is seeking to fly legislative changes 'under the radar'. In conjunction with a short review period I am of the opinion that proper public scrutiny has not been facilitated.

I may be contacted via my office for further comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Lewkovitz", with a stylized flourish at the end.

Daniel Lewkovitz M.Infotech CPP
Chief Executive Officer
Calamity Monitoring

Reference	<i>Clause 13 Discretionary grounds for refusal of permit (we note with concern this change was not mentioned in the RIS).</i>
Concern	<p>This refers to an expectation that the commissioner may refuse to issue a permit “authorising the possession or use of a firearm if the Commissioner is satisfied that the applicant intends to possess or use the firearm for personal protection or the protection of any other person or for the protection of property.”</p> <p>It is unclear whether this crept over from sporting shooting restrictions enshrined within the existing Firearms Act.</p> <p>This flies in the face of both the sole reason why armed security exists, as well as commonsense.</p> <p>Armed security very <i>raison d’etre</i> is the protection of property and people (e.g. the armed security officer who might lawfully be expected to rely on the use of force in their duty).</p>
Recommendation	Segregate this from security industry firearms permits.

Reference	<i>Clause 90: Registers to be kept by security guard employers</i>
Concern	The draft refers to recordkeeping and does not contemplate modern ways of doing this. We note the reliance on paper based, bound books e.g. “a book of not less than 100 pages“ and advise there are more modern, electronic and highly auditable and tamper-evident means which should not be excluded.
Recommendation	Regulations refer to suitable means of recordkeeping which include electronic means.
Comments	We note that firearms sporting clubs have migrated to electronic recordkeeping and there are clear means of achieving this without reliance on wholly antiquated paper logbooks that have no place in a modern business.

Reference	<i>92: Additional requirements relating to security guards</i>
Concern	<p>Removal of discretion for issue of licences may result in loss of livelihood and denial of natural justice.</p> <p>The draft refers to an “approved firearms safety test”. In 20 years of firearms instruction we have never seen such ‘approval’ of various training systems (all worthwhile) and only vague reference to it and similar ‘Commissioner approved’ instruments. How is this defined? By whom? On what basis?</p>

	<p>The reference to ‘continuing firearms safety training courses’ needs to contemplate the availability of such courses, the candidate’s fitness to complete them and there should be discretionary grounds for ‘suspending’ a licence (or the employee not working) until such time as an annual course has been completed.</p> <p>We have had staff who have been pregnant and for whom attendance at a range was unsafe. Cancellation of their licence might lead to the absurd situation where an employee had to start their career from scratch (e.g. by way of a so-called ‘approved employer’). Similarly, overseas travel might interfere.</p> <p>Existing discretionary arrangements manage this and we see no evidence of a benefit towards mandatory application of these rules other than motherhood statements about ‘highest level of scrutiny’ which would be applied in either scenario.</p>
Recommendation	Leave existing discretionary powers in place and permit NCAT to overrule Registry on the (frequent) case where Firearms Registry have exceeded the intent of the Act or their power.

Regulation Reference	<i>Clause 93: Number of firearms to be held by security firms</i>
Concern	<p>In 2004 a variety of new legislation and controls was introduced with an intention to reduce the number of firearms within the Security Industry and prevent them being obtained by criminals e.g via gun theft.</p> <p>This was considered a knee-jerk reaction to an incident of theft of a quantity of firearms from a Western Sydney security business which was later subject to serious questions.</p> <p>Many of these new controls were not codified within any legislation but were administered by the Firearms Registry as <i>policy</i>.</p> <p>A major example was a new requirement for Firearms Registry reviewing ‘risk assessments’ prior to issuing permits for armed work, often on a case-by-case basis, to companies that were already otherwise licenced.</p> <p>This process has never been enshrined in law. Rather, the Firearms Registry relied on the "Or such other information as the Commissioner may require" catch-all to request all sorts of information and apply all sorts of questionable restrictions to the permits of legitimate businesses most of whom did not have the appetite to appeal it</p>

(despite the high likelihood of success at NCAT and previously the ADT). This drafting appears to be an effort to legislate it and should be treated with the highest skepticism.

It appears to be an attempt to enshrine in law a policy which was previously in place and created substantial problems with no evidence supplied that it has been of benefit to industry, the public, or to law-enforcement.

In simple terms this was part of an apparent objective by then leadership of the Firearms Registry to exceed its power and disarm the security industry by stealth rather than legislation. Specifically the application of sometimes insurmountable red-tape making it too costly to perform necessary security work in any commercially viable manner.

By way of example, a client with an entirely obvious requirement for effective armed security might enquire of a security firm as to their ability to provide it (a quote). The security firm might be prohibited by conditions on their licence from performing work for any client not explicitly included. That is, if a client had a security company drop the ball and rang a competitor offering a million dollars if they could start this Friday, the competing company simply could not.

Instead they would be required by history (and now potentially forced by legislation) to perform a costly 'risk assessment' (that might not even lead to the award of work) leading to the entirely obvious original commonsense position - that armed security was required.

The Firearms Registry, as the assessor of such documents might not open the mail for a week and it would then be reviewed by a person often with no qualification whatsoever to form an opinion on the subject material.

It has been the author's experience that the staff of the Firearms Registry have no understanding of client risk, risk-mitigation or the ability to form an informed view, even less so when time was of the essence.

We have observed 'risk assessments' being drafted at huge expense and reviewed by Firearms Registry well after a one-off event had already finished (without any effective security presence to the horror of insurers). One example was a multi-million dollar car auction which went with virtually no security as per previous years when a provider pulled out at the last minute and it was impossible for anyone to gain approval in time. It is entirely unclear how this has benefited anybody but criminals.

Similarly previously published memos from Firearms Registry stating that “under no circumstances” would firearms be permitted for use at licensed venues, in effect giving the green light to criminals to rob bottleshops and registered clubs. As they did.

We have observed ‘risk assessments’ rejected on the basis that there had been no previous theft and therefore security was not required, as though a ‘smoking gun’ was literally required to justify security rather than a more sensible proactive approach.

We have observed highly qualified risk assessors having the calibre of their work queried by a manager of the Firearms Registry who was simply unfamiliar with its layout. This despite the same person having performed substantial risk assessment work for NSW Police, Department of Corrections and myriad other agencies.

Who is to review these ‘risk assessments’? What are their qualifications?

What assurance does the public have that highly sensitive information is not being handed over to a Firearms Registry who have demonstrated their inability to hold material securely?

We note with contempt a serious request by Firearms Registry to one security consultant to submit a list of assets belonging to some of the highest wealth families in the country apparently in order to justify the armed protection of their homes that had been in place, without incident, for decades.

We also predict scenarios where there is a sudden requirement for an upscale in armed security, for example in direct response to terrorist activity, and the red-tape makes this unworkable. This solely benefits the criminal element.

We note that security response and contingency planning can happen in real-time.

On the day this submission was due, a major surge in security at Sydney Airport saw passengers queuing outside the terminal and exposed to hazard. Effective security needs to be dynamic and able to adapt to change. Adding bureaucracy to this process benefits nobody except criminals and terrorists who have no such delay to contend with.

There are already huge hoops for an aspiring armed security business to jump through before attaining an armed security licence. There is

	<p>no reason to further complicate matters for an otherwise trusted entity. Indeed this has led to a situation where some companies are eligible for work and other companies are not, potentially in breach of Commonwealth competition law and government objectives.</p> <p>By way of analogy, it is comparable to approved, licensed taxi drivers having to phone their base and seek permission to transport each and every passenger, waiting for the base to respond before driving off.</p> <p>The passing reference to these risk assessments applying to existing 'in force licences' also suggests, on past conduct by Firearms Registry, an ongoing administrative burden for businesses with no evidence whatsoever that it contributes in any meaningful way to public safety.</p> <p>While it seems, at first glance to be good policy to "add scrutiny" in practice it has seen wholly unqualified bureaucrats in Far Northern NSW ruling on highly sensitive risk matters up to and including those of national security. The background to this policy was highly questionable.</p> <p>The suggestion that this red tape may actually 'benefit security firms' is ridiculous as is demonstrated by the number of good, legitimate businesses who have thrown their hands up and walked away from protection of public assets as it was simply too hard.</p> <p>Put very simply this is an attempt to eliminate armed security through the death of a thousand cuts. If we are to have a sensible discussion as to armed security, by all means let's have one. However this has previously been legislation by stealth and the continuance of this process can directly threaten public safety and greatly empower the criminal element.</p> <p>We say this despite vague references to "public safety" or platitudes about "layers of scrutiny".</p>
Recommendation	No change to existing requirements. Further governance over Firearms Registry misuse of "or such other information as the Commissioner requires" catch-all.

Regulation Reference	143 Firearms Safety Courses (We note with concern that this was not referred to in the RIS)
Concern	<p>Para (1)(a) refers to “the course known as the Firearms Licence Qualification Course or any other approved course conducted by or on behalf of an approved person or body”</p> <p>What is this course? Who is this body referred to?</p> <p>Para (4) refers to “persons to be instructors for such courses on such terms as the Commissioner may determine”.</p> <p>On what basis is this determination to be achieved? What assurance do Industry have that this is not a further limitation on effective firearms instruction?</p>
Recommendation	Further discussion with industry.

Regulation Reference	<i>New provision: clarify that a Spyderco c14 Rescue Knife is a prohibited weapon (flick knife) and provide an exemption for emergency services personnel to possess and use one</i>
Concern	<p>Folding knives may be used by security officers and other first-responders. Spyderco Knives are especially popular as a functional tool.</p> <p>When a knife is carried, context matters. There is a difference between carrying a knife on-duty or in a nightclub.</p> <p>We are concerned by the potential for a ridiculous situation where a security officer is carrying a 9mm Handgun lawfully however may be in breach of the law for carrying a knife alongside it.</p>
Recommendation	This prohibition be given no further consideration.

Further Contact

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