



## Appendix one – Response from agency

21 February 2019



**NSW Police Force**

**OFFICE OF THE COMMISSIONER**

D/2019/148686

Ms Margaret Crawford  
Auditor-General  
Audit Office of NSW  
GPO Box 12  
SYDNEY NSW 2001

Dear Ms Crawford

I welcome the opportunity to respond to the Performance Audit on NSW Police Force Firearms Regulation and consider recommendations to build on the better regulation strategies already being developed and implemented by the Firearms Registry.

### Context

Firearms regulation is challenging and dynamic, made more complex by the co-regulatory nature of the Firearms Act 1996 (the Act) and the Firearms Regulation 2017 (the Regulation).

Multiple legislations – in NSW, other states and territories, and the Commonwealth – control firearm ownership, licensing, movement, importation, trade, compliance, misuse, and reporting, and many of these do so under the umbrella of the National Firearms Agreement.

While the Firearms Registry, a unit of the NSW Police Force, is responsible for administering aspects of the Act and Regulation in a manner which upholds the prescribed principles and objects of the Act, the Firearms Registry is necessarily reliant on police and other NSW, state and territory and Commonwealth government agencies for administrative support, auditing, information exchange, and system support, and for compliance and enforcement efforts.

Also, firearms regulation is co-regulatory in that the firearms industry - being approved clubs, dealers, ranges and instructors - are vested with the responsibility to administer and oversight aspects of the Act and Regulation. The co-regulatory nature of the scheme, whereby approved industry third parties support regulator activities, is intended to increase oversight and, resultantly, compliance.

There are regulatory obligations placed on firearm licence holders, such as maintaining currency of data with the Firearms Registry and approved clubs, such as providing confirmation that the club member meets the requisite safe storage requirements. The onus for compliance with these activities rests with those parties and not with the Firearms Registry.

The Performance Audit findings do not sufficiently acknowledge that they mainly arise from the co-regulatory nature of the scheme. The NSW Police Force Firearms Registry appears to



Locked Bag 5102 Parramatta NSW 2124 Tel 02 8263 6599 En 45599 Fax 02 8263 6561 En 45561  
TTY 02 9211 3776 for the hearing and speech impaired Web [www.police.nsw.gov.au](http://www.police.nsw.gov.au) ARN 43 408 613 180



have been assessed against activities that are performed or intended to be performed by approved third parties or are activities that fall outside the prescribed functions as codified. Yet, the report highlights these activities as shortcomings of the Firearms Registry. This is a clear misunderstanding of the legislation and a misdirection of accountability.

The Firearms Registry continues to implement improved regulatory practices, guided by the principles of Better Regulation. Overall, we accept the main part of the Audit Office recommendations to improve Firearms Registry processes and will implement further initiatives as outlined below. However, the NSW Police Force raises concerns with the following key findings in the report. The findings are highlighted below together with explanatory material from NSW Police Force.

These comments and explanatory material are important to a balanced understanding of co-regulatory nature of firearms industry and the related NSW Police Force obligations.

### **Findings**

#### **Address details in the register are not up to date**

The obligation rests with the licence holder to maintain currency of information with the regulator, for example, change of address. The Registry immediately responds when advised of detail changes and updates the register accordingly.

The Act and Regulation clearly place the onus on the licence holder to supply information relating to change of address details. Section 69 of the Act articulates that it is the responsibility of the licence holder to provide the Commissioner with the particulars of a change of address within 7 days after the change occurs. Clause 17(3) of the Regulation requires the licence holder to notify the Commissioner within 14 days of the change of premises where a firearm is kept. The Act and Regulation have prescribed penalties for non-compliance.

The passive nature of the legislative requirements for change of address particulars is reflected in the Registry's practices.

The Registry immediately responds to failure by licence holders to notify address changes when notified. The Registry takes a proactive approach to contact licence holders on reapplication for a firearm licence to minimise licences expiring.

The new online renewal and permit to acquire applications require the applicant to provide up-to-date residential, mailing and safe storage information. Online systems are available to licence holders to update their details on both the Registry and Service NSW websites.

Whilst a mailing address may not be current, it does not follow that the Registry is not aware of the current location of firearms as a clear legislative distinction is made between a residential (mailing) address and a safe storage address (location of firearm).

The Performance Audit report notes that there is an inherent risk to police officers attending events without knowing whether there are firearms present. This is always a risk as movement of firearms is common. Accordingly, all police officers attend events with the assumption that firearms may be present.

**The Registry's processes do not ensure sound and consistent decisions for licence suspensions and revocations**

The Registry accepts that it has outdated adjudication guidelines and that a quality review mechanism can be formally built into the adjudication process. However, it does not accept the level of risk that the Report suggests may result. The staff of the Registry are highly experienced and escalate complex or contentious matters on an ad hoc basis which they identify need review by a more senior adjudicator or manager.

The Registry has an internal review process, which is communicated to all applicants who receive an unfavourable decision. Approximately 30% of refusal and revocation decisions are overturned on internal review. An internal sample was conducted that revealed 30% of decisions were overturned or amended due to new information coming to light. This statistic is not indicative of an erroneous original decision; rather, changes in circumstances such as an appeal against a conviction or additional information being supplied by the applicant. Simply put, setting aside an original decision on review does not necessarily mean that the original decision was wrong at the time it was made with the information available to the decision maker at that time. The Registry's track record also demonstrates procedural fairness is being afforded to the applicant.

Once a matter has been finalised through the courts, the Registry receives a briefing from the NSW Police Force Office of the General Counsel following the hearing of matters before NSW Civil and Administrative Tribunal (NCAT) which are analysed (along with the decision itself) by senior staff at the Registry to determine trends and weaknesses in the initial decision. This analysis sometimes leads to advising the supervisor of the original decision maker for consideration, review and action as may be required. Alternatively, an NCAT decision may highlight a legislative anomaly which may result in the drafting of a ministerial recommending legislative amendment to correct the anomaly or to respond to emerging issues. Likewise, a decision may highlight the need to either draft or amend a pre-existing policy decision.

**The Registry's processes do not ensure all data is accurate when added to the register**

**The Registry is aware that data in the register is not accurate and up-to-date**

The Firearms Registry employs a proactive approach to identifying data integrity issues by reporting on and analysing data idiosyncrasies as they arise. The Registry generates regular data integrity reports that identify potential anomalies in the register. These reports are prioritised according to risk. Key risk areas, such as suitability to continue to hold a licence and information as to the whereabouts of firearms are considered high risk and so effort is deployed to these areas to ensure as close to real time data is available to operational police.

The Registry has various programs to check for and correct data errors, such as the firearms description cleansing program. Firearms make and calibre are locked down through a table in the Register so the firearm descriptor data of this nature cannot be modified unless via an approval system involving the NSW Police Force Forensic Ballistics Unit or national subject matter experts who generate firearm identification templates.

The Registry led a national initiative to prepare firearm data held by all Australian firearms registries for integration with the Australian Firearms Information Network (AFIN) through a national data cleansing project. This program, supported by the Australian Criminal



Intelligence Commission, was promoted as a success at the Commonwealth Senate Estimates in 2017 and saw almost half of NSW's firearms data cleansed to align the records to a national standard, and to ensure completeness and accuracy. This was facilitated through the introduction of the National Firearm Identification Database (NFID), which was a Minister's Council directive and solution to provide a single reference point of firearm descriptor values. NFID was developed to assist with firearm identification and to facilitate a consistent national approach to recording firearm descriptors by each law enforcement agency so that like-for-like descriptors of firearms are employed nationally. The different ways of reporting firearm data between states and territories does not reflect poor or inaccurate data; rather, the different firearm nomenclature came about because of: i) different IT controls constraints; ii) legislative characteristics that arise due to different drafting norms across the jurisdictions' parliamentary counsels' offices; iii) descriptors employed by firearms dealers and other third parties involved in the naming conventions of firearms.

The data quality strategy proposed a multi-modal approach to improve firearm data held within firearm management systems, including a targeted data cleansing effort, which was conducted by NSW, leveraging current business process to cleanse existing firearm records (ongoing) and leveraging current business process to implement an improved baseline for new firearm records (ongoing). These approaches have been and continue to be employed by NSW. Any new firearm that does not conform is subject to a rigorous process whereby information is sought, and confirmation obtained through NSW Police Force Forensic Ballistics Unit or subject matter experts nationally. Checks are also done by operational police when they attend a safe storage inspection and firearm data is updated when the dissemination of those inspections is received by the Registry. The Performance Report does not acknowledge the ongoing efforts by the Registry, and that the Registry's approach complied with the multi-modal data quality strategy.

The Report identified that another limitation on data accuracy is that there is no requirement for licence holders to provide supporting evidence when notifying the Registry of change of address, unlike for a change of name. This is incorrect as addresses are allocated a unique location reference number and there are validation processes in place to ensure that there are no duplicate locations created. This is enhanced by the online application processes whereby addresses are auto-populated by an address look up function through Australia Post. Adjudicators use maps to see the land size for primary producers and for recreational hunters using permission to shoot to validate the address. Other ancillary documentation may be sought, such as rates notices, for the adjudication process. Also, it should be noted that this process is the same as changing of address details for a driver's licence.

As a further identity check, when a firearm licence holder attends Service NSW a three-way authentication is performed by the Customer Service Representative. The licence holder's identity documents are sighted and checked against the photo advice letter which precipitates their attendance at Service NSW. This letter includes name and address identification details that must be matched by Service NSW staff. The identity of the individual is then validated by checking the photo identification matches the person who attends the Service NSW centre.

#### **The Registry has reduced its risk-based safe storage inspection program**

This program is a better practice initiative of the Registry; a proactive operation based on a risk-based approach for tasking operational police across the state to conduct safe storage inspections. These inspections are selected on risk-based criteria which include categories or numbers of firearms in possession, high risk locations and other identified trends. This is a

good program and is run in addition to existing safe storage inspection programs operating at a local level with the assistance of Registry data.

It should be noted that the initial push of the risk-based program closely followed the conclusion of a 4-year state-wide safe storage inspection program, which resulted in most safe storage locations throughout NSW being inspected. The commencement of the risk-based program saw a marked improvement in the quality of inspections and data received by the Firearms Registry. The purpose of the initial program was not to take over the tasking of safe storage inspections from local commands but rather provide commands with the guidance, information and tools to conduct more thorough inspections. These tools are now readily available on the intranet and in COPS (police follow a step-by-step process to assist them in conducting a thorough inspection) so the need to continue vigorously driving the operation from the Registry has reduced. State-wide inspection numbers have remained consistent throughout this period and police continue to rely on data provided by the Registry for this practice.

Criticism of the Registry's actions regarding the inspection program would appear incomplete - lacking the broader inspection details provided above.

#### **The Registry does not effectively administer important parts of the Act and Regulation**

The Report bases the deceased estate process to suggest that the administration of parts of the Act and Regulation are ineffective. This finding extends beyond the need to operate within existing policy and legislative settings as well as other parties involved in the administration of the Act and Regulation.

The Registry invokes a process to administer the requirements under section 82A of the Act, which relates to management of firearms held against deceased estates by enabling an administrator or executor to possess and be responsible for the safe storage of firearms in a deceased estate for up to six months. The Registry promptly cancels licences and records firearms to be retrieved from deceased estates when it becomes aware that a licence holder has died. The Registry receives information through a weekly COPS report and a fortnightly report from the NSW Registry of Births, Deaths and Marriages about recent deceased individuals. There is also a process whereby the Registry may be notified from executors, administrators, next-of-kin or club officials.

Once notified about a death by any of the sources identified above, the Registry sends a letter out to the last known address of the deceased seeking evidence that the person in possession of the firearms is either the administrator or executor and requests details confirming their capacity to comply with the safe storage arrangements of firearms and/or to advise of disposal options. At the end of the prescribed six-month period, and where firearms remain in possession of the deceased estate, the Registry creates a COPS event advising police to seize the firearms.

There are a small number of instances where the Registry may not have been aware of the death of the licence holder for some time, possibly only when the licence of the deceased comes up for renewal. This means in that instance the firearms may have been in possession of persons who did not know their obligations. Data confirms that the Registry is not notified within 14 days for 2% of all deceased licence holders.

### **Improvements**

Responses to the Report's recommendations, with time frames for implementation is attached. The Registry already fulfils many of the recommendations through existing business processes, has commenced activity to pursue the recommendations or has suggested appropriate initiatives to meet the recommendations.

NSW Police Force does not propose to adopt recommendation for administrative staff to take enforcement action in the form of penalty notices as operational police have greater investigative capabilities and the function is more suited to that role. Further, we do not propose to pursue the recommendation in respect of pistol clubs and safe storage arrangements as the obligation currently sits with clubs and shifting responsibility to the regulator clearly changes the current policy setting.

I would like to extend my appreciation to your office and your staff for conducting the review, and to recognise the officers within the NSW Police Force who aided in this process.

I appreciate your consideration of the issues raised in this response.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'MJ Fuller', with a stylized flourish at the end.

**M J Fuller APM**  
**Commissioner of Police**

Recommendation		NSWP Force Response
To improve integrity of data in the register, NSW Police Force should ensure the Firearms Registry urgently:	1. addresses backlogs in identifying and updating incorrect data in the register	The Registry will continue to update data integrity issues as they arise.
	2. conducts computer access audits according to NSW Police Force policy.	<p><b>February 2019:</b> An Executive Officer was employed at the Registry, of which one of the employee's duties includes the coordination of computer access audits in accordance with NSW Police Force policies. This process has been commenced.</p> <p>Prior to the appointment of the Executive Officer the last audit was conducted in July 2018. The Registry will continue to comply with NSW Police corporate policies requiring regular, independent audits of staff access to information and transactions they conduct.</p>
By July 2019, to improve consistency of administrative decisions, NSW Police Force should ensure the Firearms Registry:	3. introduces updated delegations for all administrative functions that delegate functions to specific positions	The Registry Commander commenced the process of reviewing and updating existing delegations across the Registry in October 2018. Subject to legal advice from the Office of General Counsel, all delegations across the Registry will be confirmed and enacted by March 2019.
	4. introduces detailed guidance for assessing discretionary reasons when considering a licence suspension or revocation 5. introduces procedures to quality-review decisions about licence suspensions and revocations	<p>An independent internal review was conducted by the Office of General Counsel in early February 2019. Upon receipt of formal recommendations, the Registry will implement detailed guidelines for assessing discretionary reasons when considering a licence suspension or revocation, in accordance with advice arising from the review. Relevant training has been scheduled for April 2019 in support of the introduction of new guidelines.</p> <p><b>April 2019:</b> Review escalation process and update guidelines, implementation of checklists, update of adjudication guidelines and decision-making tool etc to assist with consistency.</p> <p><b>July 2019:</b> Develop a quality assurance strategy which will be reflected in any potential realignment of the existing organisational structure. This will include a risk-based work-flow, a quality review of decision making to improve sound decisions being made at the outset, the introduction of dip sampling of approved licences, continuous improvement strategies such as monthly feedback meetings covering case law and, an internal review of decisions made by the original decision maker solidified by training where necessary.</p> <p><b>April 2020:</b> Conduct a 12-month review of the risk-based work flows with adjustment to placement, functions, processes and gradings if necessary.</p>



	6. introduces detailed guidance for assessing whether "good" reasons provided by licence holders for acquiring firearms are satisfactory	<p>In November 2018, the Registry introduced an online application for a PTA, which requires the applicant to mark one of a range of "good" reasons listed on a drop-down menu. In addition, the Registry will:</p> <p>Part of the review conducted by the Office of the General Counsel in February 2019 (refer to point 4) is to provide advice regarding the "good reason" test.</p>
	7. introduces a policy and procedures taking enforcement action	<p>NSW Police Force opposes the recommendation for Firearms Registry staff to issue penalty notices as, there are limited investigative routes for Registry staff to employ and there are impacts in terms of court attendance and other administrative requirements should the fine be challenged. Notwithstanding NSW Police Force opposition to the recommendation, the Registry will:</p> <p>Develop a communications strategy to remind customers of their obligations as outlined in legislation which is expected to be completed by March 2019.</p> <p><b>July 2019:</b> Strengthen operational police awareness of licence holder obligations to maintain currency of mailing and other details, with a view to police issuing penalty notices for non-compliance.</p>
	8. ensures pistol clubs actively confirm safe storage arrangements.	<p>This recommendation is opposed by NSW Police as it extends beyond the existing legislative arrangements. The legislation clearly places the obligation on the clubs to confirm safe storage arrangements. The report criticises the Registry for providing 'inappropriate guidance' for pistol clubs however the Registry provides them with a raft of options they may employ to be satisfied to certify the safe storage arrangements, including seeking a safe storage event number, which confirms that police have inspected the safe storage arrangements. Notwithstanding the opposition to the recommendation, the Registry has amended the Permit to Acquire form for Category H firearms to include a field to record the event number.</p>
By May 2019, to improve safety of the public and police, NSW Police Force should ensure the Firearms Registry:	9. restores the Firearms Registry initiated risk-based firearms safe storage inspection program	<p>The Registry will:</p> <p><b>May 2019:</b> The Registry is currently reviewing Risk-Based Safe Storage Inspection Program (aim, methodology, results, strategies etc) and will re-energise activities in this area and include greater visibility in the Corporate Reporting platform.</p> <p><b>July 2019:</b> Re-calibrate, if necessary, to accommodate for new and emerging risks with a view to amending or expanding the parameters for the locations targeted for inspection.</p>



10. implements strategies for timely reporting of address changes and prompt retrieval of firearms from deceased estates after expiry of the six-month statutory period.

The Registry will:

**February 2019:** The Registry has begun to make enquiries with other jurisdictions regarding potential strategies for prompt retrieval of firearms from deceased estates after expiry of the six-month statutory period.

**May 2019:** Conduct an analysis of other jurisdictions' deceased estate process to inform areas of potential process improvement. Consider and potentially implement policy, process or legislative amendment pending outcome of analysis.