

14 November 2023

The Hon. Paul Papalia  
Minister for Police  
10<sup>th</sup> Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

Dear Minister,

**Re: The Firearms Act Reform Consultation Paper – response from the WA Family and Domestic Violence Legal Workers Network**

***Introduction***

The WA Family and Domestic Violence Legal Workers Network (FDVLWN) is comprised of members of legal assistance services operating in Western Australia (WA). The FDVLWN provides a mechanism to coordinate systemic advocacy, training and reform for the Community Legal Centre (CLC) sector. The FDVLWN shares information, promotes and organises professionals to assist building the capability of Network members, and leads the preparation of submissions relevant to the Network.

The FDVLWN is convened by Women’s Legal Service WA (WLSWA). WLSWA is a specialist gender-specific community legal centre, providing services to women around WA who are financially disadvantaged, prioritising women experiencing family, domestic and sexual violence (FDSV). In addition to poverty and FDSV, WLSWA clients live with multiple vulnerabilities that creates other barriers to accessing justice. WLSWA aims to empower women to make informed choices and participate fully in legal processes that impact them and their children. WLSWA also advocates for women’s rights to be upheld and fosters social change through education and policy reform.

WLSWA do not advise on firearms licence matters or criminal offences. However, most of our clients have experienced family and domestic violence and many will have a current, or previous Family Violence Restraining Order (FVRO) against a former partner. WLSWA has a particular insight into the experiences of women at both individual and collective levels, in relation to the threat a person might pose should they misuse a firearm.

FDVLWN member CLCs offer a range of legal services, including: specific FDSV services for women, representation to Respondents to FVROs, representation for Family Law matters, or representation to clients in criminal matters which may impact on their eligibility to hold a firearm licence. Collectively our organisations have significant knowledge and practical experience relating to the interaction of firearm use and FDSV.

***Acknowledgments***

We acknowledge the Traditional Owners of the country on which we live and work, the Whadjuk people of the Noongar nation, and pay respects to their Elders past and present. We also endorse this statement from the National Plan to End Violence against Women and Children 2022-2032:

*Victim-survivors must be at the heart of solutions. Victim-survivors have specific and contextual expertise that comes from lived experience of abuse and violence. They have intimate firsthand knowledge of services, systems, and structures that are meant to support*

*them but have sometimes failed them. They know from experience the weaknesses and strengths of interventions in practice. (p68)*

We cannot develop effective solutions to FDSV without the input of the people most affected by it.

### ***Background to the submission***

The FDVLWN welcomes the opportunity to make this submission to WA Police in relation to their Consultation Paper for the reform of firearms laws in WA. This year has marked a pivotal shift in the WA discourse on FDSV with the implementation of the Family and Domestic Violence Taskforce and Lived Experience Reference Group. We are heartened by the Government's commitment to taking a whole of Government approach to addressing sexual violence experienced across the life course of victim-survivors – from primary prevention, perpetrator accountability, improving the criminal justice system experience for victim-survivors, to recovery and support. We need long-term investment in preventing family and domestic violence. This includes clearer and tougher laws relating to firearm use by those who use FDSV.

We have reviewed the Consultation Paper in light of the current legislation and the Government's commitment to addressing FDSV, and make the comments below in relation to issues of key interest or relevance to the clients of our respective legal practices.

### ***Purpose of the legislative reforms***

We are fully supportive of the Government's decision to reform and re-draft, rather than further amend the Act. Given the Government's focus on community safety, we suggest that a statement relating to the community safety purpose of the legislation be included in the long title, or otherwise referenced specifically in the legislation.

Although we broadly agree that there are important benefits to nationally consistent legislation regarding firearms, we are also supportive of the WA Government's urgency regarding the revision of the WA legislation. We support the current timetable for the new WA legislation, and do not support waiting for any work being undertaken by the Commonwealth to review existing legislation or provide for nationally consistent legislation that would delay or lessen the powers of the proposed WA legislation.

### ***Broader practical aspects of the legislative reforms***

The FDVLWN is supportive of the Government's proposal to remove additional high-powered or automated firearms from the list of allowable firearms. We would be supportive of further restrictions of dangerous or unsuitable firearms as determined by those with specialist knowledge in the field. Overall, we do not see the value to the community in the ownership of highly dangerous weapons by any person.

We are, however, unclear based on the Consultation Paper whether further restrictions will be placed on the sale and use of more dangerous forms of ammunition, such as expanding or 'dum dum' bullets, which we understand to be particularly harmful to people. We would be supportive of any further restrictions placed on dangerous ammunition in the new legislation, as determined by those with specialist knowledge in the field, as this will provide a reduction in risk to the general public of fatal injuries from such ammunition.

We are supportive of the substantial changes to the way licences are issued and managed (user, firearm and land), with a view to improved safety, clarity and accountability in the system.

We are supportive of the implementation of a minimum age for firearm use and licences. However, we argue that this minimum age should be raised to age 18, as we see no benefit to children using firearms for any reason. Notwithstanding the above, we propose that the criteria applied regarding the 'genuine purpose and genuine need' be applied at a more stringent level for children.

We are supportive of the implementation of a maximum limit to the number of firearms that an individual can hold. We would be supportive of further numerical limits, should this be proposed by Government. We would also be supportive of additional numerical limits on particular types of more dangerous (but allowable) firearms as determined by those with specialist knowledge in the field. Overall, we do not see the benefit to individuals or the community in the ownership of large numbers of firearms.

The FDLWN is fully supportive of a requirement for new licensees to receive mandatory training prior to obtaining a licence. We would also propose that a refresher training and other resources be made available for existing licence holders that would outline current safety advice and legislative requirements.

Separately, we are of the view that neither the current legislation, nor the Consultation Paper, sufficiently provide for appropriate restrictions or guidelines regarding the safe transport of firearms, whether by vehicle, or with a person in a public place. We strongly propose that appropriate rules regarding safe and appropriate transport be specifically outlined in the revised legislation or regulations.

### ***Assessment of fit and proper persons***

The FDVLWN is supportive of the overall provision that Police can cancel a licence if someone is not fit and proper to hold a licence, which includes disqualifying offences and orders. Similar criteria are in place for Firearms Prohibition Orders. However, in our view, the wording is unclear and inconsistent throughout the Consultation Paper, leaving room for the Police or the Court to apply the criteria inconsistently should the legislation be drafted similarly. For example, it is unclear whether a disqualifying offence or order would always result in a mandatory cancellation, and for how long this would apply, particularly if an order is lifted. In relation to family and domestic violence offences, we believe that these criteria should include a specific consideration of previous suspensions and patterns of behaviour. We propose that the legislation should be specific about how the disqualification applies interim FVROs or VROs where evidence of FDSV has yet to be determined by the Court.

It is also unclear how the Police will implement the legislation in relation to relatives and friends who are not fit and proper. For instance, a person may not be deemed fit and proper due to a medical condition, but it is not clear whether (say) their brother would therefore be considered not fit and proper due to their association with that person.

We support the inclusion of a clause that specifies both Conduct Agreement Orders and Family Violence Restraining Orders when determining whether someone is a fit and proper person to hold a licence or be subject to a Firearms Prohibition Order (FPO). We believe this additional specificity will aid in the interpretation and ease of implementation of the legislation.

### ***Mandatory health assessment***

The FDVWLN is highly supportive of the proposal that all persons applying for or renewing a firearms licence be subject to a regular assessment of their physical and mental health. And we strongly urge that this should be undertaken only by specially accredited doctors and using a standardised and rigorous process. We would not be supportive of a model where the requirement for a medical report is only triggered if the Applicant self-identifies that they have a relevant mental health or physical condition. We believe that this is necessary to prevent a disparity in the criteria applied to persons applying for or renewing a licence, which may result in individuals 'doctor shopping' for a less stringent medical practitioner. In addition, we propose that there be a register of applications for health assessment, such that a person who is assessed as NOT fit and proper, cannot continue to seek a positive assessment. To reinforce the process, and also to promote the safety of medical practitioners, we propose that medical practitioners be required to send their part of the form directly to licencing. To counter these stringent requirements, we propose that the regulations outline a clear pathway for an appeal of the outcome of any health assessment, with a reasonable timeframe within which a person may become eligible for reassessment.

In addition, any training towards accreditation for relevant doctors in assessing a person's fitness to use a firearm, should also include additional training in FDSV. We acknowledge that the doctor may not be able to consistently or fully determine whether someone uses violence or is likely to use violence. Nevertheless, we believe that if a doctor does recognise that violence is taking place, or is intended to take place, based on their training, or based on other information included in that person's medical record, that this can be a valid criteria for indicating that the licence Applicant is not a fit and proper person to obtain, or maintain a licence. This training should include specific and robust content that builds the cultural capability to understand the complexities of FDSV as it is uniquely perpetrated and experienced in Aboriginal and Torres Strait Islander communities. This would be in addition to the current provision for medical practitioners to anonymously report a person to the Police as being not fit and proper to hold a firearms licence for another, or the same reason.

We would support mandatory reporting by accredited doctors undertaking an assessment, if a person's physical, mental or emotional condition means that possession of a firearm is not in their own interest or that of the public.

While the inclusion of an assessment of mental health is an important safety precaution, particularly as it relates to suicide death using firearms, the implementation of the legislation should be balanced carefully with the potential stigma and other negative effects associated with a mental health diagnosis or alcohol and other drug addiction. We believe strongly that people should not be discriminated against or further stigmatised due to their mental health condition. For this reason, we reiterate the importance of having specially accredited professionals using consistent and appropriate criteria, with centralised recording of attempts to seek an assessment.

### ***Licence holder to notify the Police of a disqualifying offence or order within 7 days***

The proposal that a licence holder should be responsible for notifying the Police if they are charged with a disqualifying offence, or have a disqualifying order is of concern to the FDVWLN. We believe that the short duration will potentially set some people up to fail unnecessarily, and conversely put others at risk for too long a time period. In our experience, offenders can be unreliable and less

motivated to comply with rules. In addition, there are many scenarios which might mean that an individual may not be able to notify Police within that period, including being held on remand or being hospitalised.

We strongly believe that an alternative technological or other practical system should be developed that that does not rely on the Offender / Respondent. This could include both a notification to Police when a disqualifying offence or order is committed by a firearm licence holder, and the power and technical ability of the licencing office to check for previous convictions and orders in the case of new applications.

Notwithstanding the above, we are concerned about the lack of effective consequences for NOT notifying the Police in time. We strongly advocate an additional consequence where a person could have notified the Police that they were disqualified and did not.

### ***Length of licence disqualification***

The FDVLWN is supportive of a consistent and clear disqualification period for individuals with disqualifying offences or orders. However, we would argue that there is a need for both specificity and discretion regarding the length of time that a person can be prohibited from having a firearms licence once the disqualification is in place. The Consultation Paper states that a cancellation will occur if someone has received a disqualifying conviction or order within the past five years but does not specify the amount of time afterwards. We note that this is likely to be outlined in the regulations and would be at the discretion of the Commissioner. However, it is currently unclear whether, or in what circumstances, the cancelled licence can be reinstated. We strongly propose that this issue be fully clarified in the draft legislation, such that it is not open to interpretation. We further propose that the legislation or regulations make it clear that onus should be placed on the Applicant to demonstrate their fitness to hold a licence after the disqualifying period, rather than simply lifting a suspension.

The basis for this concern is that it is not uncommon among FVRO matters for a Respondent to place pressure upon an Applicant to withdraw their application, due to their concern about losing access to their firearms. This can be particularly applicable to Aboriginal and Torres Strait Islander women, whose partners may use firearms regularly for hunting for cultural reasons. A clear disqualification period would assist with this scenario, or potentially other legislative provisions, which outline specific circumstances where a firearms licence may be retained in a Conduct Agreement Order.

We note that the recent introduction of Conduct Agreement Orders through Shuttle Conferencing has been successful in reducing the trauma for the Applicant, the length of time needed for an agreement to be reached, and overall reduction in breaches by Respondents. For some matters, this success has been in part due to an agreement being reached that the Applicant would not oppose firearms restrictions in the order (but determined by the judicial officer). A concern is that a mandatory firearms cancellation may result in additional FVROs being contested, so that Respondents can argue to retain their firearms licence. Contested FVROs result in delays and trauma to the Applicant, as well as the risk of not obtaining any order at all, compromising her safety.

Under current practice arrangements, due to a lack of clarity in the existing *Firearms Act*, the Court has adopted a process whereby the decision regarding access to firearms under a Conduct Agreement Order is determined by the judicial officer, rather than the Parties. This reduces the possibility that the Applicant be pressured to agree to the Respondent retaining firearms in the final

agreement. Should the Government propose that judicial discretion remain in the new Bill, then we would strongly support legislation or regulations which clarifies that the issue of firearms licencing should not be agreed during the shuttle conferencing process, but rather by the judicial officer.

Appropriate training for staff and comprehensive supports for Applicants may address the impacts of this issue and we ask that you consider this in the implementation of the legislation.

In addition, we propose that an additional clause be included to account for time spent incarcerated. Under the current proposal, if a person was convicted of an offence and was imprisoned for five years, then immediately upon release the person could potentially apply for and receive a licence. We acknowledge that there are provisions to enable this person to continue to be considered not fit and proper after the five-year period, however we believe that greater specificity would be in the public interest and in the specific interest of the victim related to the relevant disqualifying offence.

### ***Weapons belonging to person with licence cancelled***

The FDVLWN ask that the Government consider adding an additional clause to the legislation to apply when a person becomes subject to a licence cancellation, either on a temporary basis or for a five-year term, that any guns that they own be surrendered ONLY to Police, a firearm storage facility or a firearms dealer.

We are of the understanding that it is common practice that gun owners, when they become aware that they may be subject to a cancelled licence due to a FVRO, will transfer custody of their firearms to a friend or family member. They do this out of a concern (valid or otherwise) that Police will not take sufficient care of their firearms while in custody. In other instances, where a gun owner is removed suddenly from their house after being arrested, issued a Police Order, FVRO or other order, or for some other reason, the guns remain in the gun safe in the house with the victim.

We believe that both of these scenarios constitute a particularly high risk for victim-survivors of FDSV. Having a 'friend' take custody of the gun creates an opportunity for the perpetrator to use the weapon. Likewise, even though a FVRO will prohibit a person from entering a house, there remains a risk if that person were to enter the house and unlock the safe.

For this reason we strongly recommend that the legislation specify that in these instances, the weapon is immediately or quickly placed either in Police custody, a secure storage facility, or a dealer, to avoid the weapon being left locked in the safe of the victim-survivor's home, or being transferred to a friend where it can be easily accessed by the perpetrator.

### ***Firearms Prohibition Orders***

The FDVLWN is supportive of the newly-enacted amendments to the *Firearms Act 1973* which include provisions for Firearms Prohibition Orders.

We note that the Government intended that this type of order to be focused on both criminal organisations and dangerous family violence offenders. However, we believe that the criteria have been drafted specifically with members of criminal organisations in mind, with the consequence that the criteria may not be as good a fit for dangerous family violence offenders.

We propose the following in relation to this:

- That the new Bill include a revision to the criteria for fit and proper persons to account for patterns in FDSV behaviours, including coercive control;
- That the new Bill include revision to the provision to cancel an FPO, such that –
  - o where a FPO has been put in place in response to a disqualifying offence or order that relates to one or more victim of crime or FVRO Applicant,
  - o and if that FPO is cancelled, that a reason be given, and that those persons be notified that the FPO has been cancelled.

We would anticipate that this would be a rare instance, and therefore notification of the other party is practical and achievable in these circumstances, and would enhance safety.

To date, the details regarding the operation and administration of these orders within WA Police in relation to dangerous family violence offenders remains unclear to members of our sector. This is of concern as our lawyers may need to provide advice to persons subject to FPOs, but also to victim-survivors of FDSV whose perpetrators may be subject to a FPO or a suspension.

We strongly suggest the following in relation to this:

- the Government consider revising the regulations and public information to aid clarity in this process; and
- in collaboration with the relevant sectors, the Government consider implementing training or preparing training materials in relation to FPOs in general.

In addition, and separate to this submission process, we would sincerely appreciate an early opportunity to meet with the relevant Commander/s at WA Police to discuss the current and future operation of FPOs as they relate to dangerous FDSV offenders.

We would also suggest that the Government consider the following in relation to the legislation and/or regulations specific to FPO's:

- amending the legislation to make it clearer under which circumstances FPOs apply instead of a licence cancellation, as the fit and proper criteria for both of these are very similar and the purpose of each is not explicit; and
- providing more specificity regarding the term "views, opinions and attitudes" in relation to the assessment of a person as fit and proper. As currently worded, many of the lawyers in our organisations view this as too vague, and easy to argue against.

### ***Amendments to Restraining Orders Act and WHS, Protection and Care Act and others***

We note that a new Firearms Bill will likely require amendments to other legislation. As the Consultation Paper does not outline these amendments specifically, the FDVLWN hold concerns that there may be unintended consequences to the implementation of these other Acts.

The FDVLWN strongly suggests that additional stakeholder consultations be undertaken during the Bill drafting process. We request that we be given the opportunity to contribute further at this stage.

### ***Levy toward firearms safety research***

The FDVLWN is strongly supportive of the proposal by some WA peak bodies to implement a levy on firearms licences, with the proceeds to fund firearms research. We believe that the development of an appropriate and accountable Institute to conduct relevant, transparent and scientifically rigorous

research will be of benefit to the community, and will reassure the Government, firearms user and lobby groups and the wider public that any changes to legislation, policies and procedures are in the best interest of the WA community. Members of the FDVLWN would be grateful for the opportunity to provide a representative to any governance body for such an institution (should it be created).

### **Concluding remarks**

The FDVLWN again thank WA Police for the opportunity to prepare this submission. We are heartened by the commitment of the Western Australian Government towards the ongoing safety of victim-survivors of FDSV.

Please do not hesitate to contact us if you require additional information. We welcome the opportunity to provide additional advice on specific aspects of the upcoming draft bill, in particular its impact on other legislation.

We also reiterate our request for an opportunity to discuss the operation of Firearms Prohibition Orders as they relate to dangerous FDSV offenders as soon as practicable.

Kind regards

**Dr Monica Cass**

Coordinator, WA Family and Domestic Violence Legal Workers Network  
Women's Legal Service WA  
Level 1, 445 Hay Street  
PERTH WA 6000

