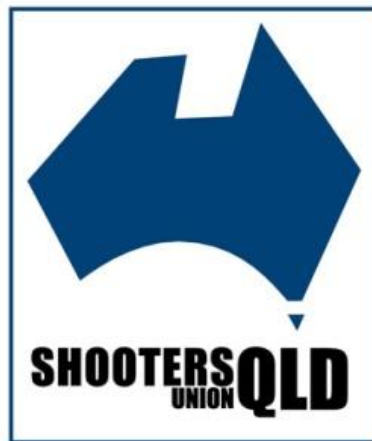


SUBMISSION

Queensland Government's Health Response to COVID-19



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1. General Comment

2. Authors

Professor Ross Grantham and Mrs Jan Linsley on behalf of Shooters Union Queensland Pty Ltd Executive Committee.

3. Intended Audience

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee;
Executive members, Shooters Union Qld Pty Ltd.

4. Background and authority to comment

- 4.1 Shooters Union of Qld Inc was formed in 2005, obtaining Weapons Licensing club approval in that year. In 2018, the organisation was restructured to become a proprietary company limited by guarantee because of rapidly increasing membership numbers. Shooters Union Queensland Pty Ltd is the second largest shooting organisation in Queensland.
- 4.2 Shooters Union Australia Inc was formed in 2013 in answer to requests by members in other states. The organisation was changed to a company limited by guarantee in 2018, again because of rapidly increasing membership Australia-wide.
- 4.3 Shooters Union has been represented at all Ministerial Advisory groups since formation, both in Queensland and in other states. Shooters Union Australia Ltd is represented on the Commonwealth Firearms Advisory Council.
- 4.4 This submission is made with the permission and co-operation of Shooters Union Qld Pty Ltd and Shooters Union Australia Ltd.

5. History

- 5.1 Following the discovery of a new SARS-related virus in China in December 2019, the WHO declared COVID-19 to be a pandemic on 11 March 2020.

In Australia, screening for COVID-19 began on incoming passengers from China on 23 January 2020. The first known case was identified in Melbourne on 25 January 2020. Also on 23 January 2020, three cases were identified in Sydney. The virus had arrived in Australia.

Queensland issued a public health emergency order to commence on 6 February 2020. January. The existing public health legislation was amended on 19 March by the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*. This granted power to the Chief Health Officer to give directions where "the chief health officer reasonably believes it is necessary to give a direction under this section (a **public health direction**) to assist in containing, or to respond to, the spread of COVID-19 within the community."

The first known cases in Queensland were identified on incoming flights from China on 6 February 2020. Further cases appeared in Queensland from Iran on 29 February 2020.

On 27 February 2020, the Prime Minister activated the Australian Health Sector Emergency Response Plan for COVID-19.

On 20 March 2020, Australia's external borders were closed to all non-residents, however residents returning home from international destinations were still allowed to return but were quarantined on arrival. On 21 March 2020, social distancing rules were imposed.

Most of the Health response, especially the community education about social distancing and awareness of the signs/symptoms of COVID-19 was, in our view, conducted very well. These measures were and are supported by Shooters Union Qld Pty Ltd, although there were some obvious cases of over-diligence by businesses and individuals. On the whole, though, most people, and certainly most shooters, were happy to comply with restrictions that contributed to community safety in the unknown environment of the pandemic.

- 5.2 In Queensland, on 31 March 2020, Dr Jeannette Young, the Chief Health Officer, made the *Non-essential Business, Activity and Undertaking Closure Direction (No 4)*.

This Direction closed gunshops completely, even for mail order or internet transactions. The Direction also effectively restricted access to outdoor recreational facilities including shooting ranges. As a member-based organisation, Shooters Union Qld Pty Ltd accepted without comment the restriction on the activities of our members in relation to attendance at their local ranges. SUQ prepared guidelines for our members to assist range operators to ensure that members and visitors

were safeguarded from the possibility of transmission of the virus, even though there were no cases in most of Queensland and none in the rural areas, where many of the ranges are located. It is worth noting that ranges by their design and function, provide a high level of social distancing, since shooting is not a contact sport nor one in which coaches or referees must be in close proximity to shooters.

Despite the willingness of shooters, clubs, firearms dealers, and armourers to abide by the Direction and to work as members of the community to control the spread of COVID-19, the Direction poses two significant problems:

- Its effect on the rural sector;
- Its legality.

Effect on the Rural Sector

The Direction ordered the closure of gunshops, firearms dealers, and armourers. This necessarily meant that those who rely on access to firearms and ammunition as a part of their business were denied their tools of their trade.

Most gunshops are mixed businesses (that is, they sell not only firearms and ammunition but also a range of other goods) and this was a particular problem in rural areas, where many of our members are primary producers or occupational users of firearms. The breadth of Direction meant that primary producers or occupational users of firearms could not even make purchases online or send their firearms for repair during the period of restriction imposed by the Direction.

Discussions with firearm dealers in rural areas indicated some of the mixed businesses:

- automotive supplies
- in one case, a clothing shop in outback Queensland
- outdoors/camping supplies
- bulk oil and battery supplies
- rural supplies
- hardware shops
- fishing supplies
- service stations
- mail order suppliers and repairers
- newsagency and stock feed suppliers
- saddlery and farm supplies

The Direction was so restrictive in its terms that firearm dealers who operated mixed businesses could not operate that portion of their business that did not deal with firearms, even where the firearms section was physically quite separate to the rest of the business. So, for example, in the case business that was a newsagency and gun shop, the Direction forced the closure of the newsagency. Where rural firearm dealers were involved also in stock and station supplies, those businesses also had to close.

- 5.3 It became obvious that the Chief Health Officer had little or no idea of how the rural sector operates in Queensland. Most disappointingly, it appears that no effort was made to find out how the sector operated or what the impact of the Direction would be – and the impact was significant and, in our view, disproportionate. The safest place to be during the virus crisis was at home and working from home, but the Direction made it almost impossible for primary producers to work properly from home. Firearm Dealers were prevented from providing basic firearm safety-related services, eg taking in firearms from deceased estates, registering firearms handed in by unlicensed members of the community etc, and the closure of mixed businesses deprived rural communities of a wide range of other back goods and services.
- 5.4 Shooters Union Qld Pty Ltd liaised with the Firearm Dealers Association Qld Inc in an attempt to relieve the situation at gun shops to allow them to open for normal trade and allow our members access to the essential supplies our primary producers needed for their day-to-day occupational use.
- 5.5 As a result of representations made to both sides of the Queensland Parliament by industry and shooters, the Chief Health Officer, amended *Non-essential Business, Activity and Undertaking closure Direction (No 4)* on 31 March 2020 to allow gunshops to provide essential services for a restricted range of licence categories, which included primary producers. These categories were indicated by particular licence codes. This approach, however, highlighted another significant problem with the way firearms licensing has been administered.
- 5.6 The *Weapons Act 1990* defines 'primary producer' to mean a person "primarily engaged in the occupation of a list of framing, growing and grazing activities. Over the last 3 to 5 years, however, the statutory definition of a primary producer has been effectively redrafted by the Weapons Licensing Branch of the Queensland Police Service (WLB) to mean that a person's income is *solely derived* from farming and growing activities. The effect of WLB's change to the legislative definition has been to exclude a large number of farmers from eligibility for a primary producer firearms licence.

Most farmers have been forced to take on two or more jobs because of poor seasonal conditions (ie drought and bushfires) and because of WLB's approach to the definition, there are now less than 10% of farmers with a primary production code on their licence. Most have either OC (occupational)¹ or RE (recreational) codes, neither of which were included in the amended Direction. These farmers, however, still need ammunition, firearms and accessories to perform their essential services. Many large farming operations have instructed their people to get RE licences purely because of the difficulties presented by WLB's policy of obtaining a Primary Producer licence.

- 5.7 Unfortunately, few Members of Parliament understood the complexity of the situation, so press releases from both sides of politics hailed the amended Direction

¹ It is worth noting that WLB have created a number of additional licence codes to those that are authorised by the *Weapons Regulation 2016*, sch 2. The legal authority of WLB to do this is unclear.

as solving the problem and ensuring that farmers could access the firearms and ammunition they needed. In fact, this was far from the case and most gunshops had to remain closed.

- 5.8 This particular problem would never have occurred had the Health Department, or the Health Minister or even the Police Minister inquired of firearm dealers, or the industry body. The inescapable conclusion, which most in the industry reached, was that the aim of the Direction was simply to close gunshops, with little or no regard to the effect on the rural sector, the livelihood of gun dealers, or the impact of the closure on the spread of COVID-19. This conclusion was reinforced by the fact that while gunshops were closed, hardware stores, clothing stores, camping stores, even hairdressers, were permitted to open provided social distancing and regular sanitising procedures were instituted. Even shops selling the same types of items as gunshops (eg optical suppliers) could continue to trade while a gunshop selling exactly the same thing could not operate except within a very narrow framework of licence codes.

The Legality of the Direction

- 5.9 The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* granted power to the Chief Health Officer to give directions where

“the chief health officer reasonably believes it is necessary to give a direction under this section (a **public health direction**) to assist in containing, or to respond to, the spread of COVID-19 within the community.”

The breadth of the Direction, which closed gunshops, gun dealers, armourers, including those that traded online and as part of mixed purposes businesses, raised a serious question as to the legality of the Direction and whether it was authorised by section 362B of the *Public Health Act*.

- 5.10 The power of the Chief Health Officer to issue a direction is not a general or unlimited one. Rather, power was given only to “assist in containing, or to respond to, the spread of COVID-19 within the community.” For the Direction to be *intra vires* the Act, therefore, there must be a connection between the control of the spread of COVID-19 and the actions being directed. In the case of the closure of gunshops, that connection is missing. First, while the closure of physical retail spaces might in principle control spread, the fact that so many other types of retail outlet (hardware shops, clothing shops etc) were not closed indicates that the Chief Health Officer did not act on this ground.

Secondly, the Direction extended to online sales and to armourers. Neither require face-to-face contact and there is no obvious connection between closing online sales of firearms etc and controlling the spread of COVID-19. If there was such a connection, then all online sales of all types of good ought to have been closed. This did not in fact happen.

Thirdly, statements by government (see Appendix) suggested that the closure of gunshops was necessary to prevent outbreaks of violence, especially domestic violence. As well as being wholly unfounded, and as the experience in those other states that did not close gunshops demonstrates, this would not in any event justify the direction in terms of the power conferred on the Chief Health Officer by section 362B. Suppressing domestic violence is not a purpose for which the *Public Health Act* conferred the power on the Chief Health Officer.

- 5.11 Government has claimed (see Appendix) that the closure of gunshops was necessitated by a decision of the National Cabinet. This does not confer legality on the Direction. First, it does not seem that the National Cabinet did in fact mandate the closure of gunshops. This is borne out by the fact that only three states moved to close gunshops. Secondly, a mandate of the National Cabinet does not enlarge the powers conferred on the Chief Health Officer by the *Public Health Act*.
- 5.12 In our view, therefore is there prima facie grounds to believe that the Direction was *ultra vires* the Public Health Act and therefore unlawful? This in turn raises the issue of whether those individuals and businesses impacted by the closure should be compensated for their losses by the government.

6. Conclusion

The Health response included placing trading restrictions on Queensland small businesses that operate as firearms dealers and armourers, which was inconsistent with other measures taken (or not taken) to protect the community from COVID-19 transmission. These restrictions were determined at State level and were not part of the recommendations from the national cabinet. This decision serves political purposes only, unnecessarily resulting in a negative economic impact to small businesses, and has no correlation with the objectives of the Health response. By committing time and resources to implementing these specific restrictions, the Health response has unethically and unnecessarily diverted time/cost/resources away from its primary responsibility: to ensure community safety during the pandemic.

8. Recommendations

- (a) That any future Health responses remain focused solely on matters relevant to Health and not allow the influence of party politics or other motivations.
- (b) That an inquiry be undertaken into the legality of the Health Direction with a view to compensating those affected by the closure of gunshops, firearms dealers and armourers.

APPENDIX

1 Law Abiding Firearms Owners (LAFO)

published the following on their website:

*Domestic Violence could be a consequence of community restrictions BUT its not COVOD 19 and that potentially makes the direction unlawful and an abuse of power
Queensland's Chief Health Officer Dr Young issued directions last Friday closing all Queensland gun shops for all business without exception. Many other retailers remained open, including JB Hi-Fi, which on its website boasts "JB STORES ARE OPEN". Some retailers were given exceptions to operate in a safe way with 'social distancing'.*

*Senior staff from Queensland's Department of Child Safety, Youth and Women have confirmed with LAFO that Queensland Health decided to close gun dealers ostensibly to **reduce domestic violence**. That's right, Health presumes that licensed shooters, some of the most heavily-vetted individuals in society, are likely to carry out domestic violence **because they can go to a gun dealer?***

The basic proposition in this thinking is that licensed shooters are murderers-in-waiting.

LAFO is lodging and pursuing Right To Information Requests across relevant departments to shed more light on where responsibility for this nonsense rests.

Direct evidence on Domestic Violence and licensed shooters

Earlier last year (2019), LAFO made a Right To Information application (reference 26581) to Queensland Police to obtain statistics on the relationship, if any, between DV incidents and firearms. Initially, Police said they would refuse to deal with the request. An RTI officer wrote to us:

'Enquiries have been conducted with the Public Safety Business Agency (PSBA) Statistical Services Team who have advised that identifying the statistics you are seeking is not able to be done via a simple search of existing QPS databases. They have advised that the only way we could accurately identify this information would involve a number of steps... [manually reviewing thousands of call outs]'

*LAFO negotiated with Police so that a random sample of 50 domestic violence call outs from October 2018 would be reviewed and the outcomes released. Police responded: "searches were conducted on a selection of 50 DV occurrences in October, **no incidents involved firearms** or threats to police."*

Health doesn't like the truth: licensed shooters are low-risk

Queensland Police were resistant to compiling any sort of evidence about the frequency of licensed shooters in domestic violence incidents. Queensland Health are totally disinterested in establishing whether there is any evidence at all that licensed shooters perpetrate domestic violence.

It is easier for Queensland Health to simply destroy the livelihoods and businesses of Queensland gun dealers by closing them for months on end. If you are an anti-firearm member of Queensland's Labor Government, or a left-leaning Queensland Public Servant, it probably feels pretty satisfying to destroy industries and people you don't agree with, while leaving JB Hi-Fi open to see remote control cars and DVDs.

2 The Sydney Morning Herald of 21 April 2020 reported (in part):

The justification for bans on the sale of firearms and ammunition in three Labor-controlled states has been questioned after it emerged the national cabinet had no active role in the moves, despite this being cited by state ministers and officials.

Bans were introduced by governments in Queensland, Victoria and Western Australia at the end of last month as a response to the COVID-19 emergency. Victoria's police minister Lisa Neville announced "a decision of national cabinet to put a temporary ban" on access to firearms at a press conference on March 31 and Queensland officials have also referred to national cabinet playing a central role.

In correspondence to lobby group the National Shooting Council last week, a staffer in Queensland Police Minister Mark Ryan's office referred to "discussions in National Cabinet led by the Prime Minister Scott Morrison" having prompted chief health officers "around Australia" to implement bans. There is no suggestion Mr Ryan was aware of the staffer making that assertion.

Multiple sources in Canberra have told Brisbane Times there was no national cabinet decision regarding firearms and the limited discussion that did take place was not led by the Prime Minister.

The sources said WA and Victoria had brought up the topic of firearms during a national cabinet discussion in late March, but it was simply to provide the Prime Minister with lists of retail activities they were proposing to shut down.

One senior Coalition source said the idea any state had banned sales on the basis of national cabinet deliberations was "horseshit".

"It wasn't a national cabinet decision," the source said. "It was pretty well the states making their own decisions re: firearms and the PM being OK with that."

3 The Age, on the same day reported (in part):

Federal and state governments made no collective decision to ban the sale of firearms and ammunition as part of the coronavirus pandemic response, despite the insistence of Labor-run states that their bans were based on national cabinet deliberations.

Multiple Canberra sources with knowledge of national cabinet discussions have told The Age and The Sydney Morning Herald that no decision was made regarding firearms and the limited discussion that did take place on the topic was not led by the Prime Minister.

The sources said Victoria and Western Australia proactively raised the topic of firearms during a national cabinet discussion in late March, but it was simply to provide the Prime Minister with lists of retail activities they were proposing to shut down.

Victorian Police Minister Lisa Neville announced "a decision of national cabinet to put a temporary ban" on access to firearms during a press conference on March 31. Queensland officials also referred to national cabinet playing a central role.

Standing alongside Ms Neville at the announcement, Victoria Police Deputy Commissioner Shane Patton said more than double the average 1000 firearm applications were lodged during the final week of March. He also said the ban would reduce the amount of guns falling into the hands of criminals. Mr Patton did not make any assertions about national cabinet decisions.

One senior Coalition source said the idea any of the states – which are responsible for regulating firearms – had banned sales on the basis of national cabinet deliberations was "horseshit".