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Sent: Sunday, 24 November 2024 3:45 PM
To: Strategy Support
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Subject: CONSULTATION PAPER ANTIQUE FIREARMS SUBMISSION

Follow Up Flag: Flag for follow up
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ANTIQUE FIREARMS SUBMISSION

By way of introduction, it is fair to say criminals do not submit firearms applications or seek a licence to collect antique firearms because they know that such applications will be refused. Therefore, the proposed changes have no impact on criminals or their activities.

It follows that the proposed changes only impact law abiding citizens and, the proposals put forward, seem squarely aimed at antagonising and punishing people who have done, and continue to do, the right thing. Is that good policing? I think not. Why antagonise the very people the Police rely upon for support and co-operation?

The *ultra vires, void ab initio* exemption of antique firearms made by a former Commissioner of Police

That exemption made by a former Commissioner of Police - on the admission of the Police and no doubt based on legal advice - is *ultra vires* and therefore *void ab initio*. The Commissioner had no power to make such a blanket exemption and, in doing so, contravened the Firearms Act. That the present Commissioner of Police then purported to revoke that exemption appeared to imply that the exemption was valid when it was known that that was not the case. One cannot revoke something that does not exist or indeed has ever existed.

In any event, the holder of an antique firearm was from date of possession of the firearm committing a criminal offence by having an unregistered firearm, being unlicenced to possess that category of firearm, failing to store the firearm in accordance with the Firearms Act, trafficking in firearms by purchasing the firearm and/or transporting the firearm. All of which offences carry fines and/or terms of imprisonment. In addition, just about every

Firearms Dealer in Tasmania in buying and selling unregistered antique firearms would also be committing the offence of trafficking in firearms.

The Police ought to have charged each offender. Despite the strictures of the Firearms Act they have not done so. Unlike the New York Yacht Club, Tasmania Police do not have the luxury of waiving the rules.

Ordinary law-abiding citizens have been turned into criminals.

What is unforgiveable is the absence of an apology.

What is worse, the Police, in demanding that all firearms be registered have, by force of law, formally directed citizens to incriminate themselves.

These same citizens are now probably precluded from obtaining a firearms licence because each and every one of them has by action and confession in writing (ie the written and signed application to register a firearm) incriminated themselves to the point where the Commission has no choice but deny the application for a firearms licence given the serious nature of the confessed offences.

To add to the injury suffered, all those applying for jobs requiring a Police Check eg age person carers, chid carers, lawyers seeking a practicing certificate may find the response disclosing the admission of committing offences under the Firearms Act thus prejudicing their employment opportunities and this will continue into the future irrespective of whether the proposed changes are enacted.

It can only be redressed by retrospective legislation.

What is proposed is an unwarranted burden on Police resources and a clear case of bureaucratic empire building. It does nothing to rectify the criminalisation of otherwise decent law abiding Tasmanians.

No costing of these proposals has been made available. No staffing requirements over and above present staff levels has been presented despite Police saying that staff have been overwhelmed by the work involved so far.

<u>Financial risk for the State Government from possible future Class Action</u>.

In short and most importantly, the State Government is in peril of being subject to the largest class action in the history of Tasmania. The only way to avoid that is to legislate the exemption made by the former Commissioner of Police and make it retrospective.

Despite being *ultra vires* the exemption has proved to be fair, safe, administratively efficient; fully accepted by Police, Government and the community. It has proved beyond any doubt over the decades that it posed no risk to public safety. There are no statistics to contradict the fact that the exemption worked extremely safely over an extended period of a decades or so.

The exemption proved, by passage of time, that the extraordinary and convoluted and complicated rules surrounding the proposed legislation and discussion questions are neither needed nor warranted for antique firearms.

Recommendation

It is submitted that the correct, proper action of Government.is to enact the exemption without alteration or addition and make it retrospective. Thus, avoiding the risk of enormous litigation expenses and a possible compensation payout of more than significant proportions.

The government owes immediate redress to make lawful that which was not to law abiding, naively trusting Tasmanians who now find themselves adversely effected by past Government defective administration. Why? Because it is the right thing to do.

The *ultra vires* unlawful exemption issued by a former Commissioner of Police that has until recently been in "force" until revoked by the present Commissioner of Police proved by virtue of demonstrated experience over decades to be completely adequate and has proved that the proposed measures are unnecessary. What dramatic change would warrant departure from that successful arrangement? Where is the hard evidence to warrant the proposed changes? The hard fact is that there no hard evidence to warrant the change.

Particular matters concerning the proposal

The questions relating to health both physical and mental are discriminatory, racist and an unwarranted invasion of privacy.

What Doctor is going approve a person to hold a firearm licence? Self-interest will prevail resulting in a refusal to offer an opinion or the easy option of saying no.

Discrimination – Financial: Disputing a doctor's opinion that a person's medical condition precludes that person from gaining a firearm licence is a Supreme Court action at prohibitive cost to the litigants and the Government and that situation is plainly discrimination against those that are financially challenged.

Discrimination Physical Health: Physically disabled people, people in wheelchairs, absence of limbs, one eye, hearing impairments, migraine – all ok to drive a car but not to get a firearms licence? Medical conditions that have nothing to do with safe handling of firearms like cardiac issues, terminal cancer and so on to be disclosed – once again ok to drive a car but not get a firearms licence? This is plain unwarranted and unjustifiable over-reach.

Discrimination – Mental Health: Ok to drive a car which can be (eg Melbourne CBD driver runs down pedestrians deliberately) used as a lethal weapon whilst suffering depression, anxiety and so on but not ok handle a firearm?

The importance of mental health being promoted by the Government will be undermined because no one will seek mental health care because, to do so means that in applying to

obtain a firearms licence or re-new a licence the fact that psychiatric care has been considered, recommended or obtained automatically exposes the applicant to an inquisition by the Police and the need to get the medical practitioner to certify that the applicant is a fit and proper person…a medical practitioner will only opine about the state of a person at the time of consultation. To ask a medical practitioner to gaze into the crystal ball and give an opinion about what might be the mental state of the person in the future will be met, quite rightly, with a refusal by the doctor to do any such thing.

No one would dispute the need to do a mental health check as part of the application process. But what is proposed is so wide ranging that it beggars belief. Migraine? Who hasn't had a 'migraine'. Anxiety? Who hasn't felt anxious? An appointment to see a psychologist? Who hasn't had an appointment with a psychologist to do a IQ test? What is proposed is unwarranted and unjustifiable over reach.

Racial implications. This point is more relevant to the change in the Firearms application form; however, it has relevance to holding antique firearms. Indigenous Tasmanians have long been the butt of policing due to cultural mores, the effects of being displaced, marginalised, ignored and in the past subjected to appalling treatment. Consequently, some will have histories more extensive than others in the wider community. Such history may nullify any opportunity to have a successful application for a firearms licence. Thier pursuit of a cultural lifestyle will be inhibited.

Invasion of privacy - What is proposed is an interrogation of one's past above and beyond disclosing criminal convictions or being subject to certain types of court orders. It involves demanding disclosure of information that could be covered by legal/medical privilege and/or classified by legislation as secret. For example, where one resided whilst on active service both within and without Australia. Psychology consultations, tests, interviews associated with recruitment and/or being a member of a government agency that requires a security clearance. Working in a security agency or de-briefing following deployment – outrageous over-reach.

What is an antique firearm?

"These rules will apply to an antique firearm that was manufactured prior to 1 January 1900, is not designed to discharge cartridge ammunition, and for which cartridge ammunition is not commercially available."

What does that statement mean? It seems implausible that ammunition would be commercially available for a firearm which is not designed to discharge cartridge ammunition. It appears that the word "and" in the statement is disjunctive and should be construed as "or". By doing this the statement makes sense.

The correct drafting of this statement should be:

"These rules will apply to an antique firearm that was manufactured prior to 1 January 1900 that:

1. is not designed to discharge cartridge ammunition, or

2. is designed to discharge cartridge ammunition, that cartridge ammunition it does take is not commercially available.

For example, in the Victorian legislation being the Firearms Act 1966 (as amended) which does not apply to a firearm that was manufactured before 1900 if _
S.4 (a) (i)…in the case of a long arm- it does not take cartridge ammunition ;
or
(ii) …if it does take cartridge ammunition, the cartridge ammunition it does take is not commercially available; or …

The Commonwealth Government prohibits the importation of firearms and/or ammunition except where a Certificate B709? is issued by the Police. It follows that ammunition manufactured overseas is not commercially available per se but only available to a named person on the import documentation in very particular circumstances ie on application to Police and receiving Police consent for each specific importation.

In brief Tasmania Police have the option of refusing to issue the appropriate certificate that would allow the import of ammunition. Where a certificate is issued Tasmania Police know the importer and the quantity and type of ammunition imported.

Manufacturing of firearms and/or ammunition in Australia is highly regulated and controlled by Commonwealth, State and Local Government Authorities. Retail sale of ammunition is restricted to Firearms Dealers licensed by Police.

What is proposed is an unnecessary duplication of control of firearms and/or ammunition. Further it is out of step with Victoria. Why?

There is no statistical or evidence-based foundation produced to justify what is being proposed.

Where are the statistics justifying these proposals? For example, how many crimes involving the use of antique firearms were committed in Tasmania?

Tasmania Police admitted, on the evening of the last Friday in October, at a meeting of HAMST that firearms that did not use cartridges were not a risk. What was advocated at that meeting by Firearms Services was that firearms that were loaded using cartridges should be registered and those loading with powder and shot or projectile would not be registrable.

It was confirmed that they ‘had to draw a line somewhere’. In other words, the line drawn was purely arbitrary with no statical evidence to justify the stance taken.

<u>Resort by Police to justify the proposed legislation was that it prevents suicide.</u>

Suicide is not a criminal offence therefore committing suicide unaided is a lawful activity and a right of a citizen. The Police have no right to interfere with or preclude people from going about their lawful activities. In short, un-aided suicide is not a Police matter; it is a

Department of Health matter. The Police argument of un-aided suicide to justify the legislation is plainly wrong and irrelevant.

Creation of law should be underpinned by evidence, statistics and designed to achieve identified rational outcomes. In the matter at hand there is no evidence base, no underpinning of statistics warranting change and, what is unforgiveable, bringing about the situation where sentiment has replaced outcomes in promoting legislative change.

May I take this opportunity to wish you and your staff a safe and happy Christmas

Regards

Max Watson
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Sent from Outlook