



LEGAL AID COMMISSION OF TASMANIA

**Comment from the Legal Aid Commission of
Tasmania to the House of Assembly Select Committee
on Firearms Legislation and Policy**

NOVEMBER 2018

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The Legal Aid Commission of Tasmania (LACT) provides a range of quality legal services across Tasmania. LACT is funded by State and Federal Government, and our focus is on economically and socially disadvantaged Tasmanians. We provide preventative services, such as information about the law, through our website and through community legal education sessions. We deliver early intervention services through our telephone advice line, face-to-face consultations, duty lawyer services, minor assistance and mediation services. We also provide legal representation in Court, delivered through grants of aid to private and in-house lawyers.

The Criminal Law section provides representation for clients on a duty-lawyer basis, or ongoing representation for clients who meet the means & merits tests when they are charged with offences, particularly youths, people with a disability and those facing a risk of imprisonment.

The Criminal Law section not infrequently provides duty lawyer services in the Magistrates Court for persons charged with offences concerning improper storage of firearms.

The other relatively common offence is assault with a firearm, generally pointing a firearm at a person. That matter is contained in the *Firearms Act* 1996, section 115¹, and there is an election – the offender can choose to be dealt with in the Magistrates Court rather than the Supreme Court, notwithstanding the serious, potentially fatal, nature of the offending. It is considered preferable that the offence be included in the Criminal Code, to reduce the fragmentation of the law (that is, all serious offences should be found in the one place), the involvement of a firearm could be simply included as an aggravating factor under section 183 of the *Criminal Code Act* 1924.²

¹ *Firearms Act* 1996 115. **Aggravated assault**

- (1) A person is guilty of a crime under section 183 of the Criminal Code if, during the course of an assault, as defined in section 182 of the Criminal Code, the person carrying out the assault –
- (a) uses a firearm; or
 - (b) threatens to use a firearm, whether or not the person was actually carrying a firearm; or
 - (c) was carrying a firearm.
- (2) A court of summary jurisdiction may hear and determine proceedings in respect of the assault if the prosecutor and the defendant consent.

² *Criminal Code Act* 1924 183. **Aggravated assault**

Any person who –

- (a) assaults any person with intent to commit a crime, or to resist or prevent the lawful apprehension or detainer of himself or of any other person; or
- (b) assaults, resists, or wilfully obstructs any person in the lawful execution of any process against any lands or goods, or in the making of any lawful distress, or with intent to rescue any goods taken under such process or distress –

is guilty of a crime.

Charge: Aggravated assault.

The Safe at Home Section is part of the Tasmanian whole-of-government response to family violence and provides services under the Family Violence Action Plan, providing advice, assistance and representation to victims of family violence.

We are not aware of any specific Tasmanian research having been carried out as to the actual or threatened use of firearms in situations of family violence (or suicides where a person is alleged to have committed family violence).

Anecdotally:

- A significant proportion of adult victims of family violence report that the offender has made threats to kill (the adult victim, and sometimes also child victims), and threats involving firearms are numerous amongst those threats. In some cases, evidence of this does not rest solely on the victim's account, and text messages from the offender show the threats made.
- Firearms have been used in the killing of pets, pet-like domesticated animals (such as goats), or livestock in such a manner as to create fear in the victim of family violence (ie: as a demonstration of capacity to carry out lethal violence).
- Offenders not infrequently threaten that they have access to (legal or illegal) firearms even where they do not themselves have a firearms licence. Indeed, there are reported examples of people who hold firearms licences keeping firearms for or lending firearms to unlicensed offenders (frequently the report of lending has been when offenders and friends or relatives go shooting together, and then are willing to lend firearms).
- Offenders who have had firearms licences sometimes pressure victims to withdraw allegations of family violence in order to regain their licences.
- It is not only offenders who access firearms illegally who make threats of or commit actual firearms use.³
- Threats of harm or death involving firearms are experienced by adult and child victims as particularly frightening.
- The more difficult the incident involving firearms may be to avoid or stop, the more frightening it is. Therefore, the potential availability of more rapid-fire weapons or 'silencers' (which may prevent help being called) may be expected to both figure in threats made by offenders and to increase the levels of fear and trauma experienced by adult and child victims.

An additional consideration is that the current test under section 29(1)(c) of the *Firearms Act* 1996 of 'fit and proper person', which includes the factors set

³ We cannot disclose individual clients' details without permission, so we refer to media articles concerning interstate fatalities within families, noting that one alleged offender is the local area president of the Sporting Shooters' Association Australia:

<http://www.abc.net.au/news/2018-10-31/family-dispute-on-border-leaves-two-family-members-dead/10450574>

<https://www.9news.com.au/national/2018/10/31/11/36/peter-john-smith-jailed-for-murder-of-son>

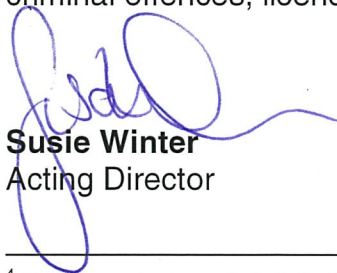
out in subsection 2⁴, does not, in the licencing process, require any psychological assessment, but relies only on a background police check and national check (which would disclose offending for which people have been charged and found guilty, and any protective orders – such as family violence orders or restraint orders – made against them), and a check of the property itself in case (in relation to the *storage* of the firearms) an unsuitable person at that time resides at the property.

The Application does ask people to voluntarily disclose if they suffer from a diagnosed medical condition, and if they do, then a request may be made for a letter from that person's doctor.

There are a number of apparent potential weaknesses in this approach:

- Offending, in particular family violence offending, is not always reported. For some offences, reporting rates are very low indeed. This means that threatening and violent past behaviour may not be uncovered by the background check or national check.
- There is no examination of a person's attitudes and beliefs which may support family violence, or violence generally.
- There is no effective test of a prospective licensee's ability to resist requests to lend firearms to others, or permit others to use firearms, or periodic reinforcement of the requirements of the licence.
- The people resident at a property may change, and people may in fact be able to access a property, and in particular the gun safe, without residing there.
- People may not have been diagnosed with, or disclose, relevant health (especially mental health) conditions at the time of obtaining a licence.

It is respectfully submitted that the safety, experiences and interests of adult and child victims of family violence ought be taken into account when formulating policy and legislation in relation to firearms regulation, in particular criminal offences, licencing regimes and infringements.



Susie Winter
Acting Director

⁴ The Commissioner is to take into account the following:

- (a) any likelihood of the person using a firearm –
 - (i) for an unlawful purpose; or
 - (ii) to harm himself or herself;
- (b) the mental and physical condition of the person;
- (c) any criminal activity of the person, whether in Tasmania or elsewhere;
- (d) any offence committed by the person under this Act or under the Guns Act 1991 ;
- (e) the ability of the person to exercise reasonable and responsible control over a firearm;
- (f) whether the person is subject to a restraint order, interim restraint order, family violence order, interim family violence order or police family violence order or has, at any time in the 5-year period immediately before lodging the application, been subject to such an order;
- (g) whether the person is subject to a recognisance, granted in Tasmania or elsewhere, to keep the peace.