



22 April 2020

Submission by the Queensland Living History Federation Inc to the Legal Affairs and Community Safety Committee regarding the Corrective Services and Other Legislation Amendment Bill 2020

Submitted by email: lacsc@parliament.qld.gov.au

SUMMARY OF SUBMISSION

The Queensland Living History Federation Inc represents the interests of historical re-enactors in Queensland.

The proposed legislation contains some beneficial measures for historical re-enactors. Our submissions relate wholly to the proposed amendment of section 67 of the *Weapons Act 1990* (Qld) contained in Part 5 of the Bill.

However, the proposed amendments do not achieve the stated intent of the Queensland Police Service's policy statement distributed to stakeholders. In particular,

- it does not achieve the stated intent that all replica firearms will become restricted items, and will not require a licence to possess them
- it maintains a disproportionate regulation of replicas and licencing requirements when these items are in the hands of historical re-enactors.
- a substantial part of the implementation of the proposed measures is subject to accompanying amendment to *Weapons Categories Regulation 1997* (Qld). The language of the proposed regulatory change has not been disclosed to the QLHF.

EXTRACT OF RECOMMENDATIONS

Recommendation 1: That the Committee recommend the introduction of a class of licence for re-enactors via regulation.

Recommendation 2: That the committee request that the Queensland Police Service release a draft of relevant amendments to the *Weapons Categories Regulation 1997* (Qld) to members of the Minister's Firearms Forum stakeholders to further submissions to the Committee.

Recommendation 3: Renumber the proposed subsection (4) (b) as (4) (c), and insert a new subsection (4) (b), as follows using definitions previously referred to:

(b) both of the following apply—

(i) the person is a member of an incorporated association that undertakes re-enactment activities involving military re-enactment and historical demonstrations;

(ii) the person's reason for possession or acquisition of the replica of a firearm is to participate in the re-enactment activities;



Recommendation 4: That the Committee seek clarification from the QPS whether subsection (5) introduces additional constraints than those that currently apply and if so, propose further amendments to the draft subsection to redress that issue.

Recommendation 5: As with Recommendation 2, that the committee request that the Queensland Police Service release a draft of relevant amendments to the *Weapons Categories Regulation 1997 (Qld)* to members of the Minister's Firearms Forum stakeholders to further submissions to the Committee, in particular regarding clarification of the position regarding Category R replicas.

Recommendation 6: That the Committee consider whether the current definition and application of the term 'association' provides appropriate regulation.

BACKGROUND

What is the Queensland Living History Federation?

The Queensland Living History Federation Inc was formed to represent the interests of living history, historical re-enactment and associated historical interest groups in Queensland.

The QLHF¹ is a not-for-profit incorporated association that operates as a federation of its member groups. Membership of the QLHF is offered to groups that exhibit high standards of safety, authenticity, research, and performance. Individuals who are members of a member group are automatically a member of the QLHF.

Historical re-enactment is a hobby combining elements of historical and archaeological research, arts and crafts, and sometimes martial skill.

Historical re-enactment is an educational or entertainment activity in which mainly amateur hobbyists and history enthusiasts wear uniforms and costumes and recreate aspects of a historical event or period. This may be as narrow as a specific moment from a battle, or as broad as aspects from an entire period, such as the First World War.

While historical re-enactors are generally amateurs, some participants are members of the armed forces or historians. Historical re-enactors do research on the costume, uniform, and other gear they will carry or use. Re-enactors buy the apparel or items they need from specialty suppliers or make items themselves. Historical re-enacting covers a wide span of history, from the Roman Empire to the Dark Ages, through the Medieval and Renaissance eras to the World Wars and the Vietnam War. See the gallery of images for a few examples at:

<https://www.historyalive.com.au/gallery/>

The focus is on historical accuracy: re-enactors strive to make their portrayal as accurate as possible. They do this to help them gain a greater insight into the period that they are re-enacting, and as an educational tool for members of the public.

Many of our members own firearms and other weapons under licences granted under the *Weapons Act 1990 (Qld)*, and they do so for a variety of reasons. Some collect historical or antique weapons simply as an aspect of their interest in a period of history. Sometimes they display those weapons at events so that members of the public can view (but not handle) examples of weapons from a particular era. Management and handling of all weapons at events involving the

¹ Webpage www.qlhf.org.au



public are subject to strict rules. Others use their weapons (either blank fire or inert replicas) in mock skirmishes at public events to demonstrate field tactics. Others use their weapons to be able to participate in parades, or other ceremonial or commemorative events: for example, ANZAC Day events, salutes and events hosted by RSLs and charities.

The QLHF and its member groups have a longstanding relationship with Fort Lytton National Park.² QLHF member groups regularly stage historical displays there in support of the fort's own activities and conduct the fort's regular cannon firings for the public.

The role of the QLHF is:

- to promote the authentic re-enactment and preservation of history and historical events, and its presentation to the public
- to run its own public events, such as History Alive³, as well as participate and support events run by RSL Queensland and commemorative events such as ANZAC Day.
- to provide insurance for our members
- liaise and negotiate with local and State regulatory bodies
- to support and work with museums and historical sites (for example, the military fortifications at Fort Lytton National Park)
- to provide safety standards for our members through maintaining:
 - a database recording its members' weapons licences and conditions held under the *Weapons Act 1990* (Qld)
 - a system of training and accreditation for its members (including via safety marshals, authorisation and peer review)
 - a set of by-laws, policies and procedures governing:
 - the accurate and authentic representation of history and historical events.
 - appropriate conduct and the safe handling and use of weapons by its members, and compliance with the Weapons Act and regulations, most especially in regard to interaction with the public and in public places
 - child protection and Blue Card requirements.

Our membership numbers approximately 1010 members across 71 individual re-enactment groups.

QLHF has consistently acted in support of the Queensland Police Service in implementing and enforcing the Weapons Act.

Current and future use by QLHF members of replicas

QLHF members possess and display replica Category R firearms on a regular basis, the original firearms being unobtainable and/or beyond the financial means of the average re-enactor. Replica firearms generally are safer as they cannot ever be fired or reactivated. We do expect that ownership and use of replica Category R firearms will increase within our organisation and that we will attract new members, depending upon the final language of the draft legislation and the accompanying regulations.

² See <https://parks.des.qld.gov.au/parks/fort-lytton/culture.html> for details of the fort's military history.

³ See <https://www.historyalive.com.au/>



Our member groups have informed us that:

- they have many members who want to participate in activities but do not hold weapons licences, and would like to make use of replicas in public events as an alternative to obtaining a firearms licence
- as noted below, we have a small proportion of teenagers in the QLHF. Some of these members would like to make use of replicas prior to turning 18 as an alternative to obtaining a minor's licence.

HISTORY OF CONSULTATION WITH THE QUEENSLAND POLICE SERVICE

The QLHF has been involved with and interacting with the Queensland Government on weapons issues since 1997, through the QPS's Weapons Licencing Branch and Police Ministers' Offices.

In 2012, a five year exemption was issued by the QPS for the benefit of QLHF members to allow for the display and blank-firing of firearms at public re-enactment events and commemorative ceremonies.

In the lead up to ANZAC Day in 2017, QLHF worked closely with the Weapons Licensing Branch and the Minister's Office on new language for a renewed Exemption, which once in place allowed QLHF member groups to go ahead with events and displays in support of ANZAC Day commemorations around South East Queensland. This led to a broader consultation on a range of issues impacting on re-enactors. The QLHF was also invited to become a part of the Police Minister's Firearms Advisory Committee.

During these consultations the QLHF has clearly articulated to the Weapons Licencing Branch and the Police Minister's Office the nature of our activities, how often they occur and in what manner.

We have been advised that the five year exemption will not be renewed. We have advised the QPS that the replacement mechanism that they have proposed is ineffective; we have not received a detailed response to the issues we have raised. Consultation on those issues is ongoing.

Recommendation for the introduction of a class of licence for re-enactors:

Our primary recommendation during the three years of consultation has been for the creation of a new category of licence for re-enactors. See for example **Attachment 1**: letter from QLHF to Inspector, Weapons Licencing Branch, 26 October 2017.

Some of the aspects of our activities are covered variously by aspects of firearms licences, collectors' licences, and blank-fire licences but no one form of licence appropriately applies to our activities. Adding to that is the fact that this new legislation has been proposed with gel blasters primarily in mind without full consideration having been given to the impacts on re-enactors or other users of replica weapons.

A re-enactor's licence could be introduced by the following steps:

Section 12 (k) of the Weapons Act allows for the introduction of a new class of licence via regulation:

Section 12: Licences are of the following classes—

- (a)
- (b)
- (c) ...



(k) another licence prescribed under a regulation.

A regulation could be introduced to set out what a re-enactor's licence authorises. See for comparison section 39, *Weapons Regulation 2016* (Qld): What theatrical ordnance supplier's licence authorises. The licence can be further regulated by way of codes under the regulation, in the way that some aspects of our activities are covered by existing military re-enactment codes issued by the QPS.

A number of relevant definitions have previously been adopted in formal exemptions issued by the QPS, or have been proposed by the QLHF as a part of consultations.

Those definitions are

- *military re-enactment*
- *historical demonstration*
- *Approved Re-enactment Group*

The text of those definitions is set out at **Attachment 2**.

In our view, the introduction of a licence for re-enactors would substantially reduce administration for the QPS, as re-enactors are currently administered under a hodge-podge of mismatched licences and regulation. As we have set out below, the proposed legislation as drafted appears to perpetuate the existing lack of clarity.

Our request that a new class of licence for re-enactors be created to specifically address our activities has been rejected, on the stated basis that it is too difficult to amend the Act.

Once consultation had begun on the specific issues of gel blasters and replicas, further requests were made to incorporate changes for re-enactors into the legislative changes but those were not taken up. However, during the consultation process we received assurances from QPS's Weapons Licensing Branch that they understood our activities and gave a commitment to treat us on parity with gel blasters, and that there would be no anomaly where re-enactors' replicas would be more strictly regulated than gel blasters.

The majority of the QLHF's concerns with the proposed legislation would be addressed by the introduction of a re-enactor's licence.

Recommendation 1:

That the Committee recommend the introduction of a class of licence for re-enactors via regulation.

Context of the legislative changes:

Regarding consultation on the discrete issues relating to the regulation of replicas, our initial response to the policy position published by QPS in their PowerPoint presentation on 3 March 2020 was favourable. But closer examination of the draft legislation has identified significant issues, which we have detailed later in this submission.

Committee transcript:

The QLHF has read the transcript of proceedings⁴ from the Committee's public briefing held on Monday, 30 March 2020

⁴ See <https://www.parliament.qld.gov.au/documents/committees/LACSC/2020/CorrectiveServices2020/trns-30March2020-pb.pdf>



At page 4:

Sgt Tatkovich: We started the Project Cubic Monitor from 2018 till around October of that year. From that time, what we were able to identify is that a gel blaster, for the rest of the persons present, is like a replica firearm. It looks in every other way like a semi or fully automatic machine gun. They do come in different types of weapons—that is, handguns and the like—but they are predominantly the ones that we deal with.

*Obviously Magistrate Shearer's decision in December 2017 allowed for the interpretation of those to be considered toys. From that project, what we have been doing is monitoring incidents that involve police—I will call them, using my own words, 'true incidents', so incidents that we, the police, feel need to be monitored. Examples would be where people who have extensive criminal history are found in possession of these weapons, people firing these gel blasters on members of the public without their lawful permission, and people displaying these gel blasters in public and causing members of the public fear. We have been monitoring those offences, dating from the time of the interpretation of the legislation on 17 December 2017. **As of Monday last week we found, true incident wise, that we are up to 352 incidents, and they make up those things that I have just mentioned. From that we have some 85 offences that have been committed directly involving gel blasters.** (emphasis added)*

Gel blasters fire a water based pellet that breaks when it hits the skin. For those who are not familiar with it, it is very similar to paintball. However, the internal mechanisms are slightly different and it does not generate as much power, so it does not actually cause bruising or anything like that.

We have been monitoring those offences and we have also been engaging with all those people who are involved with that community. We held our first meeting with that group in March 2018. We had an open forum at police headquarters. From that we were able to get them to establish five associations from around the state. We have been continuing to engage with them to come up with some safety strategies around that, and that is where we developed the STOP and Think campaign. I hope that addresses the question for the member.

Mrs McMAHON: Have there been any instances that are available to the public in terms of the use of gel blasters in the commission of offences?

*Sgt Tatkovich: Yes, absolutely. We have what is called district crime prevention coordinators from around the state with whom I have been in constant dialogue with regard to that product I mentioned before, the STOP and Think campaign. We have provided them with material which includes the A4 flyer as well as a PowerPoint presentation. We have been articulating the offences that are going on, the trends and the like, and the persons that are involved. **We have identified that they are males under the age of 20, predominantly around 16 to 17 years of age, who are committing these offences.** These district crime coordinators from around the state have been engaging, whether that is on radio, TV or in print. They have been reaching out to their broader community to get the message out there as best as they can with the best practices for those gel blasters. (emphasis added)*

The QLHF makes the following points regarding the excerpt of the transcript:

- The focus of the draft legislation is specifically the regulation of gel blasters, but the mechanism for doing so is achieved through casting a wider net that impacts all users of replicas, whether those are gel blasters or not.
- Insufficient thought has been given to unforeseen consequences for other users of replicas, despite three years of consultation by the QLHF with the QPS
- QLHF members will be impacted by the new legislation, but the QLHF is not aware that any of its members were the subject of any of the 352 incidents or 85 offences.
- a very small proportion of the QLHF's member demographic fall within the age group identified in the transcript of males 16 to 17 years of age. QLHF has 31 members in the 16 to 17 year old age group, which is 3% of our membership. Of these, 15 are male and 16 are female.



Contemplated changes to the *Weapons Categories Regulation 1997 (Qld)*

The Queensland Police Service has indicated that it will also be necessary to amend the *Weapons Categories Regulation 1997 (Qld)* alongside the amendments to section 67, to give effect to the new arrangements: see the PowerPoint presentation.

The QLHF has not received a copy of a draft amendment to the Regulation as part of the stakeholder consultation process. This is concerning: if stakeholders are to lodge submissions to the Committee by a fixed date, then all relevant materials should have been circulated to stakeholders so that they could meaningfully and fully participate in the process.

Recommendation 2:

That the committee request that the Queensland Police Service release a draft of relevant amendments to the *Weapons Categories Regulation 1997 (Qld)* to members of the Minister's Firearms Forum stakeholders to further submissions to the Committee.

At this point, we can only comment on the stated intent of the QPS expressed in the PowerPoint presentation mentioned in Sgt Tatkovich's comments to the Committee. See **Attachment 3: Weapons Licensing PowerPoint presentation** circulated to stakeholders on 3 March 2020.

QPS PowerPoint presentation:

The slides in the PowerPoint presentation most relevant to QLHF members are as follows; the most relevant statements have been out in bold for emphasis:

Slide 3: Replica firearms to become Restricted Items

- **ALL replica firearms will become "Restricted Items"** under the provisions of the Section 9 of the *Weapons Categories Regulation 1997*
- "Restricted items" are the mildest form of regulation permitted under the *Weapons Act*.
- **NO licence is required to possess a restricted item and the items do not need to be registered.**
- A person only needs a 'reasonable excuse' to possess a restricted item: *Section 67 of the Weapons Act 1990*.

Slide 6: What does this mean?

- Restricted items are NOT firearms.
- Restricted items are NOT a category of weapon.
- **You will NOT need a license to have one.**
- Replicas, including relevant Gel Blasters, will NOT need to be registered with Weapons Licensing.
- **If you have a reasonable excuse to have one, you can have as many as you like.**
- ...

Slide 7: What's a 'Reasonable Excuse'?

- Changes are proposed to Section 67 of the *Weapons Act 1990* to offer some guidance, however it is impossible to identify all possible reasonable excuses.
- **i.e. A member of a Gel Ball Club for the purpose of taking part in Gel Ball sports OR a collector of firearms.**
- The changes will make it clear that these are NOT the only reasonable excuses available.



- ...

Slide 11: *The elephant in the room and what does it mean?*

- **Category R category will be modified to remove 'not a toy' and replace it with 'a firearm':** Section 8 of the Weapons Categories Regulation 1997
- **Effectively this means that ALL replicas will be removed from Category R unless they are ACTUALLY a firearm** (some firearm manufacturers make category A and B firearms that are replicas of full auto weapons ie a .22 calibre rimfire semi auto rifle designed to look like an M16).
- ...

Slide 12: *Then why do it?*

- *The proposed legislation is designed to capture ALL replicas. If the toy provision remains in Cat R, then Gel Blasters (which we agree are toys) would possibly be exempt from the proposed changes completely.*
- *Whilst that would suit the Gel Ball community, it would do nothing to achieve the objective of the legislation and reduce the impact on community safety of continued replica firearm incidents.*
- *The 'Toy' argument is irrelevant. It doesn't matter if you call them toys or sports equipment or militaria. **As long as they are not a real gun, they cannot be in Category R.***

Slide 14: *Still don't see it, why change it!*

- *Also, for many years, RSL's and bona fide collectors of militaria have had to register and pay a fee, as well as hold a firearms collector's license just to possess inert replicas that were NOT real guns.*
- *These Cat R replicas were also the subject of strict storage requirements, identical to those of real guns.*
- *Weapons Licensing recognised that this was a disproportionate regulation of inert items, based entirely on appearance and so, requested the change for this reason also.*

In the view of the QLHF, the proposed amendments do not achieve the stated intent of the QPS's policy statement expressed in the PowerPoint presentation distributed to stakeholders. In particular,

- it does not achieve the stated intent that all replica firearms will become restricted items, and will not require a licence to possess them;
- it maintains the disproportionate regulation of replicas and licencing requirements when these items are in the hands of re-enactors, because re-enactors will not be permitted the same latitude to use replicas that gel ball club members will receive.

In summary, the QLHF has consulted and negotiated in good faith with the QPS for three years on a range of issues; more recently with a focus on the issues related to replicas. Despite our efforts, at this point unfortunately our expectation is that we will come out of this process more heavily, and less effectively, regulated than when we began.

SPECIFIC ISSUES REGARDING THE LANGUAGE OF THE DRAFT LEGISLATION

We will now address specific issues that arise from the text of the proposed amendments to section 67.

Issue 1: deficiencies in new section 67 (4) (a)

Subsection (4) (a) reads:



(4) It is a reasonable excuse for a person to possess or acquire a restricted item that is a replica of a firearm if—

(a) both of the following apply—

(i) the person is a member of an association, whether or not incorporated, that provides recreational activities involving replicas of firearms and the activities are conducted other than in, and in a way not reasonably able to be seen from, a public place;

(ii) the person's reason for possession or acquisition of the replica of a firearm is to participate in the recreational activities; or

The QLHF makes the following points regarding the subsection:

The recreational activities are restricted to those conducted other than in, and in a way not reasonably able to be seen from, a public place.

The purpose of the subsection is to establish an 'out of sight; out of mind' regime governing the use of gel blasters: provided users of gel blasters keep out of sight of the public, they can do so without any other constraints.

The same is not the case for re-enactors. Despite assurances from Weapons Licensing during consultation, the section has not been drafted with re-enactors in mind. We refer the committee back to the information provided in the background of this submission: the very purpose of much of what re-enactors do is that the activities are conducted in public, for the public, at public events. Not all re-enactors are hold collectors' licences; this has been made clear many times during consultation.

The result of this 'out of sight; out of mind' policy approach means that an item in the hands of a member of a gel ball club can be used with very minimal restrictions, but the very same item in the hands of a re-enactor can only be used with a licence.

This disparity is best summed up in slide 7 of the PowerPoint presentation, where examples are given of reasonable excuses to possess a restricted item:

- *Changes are proposed to Section 67 of the Weapons Act 1990 to offer some guidance, however it is impossible to identify all possible reasonable excuses.*
- *i.e. a **member of a Gel Ball Club for the purpose of taking part in Gel Ball sports OR a collector of firearms.***

Recommendation 3:

Re-number the proposed subsection (4) (b) as (4) (c), and insert a new subsection (4) (b), as follows using definitions previously referred to:

(b) both of the following apply—

(i) the person is a member of an incorporated association that undertakes re-enactment activities involving military re-enactment and historical demonstrations;

(ii) the person's reason for possession or acquisition of the replica of a firearm is to participate in the re-enactment activities;



The QLHF notes that, if a class of licence for re-enactors was introduced, a similar outcome could be achieved via provision for a reasonable excuse if the person in possession holds a re-enactor's licence.

Issue 2: New section 67 (4) (b)

Subsection (4) (b) reads:

(b) both of the following apply—

(i) the person is the holder of a collector's licence;

(ii) the person's reason for possession or acquisition of the replica of the firearm is for it to be part of the holder's collection of weapons.

This section will have benefits for holders of collector's licences if, as we understand, requirements for de-activation processes are reduced. But not all re-enactors who might want to make use of replicas in public events hold one. We had understood that one of the purposes of the amendment was to ensure that re-enactors were not more strictly regulated than gel blaster owners.

As compared to the measure introduced in subsection (4) (a) to benefit the users of gel blasters, the situation for re-enactors in most cases will be that while they might not require a licence to obtain a replica, it will still be a pre-requisite to have a licence to do so.

This issue of disparity may be substantially overcome if Recommendation 3 is adopted.

Issue 3: New section 67 (5):

Subsection (5) reads:

(5) It is a reasonable excuse for a person to possess or acquire a weapon that is permanently inoperable and would be, if it were not permanently inoperable, a category A, B or C weapon if—

(a) the person is the holder of a collector's licence; and

(b) the person's reason for possession or acquisition of the weapon is for it to be part of the holder's collection of weapons.

See also the existing section 6A of the Weapons Act:

A replica of a weapon is:

(a) a reasonable facsimile or copy of a weapon, even if it is not capable of discharging a projectile or substance;
or

*(b) a category A, B or C **weapon that has been rendered permanently inoperable;***

(c) or ...



Accordingly, a permanently inoperable category A, B or C weapon is already defined as being a replica under the Weapons Act. The QPS webpage⁵ currently says that no weapons licence is required For Category A, B, C and H non-firing replica weapon.

Therefore the new legislation impliedly introduces additional requirements: although section 67 does not categorically rule out other reasonable excuses, in interpreting the new section the implication is that possession of a permanently inoperable Category A, B or C weapon will be constrained to those who hold a collector's licence.

Recommendation 4:

That the Committee seek clarification from the QPS whether subsection (5) introduces additional constraints than those that currently apply and if so, propose further amendments to the draft subsection to redress that issue.

Issue 4: new section 67 (6)

Subsection (6) reads:

(6) Subsections (3) to (5) do not limit what may be a reasonable excuse for subsection (1).

Subsection (1) says that a person must not, without reasonable excuse, possess or acquire a restricted item.

In a number of these issues that the QLHF has identified and sought clarity, we are aware that a counterargument would be that, as stated at page 4 of the Explanatory Note, the specific examples of reasonable excuses that are articulated in the subsections of section 67 are not intended to limit what other circumstances may also be reasonable excuses.

With respect, that is not a satisfactory measure in real life scenarios, when there is an opportunity to achieve greater clarity through the committee's review of the draft legislation. The Explanatory Note also says: "Whether something is or is not a reasonable excuse will depend on all the circumstances at the time. It is essentially whether a reasonable person would consider it a reasonable excuse to possess the item. **Ultimately, whether something is or is not a reasonable excuse is a matter to be determined by a court**" (our emphasis). We would add, it is also a matter largely determined in the first instance by a police officer engaged in contact with a person in possession of the restricted item. Lack of clarity and specificity in the legislation will lead to confusion, cost and unnecessary process for owners of replica weapons, the police and the courts.

The QLHF has pointed out the need for an additional provision in subsection (4) (a) to address the use of replicas by re-enactors in public events. It is clear that this cannot be left to be interpreted on a case by case basis under the general excuse in subsection (1). The need for this is further demonstrated by the statement in the Explanatory Note that "This limits the provision to groups who carry out activities lawfully and, as such, **precludes activities involving the use of replica firearms in a public place since exposing a replica firearm to view in a public place is unlawful**" (emphasis added)

Issue 5: Replicas of Category R weapons

The new provisions specifically refer to Category A, B and C replica weapons but do not specifically make reference to replicas of Category R weapons, although the issue is a focus of the QPS PowerPoint presentation:

⁵ <https://www.police.qld.gov.au/weapon-licensing/replica-temporary-and-permanently-inoperable-weapons>



Slide 11: The elephant in the room and what does it mean?

- *Category R category will be modified to remove 'not a toy' and replace it with 'a firearm': Section 8 of the Weapons Categories Regulation 1997*
- *Effectively this means that ALL replicas will be removed from Category R unless they are ACTUALLY a firearm (some firearm manufacturers make category A and B firearms that are replicas of full auto weapons ie a .22 calibre rimfire semi auto rifle designed to look like an M16).*

It is understood that the vast majority of gel blaster weapons are replicas of Category R weapons.

Absent a draft of the intended amending Regulation, our understanding is that this would mean that section 8 of the *Weapons Categories Regulation 1997* (Qld) will be amended to read:

8 Category R weapons

(1) Each of the following is a category R weapon—

*(a) a machine gun or submachine gun that is fully automatic in its operation and actuated by energy developed when it is being fired or has multiple revolving barrels, and any replica or facsimile of a machine gun or submachine gun that is a **firearm not a toy**; (emphasis added)*

(b) ...

For completeness, note that in schedule 2 of the Weapons Act, firearm means—

(a) a gun or other thing ordinarily described as a firearm; or

(b) a thing ordinarily described as a weapon that, if used in the way for which it was designed or adapted, is capable of being aimed at a target and causing death or injury by discharging—

(i) a projectile;

(ii) ...

and the example provided after that definition says:

Example—

A replica of a gun capable of causing death or injury by discharging a projectile is a firearm. However, a replica of a gun not capable of causing death or injury by discharging a projectile is not a firearm.

The QPS webpage ⁶ contains the following text describing the process for rendering weapons such as Category R weapons permanently inoperable. It is our experience that QPS applies the same requirements to both an actual weapon that is to be rendered inoperable, and to a replica of a Category R weapon which has never been operable but otherwise has the appearance of an original, functioning Category R weapon.

⁶ See <https://www.police.qld.gov.au/weapon-licensing/replica-temporary-and-permanently-inoperable-weapons>



Permanently inoperable

In some cases (e.g. for collectors) it may be necessary to have a weapon rendered permanently inoperable to meet the conditions of a licence. This means that the firearms will be made incapable of being discharged in a manner that is irreversible. Proof that a firearm has been rendered permanently inoperable will need to be supplied to Weapons Licensing.

A licensed armourer is the only person authorised to render a firearm permanently inoperable, or certify that a weapon already is permanently inoperable. They can provide documentation confirming this (a form 31).

To obtain a certificate of a firearm/weapon being permanently inoperable you must present your firearm to the armourer to be rendered permanently inoperable or to be inspected and confirmed as permanently inoperable.

Once a firearm has been rendered permanently inoperable, or confirmed to be so, the licensed armourer will provide you with a completed form 31 – 'certificate of a firearm/weapon being permanently inoperable'. You must forward this form to Weapons Licensing.

Our hope is that the foreshadowed regulation will lead to a relaxation of the requirements for de-activation of replica weapons (which, as replicas, were never activated). QLHF has received no confirmation during the consultation and no response to enquiries as to whether this process will no longer be a requirement.

Recommendation 5:

As with Recommendation 2, that the committee request that the Queensland Police Service release a draft of relevant amendments to the *Weapons Categories Regulation 1997* (Qld) to members of the Minister's Firearms Forum stakeholders to further submissions to the Committee, in particular regarding clarification of the position regarding Category R replicas.

Issue 6: Museums

The QLHF works closely with a number of museums in South East Queensland. The QLHF notes that the section as drafted makes no provision, and provides any clarification, for museums wishing to own and display replica weapons.

Issue 6: Definition of 'association'

The existing provisions of s67 (3) says that it is a reasonable excuse for a person to possess or acquire a laser pointer if the person is a member of a recognised astronomical organisation.

The section defines a recognised astronomical organisation as being an astronomical organisation—

(a) prescribed under a regulation; or

(b) published on the QPS website for this paragraph.

There is no parallel requirement in the new subsection 4 (a). The section says it is a reasonable excuse for a person to possess or acquire a restricted item that is a replica of a firearm if the person is a member of an association, whether or not incorporated. 'Association' is defined in the section with the ambiguous wording of 'see the *Associations Incorporation Act 1981*'.



Section 67 (4) does not require that the association be recognised and makes no provision for a recognition process under Regulation, in the way that subsection (3) does for astronomical societies.

In the context of discussions regarding approval or recognition of re-enactment groups for the purpose of implementing QPS codes relating to military re-enactment, QPS officers have acknowledged in consultations that they maintain no internal process for recognising or approving associations under the Act.

The QLHF queries why there is no minimum effort here to require some kind of standard or regulatory oversight. In parallel consultations on related issues, the QLHF has recommended for some months that associations referred to in these kind of provisions and administrative arrangements should in fact be associations under the Associations Incorporation Act 1981. This would mean that associations would:

- have constitutions consistent with that Act
- have properly constituted governing committees
- be required to comply with the standards of transparency and financial accountability required under that Act.

Recommendation 6:

That the Committee consider whether the current definition and application of the term 'association' provides appropriate regulation.

Appearance before the Committee

The Queensland Living History Federation thanks the committee for the opportunity to make a submission in relation to the proposed amendments.

Representatives of the QLHF would welcome an opportunity to attend at the public hearing tentatively scheduled for 11 May 2020 and respond to any queries from the committee regarding the content of the submission. Contact details are set out below.

James Sunter

President

Queensland Living History Federation

Contact details:

President: [REDACTED]

Secretary: Damien Fegan; [REDACTED]



Attachment 1: letter from QLHF to Inspector, Weapons Licencing Branch, 26 October 2017.

**Attachment 2: relevant definitions:**

military re-enactment means the dramatic performance, restaging or recreation of:

- an identified, identifiable, military event, and
- scenarios based on historical military practices and drills, and includes participation in civil ceremonies and commemorations (for example, ANZAC Day ceremonies and parades).

historical demonstration means the exhibiting of the performance and/or practical operation of weapons, or the exhibiting of the manner of operation of devices, machines and/or processes which necessarily include the use of weapons, within an identified, or identifiable, historical context. A historical demonstration can only include a static display if any weapons are appropriately secured and supervised in accordance with the Act.

Source of text: Exemption issued under the *Weapons Act 1990* (Qld), number 71003871-00, 18 July 2017

Approved Re-enactment Group:

- Be an organisation that promotes the authentic re-enactment and preservation of history and historical events, and its presentation to the public
- Be an association incorporated under the *Associations Incorporation Act 1981* (Qld).
 - (Note: by requiring the association to be incorporated under the AIA, this automatically imports obligations of legitimacy and transparency such as requiring: a constitution, annual general meetings, a duly elected committee, reporting to the Office of Fair Trading, maintenance of an accurate register of membership).
- Maintain a database recording its members' weapons licences and conditions held under the *Weapons Act 1990* (Qld)
- Maintain a system of training and accreditation for its members (including via safety marshals, authorisation and peer review)
- Maintain a set of by-laws, policies and procedures governing:
 - the accurate and authentic representation of history and historical events, including historical demonstrations and military re-enactments,
 - appropriate conduct and the safe handling and use of weapons by its members, and compliance with the *Weapons Act* and regulations, most especially in regard to interaction with the public and in public places,
 - child protection and Blue Card requirements.

Source of text: definition first provided to QPS on 3 January 2020; updated here with minor amendments.



Attachment 3: QPS PowerPoint presentation



26 October 2017

Inspector Adam Guild,
Manager, Weapons Licencing Branch

By email: [REDACTED]

Dear Inspector,

**re: proposal for amendment to *Weapons Act 1990 (Qld)*:
re-enactor's licence**

Thank you for meeting with James Sunter and I on the 11th of October 2017.

One of the issues we discussed was the potential for the creation of a new category of licence under the Weapons Act intended only for re-enactors, and applying to weapon categories A, B, D, M, H & R. At our meeting, you invited the Qld Living History Federation to provide you with a submission in writing to begin a discussion with the Branch.

The Queensland Living History Federation represents the interests of Living Historian and Re-enactor groups in Queensland and has a membership of over 1,000, who make up over 60 member groups. These groups re-enact everything from Ancient Rome to the Vietnam War.

Membership of Queensland Living History Federation is based on high standards of safety, authenticity, research and performance. QLHF will shortly be making an application to become a 'Historical Society' under the Act.

The majority of our members requiring Weapons Act licences re-enact the more modern eras (for example, Napoleonic of the early 1800s, American Civil War, Queensland Colonial history, World War I, World War II, and the Vietnam War). But some earlier era re-enactors also require licences; for example, for maces, black powder firearms and cannons.

For re-enactors wishing to use weapons that are subject to the Act at re-enactment events, they are currently required to hold either a Firearms Licence and/or a Collectors Licence. Often, they will also require an endorsement of conditions MR1 and MR3 coupled with the effect of specific exemption 71003849-00 to allow them to, for example, blank fire a weapon at a public event such as an ANZAC Day ceremony while performing a salute.



The existing licence process is reasonably complex both for re-enactors and for the Branch. More relevantly, neither the Collectors' Licence or Shooters' Licence regime are tailored directly to the requirements of re-enactors, making regulation and oversight difficult both for the Branch and for our member groups. Further, to be able to comply with the Weapons Act regulatory scheme, re-enactors are generally required to maintain memberships of one or more associations (for example, the Sporting Shooters Association of Australia) unrelated to re-enactment or re-enactment events.

A reenactor licence would:

- Create greater certainty for re-enactors and the Branch, and provide opportunities to streamline and systemise processes and oversight
- Remove the need for exemption 71003849-00 and the renewal process associated with it. At a meeting earlier this year, the Branch and QLHF both acknowledged that the exemption was a 'band-aid' solution; the permissions granted under the exemption can arguably be incorporated in to the Act or Regulations as part of the creation of process for Re-enactor's Licence
- On the same basis, the requirements for licence conditions MR1 and MR3 could also be incorporated into that process.
- Promote awareness and compliance under a more easily understood system.

The QLHF would be happy to provide further details for the Branch that might assist you in considering the proposal.

Alongside the proposal, QLHF would also like a consideration of the ability to possess and use theatrical ordnance, and 'gas guns'. (At our recent meeting, you also invited the QLHF to formally approach you with a detailed submission regarding an assessment of 'gas guns' by the QPS's Ballistics Unit).

The QLHF believes that with a Re-enactor's Licence process, we would be in a better position to instruct, manage and oversee holders of a reenactor licence, hold a closer relationship to the QPS and better ensure that those in public places are appropriately licenced, and fully aware of their legal obligations both in firearms management and security.

We would also ensure new licence applications have completed the appropriate Safety Courses for their applied weapons categories.

We currently vet all new members; we ensure they comply with our own by-laws and regulations and can offer above average compliance if the licence holder is a Qld Living History Federation member. We are happy to include certification as currently occurs under an approved Historical Society with completion of such documents as a QP517 certifying the member is a fit and proper person, and a current financial member.

As both you and we identified at our meeting, there is currently a difficulty for both the Branch and QLHF in managing the behaviour of general members of the public who bring weapons in to public areas and ceremonies. QLHF believes that having a system in place for the licensing of actual re-



enactors with a genuine interest in history will make the job of the Qld Police Service that much simpler.

In our view, some of the language already contained in the existing exemption number 71003849-00 could form the basis both of defining a re-enactor and setting the boundaries of their activities under a re-enactor licence.

The QLHF is well aware that statutory amendment is a lengthy and complicated process; we recognise that implementing the suggested changes will take time. The QLHF would like to have a mutually beneficial working relationship with the Branch to work collaboratively with you to implement the changes over time.

You or your officers should feel free to contact me on [REDACTED] should you require any additional information.

Yours faithfully,

Robert Finlay

Qld Living History Federation

Proposed Replica Legislation

What's changing and what does it mean?

What is the need for changes?

- Gel Blaster incidents 293 in 2019
- Drain on police resources – don't always result in charges and often amount to no action taken, however every incident requires an armed tactical response until such time as police can safely identify that the item is not a firearm and there is no danger to the community.
- Impact on frontline police to respond to more important incidents.
- Risk of possible police shooting
- 2017 State Coroner's recommendations – asked the Commissioner to consider restricted ownership of replica firearms.

Replica firearms to become Restricted Items

- ALL replica firearms will become “Restricted Items” under the provisions of the **Section 9** of the **Weapons Categories Regulation 1997**.
- “Restricted items” are the mildest form of regulation permitted under the Weapons Act.
- NO licence is required to possess a restricted item and the items do not need to be registered.
- A person only needs a ‘reasonable excuse’ to possess a restricted item. **Section 67** of the **Weapons Act 1990**.

What is a replica in the *Weapons act 1990*?

- **6A What is a replica**
- (1) A **replica of a weapon** is—
 - (a) a reasonable facsimile or copy of a weapon, even if it is not capable of discharging a projectile or substance; or
 - (b) a category A, B or C weapon that has been rendered permanently inoperable; or
 - (c) a hand grenade that is inert.
- (2) A **replica**—
 - (a) of a particular weapon—means a reasonable facsimile or copy of the weapon, even if it is not capable of discharging a projectile or substance; or
 - (b) of a spear gun, longbow or crossbow—means a reasonable facsimile or copy of a spear gun, longbow or crossbow even if it is not capable of discharging a projectile; or
 - (c) of a thing prescribed under a regulation—means anything prescribe

What about toys?

- There is NO exemption for a toy in this definition.
- A thing can be a toy or a paperweight, a bottle opener or a cigarette lighter and ALSO be a replica firearm.
- The intended use of an item has no bearing on how the legislation views its appearance.
- ‘Toy’ is not a classification under the *Weapons Act 1990*.
- Gel Blasters have not been officially classified as a ‘toy’ by QPS or under any legislation.
- QPS Ballistics have previously indicated that Gel Blasters are NOT firearms. They have agreed that ‘projectile toy’ is probably a more accurate description of what they are intended for, but this is not binding on any court. It is not the job of QPS to categorise ‘toys’.
- Clark v Customs – Description by magistrate not binding.

What does this mean?

- Restricted items are NOT firearms.
- Restricted items are NOT a category of weapon.
- You will NOT need a license to have one.
- Replicas, including relevant Gel Blasters, will NOT need to be registered with Weapons Licensing.
- If you have a reasonable excuse to have one, you can have as many as you like.
- This will NOT affect importation to QLD. B709A police certificate only states that a licence or permit is NOT required for possession in the state. This will NOT change.
- Weapons Licensing are working hard on creating a smart form that eliminates common application errors to streamline importation process for importers.

What's a 'Reasonable Excuse'

- Changes are proposed to **Section 67** of the *Weapons Act 1990* to offer some guidance, however it is impossible to identify all possible reasonable excuses.
- I.e. A member of a Gel Ball Club for the purpose of taking part in Gel Ball sports OR a collector of firearms.
- The changes will make it clear that these are NOT the only reasonable excuses available.
- A court would apply what is commonly called the 'Reasonable Person Test'.
- In other words: Would an average person, given the ethical and moral standards and expectations of the community, believe that the excuse was reasonable?

What does that mean?

- The guideline I apply, and seems to be acceptable to all the legal opinions I have received is this:
- If your intended use of the item is NOT unlawful, dangerous, irresponsible, alarming to the public or threatening toward any person, it would be unlikely for a court to consider that excuse to be unreasonable.
- Deciding to possess a restricted item, the onus to have a reasonable excuse resides with the person possessing the item.
- Retailers would only need to point out to a customer that a reasonable excuse is required, NOT to determine what that excuse may be, or if it is reasonable.

What else?

- Provisions already exist in the legislation regarding storage of restricted items and preventing access to persons not authorised to have possession. **Section 142** of the **Weapons Regulation 2016**.
- This is NOT something that has been added as part of the proposed changes.
- When not in possession of the restricted item, it must be stored in a locked container.
- This does NOT mean a gun safe. It could be any closed container that is lockable. Eg a toolbox with a padlock, a gun bag with a small padlock, a cupboard or a drawer that is lockable.
- Police will NOT do safe keeping inspections.
- Police will be advised to avoid frivolous prosecution and encouraged to promote education.

How does this effect retailers and field operators or people who want to have their Gel Blasters on display?

- Provisions exist under the weapons regulations for Authorised Officers to approve alternate storage for weapons. **Section 98** of the **Weapons Regulation 2016**.
- This does NOT apply to restricted items at the moment as they are NOT weapons.
- Under the proposed changes Weapons Licensing will be able to approve alternate storage for restricted items on a case by case basis, upon application.
- This may require some retailers to adjust their store layout or apply for alternate storage, such as tethering some display stock.
- There will be an ample lead in time before the legislation takes effect to enable affected parties to comply.

The elephant in the room and what does it mean?

- Category R category will be modified to remove 'not a toy' and replace it with 'a firearm'. **Section 8** of the **Weapons Categories Regulation 1997**
- Effectively this means that ALL replicas will be removed from Category R unless they are ACTUALLY a firearm (some firearm manufacturers make category A and B firearms that are replicas of full auto weapons ie a .22 calibre rimfire semi auto rifle designed to look like an M16).
- This is NOT part of a government plan to ban Gel Blasters.
- Legislators were originally reluctant to include this provision until Weapons Licensing presented a case.
- Weapons Licensing is NOT working to ban Gel Blasters.

Then why do it?

- The proposed legislation is designed to capture ALL replicas. If the toy provision remains in Cat R, then Gel Blasters (which we agree are toys) would possibly be exempt from the proposed changes completely.
- Whilst that would suit the Gel Ball community, it would do nothing to achieve the objective of the legislation and reduce the impact on community safety of continued replica firearm incidents.
- The 'Toy' argument is irrelevant. It doesn't matter if you call them toys or sports equipment or militaria. As long as they are not a real gun, they cannot be in Category R.

So?

- From an interpretation point of view, in the absence of a definition within the relevant legislation, a court would often turn to the common or dictionary meaning of a word.
- In our opinion, the dictionary definition is NOT sufficient to clearly indicate that a Gel Blaster should be called a toy.
- To be able to say that Gel Blasters are NOT firearms, and therefore NOT Cat R is far more accurate than relying on them being called toys.
- Weapons Licensing asked for this change for several reasons.
- We currently think ‘toy’ and ‘replica’ are the best descriptions for (most) Gel Blasters, but some legal opinions still consider that (most) Gel Blasters are Cat R.
- Replacing “is a toy” with “a firearm” in legislation, nullifies that argument completely.

Still don't see it, why change it!

- Also, for many years, RSL's and bona fide collectors of militaria have had to register and pay a fee, as well as hold a firearms collector's license just to possess inert replicas that were NOT real guns.
- These Cat R replicas were also the subject of strict storage requirements, identical to those of real guns.
- Weapons Licensing recognised that this was a disproportionate regulation of inert items, based entirely on appearance and so, requested the change for this reason also.