



## Federation of Hunting Clubs

*'Hunters representing Hunters'*

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Regulatory Policy Branch  
Better Regulation Division  
Department of Finance, Services and Innovation  
92-100 Donnison Street  
GOSFORD NSW 2250

### **Re: Statutory review of the Work Health and Safety Act 2011.**

The Federation of Hunting Clubs Inc.<sup>1</sup> welcomes the opportunity to comment on statutory review of the *Work Health and Safety Act 2011*.

Our interest in this review is driven by our concerns that recreational hunters and shooters in NSW are being unfairly denied permits to possess and use firearm suppressors (also known as, albeit incorrectly as “silencers”) by the NSW Police Firearms Registry.

Especially relevant to the review committee is the abundant independent and objective evidence recognising the effectiveness of firearm suppressors in attenuating noise and mitigating hearing damage. We believe that licensed recreational and sporting users of firearms should be afforded equivalent access to firearm suppressors as government employees and enjoy all the benefits, including protection from hearing damage, these devices confer.

As the Federation’s concerns may not fall wholly within the scope and terms of reference for the review we wish to submit responses to the on-line questions, plus a separate detailed submission.

The issue of having access to *adequate* and *effective* hearing protection for firearm owners has been suppressed by State and Territory Police agencies throughout Australia. There are substantial health and safety consequences if firearm owners continue to be denied access to these effective hearing protection devices.

We look forward to following the progress and outcomes of the review.

Yours sincerely

Stephen Larsson  
for The Federation of Hunting Clubs Inc.

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<sup>i</sup> The Federation of Hunting Clubs Inc. (the Federation) is an umbrella organisation of 38 clubs representing hunters from metropolitan, rural and regional parts of New South Wales (NSW). The Federation was established in 1996 following the introduction of the *Firearms Act 1996* and is recognised in the *NSW Firearms Regulation 1996* as a peak association for satisfying the 'genuine reason' for issuance of firearm licences for recreational hunting/vermin control.

The Federation is the leading organisation representing the interests of licensed recreational hunters. The NSW Government recognises licensed recreational hunters provide a valued human resource to assist government agencies and private landholders in the control of game and feral animals (NSW Natural Resources Commission, 2016).



Have your say!

Please provide your feedback in conjunction with the discussion paper by **midnight 20 December**. Please base your answers on your own experiences working within the WHS laws.

Submissions will be published on the SafeWork NSW website after the closing date. If you wish all or some of your feedback to remain confidential, please indicate below and BRD will take this into consideration.

1. Do you wish your feedback to remain confidential?

- Yes  
 No

Please explain which questions and why

We have no objection to our submissions being published on the SafeWork NSW website

2. Contact information

Name

Industry

Region

Email Address (optional)

3. Tick the box that applies to you

- Small business PCBU  
 Medium business PCBU  
 Large business PCBU  
 Worker  
 Union representative  
 Government representative  
 Professional association  
 Employer association

\*Community Association

# THE ACT PART 1 - PRELIMINARY

Discussion paper, page 12

4. Are the objects of the Act still valid?

- Yes
- No

Please explain your answer

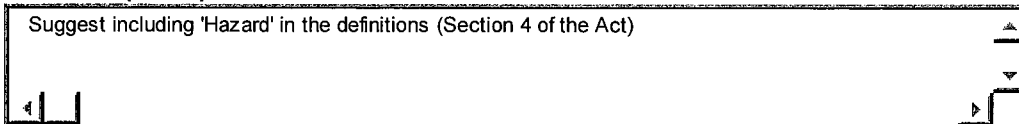


5. Are the terms of the Act appropriate for achieving the stated objectives?

- Yes
- No

Please explain your answer

Suggest including 'Hazard' in the definitions (Section 4 of the Act)



6. Could the objectives of the Act be achieved in ways that do not cost business as much time, resources or financial expenditure?

- Yes
- No

Please explain your answer



7. Are any of the objectives causing unnecessary costs for business?

- Yes
- No

Please explain your answer

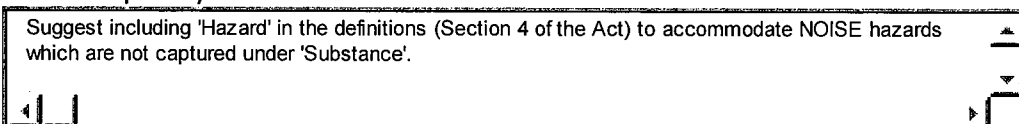


8. Are the NSW-specific definitions in section four of the Act working effectively?

- Yes
- No

Please explain your answer

Suggest including 'Hazard' in the definitions (Section 4 of the Act) to accommodate NOISE hazards which are not captured under 'Substance'.



9. Are these definitions clear? Please provide examples of circumstances where any definitions are not clear.

- Yes
- No

Please explain your answer: provide examples where the definitions are not clear.

Recommend clarifying that 'Employees' of Government agencies are also 'Workers'

10. Do you have any comments about how the strict liability provision is working?

From our perspective, NSW Police Force seem to be immune from non-compliance with the Act.

## THE ACT PART 3 - INCIDENT NOTIFICATION

Discussion paper, page 15

11. Do you have any comment regarding the provision that prevents duplication of incident notifications where they must be notified to the Resources Regulator?

## THE ACT PART 5 - CONSULTATION, REPRESENTATION AND PARTICIPATION

Discussion paper, page 16

12. Do you have any comment to make regarding the Industrial Relations Commission being the forum that can receive and decide whether to disqualify a health and safety representative?

13. Are the additional provisions that have been inserted for health and safety committees in coal mines working well?

- Yes
- No

Please explain your answer

14. Are the provisions relating to prisoners working well?

- Yes
- No

Please explain your answer

# THE ACT PART 6 - DISCRIMINATORY, COERCIVE AND MISLEADING CONDUCT

Discussion paper, page 17

15. Are the organisations listed to clarify who is an emergency services worker, appropriate?

- Yes
- No

Please explain your answer

Recommend the definition of "Discriminatory Conduct" be expanded to include...discrimination through the acts, omissions or decisions made by government 'workers' (employees)

16. Are there any other organisations that should be listed?

17. Are there any other organisations listed that should not be?

18. Do you have any comment to make regarding the District Court of NSW being the forum that can receive applications about civil proceedings in relation to discriminatory, coercive or misleading conduct?

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# THE ACT PART 7 - WORKPLACE ENTRY BY WHS ENTRY PERMIT HOLDERS

Discussion paper, page 18

19. Do you wish to comment about the Industrial Relations Commission being the Authorising Authority for NSW?

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20. Do you wish to comment on the *Industrial Relations Act 1996* being named as the relevant state or industrial law in NSW?

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# THE ACT PART 8 - THE REGULATOR

Discussion paper, page 18

21. Is the definition of 'authorised person' working well?

- Yes
- No

If no, please provide details and examples about how this could be improved for your particular circumstances

## THE ACT PART 9 - SECURING COMPLIANCE

Discussion paper, page 19

22. Are the classes of persons that the regulator may appoint as an Inspector working well?

- Yes
- No

Please explain your answer

23. Are the provisions for Inspectors to obtain a search warrant to obtain information about a suspected WHS breach clear?

- Yes
- No

Please explain your answer

24. Do the references to the *Law Enforcement (Powers and Responsibilities) Act 2002* provide suitable powers for a WHS inspector and NSW Police to cooperate and obtain information about a suspected WHS breach?

- Yes
- No

Please explain your answer

25. Are any other provisions needed for the WHS Inspector and NSW Police to cooperate and obtain information about a suspected WHS breach via a search warrant?

- Yes
- No

Please explain your answer

26. Do you wish to comment on the provisions that NSW currently provides for an inspector to obtain a person's name and address?

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27. Do you wish to comment on the provision regarding a person who fails to prove that the name or address they provided to an inspector, is correct?

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## THE ACT PART 10 - ENFORCEMENT MEASURES

Discussion paper, page 21

28. Do you have any comment to make regarding the District Court of NSW being the forum that can receive applications by the regulator, about non-compliance with notices?

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## THE ACT PART 11 - ENFORCEABLE UNDERTAKINGS

Discussion paper, page 21

29. Do you wish to comment about the District Court of NSW being the nominated forum to receive and hear an application for orders where a person is alleged to have contravened a WHS undertaking in NSW?

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## THE ACT PART 12 - REVIEW OF DECISIONS

Discussion paper, page 22

30. Do you wish to comment about the Industrial Relations Commission being the nominated external body to receive and decide an application for review of a reviewable decision made by the regulator?

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31. Do you wish to comment about the Industrial Relations Commission being the nominated external body to receive and hear an application for review of a decision made or taken to have been made, on an internal review by the regulator?

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# THE ACT PART 13 - LEGAL PROCEEDINGS

Discussion paper, page 22

32. Is the forum for proceedings for an offence against the WHS laws (except category 3 offences) being the local or district court in its summary jurisdiction, working well?

- Yes
- No

Please explain your answer

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33. Is the requirement for proceedings about category 3 offences to be dealt with summarily, working well?

- Yes
- No

Please explain your answer

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34. Are the provisions of the *Industrial Relations Act 1996* that relate to appeals under the WHS Act working well?

- Yes
- No

Please explain your answer

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35. Do you wish to comment on the provision for the secretary of a union to bring proceedings for an offence against the Act?

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36. Do you wish to comment on the penalty notice scheme being made under the *Fines Act 1996*?

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# THE ACT PART 14 - GENERAL

Discussion paper, page 25

37. Do you wish to comment on the provisions for sharing information by the NSW WHS regulators?

38. Do you have any comment regarding ongoing reviews of the Act?

All government agencies should be required to acknc

39. What is/is not working well for small business in relation to the NSW-specific provisions of the WHS laws?

40. What has/has not improved for PCBUs or workers operating in more than one jurisdiction?

41. Are there differences between how the NSW regulators are applying the legislation compared to other states, territories and the commonwealth?

- Yes
- No

If yes, please provide a detailed response.

There seems to be a poor attitude to compliance WHS obligations by NSW Police Force (the regulator for firearms and prohibited weapons in NSW) although we are not aware of any specific differences from other jurisdictions.

42. Are there differences between how the NSW regulators are providing advice and assistance compared to the other states, territories and the commonwealth?

- Yes
- No

If yes, please provide a detailed response.

NSW Police Firearms Registry are very poor at providing advice and ASSISTANCE regarding firearm suppressors. In fact it seems they are deliberately evasive and unhelpful.

## THE ACT SCHEDULE 2 - THE REGULATOR

Discussion paper, page 28

43. Are the provisions that relate to two separate WHS regulators working well?

Yes

No

Please explain your answer



44. Are any additional provisions needed to provide for easier communication and exchange of information between the regulators?

Yes

No

Please explain your answer



## THE ACT SCHEDULE 3 - REGULATION-MAKING POWERS

Discussion paper, page 28

45. Do you have any comments to make about the forums nominated to conduct reviews under the Regulation in NSW?



## THE ACT SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Discussion paper, page 29

46. Do any parts or sections of schedule 4 require updating?

Yes

No

If yes, please provide sufficient details about what the provision is, why it is out of date or not working well, and what can be done to improve it.



# THE REGULATION, CHAPTER 1 - PRELIMINARY

Discussion paper, page 30

47. Are the definitions in clause 5 and 7 working effectively?

Yes

No

Please explain your answer

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48. Do you wish to comment on provisions for the Act to apply (or may apply) to dangerous goods and high risk plant that are not at a workplace? (clause 10)

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49. Do you wish to comment on the exclusions that mean the Act does not apply (or may not apply) to dangerous goods and high risk plant that are not at a workplace? (clause 10)

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# THE REGULATION, CHAPTER 2 - REPRESENTATION AND PARTICIPATION

Discussion paper, page 33

50. Is the note about training for health and safety representatives helpful?

Yes

No

Please explain your answer

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# THE REGULATION, CHAPTER 4 - HAZARDOUS WORK

Discussion paper, page 34

51. Is any additional information required to make it easier to understand that the requirements for demolition licensing continue to apply from chapter 10 of the former legislation?

Yes

No

Please explain your answer or provide examples of situations where the information has been needed.

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52. Is the meaning of electrical equipment in clause 144 clear?

- Yes
- No

Please explain your answer

53. Do you wish to comment on the term 'authorised' that has been inserted by NSW in clause 146?

54. Do you wish to comment on the exclusion in clause 152 that applies to an electricity supply authority, or a person accredited and providing contestable services?

55. Is the note in clause 164 that advises that residual current devices are also regulated under the *Electricity (Consumer Safety) Act 2004*, helpful?

- Yes
- No

Please explain your answer

56. Is the note in clause 166 that advises the *Electricity (Consumer Safety) Act 2004* and the *Electricity Supply (Safety and Network Management) Regulation 2008* also apply to the PCBU, helpful?

- Yes
- No

Please explain your answer

## THE REGULATION, CHAPTER 5 - PLANT AND STRUCTURES

Discussion paper, page 37

57. Are the professional organisations or associations in clause 235, for determining a competent person to conduct a major inspection of registered mobile cranes and tower cranes, appropriate?

- Yes
- No

Please explain your answer



## THE REGULATION, CHAPTER 7 - HAZARDOUS CHEMICALS

Discussion paper, page 38

58. Do the local laws that NSW added for exemptions to clause 328 remain appropriate?

- Yes  
 No

Please explain your answer



59. Do you wish to comment on the *Pesticides Act 1999* being specified in clause 354 to provide for an exemption, meaning an identification of physical or chemical reactions is not required when the chemical is being used for agricultural purposes?



## THE REGULATION, CHAPTER 8 - ASBESTOS

Discussion paper, page 40

60. Do you wish to comment on the exemption in clause 419 that means a license is not required for work involving transport and disposal of asbestos or asbestos waste - that is done in accordance with the *Protection of the Environment Operations Act 1997*?



61. Do you wish to comment on whether the requirement for the regulator to be satisfied that the applicant is able to ensure the licensed work will be done safely, competently and in compliance with the conditions of the licence, working well? (clauses 497 and 500)



## THE REGULATION, CHAPTER 9 - MAJOR HAZARD FACILITIES

Discussion paper, page 45

62. Do you wish to comment on the exclusion in clause 530(1) that means chapter 9 does not apply to a facility that is regulated by the National Offshore Petroleum Safety and Environmental Management Authority under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth?

**63. Do you wish to comment on the exclusion in clause 530(2)(a) that means chapter 9 does not apply to a port operational area under the control of a port authority?**

**64. Do you wish to comment on the exclusion in clause 530(2)(b) that means chapter 9 does not apply to a pipeline to which the *Gas Supply Act 1996* or the *Pipelines Act 1967* applies?**

**65. Do you wish to comment on the exclusion in clause 530(2)(e) that means chapter 9 does not apply to a mine or petroleum site?**

**66. Is the example in clause 552 under the heading 'arrangements for preventing unauthorised access to the major hazard facility' helpful?**

**67. Do you wish to comment on the requirement in clause 557(2)(a)(i) to consult with Fire & Rescue NSW in preparing an emergency plan for a major hazard facility?**

**68. Do you wish to comment on the requirement in clause 557(2)(a)(ii) to consult with the NSW Rural Fire Service in preparing an emergency plan for a major hazard facility?**

**69. Do you wish to comment on the requirement in clause 561 for the operator of a major hazard facility, to provide the content for a safety case, as stated in schedule 18?**

70. Do you wish to comment on the Civil and Administrative Tribunal in clause 599 being the forum for external review following the Regulator's decision to refuse to renew a MHF license?



## THE REGULATION, CHAPTER 11 - GENERAL

Discussion paper, page 49

71. Do you wish to comment on the period of 21 days for the internal reviewer to review the previous decision in clause 680?



72. Do you wish to comment on the period of 21 days for the internal reviewer to give notice of the decision and the reasons for the decision in clause 681?



73. Do you wish to comment on the Civil and Administrative Tribunal being the forum that is nominated to hear and decide applications for external review of a decision in clause 683?



74. Is the note in clause 699, advising that the *Public Health Act 2010* also imposes obligations relating to the notification of certain medical conditions, helpful?

Yes

No

Please explain your answer



75. Do you wish to comment on the Acts that have been prescribed in the Regulation for the purposes of section 271 (3) (c) (ii) of the Act? (clause 702)



76. Do you wish to comment on the penalty notice offences listed in schedule 18A? (clause 702A)





# Pre WHS Codes of Practice

Discussion paper, page 54

77. Which of the pre-WHS codes do you still use?



78. How often do you use the pre-WHS codes you have listed?

Please explain how often you use each code you named for the question above.



79. What parts of the pre-WHS codes have you looked up in the last 18 months?

Please describe the situation and whether the part you looked up was useful, or not, and why.



80. What parts of the pre-WHS codes do you or persons you represent find useful?

Please describe which parts are useful, when and how these are useful to you or persons you represent.



81. Are there any parts of the pre-WHS codes that are unclear or confusing?

- Yes
- No

If yes, please state which codes, which parts and what is unclear or confusing.



82. Are there any documents that cover the same subject matter as any pre-WHS codes, but are inconsistent with the codes?

- Yes
- No

Please explain your answer



83. Is additional guidance needed for any of the subjects covered by the pre-WHS codes?

- Yes
- No

If additional guidance is needed, please explain what guidance would be useful with practical examples of when you (or persons you represent) would use it.

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**The Federation of Hunting Clubs Inc.**

**Submission to the**

**Statutory review of the *Work Health and Safety Act 2011***

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**Federation of Hunting Clubs**

*'Hunters representing Hunters'*

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***“All suppressors offered significantly greater noise reduction than ear-level protection, usually greater than 50% better. Noise reduction of all ear-level protectors is unable to reduce the impulse pressure below 140 dB for certain common firearms, an international standard for prevention of sensorineural hearing loss.”***

Matthew Branch, MD  
Otolaryngologist

### **Profile – the Federation of Hunting Clubs Inc.**

The Federation of Hunting Clubs Inc. (the Federation) is an umbrella organisation of 38 clubs representing hunters from metropolitan, rural and regional parts of New South Wales (NSW). The Federation was established in 1996 following the introduction of the *Firearms Act 1996* and is recognised in the *NSW Firearms Regulation 1996* as a peak association for satisfying the ‘genuine reason’ for issuance of firearm licences for recreational hunting/vermin control.

The Federation is the leading organisation representing the interests of licensed recreational hunters in this state. The NSW Government recognises licensed recreational hunters provide a valued human resource to assist government agencies and private landholders in the control of game and feral animals (NSW Natural Resources Commission, 2016).

This document was prepared by Stephen Larsson, Special Projects Officer, the Federation of Hunting Clubs Inc. P.O. Box 376 Baulkham Hills, NSW 1755 Australia.

## Introduction

### Technical Aspects

Upon discharge of a firearm, the exit of a projectile from the barrel produces noise that can exceed 140dB. For a projectile travelling greater than the speed of sound (supersonic) the noise produced is a distinct crack, in the order of 145dB heard downrange from the firearm (MacCarthy *et al.* 2011).

Depending on the calibre of firearm and type of ammunition the noise produced can exceed the 'exposure standard for noise' ( $L_{C,peak}$  of 140 dB(C) specified in Section 56 of the *Work Health and Safety Regulation 2011*<sup>1</sup>. Firearms that produce peak sound pressure greater than 140 dB present a risk of cochlear and associated hearing damage (Nondahl *et al.* 2000).

The term "silencer" suggests (incorrectly) that these devices silence the sound of a projectile leaving the barrel of a firearm. This is not correct – they merely *reduce* the sound. For this reason 'suppressor' or 'moderator' are more accurate descriptors for these devices. In this submission, the term 'suppressor' is used.

### Legislation and Regulation

The possession and use of firearms in NSW is highly regulated by the NSW Police Force and conditional on the overriding need to ensure public safety. Any person possessing or using a firearm must be authorised for that specific category of firearm by holding a current firearms licence or permit. A firearms licence must not be issued unless the Commissioner of Police is satisfied that the applicant is a fit and proper person and can be trusted to have possession of firearms without danger to public safety or to the peace.

Firearm suppressors are listed in Schedule 1 of the *Weapons Prohibition Act 1998*<sup>2</sup>. Section 11 of the Act provides nine 'genuine reasons' that one may apply to the NSW Police Firearms Registry for a suppressor. The genuine reason relevant to the majority Federation members is for '*recreational / sporting purposes*'. For recreational / sporting purposes the applicant must demonstrate that the recreational or sporting activity concerned 'requires' the possession or use of the prohibited weapon for which the permit is sought.

Historically, applications for firearm suppressors for recreational / sporting purposes have been denied by the NSW Police Firearms Registry which has recently confirmed the NSW Police Commissioner has never issued a suppressor for the genuine reason of recreational hunting (Appendix B).

Further to our observation that the NSW Police Firearms Registry almost universally rejects *legitimate* 'genuine reason' applications for suppressors is the recent case brought before the NSW Civil and Administrative Tribunal - *Allen v Commissioner of Police, NSW Police Force*

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<sup>1</sup> *Work Health and Safety Regulation 2011*. <http://www.legislation.nsw.gov.au/#/view/regulation/2011/674>

<sup>2</sup> Weapons Prohibition Act 1998 No 127.

<http://www.legislation.nsw.gov.au/#/view/act/1998/127/part2/div2/sec11>

[2015] NSWCATAD 224] and *Commissioner of Police, NSW Police Force v Allen* [2016] NSWCATAP 148. This case reveals the extraordinary lengths the NSW Police Firearms Registry will go to, to deny issuing permits for firearm suppressors.

### Acoustic Shock

The sequelae following acoustic shock (sudden loud noise) are profound and can manifest in a broad range of primary, secondary and tertiary symptoms (Safe Work Australia 2015).

Noise trauma can have wide-ranging negative effects including decreased socialisation, reduced personal safety and security, and misdiagnosis of medical and emotional problems (Nondahl 2011).

Personal hearing protectors ( earmuffs, earplugs) are one option when using firearms however they suffer numerous disadvantages that markedly reduce their effectiveness and utility including:

- individual fit of personal hearing protectors is critical for optimum protection
- ear-muffs can be uncomfortable to wear in hot environments
- wearing spectacles and hats interferes with proper fit and seal of hearing muffs
- ear-muff seals should be undamaged
- the tension of headbands appropriate
- compressible ear-plugs should be soft, pliable and clean (Safe Work Australia 2015).

In his 2011 paper Dr Matthew Branch includes a summary of earlier work by the National Institute of Occupational Safety and Health (NIOSH) which cautioned that due to differences between 'laboratory testing methods' and the 'real world', earmuffs should be considered to have 25% less noise reduction ratio (NRR) than stated and earplugs to have 50% less.

Dr Branch shared this view stating that ear-level protection is far from being a panacea and rarely, if ever confers the level of protection advertised. Alarmingly Dr Branch warned that *laboratory* (advertised) noise reduction ratio for earmuffs and earplugs grossly overestimate *real world* (actual) noise reduction ratios by 140%-2000%.

In a hunting situation, it is essential that firearm users maintain the unimpeded ability to hear clearly to:

- hear sounds that warn of danger (falling branches, impending animal attack, verbal alerts and sound signals from others etc.)
- maintain contact with hunting partners, and
- help find targeted quarry (Nondahl *et al.* 2000).

Firearm suppressors are vastly superior to ear-level protection and the only available form of suppression capable of making certain sporting arms safe for hearing (Branch 2011).

## Firearm Suppressors: Myths and Realities

Earlier this year an article in the *Sydney Morning Herald* demonstrated the extraordinary sensationalism and misunderstanding surrounding firearm suppressors:

**"Silencer[s] are banned in 11 states in US because they are considered too dangerous".**

In contrast, following is a selection of three non-sensationalised, rational views on suppressors. First, in a paper presented at the 2016 annual conference of the Australian and New Zealand Marketing Academy (ANZMAC) Dr MacCarthy *et al.* put a well-reasoned and rational view of these devices:

**"... a suppressor is not a device which of itself can cause harm or injury and therefore to suggest it is a weapon is arguably a mischievous falsity. One literal appreciation of the product implies they are similar in principle and no more or less benign than a motor vehicle muffler."**

Second, in a scientific study comparing the effectiveness of ear-level protection ( earmuffs, earplugs) with muzzle-level protection (suppressors) in a range of firearms using strict military/industrial standard sound measurement for impulse noise, Branch (2011) found that:

**"All suppressors offered significantly greater noise reduction than ear-level protection, usually greater than 50% better. Noise reduction of all ear-level protectors is unable to reduce the impulse pressure below 140 dB for certain common firearms, an international standard for prevention of sensorineural hearing loss."**

Finally, in their recent review of the *Firearms Act 1973* (WA) the Law Reform Commission of Western Australia acknowledges the utility of these devices and gives a realistic assessment of risk<sup>3</sup>:

**"...the Commission's view is that, as a firearm is permitted under the Firearms Act for certain purposes it is not logical for the use of a silencer in similar lawful circumstances to be prohibited. The Commission does not consider that the wider use of silencers as proposed in this section will increase the risk to community safety to any great extent."**

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<sup>3</sup> Law Reform Commission of Western Australia (October 2016). *Review of the Firearms Act 1973 (WA): Project 105 Final Report*.  
<http://www.lrc.justice.wa.gov.au/apps/search/results.aspx?query=Review+of+the+Firearms+Act+1973&search.x=0&search.v=0>

## Our Submissions

The following submissions result from our detailed review of (a) work, health and safety obligations contained in the review discussion paper and the *Work Health and Safety Act 2011* (b) *the Police Act 1990* (c) the *Internal Review - Statement of Reasons* by NSW Police submitted as evidence in a case brought before the NSW Civil and Administrative Tribunal (Appendix A) (d) correspondence between a firearm suppressor applicant and the NSW Police Firearms Registry (Appendix B) and (e) an application by the NSW Office of Environment and Heritage for a firearm suppressor and approval by the NSW Police Firearms Registry (Appendix C).

Documents presented in Appendix A and Appendix B are used with permission. Documents presented in Appendix C were released under the *Government Information (Private Access) Act 2009*.

1. **The Review Discussion Paper**<sup>4</sup> mentions that the *Work Health and Safety Act 2011* specifies *who* has duties, and, that they are to **achieve required outcomes** by doing certain things, including:

- having regard for the underlying principle that workers **and other persons should be given the highest level of protection against harm** (page 12);
- **every person is entitled to protection, regardless of whether they are workers, members of the wider public**, or have some other work related status (page 12); and
- that there are **work health and safety duties** for Persons Conducting a Business or Undertaking (PCBUs), **officers**, unincorporated associations, **government departments and public authorities** (page 14).

2. **The Police Act 1990**<sup>5</sup>

- Section 5 affirms the **NSW Police Force** comprises the following **members** - the Commissioner, members of the Senior Executive Service, **all other police officers** and **administrative officers**;
- Section 6(2)(a) states the **NSW Police Force** has among its **functions**, to provide **police services** for New South Wales;
- Section 6(3)(b) states that '**Police Services**' includes the **protection of persons from injury** or death, and property from damage, **whether arising from criminal acts or in any other way**; and
- Section 6(4) affirms that a reference to the **functions of the NSW Police Force** includes a reference to the **functions of members of the NSW Police Force**.

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<sup>4</sup> Statutory review of the *Work Health and Safety Act 2011*: Discussion Paper.  
[http://www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0004/109480/Statutory-review-of-the-Work-Health-and-Safety-Act-2011-Discussion-Paper.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0004/109480/Statutory-review-of-the-Work-Health-and-Safety-Act-2011-Discussion-Paper.pdf)

<sup>5</sup> *Police Act 1990 No. 47*. <http://www.legislation.nsw.gov.au/#/view/act/1990/47>



### **3. The Work Health and Safety Act 2011**

- Section 7(2) affirms that a **Police Officer** is a **'worker'** and is at work throughout the time when the officer is on duty or lawfully performing the **functions** of a police officer, but not otherwise; and
- Section 28(b) states that while at work a **'worker'** (i.e. NSW Police Officer) **must take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons.**

4. **The NSW Police Force website** lists among its **'Services'** the administration of NSW firearms legislation and **issue of firearms licences and permits by the Firearms Registry.**<sup>6</sup>

### **5. The Work Health and Safety Act 2011**

- Section 29 affirms that **'other persons'** at the workplace (e.g. **administrative officers** at the NSW Firearms Registry) **must take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons;**
- Section 252 affirms that a **person who makes, or participates in making,** decisions that affect the whole, **or a substantial part,** of the business or **undertaking of a public authority is taken to be an officer of the public authority** for the purposes of the Act.
- Section 27 affirms that **officers, workers** and **other persons** must exercise **'due diligence'** which includes taking reasonable steps to **acquire and keep up-to-date knowledge of work health and safety matters,** and **implementing processes for complying with any duty or obligation** under the Act.

We submit that an administrative officer of the NSW Firearms Registry, who makes or participates in making decisions to approve or reject firearm suppressor applications:

- is also an **'officer of a public authority';**
- must exercise due diligence and keep up-to-date on health and safety matters, including contemporary, effective hearing protection for firearm owners; and
- must take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons, including firearm owners.

### **6. Appendix A: NSW Firearms Registry – Communications with Suppressor Applicant**

Email correspondence from the NSW Firearms Registry on 14 April 2016 (Appendix B) to a firearm suppressor applicant, states that **the onus is on the applicant to demonstrate that they require the prohibited weapon** (suppressor). An earlier email, dated 13 April 2016 to the same applicant states **it is the applicant's responsibility to prove they require the prohibited weapon and there is no other alternative to meet the genuine reason the applicant has submitted.**

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<sup>6</sup> NSW Firearms Registry. <http://www.police.nsw.gov.au/services>

We submit there is no legislative basis for the NSW Firearms Registry to assert that applicants have a responsibility to prove that there is *'no other alternative'*. There is no mention in either the *Weapons Prohibition Act 1998* or the *Weapons Prohibition Regulation* that consideration of "alternatives" to firearm suppressors ought to be given by the Commissioner when adjudicating applications for firearm suppressors.

We further submit the true motivation for this assertion is acknowledgement by the Commissioner's Delegate that an approval decision "will set a precedent".

#### **7. Appendix B: Internal Review - Statement of Reasons by NSW Police Force**

Comments in the *Statement of Reasons* submitted by NSW Police as evidence in *Commissioner of Police, NSW Police Force v Allen [2016] NSWCATAP 148* show that the Delegate of the Commissioner, acknowledges that firearm suppressors may be beneficial:

**"I accept that the use of a silencer may be of benefit to you for your own occupational health and safety for hearing purposes, however, I believe that other means are available to achieve your desired result (e.g. the use of earplugs or protective headwear would be more appropriate)."**

We submit the Delegate of the Commissioner made a fundamental error in asserting **"I believe that other means are available to achieve your desired result (e.g. the use of earplugs or protective headwear would be more appropriate)"**.

It is not a matter of what the Delegate *believes* regarding firearm suppressors, it is a matter of what *duties* and *obligations* the Firearms Registry has under the *Police Act 1990*, the *Work Health and Safety Act 2011*, including the Code of Practice: *Managing Noise and Preventing Hearing Loss at Work*.

#### **8. Appendix C: Office of Environment and Heritage Suppressor Application and Approval**

The application by the Office of Environment and Heritage (OEH) for a suppressor permit dated 25 February 2015 was for "the purpose of feral animal control on national park estate". The application was approved and a Commissioners permit dated 31 March 2015 duly issued 34 days after the application was submitted.

We submit that the NSW Firearms Registry gives preferential and expedited consideration to applications for suppressors by government agencies while deliberately delaying consideration of applications from non-government applicants and rejecting legitimate 'genuine reasons' for applications, as is revealed in Case Law (2016a).

Regarding application(s) for firearm suppressors by the NSW Office of Environment and Heritage we find it truly remarkable that the NSW Firearms Registry is somehow **"... satisfied**

**that their genuine reasons to possess and use these prohibited weapons were substantiated”** (Appendix A) whereas applications by business owners (Appendix A, NSW Caselaw 2016a, NSW Caselaw 2016b) and private individuals (Appendix C) are without merit and rejected.

The application for a suppressor permit(s) by the Office of Environment and Heritage on 25 February 2015 was approved in just 24 working days (Appendix C), whereas in the email to a non-government suppressor applicant dated 13 April 2016 the NSW Firearms Registry confirms it had **“received a large volume of applications and at this stage none have been processed”** and **“the backlog extends to October/November last year”** (Appendix B).

We further submit the NSW Firearms Registry has participated in discriminatory and misleading conduct and that this conduct may constitute a breach of Part 6 of the *Work Health and Safety Act 2011*.

## Conclusions

From the documents and submissions presented here the Federation of Hunting Clubs Inc. believes:

1. all NSW Government agencies, including the NSW Police Force (including the Commissioner, Senior Executive Service, all other police officers, and administrative officers employed under the *Police Act 1990*) have a health and safety duty under Division 2, 3 and 4 of Part 2 of the *Work Health and Safety Act 2011*;
2. the NSW Police Firearms Registry has a duty under Section 17 of the *Work Health and Safety Act 2011* to eliminate or minimise risks to health and safety of firearm owners and users, and others, during recreational/sporting use of firearms.

In relation to licensed firearm owners applying for a firearm suppressor, the duty of the NSW Police Firearms Registry includes complying with the Code of Practice '*Managing Noise and Preventing Hearing Loss at Work*', in particular, section 5.1b *The Hierarchy of Risk Control* which ranks the ways of controlling the risk of hearing loss from noise from the highest level of protection and reliability to the lowest so that the most effective controls are considered first (*Safe Work Australia 2015*); and

3. the NSW Firearms Registry has wilfully discriminated against non-government applicants for firearm suppressors and this conduct breaches the *Work Health and Safety Act 2011*.

## Recommendation / Request

Given the evidence presented here and the potentially seriousness of consequences of acts or omissions we believe there are sufficient grounds for Work Safe NSW to undertake a formal comprehensive audit and review of the NSW Police Firearms Registry policies and procedures for assessing applications for firearm suppressors. This review should include, but not be limited to:

- assessment of the understanding by all Firearms Registry staff of their duties and obligations under the *Work Health and Safety Act 2011*;
- review of the assessment of all firearm suppressor applications rejected in the past 2 years for objectivity and compliance with *Work Health and Safety Act 2011* requirements;
- oversee development of objective criteria to satisfy the genuine reason requirements for suppressor applications and instil this as an SOP.
- implementing remedial actions to correct any deficiencies in training, and procedures;
- the issue of improvement notice(s) and/or penalties as required under the Act.

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