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FIREARMS CONTROL LEGISLATION AND POLICY

*This report concerns firearms control legislation and policy in
Australia, Canada, Israel, and Switzerland.*

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AUSTRALIA

FIREARMS CONTROL LEGISLATION AND POLICY

Executive Summary

The purchase, possession, and use of firearms are regulated by the Australian states and territories, with cross-border trade matters addressed at the federal level. In 1996, following the Port Arthur massacre and several years of discussions regarding gun control laws, the federal government and the states and territories agreed to a uniform approach to firearms regulation, including a ban on semi-automatic rifles and shotguns, standard licensing and permit criteria, storage requirements and inspections, and restrictions on the sale of firearms and ammunition. For example, the issuing of firearms licenses would include requirements that an applicant take a safety course and show a “genuine reason” for owning a firearm, which could not include self defense. It was also agreed that the reasons for refusing a license would include “reliable evidence of a mental or physical condition which would render the applicant unsuitable for owning, possessing or using a firearm.” A waiting period of 28 days would apply to the issuing of both firearms licenses and permits to acquire each weapon.

Alongside legislative reforms by the federal government and by the states and territories to implement the National Firearms Agreement, a national buyback program for prohibited weapons took place in 1996-1997 and resulted in more than 700,000 weapons being surrendered. Further reforms were later implemented as a result of agreements made in 2002 on firearms trafficking and handguns, as was a national buyback of newly prohibited handguns and associated parts.

A large amount of information and analysis is available regarding the number of firearms in Australia and their use in crimes or incidents resulting in death. The most recent relevant report of the Australian Institute of Criminology states that the “number of victims of firearm-perpetrated homicide (ie murder and manslaughter) has declined by half between 1989-90 and 2009-10 from 24 to 12 percent.” Recent reports have also examined the number of illicit firearms and firearm thefts in Australia. Among the activities relating to gun control that took place in 2012 was the signing of a new intergovernmental agreement to tackle illicit firearms and firearms trafficking.

I. Background

On April 28, 1996, a twenty-eight-year-old gunman armed with a semi-automatic rifle shot and killed thirty-five people and wounded eighteen others at several locations in and around Port Arthur, a popular tourist area in Tasmania, Australia. The gunman survived and pleaded guilty to multiple homicides.¹ He received thirty-five life sentences without the possibility of parole.²

Prior to this incident, gun laws in Australia could be seen as relatively lenient, and there were large variations in the regulations across the states and territories.³ Firearms regulation is the responsibility of individual Australian states and territories, as section 51 of the Australian Constitution does not confer lawmaking powers in relation to firearms on the federal parliament.⁴ Federal laws can be enacted regarding the import of firearms and other weapons under the overseas trade and commerce powers of the federal parliament.⁵ The Australian Constitution does not contain any explicit gun ownership rights.

In response to the Port Arthur massacre, the Australasian Police Ministers' Council (APMC) convened a special meeting on May 10, 1996, and agreed to a national plan for the regulation of firearms promoted by then Prime Minister John Howard.⁶ The resolutions made at that meeting subsequently became the Nationwide Agreement on Firearms (commonly referred to as the National Firearms Agreement).⁷ The proposals emerged from earlier recommendations of the National Committee on Violence, which was established in 1988 following two mass killings in Melbourne involving high-powered rifles.⁸ The APMC had previously considered the need for a uniform approach to firearms regulation at meetings held between 1988 and 1995,⁹

¹ See Robert Milliken, *Tasmanian Admits Gun Massacre*, THE INDEPENDENT (Nov. 8, 1996), <http://www.independent.co.uk/news/world/tasmanian-admits-gun-massacre-1351256.html>.

² See *Gunman's Life Sentence in Tasmania Killings*, NY TIMES (Nov. 22, 1996), <http://www.nytimes.com/1996/11/22/world/gunman-s-life-sentence-in-tasmania-killings.html>.

³ See JENNIFER NORBERRY ET AL., AFTER PORT ARTHUR—ISSUES OF GUN CONTROL IN AUSTRALIA (Parliamentary Library Current Issues Brief 16, 1995-96), http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib9596/96cib16, under the heading “National Uniform Gun Laws?”

⁴ AUSTRALIAN CONSTITUTION s 51, <http://www.comlaw.gov.au/Details/C2004C00469>.

⁵ *Id.* s 51(i).

⁶ See Rebecca Peters & Charles Watson, *A Breakthrough in Gun Control in Australia After the Port Arthur Massacre*, 2 INJ. PREV. 253 (1996), <http://injuryprevention.bmj.com/content/2/4/253.full.pdf>.

⁷ See SAMANTHA BRICKNELL, FIREARM TRAFFICKING AND SERIOUS AND ORGANISED CRIME GANGS (Australian Institute of Criminology (AIC) Research and Public Policy Series No. 116, June 2012), <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp116.html>, under the heading “Legislative Reforms.”

⁸ See Jennifer Norberry et al., *supra* note 3; Duncan Chappell, *Prevention of Violent Crime: The Work of the National Committee on Violence*, in INTERNATIONAL TRENDS IN CRIME: EAST MEETS WEST 155 (Sandra McKillop ed., 1992), http://aic.gov.au/media_library/publications/proceedings/12/chappell.pdf.

⁹ *Firearms Reform—Debated Nationally for Years*, THE AUSTRALIAN FIREARMS BUYBACK (archived website), <http://pandora.nla.gov.au/nph-wb/20000426130000/http://www.gun.law.gov.au/Guns/legislation/history.htm> (last visited Dec. 20, 2012).

and some state and federal laws had been changed during this period in response to shooting incidents.¹⁰

The 1996 National Firearms Agreement led to the considerable revision of the laws of the states and territories¹¹ and the implementation of a national buyback program to encourage firearms owners and dealers to surrender prohibited weapons.

After 1996 there were further shooting incidents, which led to additional action by Australian federal and state governments, including the National Handgun Agreement (2002), National Handgun Buyback Act 2003 (Cth), and the National Firearms Trafficking Policy Agreement (2002).¹²

II. Relevant Legislation

The restrictions and licensing requirements relating to the purchase, possession, and use of firearms in Australia are currently controlled by the following state and territory instruments:

- New South Wales: Firearms Act 1996, Weapons Prohibition Act 1998, and associated regulations¹³
- Victoria: Firearms Act 1996, Control of Weapons Act 1990, and associated regulations¹⁴
- Queensland: Weapons Act 1990 and associated regulations¹⁵
- Western Australia: Firearms Act 1973 and associated regulations¹⁶
- South Australia: Firearms Act 1977 and associated regulations¹⁷

¹⁰ See Press Release, Gun Control Australia, Our Strict Gun Laws Have Saved Thousands of Australian Lives (Sept. 7, 2012), <http://guncontrol.org.au/2012/09/our-strict-gun-laws-have-saved-thousands-of-australian-lives/>.

¹¹ See ABIGAIL RATH & GARETH GRIFFITH, FIREARMS REGULATION: AN UPDATE (NSW Parliamentary Library Research Service Background Paper 5/99, Oct. 1999), [http://143.119.255.92/prod/parliament/publications.nsf/0/121A3D471695BA8ECA256ECF000AF715/\\$File/FIREARMSPAPERComplete.pdf](http://143.119.255.92/prod/parliament/publications.nsf/0/121A3D471695BA8ECA256ECF000AF715/$File/FIREARMSPAPERComplete.pdf).

¹² BRICKNELL, *supra* note 7.

¹³ See generally *Firearms Registry*, NSW POLICE FORCE, <http://www.police.nsw.gov.au/services/firearms> (last visited Dec. 21, 2012).

¹⁴ See generally *Firearms*, VICTORIA POLICE, http://www.police.vic.gov.au/content.asp?Document_ID=34098 (last visited Dec. 21, 2012).

¹⁵ See generally *Weapons Licensing*, QUEENSLAND POLICE, <http://www.police.qld.gov.au/programs/weaponsLicensing/>; *Firearms Licence*, QUEENSLAND POLICE, <http://www.police.qld.gov.au/programs/weaponsLicensing/licenceApplication/licences/firearms/> (both last visited Dec. 21, 2012).

¹⁶ See generally *Firearms*, WESTERN AUSTRALIA POLICE, <http://www.police.wa.gov.au/Ourservices/PoliceLicensingServices/Firearms/tabid/1802/Default.aspx> (last visited Dec. 21, 2012).

¹⁷ See generally *Firearms & Weapons*, SOUTH AUSTRALIA POLICE, http://www.sapolice.sa.gov.au/sapol/services/firearms_weapons.jsp (last visited Dec. 21, 2012).

- Tasmania: Firearms Act 1996 and associated regulations¹⁸
- Northern Territory: Firearms Act and associated regulations¹⁹
- Australian Capital Territory: Firearms Act 1996, Prohibited Weapons Act 1996, and associated regulations²⁰

A full list of current legal instruments for each state and territory are provided in an appendix to this report.

At the federal level, the importation of firearms is subject to the restrictions in Regulation 4F and Schedule 6 of the Customs (Prohibited Goods) Regulations 1956 (Cth).²¹

III. 1996 National Firearms Agreement and Buyback Program

The resolutions agreed to at the APMC meeting on May 10, 1996,²² provided for the establishment of a uniform approach to firearms regulation that would include

- a ban on the importation, sale, resale, transfer, ownership, manufacture, and use of military-style weapons (including self-loading rifles, and self-loading and pump-action shotguns, and all parts, including magazines, for such firearms), other than in exceptional circumstances relating to military or law enforcement purposes and occupational categories, depending on the category of the firearm;²³
- standard categories of firearms, including two prohibited categories (C and D), which include semi-automatic and self-loading rifles and shotguns, and a restricted category for handguns (category H);²⁴

¹⁸ See generally *Firearms*, Tasmania Police, <http://www.police.tas.gov.au/services-online/firearms/> (last visited Dec. 21, 2012).

¹⁹ See generally *Firearms Licences Permits Information*, NORTHERN TERRITORY POLICE, <http://www.pfes.nt.gov.au/Police/Firearms-Weapons/Firearms-licences-permits-information.aspx> (last visited Dec. 21, 2012).

²⁰ See generally *Firearms*, ACT POLICING, <http://www.police.act.gov.au/crime-and-safety/firearms.aspx> (last visited Dec. 21, 2012).

²¹ Customs (Prohibited Imports) Regulations 1956 (Cth), <http://www.comlaw.gov.au/Details/F2012C00724>. See generally *Firearms and Weapons*, Australian Customs and Border Protection Service, <http://www.customs.gov.au/site/page4372.asp> (last visited Dec. 21, 2012).

²² Australasian Police Ministers' Council (APMC), Special Firearms Meeting, Canberra, 10 May 1996: Resolutions, available at <http://www.austlii.edu.au/au/other/apmc/>, and on the Australian Firearms Buyback archived website at http://pandora.nla.gov.au/nph-wb/20000426130000/http://www.gun.law.gov.au/Guns/legislation/10may_resolut.htm (both last visited Dec. 21, 2012).

²³ *Id.* res. 1.

²⁴ *Id.* res. 4. The full list of firearms in category C is as follows: “semi automatic rimfire rifles with a magazine capacity no greater than 10 rounds; semi automatic shotguns with a magazine capacity no greater than 5 rounds; pump action shotguns with a magazine capacity no greater than 5 rounds.” The category D list is: “self-loading centre fire rifles designed or adapted for military purposes or a firearm which substantially duplicates those rifles in design, function or appearance; non-military style self-loading centre fire rifles with either an integral or detachable magazine; self-loading shotguns with either an integral or detachable magazine and pump action

- a requirement for a separate permit for the acquisition of every firearm, with a 28-day waiting period applying to the issuing of such permits,²⁵ and the establishment of a nationwide firearms registration system;²⁶
- a uniform requirement for all firearms sales to be conducted only by or through licensed firearms dealers, and certain minimum principles that would underpin rules relating to the recording of firearms transactions by dealers and right of inspection by police;²⁷
- restrictions on the quantity of ammunition that may be purchased in a given period and a requirement that dealers only sell ammunition for firearms for which the purchaser is licensed;²⁸
- ensuring that “personal protection” would not be regarded as a “genuine reason” for owning, possessing, or using a firearm under the laws of the states and territories;²⁹
- standardized classifications to define a “genuine reason” that an applicant must show for owning, possessing, or using a firearm, including reasons relating to sport shooting, recreational shooting/hunting, collecting, and occupational requirements (additional requirements of showing a genuine need for the particular type of firearm and securing related approvals would be added for firearms in categories B, C, D, and H);³⁰
- in addition to the demonstration of a “genuine reason,” other basic requirements would apply for the issuing of firearms licenses, specifically that the applicant must be aged eighteen years or over, be a “fit and proper person,” be able to prove his or her identity, and undertake adequate safety training³¹ (safety training courses would be subject to accreditation and be “comprehensive and standardised across Australia for all licence categories”);³²
- firearms licenses would be required to bear a photograph of the licensee, be endorsed with a category of firearm, include the holder’s address, be issued after a waiting period of not less than twenty-eight days, be issued for a period of no more than five years, and contain a reminder of safe storage responsibilities;³³

shotguns with a capacity of more than 5 rounds; self-loading rim-fire rifles with a magazine capacity greater than 10 rounds.”

²⁵ *Id.* res. 7.

²⁶ *Id.* res. 2.

²⁷ *Id.* res. 9.

²⁸ *Id.*

²⁹ *Id.* res. 3.

³⁰ *Id.*

³¹ *Id.* res. 4.

³² *Id.* res. 5.

³³ *Id.* res. 4.

- licenses would only be issued subject to undertakings to comply with storage requirements and following an inspection by licensing authorities of the licensee's storage facilities;³⁴
- minimum standards for the refusal or cancellation of licenses, including criminal convictions for violent offenses in the past five years, unsafe storage of firearms, failure to notify of change of address, and “reliable evidence of a mental or physical condition which would render the applicant unsuitable for owning, possessing or using a firearm”,³⁵ and
- the establishment of uniform standards for the security and storage of firearms, including a requirement that ammunition be stored in locked containers separate from any firearms.³⁶

The above resolutions were implemented through the passage of new or amending legislation and associated regulations by the states and territories.³⁷ A review of the relevant legislation by the Australian Institute of Criminology (AIC) in 2008 found general compliance with the 1996 National Firearms Agreement (and the 2002 agreements regarding handguns and firearms trafficking discussed below) across the states and territories but also determined that there remained some inconsistencies between the jurisdictions.³⁸ Some amendments to the relevant laws were subsequently made in response to the AIC review.

In addition to requiring law changes to implement the above resolutions, the agreement provided for the establishment of a twelve-month national amnesty and compensation program, to be accompanied by a public education campaign, after which the jurisdictions would apply “severe penalties” for breaches of the firearms control laws.³⁹ This resolution was implemented through a national firearms “buyback” program, which saw the federal parliament enacting the National Firearms Program Implementation Act 1996 (Cth).⁴⁰ The Medicare Levy Amendment Act 1996 (Cth) was also enacted in relation to providing funding for the compensation to be paid to gun owners who handed in weapons that fell within the prohibited categories.⁴¹

The buyback program started in most states on October 1, 1996, and ended on September 30, 1997. More than 640,000 prohibited firearms were surrendered nationwide as part of the

³⁴ *Id.*

³⁵ *Id.* res. 6.

³⁶ *Id.* res. 8.

³⁷ See *Successful Implementation of the Laws*, THE AUSTRALIAN FIREARMS BUYBACK (archived website), <http://pandora.nla.gov.au/nph-wb/20000426130000/http://www.gun.law.gov.au/Guns/legislation/success.htm> (last visited Dec. 21, 2012).

³⁸ See BRICKNELL, *supra* note 7.

³⁹ APMC Resolutions, *supra* note 22, res. 11.

⁴⁰ National Firearms Program Implementation Act 1996 (Cth), <http://www.comlaw.gov.au/Details/C2004C00875>.

⁴¹ Medicare Levy Amendment Act 1996 (Cth), <http://www.comlaw.gov.au/Details/C2004A05036>.

buyback program.⁴² In addition, it was reported that about 60,000 nonprohibited firearms were voluntarily surrendered without compensation.⁴³ According to a telephone poll conducted in 1999 on behalf of the federal government by Gun Control Australia, there were about 3.25 million guns in Australia prior to the 1996-1997 buyback program.⁴⁴

IV. 2002 Trafficking and Handgun Agreements

In July 2002, the APMC agreed to several resolutions aimed at controlling the illegal trade in firearms in Australia. The National Firearm Trafficking Policy Agreement called for

- increased border protection;
- the introduction of nationally consistent regulation of the legal manufacture of firearms;
- the establishment of new offences or substantial penalties for matters relating to:
 - the illegal possession and supply of firearms;
 - the defacing of serial numbers;
 - conspiracy to commit interstate firearm wrongdoings; and
- tighter recording and reporting provisions for dealer transactions involving firearm and major firearm parts.⁴⁵

In addition to subsequent changes to state and territory legislation in response to the resolutions, an amendment to the federal Criminal Code Act 1995 was enacted to make it a criminal offense, “in the course of trade and commerce between any states and territories, to illegally dispose of or acquire a firearm, or to take or send a firearm from one state or territory to another, intending that the firearm will be disposed of illegally.”⁴⁶

Later in 2002, on October 21, two people were killed and five injured as a result of a shooting incident in a classroom at Monash University in Melbourne, Victoria. The gunman, who had been armed with several loaded handguns, was a licensed pistol owner and member of the Sporting Shooters Association of Australia. He was later found not guilty of the murders on

⁴² *National Tally*, THE AUSTRALIAN FIREARMS BUYBACK (archived website), <http://pandora.nla.gov.au/nph-wb/20000426130000/http://www.gun.law.gov.au/Guns/tally/tally.htm> (last visited Dec. 21, 2012); AUSTRALIAN NATIONAL AUDIT OFFICE, THE GUN BUY-BACK SCHEME 6 (1997), http://www.anao.gov.au/uploads/documents/1997-98_Audit_Report_25.pdf. 6.

⁴³ See Simon Chapman & Philip Alpers, *Tight Gun Controls the Most Powerful Weapon*, THE SYDNEY MORNING HERALD (Apr. 27, 2006), <http://www.smh.com.au/news/opinion/tight-gun-controls-the-most-powerful-weapon/2006/04/26/1145861416502.html>.

⁴⁴ See Janet Phillips et al., *Firearms in Australia: A Guide to Electronic Resources* (Australian Parliamentary Library, Aug. 9, 2007), http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0708/FirearmsAustralia.

⁴⁵ BRICKNELL, *supra* note 7.

⁴⁶ *Id.* referring to Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002 (Cth) sch 2, <http://www.comlaw.gov.au/Details/C2004A01078>; Criminal Code Act 1995 (Cth) pt 9.4, <http://www.comlaw.gov.au/Details/C2012C00913>.

the grounds of mental impairment and sentenced to spend twenty-five years in a psychiatric hospital.⁴⁷ The incident led to renewed debate about gun control laws, particularly in relation to handguns.⁴⁸

At a meeting of the APMC in November 2002, various resolutions were agreed to, which included restricting the classes of legal handguns that can be imported or possessed for sporting purposes, changing licensing requirements for handguns, and exploring options for a buyback program for those guns deemed illegal.⁴⁹ The Council of Australian Governments (COAG) endorsed the resolutions in December 2002, and these formed the National Handgun Control Agreement.⁵⁰

The agreed restrictions were implemented through state and territory amendment legislation⁵¹ and through changes to the Customs (Prohibited Imports) Regulations 1956 (Cth).⁵² The latter instrument was amended to

prevent the importation of prohibited handguns and handgun parts with the following features by sporting shooters, or their direct sale by firearms dealers/importers to sporting shooters:

- a calibre that is greater than .38, unless the handgun is used to participate in a specially accredited sporting event in that case a calibre of up to .45 will be permitted
- a barrel length of less than 120 mm for semi-automatic handguns and less than 100 mm for revolvers and single-shot handguns, unless the handgun is a highly specialised target pistol
- a magazine/shot capacity that exceeds 10 rounds.⁵³

The federal parliament also enacted the National Handgun Buyback Act 2003, which provided for financial assistance to be granted to states in connection with the implementation of a buyback program for handguns that did not comply with the new restrictions.⁵⁴ The buyback

⁴⁷ See *Killer Sent to Psych Hospital*, THE SYDNEY MORNING HERALD (June 17, 2004), <http://www.smh.com.au/articles/2004/06/17/1087245033577.html>.

⁴⁸ See Annabel Crabb et al., *PM Flags Tougher Gun Laws*, THE AGE (Oct. 23, 2002), <http://www.theage.com.au/articles/2002/10/22/1034561495101.html>; Phillip Hudson, *Government Puts 259 Guns on Banned List*, THE AGE (Nov. 8, 2002), <http://www.theage.com.au/articles/2002/11/07/1036308423794.html>.

⁴⁹ APMC Firearms (Handguns) Resolutions November 2002, available at <http://www.customs.gov.au/webdata/resources/files/Mediaattachment021128.pdf>.

⁵⁰ See Phillips et al., *supra* note 44.

⁵¹ See, e.g., NSW, Parliamentary Debates, 3 July 2003, 2733, Second Reading of Firearms Amendment (Prohibited Pistols) Bill, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20030703014>.

⁵² Customs (Prohibited Imports) Amendment Regulations 2002 (No. 4) (Cth), <http://www.comlaw.gov.au/Details/F2002B00339>;

⁵³ Phillips et al., *supra* note 44.

⁵⁴ National Handgun Buyback Act 2003, <http://www.comlaw.gov.au/Details/C2004C01326>. For background information see Australian Parliamentary Library, National Handgun Buyback Act 2003 (Bills Digest No. 155, May 22, 2003), http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7CE96/upload_binary/7CE96.pdf.

program, which was implemented by the individual states and territories, resulted in about 70,000 handguns and more than 278,000 parts and accessories being surrendered.⁵⁵

V. Statistical Information and Analysis

There have been multiple studies and reports over the years that provide statistics and analysis regarding various aspects of gun ownership and violence, including aspects relating to the impact of the 1996 reforms and buyback program. The references below to both government and academic reports or studies are not intended to be exhaustive.

A. Government Information

In 1997, following an agreement at the July 1996 APMC meeting, the AIC established a national firearms monitoring program, which includes tracking and analyzing firearm theft information.⁵⁶ The AIC also monitors homicide rates and other violent crimes,⁵⁷ including the weapons associated with these.⁵⁸ The Australian Crime Commission (ACC) provides reports and analysis on aspects of nationally significant crime, and in February 2012 it was asked to undertake an intelligence assessment of the illegal firearms market.⁵⁹ Findings of some of the reports of these government entities include the following:

Firearm Numbers

- An AIC report published in 1988 stated that there were at least 3.5 million privately owned guns of all types (including registered, unregistered, licensed, and unlicensed) in Australia, with more than a quarter of Australian households possessing a gun.⁶⁰
- In June 2012, the ACC report on illicit firearms noted that there are more than 2.75 million registered firearms in Australia held by more than 730,000 individual license holders⁶¹ (the current population of Australia is approximately 22.8 million⁶²).

⁵⁵ Phillips et al, *supra* note 44.

⁵⁶ See generally *National Firearms Monitoring Program*, AIC, http://www.aic.gov.au/about_aic/research_programs/nmp/0002.html (last visited Dec. 21, 2012).

⁵⁷ See generally *Australian Crime: Facts and Figures*, AIC, <http://www.aic.gov.au/publications/current%20series/facts/1-20.html> (last visited Dec. 21, 2012).

⁵⁸ See generally *Weapons*, AIC, http://www.aic.gov.au/crime_types/violence/weapons.html (last visited Dec. 21, 2012).

⁵⁹ Press Release, Jason Clare MP, Final Report of the National Investigation into the Illegal Firearms Market (June 29, 2012), <http://www.jasonclare.com.au/media/portfolio-releases/home-affairs-and-justice-releases/949-final-report-of-the-national-investigation-into-the-illegal-firearms-market.html>.

⁶⁰ AIC, FIREARMS AND VIOLENCE IN AUSTRALIA (AIC Trends & Issues in Crime and Criminal Justice No. 10, Feb. 1988), <http://www.aic.gov.au/documents/A/8/4/%7BA84819A6-AC46-4A82-A049-841A3F3A9730%7Dt10.pdf>.

⁶¹ Press Release, Jason Clare MP, *supra* note 59.

⁶² *Population Clock*, AUSTRALIAN BUREAU OF STATISTICS, <http://www.abs.gov.au/ausstats/abs@.nsf/0/1647509ef7e25faaca2568a900154b63?opendocument> (last visited Dec. 21, 2012).

- An AIC report from 2008 on the criminal use of handguns in Australia found that by June 30, 2006, 130,903 handguns had been registered in Australia (excluding South Australia), which accounted for 6% of all registered firearms at that time.⁶³
- The ACC recently made a “conservative estimate” that there are more than 250,000 long-arms and 10,000 handguns in the illicit firearms market in Australia.⁶⁴ Of these, 44% were not surrendered or registered after the Port Arthur massacre and 12% were stolen or the subject of staged theft.⁶⁵
- The AIC’s 2008-09 report on firearm theft estimated that around 1,500 firearms are stolen each year, the majority being long-arms, with relatively few firearms recovered.⁶⁶
- The 2008-09 firearm theft report also provided information on the status of compliance with firearms storage laws, finding that 60% of owners who reported a firearms theft in that year were determined to have complied with these laws. The principal location for firearm theft was private dwellings.⁶⁷ Between 2004-05 and 2008-09, around 25% of firearm owners who reported a theft of their firearms were “found, or suspected, to be in breach of one or more firearms laws.”⁶⁸

Firearm Deaths

- The AIC’s 1988 report found that one third of all reported murders in Australia were committed with firearms, with gunshot wounds being “the single most common cause of death among homicide victims” and with research showing that “guns substantially increase the probability that death, rather than injury, will be the end result of a firearm attack.”⁶⁹
- A 2003 report on firearms related deaths between 1991 and 2001 found that

[i]n 1991 there were 629 firearm related deaths in Australia compared to 333 in 2001. This represents a 47 per cent decrease in firearms deaths between 1991 and 2001. The incidence of both firearms suicides and firearms homicides almost halved over the 11 year period. While the number of firearms homicides

⁶³ SAMANTHA BRICKNELL, CRIMINAL USE OF HANDGUNS IN AUSTRALIA (AIC Trends & Issues in Crime and Criminal Justice No. 361, Sept. 2008), <http://aic.gov.au/publications/current%20series/tandi/361-380/tandi361.html>.

⁶⁴ *Illicit Firearms*, AUSTRALIAN CRIME COMMISSION (ACC), <http://www.crimecommission.gov.au/publications/crime-profile-series-fact-sheet/illicit-firearms> (last visited Dec. 20, 2012); ACC, ILLICIT FIREARMS (Nov. 5, 2012), http://www.crimecommission.gov.au/sites/default/files/files/fact_sheets/Illicit%20Firearms%20FACT%20SHEET%20201112%20low%20res.pdf.

⁶⁵ Press Release, Jason Clare MP, *supra* note 59. See also BRICKNELL, *supra* note 7.

⁶⁶ SAMANTHA BRICKNELL, FIREARM THEFT IN AUSTRALIA 2008-09 (AIC Monitoring Report No. 16, Oct. 2011), <http://www.aic.gov.au/publications/current%20series/mr/1-20/16.html>.

⁶⁷ *Id.*, under the heading “The nature of firearm theft incidents.”

⁶⁸ *Id.*, under the heading “Compliance with firearm laws.”

⁶⁹ FIREARMS AND VIOLENCE IN AUSTRALIA, *supra* note 60.

has continued to decline, with 2001 recording the lowest number of firearms homicides during this period (n=47), the number of firearms suicides declined consistently from 1991 to 1998, but has since fluctuated. The number of firearm related accidents also fluctuated over the same period, from 29 firearms accidents in 1991 to 18 in 2001, but ranging between 15 and 45 over this time. While the numbers are quite small, the year 2000 recorded the highest number of firearms accidents (45 accidents) during the 11 year period.⁷⁰

- The AIC’s 2008 handgun report stated that firearms are used in an average of 20% of homicides committed each year in Australia, and that “[i]n 2005-06, firearm homicides fell to their lowest level in 13 years: 14 percent of all homicide victims. Since 1992-93, firearm homicide as a proportion of all homicides has halved, continuing a general downward trend in firearm homicide that began in the early 1980s.”⁷¹ In terms of handgun use in homicides, the report found that

[d]uring the early to mid-1990s, handguns accounted for less than 20 percent of all firearm homicides, but over the following 10 years this percentage increased to around 50 percent (Figure 1). This increase immediately followed the National Firearms Agreement in 1996, and it has been proposed that restrictions in the availability and access to certain firearms, and who can own a firearm, led to greater use of illegitimate means to acquire firearms, particularly those that are easily concealed such as handguns.⁷²

- Other findings in the handgun report included that “[t]he majority of homicides, regardless of the method used to kill the victim, were ‘single victim/single offender’ incidents. Homicides committed by an individual using a handgun were more likely to result in multiple victims than homicides in general (11% compared with 5%), but only slightly more so when compared with all firearm homicides (9%).”⁷³ Furthermore, the report stated that “[t]he majority of firearms used to commit homicide in Australia since 1989-90 were held unlawfully at the time.”⁷⁴
- The most recently available AIC annual crime survey found that “[t]he proportion of homicide victims killed by offenders using firearms in 2009–10 represented a decrease of 18 percentage points from the peak of 31 percent in 1995–96 (the year in which the Port Arthur massacre occurred with the death of 35 people, which subsequently led to the introduction of stringent firearms legislation).”⁷⁵

⁷⁰ JENNY MOUZOS & CATHERINE RUSHFORTH, FIREARMS RELATED DEATHS IN AUSTRALIA, 1991-2001 (AIC Trends & Issues in Crime and Criminal Justice No. 269, Nov. 2003), <http://www.aic.gov.au/publications/current%20series/tandi/261-280/tandi269/view%20paper.html>.

⁷¹ BRICKNELL, *supra* note 63. Note that the fiscal year in Australia, which is used for government reporting, budget, and tax purposes, is July 1 to June 30.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ AIC, AUSTRALIAN CRIME: FACTS & FIGURES: 2011 at ch 2 (Mar. 2012), <http://www.aic.gov.au/publications/current%20series/facts/1-20/2011.html>.

- A 2012 AIC report on firearm trafficking referred to a forthcoming study in stating that

[i]n Australia, the number of victims of firearm-perpetrated homicide (ie murder and manslaughter) has declined by half between 1989–90 and 2009–10 from 24 to 12 percent. (Chan & Payne forthcoming). The predominance of handgun-perpetrated homicide, as a proportion of all firearm homicide, rose from 17 to 45 percent between 1992–93 and 2006–07 (Bricknell 2008b; Dearden & Jones 2008) but dropped again in the following three years to a little over 10 percent. For the most recent year available (2009–10), handgun homicide comprised 13 percent of all homicides that were committed with a firearm (Chan & Payne forthcoming).⁷⁶

A range of Australian firearms statistics can also be found on the website of GunPolicy.org, a nonprofit entity hosted by the Sydney School of Public Health at the University of Sydney.⁷⁷

B. Nongovernment Studies

Articles by academic researchers relating to the impact of firearms law reforms include the following:

- J. Ozanne-Smith et al., *Firearm Related Deaths: The Impact of Regulatory Reform*, 10(5) INJ. PREV. 280 (2004). This paper examined firearms-related deaths in the state of Victoria in the context of legislative reforms in 1988 and 1996. It found that “[a]fter initial Victorian reforms, a significant downward trend was seen for numbers of all firearm related deaths between 1988 and 1995 (17.3% in Victoria compared with the rest of Australia, $p < 0.0001$). A further significant decline between 1997 and 2000 followed the later reforms. After the later all state legislation, similar strong declines occurred in the rest of Australia from 1997 (14.0% reduction compared with Victoria, $p = 0.0372$).”⁷⁸
- S. Chapman et al., *Australia’s 1996 Gun Law reforms: Faster Falls in Firearm Deaths, Firearm Suicides, and a Decade Without Mass Shootings*, 12(6) INJ. PREV. 365 (2006). This paper states that “[i]n the 18 years before the gun law reforms, there were 13 mass shootings in Australia, and none in the 10.5 years afterwards.”⁷⁹

⁷⁶ BRICKNELL, *supra* note 7, under the heading “Characteristics and dynamics of firearms trafficking.”

⁷⁷ Australia – Gun Facts, Figures and the Law, GUNPOLICY.ORG, <http://www.gunpolicy.org/firearms/region/australia> (last visited Dec. 21, 2012).

⁷⁸ J. Ozanne-Smith et al., *Firearm Related Deaths: The Impact of Regulatory Reform*, 10(5) INJ. PREV. 280 (2004), <http://injuryprevention.bmj.com/content/10/5/280.full>.

⁷⁹ S. Chapman et al., *Australia’s 1996 Gun Law reforms: Faster Falls in Firearm Deaths, Firearm Suicides, and a Decade Without Mass Shootings*, 12(6) INJ. PREV. 365 (2006), <http://injuryprevention.bmj.com/content/12/6/365.full>; original article also available at <http://tobacco.health.usyd.edu.au/assets/pdfs/Other-Research/2006InjuryPrevent.pdf>.

- Jeanine Baker & Samara McPhedran, *Gun Laws and Sudden Death: Did the Australian Firearms Legislation of 1996 Make a Difference?*, BR. J. CRIMINOLOGY (2006). The authors commented that the stricter gun laws introduced post-1996 in Australia did not affect firearms homicide rates and may also not have impacted gun suicide and accidental shooting death rates. They concluded that “[t]here is insufficient evidence to support the simple premise that reducing the stockpile of licitly held civilian firearms will result in a reduction in either firearm or overall sudden death rates.”⁸⁰
- Christine Neill & Andrew Leigh, *Weak Tests and Strong Conclusions: A Re-Analysis of Gun Deaths and the Australian Firearms Buyback* (Australian National University Discussion Paper No. 555, June 2007). This paper revisits the Baker and McPhedran study above as well as examining the approaches in the Ozanne-Smith and Chapman studies. The authors state that their re-analysis of the data, either by using a longer time series or the log of the death rate, “shows a statistically significant reduction in deaths due to both firearm homicides and suicides.”⁸¹

VI. Recent Discussions and Actions

Discussions about Australia’s gun laws have continued in 2012, including in response to some of the above reports and findings and following various incidents involving firearms.⁸²

In June 2012, federal, state, and territory governments reached an agreement on major reforms relating to combating the illicit firearms market.⁸³ The agreed measures include

- a federal offense of aggravated firearms trafficking across national and state borders that would carry a maximum penalty of life imprisonment;
- the national rollout of the Australian Ballistics Identification Network, currently used by the Australian Federal Police and New South Wales Police;
- the establishment of a National Firearms Register;
- expansion of the ACC’s firearms tracing capability;

⁸⁰ Jeanine Baker & Samara McPhedran, *Gun Laws and Sudden Death: Did the Australian Firearms Legislation of 1996 Make a Difference?*, BR. J. CRIMINOL. (2006), available at <http://armsandthelaw.com/archives/GunLawsSudden%20DeathBJC.pdf>.

⁸¹ Christine Neill & Andrew Leigh, *Weak Tests and Strong Conclusions: A Re-Analysis of Gun Deaths and the Australian Firearms Buyback* 12 (Australian National University Discussion Paper No. 555, June 2007), <https://digitalcollections.anu.edu.au/bitstream/1885/45285/3/DP555.pdf>.

⁸² See, e.g., Samantha Lee, *Why Do We Need Any More Semi-Automatic Pistols in Australia*, THE SYDNEY MORNING HERALD (Apr. 18, 2012), <http://www.smh.com.au/opinion/society-and-culture/why-do-we-need-any-more-semiautomatic-pistols-in-australia-20120417-1x5jh.html>.

⁸³ Press Release, Hon. Jason Clare MP, Major Agreement to Tackle the Illegal Firearms Market (June 29, 2012), <http://www.ministerhomeaffairs.gov.au/MediaReleases/Pages/2012/Second%20Quarter/29-June-2012---Major-agreement-to-tackle-the-illegal-firearms-market.aspx>.

- an assessment of vulnerabilities around the national air stream, including the international mail environment, to be jointly conducted by the ACC, Australian Federal Police, Customs and NSW Police;
- the development of a “coordinated national operational response to crimes involving firearms including targeted enforcement of high risk groups and improving firearms technical skills capabilities.”⁸⁴ This will include seeking assistance from the United States Bureau of Alcohol, Tobacco and Firearms to provide training on the latest developments in firearms and technical advice; and
- a national campaign to raise community awareness about unlicensed firearms.

The federal Minister for Home Affairs and Minister of Justice also proposed additional reforms for further consideration by the states and territories.⁸⁵ Prior to the agreement, in April 2012, the federal government established a Firearm Intelligence Targeting Team inside Customs and Border Protection to “fuse together all available intelligence from law enforcement agencies and target criminal key groups at the border.”⁸⁶

On November 28, 2012, the Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012 was introduced in the federal parliament.⁸⁷ This bill contains provisions arising from the first agreed measure listed above.⁸⁸

Other activities relating to gun control laws in the states and territories in 2012 included the following:

- In New South Wales, legislation was enacted in June 2012 to place further restrictions on the sale and purchase of ammunition.⁸⁹

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* See also Press Release, Hon. Jason Clare MP, Update on National Illicit Firearms Assessment and Establishment of Firearms Intelligence and Targeting Team (Apr. 12, 2012), <http://www.ministerhomeaffairs.gov.au/Mediareleases/Pages/2012/Second%20Quarter/12-April-2012--Update-on-National-Illicit-Firearms-Assessment-and-Establishment-of-Firearms-Intelligence-and-Targeting-Team.aspx>; AAP, *Government Launches New Gun Intelligence Unit*, THE AUSTRALIAN (Apr. 12, 2012), <http://www.theaustralian.com.au/news/breaking-news/government-launches-new-gun-intelligence-unit/story-fn3dxity-1226325158137>.

⁸⁷ *Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012*, PARLIAMENT OF AUSTRALIA, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4928.

⁸⁸ Speech, Hon. Jason Clare MP, Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012 Second Reading Speech, Nov. 28, 2012, <http://www.ministerhomeaffairs.gov.au/Speeches/Pages/2012/Fourth%20Quarter/28November-2012-CrimesLegislationAmendment%28OrganisedCrimeandOtherMeasures%29Bill2012SecondReadingSpeech.aspx>.

⁸⁹ *Firearms Amendment (Ammunition Control) Bill 2012*, PARLIAMENT OF NEW SOUTH WALES, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/7D714D724CF1852DCA2579A4001B0B8C?Open&shownotes> (last visited Dec. 21, 2012).

- In December 2012, the New South Wales government announced that it had established a committee to provide advice on proposed new gun control legislation that would tighten restrictions in some areas.⁹⁰
- In South Australia, the state attorney-general announced a gun amnesty campaign in June 2012, which ran from August 1 to October 31, 2012.⁹¹ It was reported that 2,783 weapons were surrendered to authorities during the three-month period.⁹²
- In Queensland, the police minister established an advisory panel in August 2012 to examine gun laws and licensing with the aim of reducing red tape for licensed firearms owners,⁹³ generating a strong negative response from the Queensland Police Union.⁹⁴
- The Queensland government also introduced amending legislation in November 2012 to introduce new mandatory minimum penalties for weapons offenses “in an effort to address the unlawful use of firearms.”⁹⁵ It also announced a gun amnesty for people to either hand in or register their firearms.⁹⁶ The bill was passed in December 2012.⁹⁷

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⁹⁰ AAP, *NSW Govt to Tighten Gun Control*, Herald Sun (Dec. 20, 2012), <http://www.heraldsun.com.au/news/breaking-news/nsw-gun-body-rejected-law-changes-report/story-e6frf7kf-1226540783897>.

⁹¹ *Gun Amnesty Campaign 2012*, SOUTH AUSTRALIA ATTORNEY-GENERAL'S DEPARTMENT, <http://www.agd.sa.gov.au/about-agd/what-we-do/initiatives/gun-amnesty-campaign-2012> (last visited Dec. 21, 2012).

⁹² *Record Haul from SA Gun Amnesty*, ABC NEWS (Nov. 1, 2012), <http://www.abc.net.au/news/2012-11-01/record-haul-from-sa-gun-amnesty/4346204>.

⁹³ Press Release, Hon. Jack Dempsey, Panel Created to Cut Weapons Red Tape (Aug. 27, 2012), <http://statements.qld.gov.au/Statement/Id/80312>.

⁹⁴ Rosanne Barrett, *Queensland Gun Lobby Takes Aim at Red-Tape Hold-Up*, THE AUSTRALIAN (Aug. 28, 2012), <http://www.theaustralian.com.au/national-affairs/state-politics/gun-lobby-takes-aim-at-red-tape-hold-up/story-e6frgczx-1226459405120>; Daniel Hurst, *'More People Will Die': Police Union Berates Gun Law Overhaul*, BRISBANE TIMES (Aug. 27, 2012), <http://www.brisbanetimes.com.au/queensland/more-people-will-die-police-union-berates-gun-law-overhaul-20120827-24vdz.html>.

⁹⁵ *Weapons and Other Legislation Amendment Act 2012*, QUEENSLAND POLICE, <http://www.police.qld.gov.au/programs/weaponsLicensing/about/legislation/weaponsamendments2012.htm> (last visited Dec. 21, 2012).

⁹⁶ See AAP, *Qld Government to Call Three-Month Gun Amnesty*, COURIER MAIL (Nov. 1, 2012), <http://www.couriermail.com.au/news/breaking-news/qld-govt-to-call-three-month-gun-amnesty/story-e6freono-1226508282676>.

⁹⁷ *Bills This Parliament*, QUEENSLAND PARLIAMENT, <http://www.parliament.qld.gov.au/work-of-assembly/bills-and-legislation/current-bills-register> (last visited Dec. 21, 2012).

Appendix: Current State and Territory Firearms Legislation

New South Wales

- [Firearms Act 1996 \(NSW\)](#)
- [Firearms Regulation 2006 \(NSW\)](#)
- [Weapons Prohibition Act 1998 \(NSW\)](#)
- [Weapons Prohibition Regulation 2009 \(NSW\)](#)

Victoria

- [Firearms Act 1996 \(Vic\)](#)
- [Firearms Regulations 2008 \(Vic\)](#)
- [Control of Weapons Act 1990 \(Vic\)](#)
- [Control of Weapons Regulations 2011 \(Vic\)](#)

Queensland

- [Weapons Act 1990 \(Qld\)](#)
- [Weapons Regulations 1996 \(Qld\)](#)
- [Weapons Categories Regulations 1997 \(Qld\)](#)

Western Australia

- [Firearms Act 1973 \(WA\)](#)
- [Firearms Regulations 1974 \(WA\)](#)

South Australia

- [Firearms Act 1977 \(SA\)](#)
- [Firearms Regulations 2008 \(SA\)](#)

Tasmania

- [Firearms Act 1996 \(Tas\)](#)
- [Firearms Regulations 2006 \(Tas\)](#)

Northern Territory

- [Firearms Act \(NT\)](#)
- [Firearms Act Regulations \(NT\)](#)

Australian Capital Territory

- [Firearms Act 1996 \(ACT\)](#)

- [Firearms Regulation 2008 \(ACT\)](#)
- [Prohibited Weapons Act 1996 \(ACT\)](#)
- [Prohibited Weapons Regulation 1997 \(ACT\)](#)

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CANADA

FIREARMS CONTROL LEGISLATION AND POLICY

Executive Summary

The control of firearms in Canada is predominantly governed by the Firearms Act, the Criminal Code, and their subordinate regulations. The Criminal Code defines the main categories of firearms, which include restricted, prohibited, and non-restricted firearms. The Firearms Act regulates the possession, transport, and storage of firearms.

Canadian law has both licensing and registration requirements for the possession and acquisition of firearms. This is administered by the Royal Canadian Mounted Police (RCMP) through the Canadian Firearms Program (CFP).

Applicants are required to pass safety tests before they can be eligible for a firearms license. Applicants are also subject to background checks, which take into account criminal, mental health, addiction, and domestic violence records.

I. Overview of Firearms Control Laws and Regulations

At the federal level in Canada, firearms are predominantly regulated by the Firearms Act¹ and Part III of the Criminal Code.²

The Criminal Code identifies “the various firearms, weapons and devices regulated by the Firearms Act.”³ The Code classifies firearms into three categories: restricted,⁴ prohibited,⁵ and non-restricted.⁶ Non-restricted firearms “include ordinary shotguns and rifles, such as those commonly used for hunting. But some military type rifles and shotguns are prohibited.”⁷

¹ Firearms Act, S.C. 1995, c. 39, <http://laws-lois.justice.gc.ca/eng/acts/F-11.6/>.

² Criminal Code, R.S.C. 1985, c. C-46, Part III, <http://laws-lois.justice.gc.ca/eng/acts/C-46/>.

³ *Canadian Firearms Program: Frequently Asked Questions – General*, ROYAL CANADIAN MOUNTED POLICE (RCMP), <http://www.rcmp-grc.gc.ca/cfp-pcaf/faq/index-eng.htm#a1> (last modified Sept. 21, 2012).

⁴ “Restricted firearm” is defined under section 84(1) of the Criminal Code.

⁵ “Prohibited firearm” is defined under section 84(1) of the Criminal Code.

⁶ These are firearms that are neither restricted nor prohibited.

⁷ *Firearms and Firearms Act*, THE CANADIAN BAR ASSOCIATION (CBA) BRITISH COLUMBIA BRANCH, http://www.cba.org/bc/public_media/criminal/242.aspx (last updated Nov. 2012).

Restricted firearms include “certain handguns and some semi-automatic long guns (not all semi-automatic long guns are restricted or prohibited). Rifles that can be fired when telescoped or folded to shorter than 660 millimeters, or 26 inches, are also restricted.”⁸ Prohibited firearms “include most 32 and 25 caliber handguns and handguns with a barrel length of 105 mm or shorter. Fully automatic firearms, converted automatics, firearms with a sawed-off barrel, and some military rifles like the AK 47 are also prohibited.”⁹

The Firearms Act and its supporting regulations “govern the possession, transport, and storage of firearms.”¹⁰ The Act stipulates “the rules for possessing a firearm,”¹¹ which include both licensing and registration requirements.¹² A person must have a valid firearms license to possess or acquire firearms as well as ammunition. A firearms license is issued to a license holder if he or she has “met certain public-safety criteria and is allowed to possess and use firearms.”¹³

According to the RCMP website, “[i]ndividuals must be at least 18 years old to get a licence that will allow them to own or to acquire a firearm,”¹⁴ known as a Possession and Acquisition Licence, or PAL. Applicants seeking to acquire a license for non-restricted firearms are required to “pass the Canadian Firearms Safety Course (CFSC) tests.”¹⁵ If applicants are applying for a license for restricted or prohibited firearms they must pass the “Canadian Restricted Firearms Safety Course (CRFC) tests.”¹⁶

The PAL is the only license now available to new applicants over eighteen years old. An existing Possession-Only License,¹⁷ or POL, can be renewed, but new ones have not been issued since 2001. According to the Canadian Bar Association (CBA), “[a] Possession-Only Licence

⁸ *Id.*

⁹ *Id.*

¹⁰ Library of Parliament, Legislative Summary, *Legislative Summary of Bill C-19: An Act to Amend the Criminal Code and the Firearms Act* para. 1.2 (Nov. 11, 2011), http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c19&Parl=41&Ses=1&source=library_prb&Language=E#a3.

¹¹ *Canadian Firearms Program: Frequently Asked Questions – General*, RCMP, *supra* note 3.

¹² Firearms Act § 4(a).

¹³ *Canadian Firearms Program: Frequently Asked Questions – General*, RCMP, *supra* note 3.

¹⁴ *Highlights of Canada’s Firearms Laws*, RCMP, <http://www.rcmp-grc.gc.ca/cfp-pcaf/pol-leg/hl-fs-eng.htm> (last modified May 14, 2008).

¹⁵ See the RCMP website, which states “[t]he legislation stipulates that individuals wishing to acquire non-restricted firearms must take the CFSC [Canadian Firearms Safety Course] and pass the tests OR challenge and pass the CFSC tests without taking the course.” *Canadian Firearms Safety Course*, RCMP, http://www.rcmp-grc.gc.ca/cfp-pcaf/safe_sur/cour-eng.htm (last modified Aug. 27, 2012).

¹⁶ *Id.*; see also *Canadian Restricted Firearms Safety Course*, RCMP, http://www.rcmp-grc.gc.ca/cfp-pcaf/safe_sur/cour-res-eng.htm (last modified Feb. 5, 2004).

¹⁷ *Applying for a New Possession Only Licence (POL)*, RCMP, <http://www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/pol-pps-eng.htm> (last modified Aug. 21, 2012).

lets you use firearms already registered to you. It also lets you borrow firearms of the same class as the ones you own.”¹⁸

Minors aged twelve to seventeen can get a minor’s license that will “allow them to possess a non-restricted rifle or shotgun, but a licensed adult must be responsible for the firearm.”¹⁹ An applicant for this license must also “complete the Canadian Firearms Safety Course and pass the test in order to get a licence.”²⁰

A PAL can be issued for a firearm of any class (non-restricted, restricted, and prohibited). However, possessing or acquiring restricted or prohibited firearms is subject to very stringent requirements. The general rule is that restricted and prohibited firearms must be possessed in the holder’s residence (or at a place authorized by a chief firearms officer), as recorded in the Firearms Registry.²¹ One exception is when the firearm is transported and used under very strict and specific circumstances, including “for use in target practice, or a target shooting competition.”²²

Under the Firearms Act and its regulations, a person can carry a restricted or prohibited firearm, whether concealed or unconcealed, only in very limited circumstances.²³ In most cases, a permit known as an Authorization to Carry (ATC) is required, such as when “an individual needs restricted firearms or prohibited handguns for use in connection with his or her lawful profession or occupation.”²⁴

According to the RCMP, persons are allowed to possess only certain prohibited firearms “if they had one registered in their name when it became prohibited, and they have continuously held a valid registration certificate for that type of prohibited firearm from December 1, 1998, onward.”²⁵ Moreover, a PAL “allows an individual to acquire only prohibited firearms in the same categories as the ones currently registered to them, and only if the firearms they wish to acquire were registered in Canada on December 1, 1998.”²⁶ Restricted or prohibited firearms

¹⁸ CBA BRITISH COLUMBIA BRANCH, *supra* note 7.

¹⁹ *Firearm Users Younger than 18*, RCMP, <http://www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/minor-mineur-eng.htm> (last modified Sept. 5, 2012).

²⁰ *Id.*

²¹ Firearms Act § 17.

²² *Id.* § 19(1).

²³ *Id.* § 20.

²⁴ Authorizations to Carry Restricted Firearms and Certain Handguns Regulations (Firearms Act), SOR/98-207, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-207/index.html>.

²⁵ *Prohibited Firearms*, RCMP, <http://www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/prohibited-prohibe-eng.htm> (last modified Aug. 20, 2012).

²⁶ *Id.*

must also be “verified by an approved verifier if they are being transferred to a new owner and have not been previously verified.”²⁷

Under the Act, all restricted and prohibited firearms must be registered.²⁸ After April 2012, pursuant to amending legislation,²⁹ non-restricted firearms no longer have to be registered.³⁰ All licensing and registration is managed by the Royal Canadian Mounted Police’s Canadian Firearms Program (CFP).³¹ The CFP manages the Canadian Firearms Registry.³²

According to section 5(1) of the Act, “[a] person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm.”³³ Therefore, “[a]n applicant for a firearm licence in Canada must pass background checks which consider criminal, mental, addiction and domestic violence records.”³⁴ Besides criminal checks, in order to determine eligibility under the Act, authorities must consider whether within the previous five years the applicant

has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person; or

has a history of behavior that includes violence or threatened or attempted violence on the part of the person against any person.³⁵

Regulations supporting the Firearms Act also stipulate specific rules “for storing, transporting and displaying firearms safely to deter loss, theft and accidents. Provinces may have additional regulatory requirements.”³⁶

²⁷ *Selling, Giving or Trading Firearms*, RCMP, <http://www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/sell-vendre-eng.htm> (last modified Aug. 20, 2012).

²⁸ Firearms Act § 12.1.

²⁹ CBA BRITISH COLUMBIA BRANCH, *supra* note 7.

³⁰ *Id.*

³¹ *Canadian Firearms Program (CFP)*, RCMP, <http://www.rcmp-grc.gc.ca/cfp-pcaf/index-eng.htm> (last modified Oct. 30, 2012).

³² *Registration of Firearms (Individuals)*, RCMP, http://www.rcmp-grc.gc.ca/cfp-pcaf/online_en-ligne/reg_enr-eng.htm (last modified Dec. 10, 2012).

³³ Firearms Act § 5(1).

³⁴ Canada — Gun Facts, Figures and the Law, GUNPOLICY.ORG, <http://www.gunpolicy.org/firearms/region/canada> (last updated Dec. 21, 2012).

³⁵ Firearms Act § 5(2)(b)–(c).

³⁶ *Highlights of Canada’s Firearms Laws*, RCMP, *supra* note 14 (discussing Storage, Display, Transportation and Handling of Firearms by Individuals Regulations (Firearms Act), SOR/98-209, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-209/index.html>).

Both the Firearms Act and the Criminal Code contain offenses and penalties for the “illegal possession or misuse of a firearm.”³⁷ Apart from these federal laws, “[p]rovinces, territories or municipalities may have additional laws and regulations that apply in their jurisdiction. For example, provinces are responsible for regulating hunting.”³⁸

II. Impact

Numerous studies have been conducted to assess the impact of Canada’s firearms legislation on firearms-related deaths. Studies have attempted to evaluate three different periods of reform, which involved Bill C-51 in 1977, Bill C-17 in 1991, and Bill C-68 in 1995.

According to a 1988 study, “the use of firearms in Canadian homicides has declined since the legislative changes in gun control and capital punishment in late 1976.” However, the study found that the changes in the law had no impact on total standardized national homicide rates.³⁹ A 1994 report concurred that “[d]ata from Canada from 1969 to 1985 showed that the passage of a stricter firearms control law in 1977 was associated with a decrease in the use of firearms for homicide but an increase in the use of all other methods for homicide.”⁴⁰ However, a 1998 study commissioned by the Department of Justice that reviewed most literature available at that time found that the impact of firearms regulations remained “somewhat inconclusive and controversial, partly because the studies have attempted to isolate the impact of the 1977 legislation, and because of the theoretical and methodological challenges, and issues of data quality and availability, inherent in this type of evaluative research.”⁴¹

A 2004 study found “a significant decrease after passage of Bill C-17 [in 1991] in the rates of suicides and homicides involving firearms and the percentage of suicides using firearms.”⁴² However, more recent studies appear to present a mixed picture. A 2012 study concluded that the data “failed to demonstrate a beneficial association between [firearms] legislation and firearm homicide rates between 1974 and 2008.”⁴³ Some criticize this study

³⁷ *Id.*

³⁸ *Canadian Firearms Program: Frequently Asked Questions – General*, RCMP, *supra* note 3.

³⁹ Catherine F. Sproule & Deborah J Kennett, *The Use of Firearms in Canadian Homicides 1972–1982: The Need for Gun Control*, 30 CANADIAN J. CRIMINOLOGY 31, 34 (1988), available at http://heinonline.org/HOL/Page?handle=hein.journals/cjccj30&div=8&g_sent=1&collection=journals (by subscription).

⁴⁰ Antoon A. Leenaars & David Lester, Summary, *Effects of Gun Control on Homicide in Canada*, 75(1) PSYCHOL. REP. 81, 82 (1994), <http://www.amsciepub.com/doi/abs/10.2466/pr0.1994.75.1.81> (by subscription).

⁴¹ Yvon Dandurand, FIREARMS, ACCIDENTAL DEATHS, SUICIDES AND VIOLENT CRIME: AN UPDATED REVIEW OF THE LITERATURE WITH SPECIAL REFERENCE TO THE CANADIAN SITUATION (Working Document, International Centre for Criminal Law Reform and Criminal Justice Policy, 1998), http://www.justice.gc.ca/eng/pi/rs/rep-rap/1998/wd98_4-dt98_4/wd98_4.pdf.

⁴² F. Stephen Bridges, *Gun Control Law (Bill C-17), Suicide, And Homicide In Canada*, 94 PSYCHOL. REP. 819, 826 (2004), available at <http://uwf.edu/fbridges/PR%20Gun%20Control%20Law%20Suicide%20Homicide%20Canada.pdf>.

⁴³ Caillin Langmann, *Canadian Firearms Legislation and Effects on Homicide 1974 to 2008*, 27(12) J. INTERPERSONAL VIOLENCE 2303 (2012).

since it did not take into account suicide deaths, which account for three-quarters of gun deaths.⁴⁴

According to 2010 data available at Statistics Canada, over the past thirty years firearm-related homicides have continued to decline.⁴⁵ Moreover, “[m]uch of the decline in firearm-related homicide since the early 1980’s can be attributed to a decrease in homicides involving a rifle or shotgun.”⁴⁶ According to 2011 data,

[t]here were 158 homicides committed with a firearm in 2011, 13 fewer than the previous year. The 2011 rate of 0.46 firearm homicides per 100,000 population was the lowest in almost 50 years. The recent decline in the rate of firearm homicides is mainly due to a drop in the rate of homicides committed with a handgun, which has fallen nearly 30% over the past four years. However, handguns still accounted for about two-thirds of all firearms used to commit homicide in 2011.⁴⁷

III. Distribution of Firearms

According to a 2007 Small Arms survey,⁴⁸ Canada was then ranked thirteenth in the world out of 178 countries surveyed in civilian gun ownership, with a ratio of 23.8 firearms per 100 people.⁴⁹ At that time, the estimated total number of guns held by civilians in Canada was 9,950,000.⁵⁰

According to data of the RCMP, as of September 2012 Canadians held 1,927,693 valid licenses for firearms,⁵¹ which equates to 5,758 licenses per 100,000 population.⁵² In 2011, the RCMP reported that there were 7,861,902 firearms registered to individuals and businesses.⁵³

⁴⁴ Steve Mertl, *New Study Claims Gun-control Laws Have No Effect on Canadian Murder Rate*, DAILY BREW (blog) (Oct. 7, 2011), <http://ca.news.yahoo.com/blogs/dailybrew/study-claims-gun-control-laws-no-effect-canadian-201239248.html>.

⁴⁵ *Homicide in Canada, 2010*, STATISTICS CANADA, <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11561-eng.htm>.

⁴⁶ *Id.*

⁴⁷ *Homicide in Canada, 2011*, STATISTICS CANADA, <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11738-eng.htm>.

⁴⁸ See Annex 4 of Aaron Karp, *Completing the Count: Civilian firearms*. Small Arms Survey 2007: Guns and the City 67. (Cambridge: Cambridge University Press., Aug. 27, 2012), <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-4-EN.pdf>; See also Palash R. Gosh, *Connecticut Shooting: How Canada Views America’s School Massacre and Gun Culture*, INTERNATIONAL BUSINESS TIMES (U.S. EDITION) (Dec. 19, 2012), <http://www.ibtimes.com/connecticut-shooting-how-canada-views-americas-school-massacre-gun-culture-949300>.

⁴⁹ *Id.*

⁵⁰ *Id.*, see also GUNPOLICY.ORG, *supra* note 35.

⁵¹ *Facts and Figures (July - September 2012) Canadian Firearms Program*, RCMP, <http://www.rcmp-grc.gc.ca/cfp-pcaf/facts-faits/index-eng.htm>.

⁵² *Id.*

⁵³ ROYAL CANADIAN MOUNTED POLICE, COMMISSIONER OF FIREARMS REPORT – 2011 (2012), <http://www.rcmp-grc.gc.ca/cfp-pcaf/rep-rap/2011-comm-rpt/index-eng.htm>.

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ISRAEL

FIREARMS CONTROL LEGISLATION AND POLICY

Executive Summary

Israeli law regulates the issuance of firearms to both civilians and soldiers. Israel maintains restrictive policies with regard to issuing and renewing firearms licenses, and restricts their use.

The law designates persons holding certain positions, such as designated ministry employees, authorized community leaders, managers or owners of premises, and licensed guards and escorts, as eligible for firearms licenses based on security needs. Licensed private investigators, providers of guard services, and authorized escorts for field trips or camping trips may similarly be granted a license. The law also authorizes the issuance of firearms licenses to film producers and performers for purposes of gun possession or use during a performance.

Issuing a firearms license for private use to other persons requires proof of the existence of a cause that justifies the license. In addition to specific training and mental health requirements, applicants must prove that possession of a firearm is needed based on the location of their residence or employment, the type of occupation they are engaged in, or service in elite Israel Defense Force (IDF) reserve units.

Military firearms are issued to IDF soldiers. As a general rule, a soldier does not take his gun on home leave. Exceptions to this rule apply to soldiers who serve in combat units, those who serve in the West Bank or other specified areas, or who have obtained special authorization from high-ranking military officers based on their officer rank or for reasons of personal safety associated with their home or service location.

I. Introduction

There is no clear right to bear arms under Israeli law. In accordance with Israel's Firearms Law, 5709-1949 (hereinafter the Law)¹ activities involving firearms, including the manufacture, trade, possession and use of firearms, require authorization. Accordingly, any act involving firearms for civilian use requires a special license issued by the Ministry of Public Security and approved by the police. Activities involving firearms for Israeli Defense Forces

¹ Firearms Law, 5709-1949, § 11, 3 LAWS OF THE STATE OF ISRAEL [LSI] 61 (5709-1949), as amended.

(IDF) use require authorization by the Minister of Defense.² The issuance of a license or authorization for firearms is based on restrictive criteria established by the relevant Ministry.³

The Law defines a “firearm” as

...a barreled instrument adapted to throw a bullet, projectile, shell, bomb or the like, capable of killing a person, and includes any part of, accessory to and ammunition for such an instrument, including a container that contains or may contain such material, excluding a container for tear gas.⁴

II. Licensing of Firearms to Civilians

A. Statutory Requirements

1. Proper Operation and Training

The Firearms Law requires the firearm subject to a license to be checked and approved as suitable for use prior to the issuance of a license.⁵ The Law further requires the individual obtaining the license to have proper training in the use of the specific firearm he wishes to acquire or possess.⁶ Firearms Regulations (Training for the Grant and Renewal of a License) 5752-1992⁷ regulate training programs, their frequency, and certification of training, which is required as a precondition for the grant and renewal of firearms licenses. According to the Regulations, a person who possesses different types of firearms must undergo training for each one of them.

The Law requires shooting ranges and their supervisors to be licensed.⁸ The Law further regulates the admission of trainees, including those operating firearms for sport purposes, into shooting ranges by requiring proof of minimum age, depending on the type of activity for which the training is sought, as well as recommendations from appropriate associations such as sport associations, for training in specific types of firearms.⁹

² *Id.* § 11.

³ For the Ministry of Public Security policy regarding licensing, see *Criteria for Grant of a License for Personal Possession of a Firearm as Approved by the Minister on Aug. 4, 2011*, ISRAEL MINISTRY OF PUBLIC SECURITY (MOPS) (Aug 19, 2011), http://mops.gov.il/Pages/Firearm_LicensingCriterion.aspx (in Hebrew).

⁴ Firearms Law § 1 (translated by author, R.L.).

⁵ Firearms Law § 5A.

⁶ *Id.* § 5C.

⁷ Firearms Regulations (Training for the Grant and Renewal of a License), 5752-1992, KOVETZ HATAKANOT (Subsidiary Regulations) No. 5415 p. 668 (in Hebrew).

⁸ Firearms Law §§ 7, 7C.

⁹ *Id.* § 7A1.

2. Persons Who May Obtain a License

The Law authorizes the Minister of Interior and the Minister of Defense (hereinafter licensing authorities) to issue licenses to the following individuals:

- The leader of a community for the protection of the people and property of, and traffic to and from, the community;¹⁰
- The owner or manager of an eligible establishment to protect the premises, its employees, and traffic;¹¹
- An employee designated by a Minister for security purposes in connection with the functions of the employees of that ministry;¹²
- The producers of a film or a play, or people authorized by them to carry a licensed firearm during a performance;¹³
- The holder of a license for guard or private investigator services under conditions prescribed in the special license;¹⁴
- Escorts for field trips or camping trips, provided that the application is made in advance as prescribed by the licensing authority.¹⁵

3. Mental Health Requirements

The Law establishes a reporting requirement to the manager of the Ministry of Health for any physician, psychologist, mental health officer, or social worker regarding any patient under their care whom they suspect has, or if had access to, a firearm would constitute a danger to himself or to the public. Such a report may be forwarded by the manager to the IDF¹⁶ or to state security agencies such as the police or prison authorities, who routinely inform the Ministry of Health of the names of their applicants for employment.¹⁷

License applications and information regarding security agencies' employment applicants' eligibility must be forwarded by licensing officials to the manager, who will inform them of any finding of records involving mental health hospitalizations of the applicants.¹⁸

¹⁰ *Id.* § 9.

¹¹ *Id.* § 10.

¹² *Id.* § 10A.

¹³ *Id.* § 10B.

¹⁴ *Id.* § 10C.

¹⁵ *Id.* § 10D.

¹⁶ *Id.* § 11A(a).

¹⁷ *Id.* § 11A(b).

¹⁸ *Id.* § 11B.

4. Police Authorities

A person who carries a firearm must carry his¹⁹ license or authorization with him at all times and present them to any policeman who so requires.²⁰ A person who possesses a licensed firearm must deposit it at the police station at the place of his residence or occupation after expiration of his license. Special provisions apply to the seizure of firearms suspected of being involved in the perpetration of offenses.

5. Confiscation of Firearms and Revocation of Licenses

The Law imposes double penalties for committing offenses while using firearms.²¹ In addition, a court that convicts a person of an offense against the Firearms Law may order the firearm to be forfeited to the state.²²

In addition, the conviction of a person for a violent offense may, upon the prosecutor's request, result in an order for the cancellation of the person's firearm license and in license ineligibility for a period defined by the court. The conviction may also result in an order that the convicted person deposit his firearm at the police station close to his place of residence or business.²³ Such an order may also be prescribed by a court, upon a prosecutor's request, in cases involving convictions for domestic violence offenses.²⁴

B. Ministry of Public Security Criteria for Licensing of Firearms

The Minister of Public Security is authorized to implement the Firearms Law.²⁵ According to information posted on the Ministry of Public Security (MOPS) website, the Ministry's policy is to limit the number of firearms available to the public, while giving preference to authorized organizations and their employees.²⁶ Indeed, whereas in the late 1980s during the first *Intifada* the number of private citizens who held firearms licenses reached 300,000, by June 2012 this number had been reduced to 170,000 and continues to decline.²⁷

¹⁹ Any reference to males in this report applies equally to females.

²⁰ Firearms Law § 13.

²¹ *Id.* § 17.

²² *Id.* § 18.

²³ *Id.* § 18A.

²⁴ *Id.* § 18B.

²⁵ *Id.* § 21. Note that implementation authorities were initially prescribed to the Minister of the Interior but were transferred to the Minister of Public Security on March 17, 2011, with firearms licensing authorities transferred to the head of the firearms licensing division in that Ministry on September 12, 2011. See YALKUT HAPISUMIM [Government Notices] No. 6214 p. 3162 (2001) and No. 6292 p. 6468 (2011), respectively.

²⁶ See *Criteria for Grant of a License for Personal Possession of a Firearm*, *supra* note 3.

²⁷ Tal Wolfowitz & Nitsan Shiri, *Deadly Weapon*, 1 DOMESTIC SECURITY 41 (June 2012), <http://mops.gov.il/Documents/Publications/MopsNewsletter/MNL1June2012/MopsNewsletterFatalWeapon%20-p%2040-43.pdf> (in Hebrew). See also, Yakov Amit, *History of Firearm Licensing in Israel*, MOPS, http://mops.gov.il/English/AboutUsEnglish/Firearm/Pages/History_Firearm.aspx (last visited Dec. 17, 2012). Yakov Amit is the head of the Firearm Licensing Department at the Ministry of Public Security.

According to the MOPS website, a person who wishes to obtain a firearm license must meet one of the criteria for issuance of a firearm license, as determined by the Minister in collaboration with security authorities. The current list of criteria is available on the Ministry's website²⁸ and is discussed below. A license is valid for a period of three years after which it must be renewed.²⁹

The following discussion describes the evolution of criteria established by the MOPS from the mid-1990s to today.

1. Firearms' Licensing Criteria: 1995–2011

The Ministry's policy of restrictive licensing has evolved since the mid-1990s. A 1992 shooting at a psychiatric ward, killing four social workers, by a patient who as a security guard had a license to carry a weapon, prompted the appointment of the Cohen Inter-office Committee. The Committee reexamined the then-existing criteria for issuing firearms licenses and made recommendations that became the basis for new criteria adopted in 1995. According to these criteria, in addition to the criteria established by the Law, the issuance of firearms licenses is restricted to people who reside or work in dangerous geographic locations, those employed in lines of work requiring extra security, and groups involved in the country's public security.³⁰

Further firearm licensing reform took place in 1999 and resulted in the introduction of additional preconditions. License applicants, accordingly, are required to complete proper firearms training and submit a health declaration verified by a family doctor attesting to their fitness to use a firearm. According to information posted on the MOPS website, the passage of the new restrictions has resulted in the reduction of the number of invalid licenses from 72,000 in 1999, to 33,000 after the initial introduction of the restrictions, and to less than 9,000 as of March 2012. Apparently, “[m]any of the people with invalid licenses are elderly individuals who are not aware of the new changes and requirements.”³¹

The head of the MOPS Firearm Licensing Department, Yakov Amit, counted the sharp decline in the number of licenses, and the “[a]dvancement of capabilities” resulting from “the more stringent training requirements,”³² as some of what he saw as accomplishments of the 1999 reform.

2. Firearms Licensing Criteria: August 2011–Present

²⁸ *Criteria for Grant of a License for Personal Possession of a Firearm*, *supra* note 3.

²⁹ SHELI MIZRAHI, FIREARM LICENSES FOR PRIVATE CITIZENS: POLICY AND NUMERICAL DATA 2 n.10 (Knesset Information and Research Center, July 5, 2010), <http://www.knesset.gov.il/mmm/data/pdf/m02587.pdf>.

³⁰ Amit, *supra* note 27.

³¹ *Id.*

³² *Id.*

New firearms licensing criteria were approved by the Minister for Public Security in August 2011. In addition to the criteria established by the Law, submission of a health form and training,³³ the new rules require proof of permanent residence and uninterrupted stay in Israel for a period of at least three years, and a basic knowledge of the Hebrew language.³⁴ They also establish minimum age requirements—twenty-seven for citizens with no military or national service ties, twenty-one for those who served in the Israel Defense Force (IDF) or national service, and forty-five for permanent residents who are not citizens.³⁵

In addition, the 2011 criteria introduced a requirement of proof of “a cause that presumably justifies issuing a firearm license to an individual.”³⁶ Such causes include residence or employment at locations that have been approved for firearms possession.³⁷ To obtain a gun license based on these grounds the applicant must submit proof that his life is centered in the approved municipality or that most of his work for three months preceding the application was performed there. A license based on these grounds is limited to “one gun and fifty additional bullets.”³⁸

Other causes that create a presumption of a justification for the issuance of a firearm license for individuals include the transfer of explosives by a person licensed to do so, and the submission of invoices issued within the preceding three months or an income tax certificate attesting to the applicant’s income from this occupation. A license based on this ground is similarly limited to “one gun and fifty additional bullets.”³⁹

High-ranking regular service officers at the captain ranking or higher in the IDF, or at a lieutenant or equivalent level in other security forces, who have served at least two years at this rank,⁴⁰ and reservists who belong to special reserve units, are similarly qualified for a restricted license for the possession of “one gun and fifty additional bullets.”⁴¹ An application for a license under these circumstances must include a recommendation by a unit commander at the rank of an IDF lieutenant colonel or higher, or the equivalent in other security services.⁴²

A gun license may also be issued to retired officers at the rank of lieutenant colonel or higher and to reservists’ officers at the rank of captain or higher, or to persons at equivalent ranks in other security forces. A license may also be issued to security officers in a public institution

³³ *Criteria for Grant of a License for Personal Possession of a Firearm*, *supra* note 3, at 2, items 3-4.

³⁴ *Id.* at 2, item 1.

³⁵ *Id.* item 2.

³⁷ For example, dangerous locations requiring self-protection.

³⁸ *Criteria for Grant of a License for Personal Possession of a Firearm*, *supra* note 3, at 3, items 1-2. The text uses the term "אקדה" which means a gun, not the general term "כלי ירייה" which means a firearm.

³⁹ *Id.* item 3.

⁴⁰ *Id.* item 4.

⁴¹ *Id.* item 6.

⁴² *Id.* items 4 & 6.

who were trained by the police and who have at least one year of experience on the job, and to other persons who are identified by the police or other security agencies as having a “special interest” for the purpose of gun possession. As in other cases, these licenses apply to the possession of “one gun and fifty additional bullets.” Specific documentation and recommendations are similarly required.⁴³

In addition to certain high-ranking security officers, firefighters and *Magen David Adom*⁴⁴ employees with at least one year experience may be eligible for a license for “one gun and fifty additional bullets.”⁴⁵

Instead of a license limited to “one gun and fifty additional bullets,” an active “sportsman/woman” may qualify for a license for possession of a “firearm” that is recognized by the licensing authority as a firearm approved for sporting purposes, and for ammunition, as determined by a shooting association.⁴⁶ Similarly, a license may be issued to a licensed hunter for a firearm recognized by the licensing authority as one used for hunting purposes, in addition to 700 bullets,⁴⁷ or to an authorized person for possession and use of a firearm that was similarly approved for “treatment of agricultural harm” as well as for 700 bullets.⁴⁸

As a general rule, an individual who qualifies for a license may be eligible for only one firearm. Possession of additional firearms may be licensed for special reasons, including when the additional firearm is an air or BB gun, when it is designed to be held as memorabilia, or when it is required for different fields of sports or for the prevention of harm to agriculture.⁴⁹

III. Authorization for Possession of Military Firearms

A. Soldiers on Home Leave

The duties of soldiers to carry and safeguard personal weapons are regulated by orders issued by the IDF Central Command. As a general rule a soldier will not take his gun on home leave.⁵⁰ Exceptions to this rule apply to soldiers who

1. serve in combat units;
2. serve in the West Bank or in other areas specified by an order for this purpose;

⁴³ *Id.* items 5, 6, 8 & 9.

⁴⁴ Magen David Adom is Israel’s medical service association, equivalent to the Red Cross. For additional information, see the Magen David Adom website, <http://www.mdais.com/271/> (last visited Dec. 20, 2012).

⁴⁵ *Criteria for Grant of a License for Personal Possession of a Firearm*, *supra* note 3, items 10-11.

⁴⁶ *Id.* item 12.

⁴⁷ *Id.* item 14.

⁴⁸ *Id.* item 13.

⁴⁹ *Id.* § 3.

⁵⁰ IDF Central Command Order No. 2.0101, Duty for Carrying and Safeguarding Personal Weapons, issued June 15, 1986, updated Oct. 11, 2007, § 5, <http://dover.idf.il/IDF/pkuda/020101.doc> (in Hebrew). The Order uses the term נשק, correlating to “weapon” in the English language.

3. who were authorized by their unit officer at the rank of a colonel or higher for reasons of personal safety associated with their home or service location; or
4. who are officers whose request for a personal military weapon was approved by their unit officer at a ranking of a colonel or higher.⁵¹

The IDF recognizes that personal weapons are an attractive target for theft by both terrorist and criminal elements.⁵² According to news reports from September 2012, in an effort to prevent weapons theft IDF has prohibited soldiers belonging to a specific combat unit from carrying their personal weapons while on leave. According to IDF sources, soldiers of that unit were subjected to a very strict sorting procedure at the end of which a determination would be made with regard to soldiers' eligibility for carrying weapons while on home leave.⁵³

B. Persons Belonging to Special IDF Units

Persons serving in special IDF programs that involve a combination of both military and other duties may be issued military weapons under special personal authorizations and subject to numerous conditions that include similar health and training requirements, authorizations from relevant authorities, and a temporary trial period before a weapon is issued by IDF. Such programs include the Yeshivat Ha-Hesder, for military and religious training, or the Nahal Brigade, which combines military service and the establishment of new agricultural communities.⁵⁴ Special requirements regarding safeguarding and storage are specified by the military order under which weapons can be distributed in these circumstances.⁵⁵

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⁵¹ *Id.* § 7.

⁵² *Id.* § 2.

⁵³ Yoav Ziton, *Combatants on Condition, Depositing Weapons Before Leave*, YNET (Sept. 19, 2012), <http://www.ynet.co.il/articles/0.7340.L-4283806.00.html> (in Hebrew).

⁵⁴ *Nahal Brigade*, IDF, <http://www.idf.il/1515-en/Dover.aspx> (last visited Dec. 18, 2012).

⁵⁵ IDF Central Command Order No. 2.0107, *Delivery of Military Weapons to Civilians*, issued Mar. 1, 1981, updated Sept. 26, 2006, <http://dover.idf.il/IDF/pkuda/020107.doc> (in Hebrew).

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SWITZERLAND

FIREARMS CONTROL LEGISLATION AND POLICY

Executive Summary

Switzerland has a comprehensive gun control regime that is governed by federal law and implemented by the cantons. This regime may be somewhat less restrictive than that of other European countries, yet since 2008 it has complied with European Union requirements. The Swiss Weapons Act requires an acquisition license for handguns and a carrying license for the carrying of any permitted firearm for defensive purposes. Exceptions exist for hunters. Automatic weapons are banned.

Swiss militiamen may keep their issued personal weapon in their home. A popular referendum to prohibit this practice was rejected in February 2011.

I. Development of Swiss Gun Control Law

The Swiss practices on the acquisition, possession, and use of firearms are shaped by gun control legislation that applies to the civilian population¹ and by regulations on the handling of firearms issued to militiamen.² These two regulatory systems aim at preventing abuse of firearms while upholding the statutory right to bear arms,³ which is based on longstanding Swiss traditions.⁴

Until 1999, the handling of weapons suitable for private possession was regulated at the cantonal level and some of the cantons had very permissive gun control regimes.⁵ The cantonal

¹ Bundesgesetz über Waffen, Waffenzubehör und Munition [WG] [Federal Act on Weapons, Weapons Accessories and Ammunition], June 20, 1997, as amended, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS [SR] 514.54, http://www.admin.ch/ch/d/sr/c514_54.html.

² Verordnung des VBS über die persönliche Ausrüstung der Armeeangehörigen [VPAA-VBS] [Defense Department Regulation on the Personal Equipment of Members of the Army], Dec. 9, 2003, as amended, SR 514.101, http://www.admin.ch/ch/d/sr/c514_101.html. The Swiss militia system is discussed in Part III, below.

³ WG art. 3 provides that “the right to acquire, possess, and carry weapons is guaranteed within the framework of this Act” (translated by author). The federation has legislative power to prevent the abuse of weapons. Bundesverfassung [BV] [Constitution] art. 107, translation at <http://www.admin.ch/ch/e/rs/c101.html>.

⁴ HANS WÜST, SCHWEIZER WAFFENRECHT 16 (1999).

⁵ Frank Csaszar, *Waffenrecht und Schusswaffenkriminalität*, ÖSTERREICHISCHE RICHTERZEITUNG 180 (1994).

laws were held together loosely by an inter-cantonal Weapons Concordat that allowed Switzerland to have the most permissive policy on gun control in all of Europe.⁶

Until the late 1980s, this lack of uniformity in gun control worked well for Switzerland. Crime rates were low and the Swiss were comfortable with private gun ownership due to the militia system. In the early 1990s, however, the crime rate increased, and Swiss guns were frequently implicated in the European terrorist scene and in the wars that ravaged former Yugoslavia. These circumstances led to a climate of domestic and international pressure that persuaded the Swiss to abandon their *laissez faire* attitude toward firearms and start the cumbersome legislative process of enacting a federal weapons law.⁷

The first federal gun control law (hereinafter the Weapons Act) became effective in Switzerland on January 1, 1999.⁸ As originally enacted, the Weapons Act brought a gun control regime that was similar to the gun control laws of neighboring countries, albeit less restrictive. Between 2004 and 2010, several amendments made the Weapons Act more stringent.

A significant revision was occasioned by Switzerland's accession to the Schengen Agreement, the common border regime of the European Union (EU).⁹ This Revision of the Act¹⁰ became effective on December 12, 2008, the day of Switzerland's accession to the Schengen regime,¹¹ and its primary purpose was the transposition of the European Union's Weapons Directive¹² into Swiss law.¹³ Among these newly enacted measures was the introduction of the European Firearms Pass.¹⁴ Although Switzerland is not an EU Member State, it has close ties with the EU and many of its laws are harmonized with EU law.¹⁵

⁶ *Id.*

⁷ Bericht der Sicherheitspolitische Kommission des Nationalrats, Oct. 16, 1992, BUNDESBLATT [BBL.] 625 (1993).

⁸ Bundesgesetz über Waffen, Waffenzubehör und Munition, June 20, 1997, AMTLICHE SAMMLUNG DES BUNDESRECHTS [AS] 2535 (1998).

⁹ Council Decision (1999/435/EC) of 20 May 1999 concerning the definition of the Schengen *acquis* for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the *acquis*, 1999 O.J. (L 176) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999D0435:EN:HTML>, valid for Switzerland since Dec. 12, 2008. See Eidgenössisches Justizdepartement, Schengen, http://www.bfm.admin.ch/content/bfm/de/home/themen/schengen_dublin/schengen.html (last modified Oct. 27, 2011).

¹⁰ Bundesbeschluss, Dec. 17, 2004, art. 3 no. 6, AS 447 (2008), <http://www.admin.ch/ch/d/as/2008/447.pdf>.

¹¹ Verordnung, Nov. 26, 2008, AS 5405.

¹² Council Directive 91/477/EEC of 18 June 1991 on the control of the acquisition and possession of weapons, 1991 O.J. (L 256) 51, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0477:EN:HTML>.

¹³ Botschaft, Jan. 11, 2006, no. 1.4.4, BBL. 2713 (2006).

¹⁴ Council Directive 91/477/EEC of 18 June 1991 on the control of the acquisition and possession of weapons, 1991 O.J. (L 256) 51, Annex II, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0477:EN:HTML>.

¹⁵ CHRISTIAN H. KÄLIN, SWITZERLAND, BUSINESS & INVESTMENT HANDBOOK 65–76 (3rd ed. 2011).

After several incidents in which militiamen killed themselves or others with the issued weapons, reforms were also proposed for a Regulation that allows members of the Swiss militia to keep their assigned personal weapon in their home.¹⁶ In 2010, this Regulation was amended to allow members of the militia to voluntarily deposit their issued firearm in the armory.¹⁷

On February 13, 2011, a popular referendum was held on a proposal that would have made Swiss gun control laws stricter in several ways. The proposal called for an end to the practice of letting militiamen keep their weapons at home. In addition, it proposed that gun registration should be carried out by the federation instead of the cantons, and that for a weapons acquisition license, the applicant would have to prove a need for the weapon and the skill and knowledge to handle it.¹⁸

The Swiss Parliament and the Federal Cabinet advised against the referendum on the grounds that the existing laws were sufficient to protect against gun abuse.¹⁹ The referendum was rejected by 56.3% of those voting, and the voter participation of 49.1% was high as compared to other referenda.²⁰

In September 2012, the Swiss Federal Cabinet recommended a package of measures to the Parliament in response to a parliamentary request for a study on how gun control could be improved.²¹ These included the following:

- The military leadership should be informed if, in the course of a pending criminal investigation, it becomes apparent that a member of the militia may endanger himself or others with a weapon.
- The Code of Criminal Procedure should be amended to facilitate such communications.
- The cantonal police should seize weapons as instructed by the courts or prosecutors, or by acting on their own decision in case of an imminent danger.

¹⁶ Martin Furrer, *Heute wird die Ordonnanz-Waffen Initiative eingereicht*, TAGES-ANZEIGER 1 (Feb. 23, 2009).

¹⁷ Verordnung des VBS über die persönliche Ausrüstung der Armeeangehörigen [VPAA-VBS] [Defense Department Regulation on the Personal Equipment of Members of the Army], Dec. 9, 2003, art. 35a, SR 514.101, as introduced by Verordnung, Dec. 2, 2009, AS 6735 (2009).

¹⁸ Volksinitiative “Für den Schutz vor Waffengewalt”, <http://www.bj.admin.ch/content/ejpd/de/home/dokumentation/abstimmungen/2011-02-13.html> (last modified May 1, 2012).

¹⁹ Press Release, Eidgenössisches Justizdepartement, Bundesrat lehnt Volksinitiative “Für den Schutz vor Waffengewalt” ab (Dec. 16, 2009), <http://www.ejpd.admin.ch/content/ejpd/de/home/dokumentation/mi/2009/2009-12-16.html>.

²⁰ *Id.*

²¹ Bericht des Bundesrates, Sept. 5, 2012, <http://www.bj.admin.ch/content/dam/data/pressemitteilung/2012/2012-09-050/ber-br-d.pdf>.

- The sharing of information from federal databases on denials of weapons licenses and criminal records should be facilitated.
- Cantonal and federal databases with pertinent information for cantonal weapons licenses should be linked.

II. Statistics

On the occasion of the 2011 gun control referendum, the Swiss Federal Police compiled statistics on gun-related crimes.²² These showed that during 2009 the police investigated 236 homicides, of which 55 were allegedly committed with a gun.²³ During the same year, 524 aggravated batteries were reported, 11 of which involved gun use, and 3530 robberies were reported, of which 416 were committed with a gun.²⁴ Switzerland has a population of 7.9 million.²⁵

The Swiss Statistical Office prepared a chart that lists the number of deaths caused by guns during the years 1995 through 2010.²⁶ According to these figures, 70 to 90% of the reported deaths were suicides. The figures also show a gradual decrease of deaths by gun use from an overall number of 444 deaths in 1998 to 241 deaths in 2010.

The Statistical Office also stated that 17% of all suicides reported in 2009 were committed with a gun, and that 9% of the suicides committed with a gun were committed with a military weapon.²⁷

III. The Militia System

In Switzerland, military service is compulsory for all able-bodied men and alternative civil service is only available for conscientious objectors. Those unwilling to serve must pay a fine.²⁸ Conscription begins at age nineteen²⁹ and the duty to serve ends between the ages of thirty-four and fifty, depending on the rank of the militiaman.³⁰

²² Bundesamt für Statistic, Tatmittel Schusswaffe, <http://www.bfs.admin.ch/bfs/portal/de/index/themen/19/03/02/dos/03.html>.

²³ *Id.* (click on excel spreadsheet “Tatmittel Schusswaffe 2009”).

²⁴ *Id.*

²⁵ *Switzerland Population*, INDEX MUNDI, <http://www.indexmundi.com/switzerland/population.html> (last visited Dec. 21, 2012).

²⁶ Bundesamt für Statistic, Tatmittel Schusswaffe, <http://www.bfs.admin.ch/bfs/portal/de/index/themen/19/03/02/dos/03.html> (click on “Schusswaffentodesfälle 1995-2010”).

²⁷ Bundesamt für Statistic, Schusswaffensuizide (Jan. 14, 2011), <http://www.bfs.admin.ch/bfs/portal/de/index/news/03.html> (click on “Schusswaffensuizide Stellungnahme BFS”).

²⁸ BV art. 59.

²⁹ Militärgesetz, Feb. 3, 1995, as amended, art. 9, SR 510.10, http://www.admin.ch/ch/d/sr/c510_10.html.

³⁰ *Id.* art. 12.

Militiamen are issued personal equipment, which includes a personal weapon and ammunition.³¹ The militiaman is authorized to keep the weapon in his home,³² unless he decides to deposit it in his unit's armory.³³ When the militiaman retires, he may keep the personal weapon,³⁴ provided it has been properly maintained by the qualified technicians of his military unit.³⁵

If there is danger of abuse or improper handling or maintenance of the weapon, the commandant of the military unit will confiscate the personal weapon.³⁶ The police, courts, and prosecutors may inform the commandant of circumstances that call for the confiscation of the weapon.³⁷ Abuse or mishandling of weapons is punishable either by a disciplinary measure or by imprisonment or a fine, depending on the circumstances.³⁸

IV. Current Gun Control Law

A. Overview

The Weapons Act contains a comprehensive regime for the licensing of the acquisition and carrying of permitted weapons, the banning of certain weapons including automatic firearms, and the production and trade in weapons including the reporting obligations of dealers and a registration system that covers all privately owned guns, including those acquired by inheritance, but not including hunting rifles. The federal Weapons Act is implemented by the cantons and the cantons also keep registers of privately owned guns. The provisions on ammunition are in keeping with the principles of the Act, which aims to deter abuse while permitting lawful gun ownership.³⁹

B. Acquisition of Guns

An acquisition license is required primarily for handguns. Rifles and semi-automatic long arms that are customarily used by recreational hunters are exempt from the licensing requirement⁴⁰ whereas fully automatic guns are banned.⁴¹ An applicant for a weapons license must be at least eighteen years of age, may not have been placed under guardianship, may not

³¹ Verordnung SR 514.101 arts. 1–7.

³² *Id.* art. 30.

³³ *Id.* art. 26.

³⁴ *Id.* art. 44.

³⁵ *Id.* art. 44 in conjunction with art. 12.

³⁶ *Id.* arts. 7, 35–36.

³⁷ *Id.*

³⁸ Militärstrafgesetz art. 72 SR 321.0.

³⁹ BUNDESAMT FÜR POLIZEI FEDPOL, SCHWEIZERISCHES WAFFENRECHT (July 2010), [http://www.bj.admin.ch/content/dam/data/sicherheit/waffen/Brosch%
c3%bcre/waffenbrochuere-d.pdf](http://www.bj.admin.ch/content/dam/data/sicherheit/waffen/Brosch%c3%bcre/waffenbrochuere-d.pdf).

⁴⁰ Weapons Act art. 10.

⁴¹ *Id.* art. 4.

give rise to suspicion that he would endanger himself or others with the weapon, and may not have a criminal record of a conviction for a violent crime or of several convictions for nonviolent crimes.⁴² The license is issued by the canton of residence of the applicant but is valid throughout Switzerland. The license is valid for six months, maximally nine months.⁴³ It is usually valid for the acquisition of one weapon only.⁴⁴

The acquisitions license is required only if a weapon is acquired from a dealer. No license is required for transactions between private individuals. Instead, these are permitted as long as the seller verifies the identity and age of the buyer by checking an official identification document and as long as he has no reason to believe that the buyer is or should be disqualified from gun ownership. The buyer may ascertain these circumstances by requesting information from the cantonal authorities, but only if the buyer consents in writing.⁴⁵

C. Carrying of Guns

The carrying of a gun for defensive purposes requires a carrying license, which will be granted only if the applicant is qualified to acquire guns; demonstrates a need for the weapon to protect himself, others, or property against existing dangers; and has passed an exam to test his required theoretical knowledge and practical skill.⁴⁶ The theoretical exam tests knowledge of

- criminal provisions on violent crimes and self-defense, and necessity as a justification or excuse;
- federal and cantonal weapons law provisions;
- types of weapons and ammunition; and
- security measures and proper conduct when carrying weapons.⁴⁷

The practical examination tests the applicant's skill in handling the weapon, including loading, unloading, operating the safety device, and shooting.⁴⁸

A carrying license permits the concealed carrying of a handgun.⁴⁹ No carrying license is required for the transporting of an unloaded weapon for legitimate purposes such as travel to and

⁴² *Id.* art. 8(2).

⁴³ *Id.* art. 9.

⁴⁴ *Id.* art. 9b.

⁴⁵ *Id.* art. 10a.

⁴⁶ Reglement über die Prüfung für die Waffentragbewilligung [Regulation on the Examination for the Weapons Carrying License], Sept. 21, 1998, as amended, SR 514.546.1.

⁴⁷ *Id.* art. 3.

⁴⁸ *Id.* art. 4.

⁴⁹ *Id.* art. 27.

from the shooting range or hunting environment, as long as the ammunition is kept separate from the weapon.⁵⁰

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⁵⁰ *Id.* art. 28.