

## **THE AUSTRALIAN FIREARMS EXPERIENCE**

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I have been involved in the gun control debate for over 25 years; I have keenly observed the debate in Australia, in the United States and in Britain. Each country has vocal proponents on each side of the debate. I have seen the reporting of public mass shootings in Germany, New Zealand, Canada, Norway, Scotland, England and, of course, the US. In each country people have wrung their hands and wept at the loss of life from public mass shootings. Images on television of shocked family members waiting to hear if their loved ones have died or survived the latest mass shooting are universal. There is no distinguishing feature that marks out the impact from country to another.

However, when it comes to one feature, the United States stands apart from everywhere else. That feature is the National Rifle Association or NRA – generally regarded as the most powerful and influential lobbying organisation in the world. The NRA has managed to reduce the issue of gun violence to a cliché. That is, “guns don’t kill. People do”. With the benefit of the Second Amendment to the United States Constitution behind it, and also the funding and industrial muscle of one of the world’s largest armaments industry, the NRA can afford to run its public debates on the basis of clichés and a huge advertising budget. Nothing can stand in the way of gun sales and gun ownership; not even a heavy toll on human lives.

In Australia, the experience is vastly different. We have no arms manufacturing industry to speak of. We have no constitutional impediment to gun control and we have what gun control advocates regard as a more apt cliché: “Guns don’t kill, people with guns do”.

In both our countries the firearm control debate has two prominent viewpoints; one view sees firearms as a threat to public health and to be regulated as such, with a focus on the availability of the gun and type of gun. In this way, guns are regulated like tobacco, alcohol and/or drugs. The other viewpoint has as its focus the control on the user, with little concern about access to or availability of guns. This is the “gun criminals” or “law and order” model, where the answer to gun crime is seen as tougher sentences coupled with glib assertions, such that if more people had guns (ie for self-defence) then there would be less gun-related crime. This approach can be traced to the United States’ debate on firearms, heavily influenced as it is by the 2<sup>nd</sup> Amendment. In the US, this influence on debate is pervasive. The 2<sup>nd</sup> Amendment is also said to make immune from legislative action the possession and use of virtually all types of firearms. In reality, the US Supreme Court does not see the 2<sup>nd</sup>

Amendment in such terms, and the extent of the immunity conferred is unclear<sup>1</sup>. It is certainly not an unlimited right.

In Australia, where there is no express or implied constitutional right to use or possess a firearm, efforts have been made to introduce and/or have recognised such a right in Australian law, usually by reference to the UK *Bill of Rights 1688*<sup>2</sup>. Even though these efforts have been without any success, the (US) theory of a right to bear arms influences the thinking of many of those involved in the debate about firearms control in Australia - whether as academics or professional lobbyists - who seek something upon which to support their arguments.

After a public shooting in 1996, the debate in Australia changed forever. The public health model has prevailed. Gun deaths have decreased and public mass shootings have ceased. Australia is a safer place under the public health model.

In the US in contrast, the law and order model prevails. The US, with basically one gun per man, woman and child, has the highest rate of gun ownership in the world. By way of comparison with Australia, the US has approximately 10 times the population of Australia, but has about 100 times the gun death rate. No US gun lobbyist has ever explained this discrepancy. One thing is for sure; the possession of guns for self-defence (being the predominant justification for gun ownership in the US) shows no evidence at a national level of effectively reducing the gun death rate in that country.

After the Vietnam War, the march of technology had 2 consequences. First of all, many of the standard weapons of the time faced redundancy with the introduction in 1980 of the new high powered NATO standard of ammunition. Hence, large numbers of surplus semi-automatic military rifles were dumped on civilian markets with weak gun control measures. These guns poured into Australia, particularly in the 1970s and 1980s. Second, newer guns were more “efficient” and “effective” and “lethal”, able to fire lighter and faster projectiles with greater power.

Through the 1980s and the first part of the 1990s in Australia, public mass shootings with ex-military weapons were occurring more and more regularly. Death tolls of up to 8 people became common in major shootings in public places in capital cities such as Sydney and Melbourne. After two major shootings within a period of 5 months in Melbourne, the Australian Government set up the National Committee on Violence to examine the causes of

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<sup>1</sup> See, for example, *District of Columbia et al. v. Heller* (2008) (No. 07-290) 478 F. 3d 370 where the majority opinion (of 5 Justices) stated the right was not unlimited, and where there were 2 dissenting opinions as to the ambit of the 2<sup>nd</sup> Amendment.

<sup>2</sup> A notable example was *Essenberg v The Queen* B54/1999 [2000] HCATrans 385 (22 June 2000) where an argument was rejected that the Bill of Rights 1688 limited in some way the power of state parliaments to legislate to control firearms. See also *Essenberg v The Queen* B12/2002 [2003] HCATrans 836 (25 June 2003) where a similar argument was resoundingly rejected.

violence in Australia. Put simply, Australians did not accept this level of public violence. Answers and solutions were sought.

The Committee was comprised of Police Commissioners and other government and criminological representatives, psychiatrists and health experts. It heard submissions from all around Australia. It made a number of critical recommendations, particularly in relation to firearms. They are set out below, because they were landmark recommendations at a time of grave concern for violence in Australia:

***Recommendation 54. All Governments should take appropriate action to minimise death and injury arising from the accidental or intentional use of firearms by:***

***Recommendation 54.1. The enactment of uniform legislation throughout Australia to regulate the acquisition and possession of firearms.***

***Recommendation 54.2. The introduction, through the Australian Police Ministers Council, of uniform guidelines for all Australian police forces in the enforcement of firearms legislation.***

***Recommendation 54.3. Development of a national gun control strategy aimed at***

- **reducing the number of firearms in Australian society**
- **preventing access to those weapons by individuals who are not fit and proper persons, such as those who have been convicted of violent crime or who have demonstrated a propensity for violence.**

**The Committee recommends the following specific strategies:**

***Recommendation 55. The Federal Government should undertake the following action:***

***Recommendation 55.1. Military weapons: sales of surplus military weapons should be prohibited to prevent their use in Australia. The importation of military-style weapons for use other than by law enforcement officers or defence force personnel should be prohibited. The Federal Government should provide a generic statement to specify what firearms are importable.***

***Recommendation 55.2. Mail order firearms: if the Federal Government has the constitutional power, the sale of mail order firearms should be prohibited. If it does not have such powers, and in the absence of uniform State and Territory licensing laws, the mail order sales of firearms should be restricted by using, for example, legislation relating to dangerous goods.***

***Recommendation 55.3. Rifle clubs established under the Defence Act should be brought under the ambit of State and Territory licensing and registration requirements.***

***Recommendation 56. The Federal Government should use its corporations power under the Constitution, as well as its powers to regulate trade and commerce, and imports, in furtherance of a national gun control strategy.***

***Recommendation 57. The State and Territory Governments should undertake the following action:***

***Recommendation 57.1. Prohibition of all automatic long arms and certain types of ammunition.***

***Recommendation 57.2. Restriction of semi-automatic long arms to***

**individuals with a specific need.**

***Recommendation 57.3. Restriction of sales of ammunition by licensed gun shops only, to licensed individuals only, for personal use of a specific firearm.***

***Recommendation 57.4. Registration: all firearms should be registered in a computerised national firearms registry.***

***Recommendation 57.5. Licensing: ownership or possession of a firearm to be restricted to those possessing a valid licence. The prerequisites for obtaining a shooter's licence should be those in existing legislation, together with the following:***

- **must be over the age of 18 years**
- **limited to fit and proper persons with good reason**
- **a 28 day cooling-off period between application and grant of the licence, during which time appropriate checks can be made**
- **training, competence and safety consciousness must be demonstrated to the licensing authority**
- **hand gun licences should be restricted to authorised security personnel and members of pistol clubs, with weapons stored on the premises.**

***Recommendation 57.6. Security: mandatory measures to be introduced for the safe-keeping of all weapons in an inoperable condition in secure storage, both by individuals and businesses, with appropriate penalties for non-compliance.***

***Recommendation 57.7. Seizure: in the event of a licensed owner giving reason to believe that he/she is no longer a fit and proper person, for example by using the weapon in a threatening way, there should be provision for mandatory seizure of all firearms in his/her possession.***

***Recommendation 57.8. Restrictions on private sales: all sales of firearms, including secondhand sales, to be made through licensed gun dealers, and any change of registered owner should be notified through the proposed registration mechanisms referred to in (57.4) above.***

***Recommendation 57.9. Amnesties: a permanent amnesty for the surrender of unauthorised firearms should be implemented, with conditions similar to those provided in the temporary amnesties which have been introduced from time to time in various jurisdictions.***

***Recommendation 58. The use of a firearm in the commission of a crime should be regarded as an aggravating circumstance by sentencing authorities.***

Following the release of the Committee's report in 1990 the Australian Government, through various intergovernmental leaders' groups, tried to steer the 8 Australian States and Territories – which were largely responsible for firearm control laws – to move towards a uniform scheme with tougher standards on storage, registration of all guns, limits on the type of weapons available and, also, the introduction of a licencing system for all gun owners.

Through this same period (ie the first half of the 1990s) the firearm suicide rate in Australia was climbing. Public mass shootings continued. And the State of Tasmania stymied any move

for uniform laws for registration and licencing. Put simply, Tasmanian politicians were not leading. They were following the shooters. The law and order model prevailed. As a federation of 6 States and 2 Territories there was a patchwork of firearm regulations in the different jurisdictions. Some states such as Tasmania and Queensland had very weak controls. Other states had moderate controls. There was no uniformity.

As part of the federation, the Australian Government had no constitutional power to regulate firearms directly, though it could regulate the import of firearms into Australia. Hence, any state based reform that the Australian government sought to foster had to be achieved by consensus.

Tasmania had the highest rate of gun deaths in Australia and the highest number of guns per head of population. It had the highest suicide rate. In the late 1980s in Tasmania there was no regulation of guns; a bazooka could legally be purchased by anyone, providing they were over the age of 16. A Bill put up by an independent Member of Parliament for tougher guns laws floundered and was never even debated by the Tasmanian Parliament.

On 28 April 1996 the gun law debate in Tasmania and in Australia changed forever. A young man armed with an American military rifle and an ex-Australian military rifle killed 35 people and grievously injured 18 others at a relatively isolated public historic site called Port Arthur 1 ¼ hours' drive from Hobart (the State's capital).

This event was a catalyst for change throughout Australia. It led to the introduction of uniform gun laws in Australia.

In April 1996 conservatives were in power in each State and Territory of Australia. Also, only a month earlier the conservatives had been elected as the Australian Government.

It consequently fell to the conservative leader and Prime Minister, John Howard, to fashion the nation's response to the Port Arthur Massacre. Within 2 weeks of the shooting, the Prime Minister had organised a meeting of the leaders of all of the Australian governments in the nation's capital. On the agenda was the introduction of the national uniform standards recommended by the National Committee of Violence some 6 years earlier.

The Prime Minister's government was a coalition of conservative city based politicians and the rural based National Party. It was anticipated that his constituents – especially the farmers and hunters – would not react well to the prospect of this national reform. It was anticipated that the political price Mr Howard would pay would be at too great a cost because, traditionally, the conservatives were not in favour of the type of regulation that was contemplated by the forthcoming agreement.

However, the sceptics were wrong; the national mood was strongly in favour of tight gun laws. In fact, steering through the uniform national gun laws is regarded as Prime Minister

Howard's greatest achievement of his 11 years in power. The reforms achieved some 83% support in opinion polls.

Mr Howard secured the unanimous agreement of all State leaders at the conference and the National Firearms Agreement was born on 10 May 1996. Put simply, the Australian Government agreed to change import laws to ban the import into Australia of the soon to be banned semi-automatic rifles and shotguns. The Australian Government also agreed to legislate for a tax to pay for a buyback of banned rifles and shotguns.

In turn, the States agreed to amend their firearm laws to introduce the agreed national standards, and to buy back the banned weapons. Those agreed standards were effectively the recommendations from the National Committee on Violence.

The Australian Government moved swiftly to amend the rules governing imports into Australia and also moved quickly to raise the funds for the gun buyback. The tax – a modest increase in the nation's health insurance levy – was passed by parliament without objection.

The States took a bit longer to deliver on their end of the bargain. Tasmania led the way and had its legislation in place within 4 months. Other states were slower, with some dragging their heels. At a number of stages the Australian Government let it be known that if all the States were not going to agree to uniform gun laws as proposed, the Australian Government would introduce a referendum to change the Australian Constitution to give the national government power over firearms. This threat – uttered ever so quietly and without public fanfare – was enough to push the equivocating States to deliver on their end of the bargain.

What then has been the product or the result of the National Firearms Agreement in Australia?

Firstly, the sport and hobby of shooting is alive and well in Australia. Australians compete internationally in shooting sports at all levels. Farmers still have guns to use on their farms, and people can still collect guns. More significantly, for shooters, the uniform national scheme means shooters can easily move around Australia to compete or hunt and have their license recognised in any state or territory.

For the rest of us, the result of the National Firearms Agreement is that Australia has not had a public mass shooting with a rifle or a shotgun since the Port Arthur Massacre in 1996. That's 18 years, where up until 1996 these shootings were occurring almost annually. By any standard, the NFA has been extremely successful.

Semi-automatic rifles and shotguns are now virtually unavailable in Australia. Professional shooters can get hold of these sort of weapons and so can gun collectors. But the rest of the population cannot legally get hold of them. People minded to do what was done at Port Arthur, or Sandy Hook in Connecticut in 2012, or Norway in 2011 cannot go and buy the gun at a gun shop in Australia. They cannot readily steal a semi-automatic military rifle, as there

are virtually none to be found. The buyback effectively saw to that, with 640,000 guns being taken out of the hands of the population. In effect, the composition of the stock of guns in Australia was significantly changed. Virtually all guns now in the hands of the community are single shot rifles and shotguns; these are not the weapons of choice for mass shooters.

The effect of these reforms is that farmers can still have guns to control vermin on their land and to put down their stock. Target shooters can still engage in their sport. Hunters can still lawfully own and use rifles to go hunting.

The losers from the reforms are the gun importers and the gun manufacturers. They have not been able to make profits selling surplus military weapons and ammunition and have had to concentrate on more expensive and purpose built firearms so as to ensure the viability of their businesses.

The uniform laws have been significant in the way they have improved public safety, both now and into the future. Those that have won out of the reforms are the very people who have not become victims of public mass shootings or shootings in the home since 1996. There are many, many people who have not been able to take their life because gun storage has been significantly improved. Australia is now a safer place.