

Richard Harding*

FIREARMS OWNERSHIP AND ACCIDENTAL MISUSE IN SOUTH AUSTRALIA

1. The Problem

Introducing the Firearms Bill into the South Australian Parliament in April 1977, the Minister of Community Welfare explained that its purpose was to create "appropriate controls on the possession and use of firearms by instituting a licensing system".¹ By this he meant a licensing system for individual owners, previously not a feature of South Australian firearms law except in relation to pistols.² The mischief the Minister cited to justify this departure was the criminal misuse of firearms—in robberies, assaults and homicides. The less dramatic mischief of accidental misuse did not rate a mention.³ Yet it is arguably as great a source of social harm as is criminal misuse; and paradoxically it may well be more susceptible of cure by legislative and administrative means.

In the period July 1973 to March 1977, there were 141 firearms accidents leading to injury in South Australia; 23 (16.3%) of these were fatal.⁴ By contrast, in the calendar years 1973 to 1975 inclusive there were 32 firearms incidents categorised as murder, attempted murder or suicide. A more precise breakdown was not given by the Minister, but it seems reasonable to suppose that murders by shooting are no more numerous than accidental deaths by shooting. This is certainly the case also in Western Australia,⁵ though not in the more populous and industrialised State of New South Wales.⁶

In the same three-year period, armed robberies in which firearms were used increased in South Australia from 16 to 30 a year, almost certainly a real, not merely an apparent, increase. Even so, it may once more be doubted whether the social harm emanating from this source clearly exceeds that wrought by, say, accidental woundings with firearms.⁷

Criminal misuse is, of course, of two main types: first, "professional" in which the firearm is a work-tool; second, "casual" in which the firearm is the weapon which happens to be at hand when a confrontation or

* Associate Professor of Law, University of Western Australia. The author wishes to thank the Criminological Research Council for a grant which made this work possible.

1. (1976-1977) *Parl. Debs.* (S.A.), 3448-3449 (R. G. Payne).

2. See generally Firearms Act, 1958 (S.A.); see also Pistol Licence Act, 1929-1971 (S.A.), s.3.

3. (1976-1977) *Parl. Debs.* (S.A.), 3449. Only one member (Mr. McRae) raised the question of accidents in debate: *id.*, 3628-3629.

4. These data are derived from direct analysis of Police Department Firearms Casualty Report Forms for the period under review. My thanks are due to the Police Department of South Australia for their generous assistance in this regard.

5. In the four year period July 1973 to June 1977, there were 15 accidental deaths by shooting and 14 criminal homicides.

6. In New South Wales there were 39 deaths caused by criminal misuse of firearms and 15 by accidental misuse in the period July 1973 to June 1974: see N.S.W. Bureau of Crime Statistics and Research, Statistical Report No. 1, *Accidental Shootings* (Series 2, 1975); Statistical Report No. 2, *Intentional Shootings* (Series 2, 1975).

7. There were 118 such woundings. The Firearms Casualty Report Forms do not differentiate between those causing trivial or ephemeral injury and those causing grave or permanent injury. The New South Wales study on *Accidental Shootings* (*supra*, n.6) classifies wounds by location, thus giving some *prima facie* indication of potential seriousness: *id.*, 4. Clearly, it is reasonable to suppose that a small but significant proportion of such woundings result in major disability.

altercation develops to the point where self-control snaps and impulse takes over. As to the latter, the New South Wales Bureau of Crime Statistics and Research, replicating Zimring's work in Chicago, has shown not only that the typical murder or serious assault arises in an unplanned way out of domestic or other altercations but also that when a firearm is then used it is much more lethal than any alternative weapon that is likely to be available.⁸ It follows from this that a widespread reduction of firearms available in the community should lead to a reduction of "casual" firearms assaults and thus to a reduction in deaths caused by such assaults. One part of the problem of the criminal misuse of firearms, therefore, could be said, in broad terms, to be partially soluble by legislation whose effect would be to reduce the total number of firearms available in the community.

However, it is unlikely that "professional" criminal misuse of firearms would be at all affected by such an expedient. Common experience suggests that those who need firearms for the support of their way of life are able to gain access to them ahead of any other part of the community. This is so whether they are freedom fighters in enemy-occupied territory, guerillas, I.R.A. terrorists or professional criminals. It is likely that a strategy based simply on reducing the number of firearms in the community would make virtually no impact upon this part of the problem of criminal misuse. The strategy of licencing all owners and registering all firearms is equally unlikely to make any worthwhile impact upon the problem.

A general reduction in firearms and firearms owners in the community would possibly make some impact upon accident figures. But the available data suggest that more substantial inroads into the problem could be made by less crude expedients; that more subtle law reform may be more productive. As will be seen, the Firearms Act, 1977 (S.A.), provides a framework within which this may be able to be achieved.

2. Firearms Ownership in South Australia

(A) THE NUMBER OF FIREARMS AND OWNERS

In May 1975 the Australian Bureau of Statistics carried out a General Social Survey (G.S.S.). At the instigation of the writer, the Survey contained various questions about ownership of firearms; a 1973-1974 Western Australia survey had indicated that such questions were unlikely to set up serious resistance amongst respondents.⁹

The original aim of the G.S.S. was to survey a sample of the whole population of Australia over the age of 15. Cost and administrative factors caused this aim to be modified, and in the event the population of the A.C.T., the population of the Northern Territory and residents of all areas where there are no conurbations of 500 persons or more were omitted from the survey. Numerically, this amounted, outside the A.C.T., to just under 10% of the eligible population, with variations by State.¹⁰

In the context of firearms ownership, omission of the rural group from the survey was likely to lead to a considerable under-reporting both of

8. See N.S.W. Bureau of Crime Statistics and Research, Statistical Report No. 9, *Gun and Knife Attacks* (1973); see also Zimring, "Is Gun Control Likely to Reduce Violent Killings?", (1968) 35 *U. Chicago L.R.* 721.

9. See generally, Harding, "Firearms Ownership and Accidental Misuse in Western Australia", (1975) 12 *U. Western Aust. L.R.* 122.

10. The percentage of population omitted from the G.S.S. in South Australia was 11%.

firearms and firearms owners. This view is based on the experience of the writer's 1973-1974 Western Australia survey which had indicated that not only are there more owners *pro rata* in the rural population, but also that such owners tend to own more firearms *per capita*.

TABLE 1
Ownership of Firearms in Western Australia — 1973-1974 Survey

Area	Number of households surveyed	Households where someone owned a firearm	Total number of firearms in such households	Firearms per gun-owning household
Metropolitan Perth	728	104 (14.3%)	149	1.43
Goldfields - - - -	90	18 (20.0%)	30	1.67
> 10,000 - - - -	154	42 (27.3%)	73	1.73
5,000 - 10,000 - - -	278	101 (36.3%)	199	1.97
< 5,000 - - - -	238	164 (68.9%)	410	2.50

It does not, of course, follow as a matter of statistical logic that the Western Australia patterns can be projected onto the remainder of Australia. Nevertheless, in the absence of any other data, common sense would certainly suggest that comparable trends may be expected. Steps are being taken to try to obtain corroboration for this view in two ways: first, by carrying out firearms surveys in the rural areas of two other mainland States; and, secondly, by breaking down the G.S.S. data into population groupings comparable as far as possible to those used in the earlier Western Australia survey. When this is able to be done, if it is found that curves comparable to the Western Australia ones exist with regard to numbers of firearms and owners in metropolitan areas, large country towns (> 10,000) and small country towns (5,000-10,000), then it would be a reasonable inference that comparable curves would likewise exist with regard to the pure rural areas.

If the Western Australia patterns were reproduced throughout Australia, the G.S.S. figures of both owners and firearms could be increased by 40% - 50%. Actual G.S.S. figures indicate for South Australia some 74,000 private owners of 120,000 firearms in working order. Of these, 65.7% were rifles, 19.3% were shotguns, 11.0% were air-rifles, 3.5% were handguns and 0.6% were combination rifle-shotguns.

Figures of 103,000 owners of 185,000 firearms—estimated according to the admittedly rough formula derived from the Western Australia patterns—may well be nearer the mark. Police figures, based on the registration system which has been in operation since 1919,¹¹ suggest there may be as many as 220,000 firearms in the State, though there is no indication of how many separate owners such a figure would involve. Undoubtedly, police figures count some firearms which no longer exist and double-count some other firearms. Against this, there are bound to be some firearms in the community which have never been registered at all.¹²

All things considered, it would seem reasonable to suppose that between 95,000 and 110,000 private persons own between 175,000 and 205,000

11. Firearms Registration Act, 1919 (S.A.), s.9.

12. Interstate movement of population causes this; so also does the return of soldiers from overseas wars, as in 1919, 1945, 1953 and 1973.

firearms in South Australia. The registration and licensing drive which is preceding the proclamation of the Firearms Act, 1977 (S.A.), should reveal how accurate these estimates are. In any event, there can be no doubt that firearms ownership is a significant social phenomenon in South Australia.

(B) CHARACTERISTICS OF SOUTH AUSTRALIAN FIREARMS OWNERS

Characteristics can only, of course, be reported for that part of the population actually within the G.S.S. sample. The earlier Western Australian survey had suggested that some characteristics of rural gun owners differed from those of city owners—notably that rural owners were younger, more haphazardly trained and more inclined to use a firearm as a work-tool (e.g., to destroy vermin).

The Western Australian study¹³ established that shooters responsible for 50% of accidents were persons other than the owner of the firearm in question, that the bulk of such persons were children below the age of 16, and that, generally, young and inexperienced shooters were involved to a quite disproportionate extent in accidents. In broad terms, shooter incompetence of one kind or another was the cause of 80% of accidents. These features were not at all surprising when the following data were considered: (i) almost 60% of firearms were stored in a place readily accessible to anyone in the household and were either left loaded or ammunition was stored in some equally accessible place; and (ii) some 35% of shooters were inadequately trained in the handling of firearms.

As this study is concerned to establish whether comparable patterns occur in South Australia, the characteristics of owners which are of greatest interest are (i) age, (ii) training, (iii) occasions for use, and (iv) safety consciousness.

(i) Age of owners

Age distribution was as follows:

20-29	26.0%
20-29	26.0%
30-39	24.4%
40-49	16.2%
50 +	25.0%

This distribution shows no notable disparity from that in any other State.¹⁴ However, it is possible that young owners are under-represented. This is because persons below the age of 15 were not within the G.S.S. Yet owners within the survey showed a strong tendency to have acquired their first firearm at less than 15, even though that has been the minimum age of legal ownership for the last sixty years.¹⁵ This tendency was apparent in all States (see Table 2), and the data raise doubts about the efficacy of law as a regulator of social patterns in this area of human conduct. On the other hand, it is doubtful whether a determined effort has ever

13. See Harding, *loc. cit.* (*supra*, n.9).

14. The results as reported by the Australian Bureau of Statistics, Bulletin No. 2 (Ref. 13.18, 28th July, 1977), omit data relating to ownership by persons under 20 for Western Australia and Tasmania. This is because the sampling variability was considered too high to be reliable. However, in the case of W.A. the unreported figure (4.6%) was comparable to that found in the earlier Western Australia survey: see Harding, *loc. cit.* (*supra*, n.9), 129.

15. Use of Firearms Restriction Act, 1917 (S.A.), s.3.

been made, in South Australia or any other Australian State, to keep firearms away from youths.

TABLE 2

State	Minimum age of lawful Acquisition	First Acquisition before 15	First Acquisition at 15-18	First Acquisition at 18-21
South Australia	- - 15 (since 1917)	23.4%	24.0%	23.4%
N.S.W.	- - - - 18 (since 1936)	27.3%	22.6%	24.3%
Victoria	- - - - 18 (since 1929)	25.7%	14.1%	30.8%
Queensland	- - - - 17 (since 1955)	27.3%	21.8%	26.4%
W.A.	- - - - 16 (since 1931)	23.8%	16.8%	29.0%
Tasmania	- - - - 16 (since 1933)	25.8%	30.6%	18.7%

(ii) Training

There are two principal objectives of training: to make a person a safe user of firearms, or to make him a skilled marksman. In the context of firearms accidents, it is the former objective which is crucially important; a sense of what *not* to do if a firearm is not to become dangerous to oneself or others is essential. Respondents were accordingly asked whether they had been trained in firearms use (a) in the militia, (b) in the police force, (c) at a shooters' club, (d) by a friend or relative, or (e) not at all. Generally, the first three types of training can be considered adequate with regard to safety consciousness, even though they are also aimed at developing marksmanship skill. The fourth type can generally be considered inadequate. Obviously, this is not a conclusion that is invariably accurate; some individuals trained in the militia or the police¹⁶ might be reckless in firearms use, and some trained by a friend may be meticulous. But by and large firearms owners whose training has been casual are less likely to have an adequate sense of safety consciousness than those whose training has taken place in a formal context.

On this basis, Table 3 demonstrates that South Australia has a lower percentage of adequately trained shooters than any other Australian State.

TABLE 3

	Untrained	Inadequately Trained	Adequately Trained
South Australia	- - - - 27.0%	32.5%	40.5%
N.S.W.	- - - - 28.8%	26.7%	44.5%
Victoria	- - - - 21.3%	34.3%	44.4%
Queensland	- - - - 28.5%	23.2%	48.3%
W.A.	- - - - 21.4%	21.3%	57.2%
Tasmania	- - - - 19.8%	25.0%	55.2%

16. For evidence that police training may sometimes leave something to be desired, see Harding, "Changing Patterns of the Use of Lethal Force by Police in Australia", (1975) 8 *Aust. & N.Z.J. of Criminology* 125, 133-136.

(iii) Occasions for use

Respondents were asked their principal motive for possessing a firearm. This presumably offers some indication of the sorts of situations in which they use, or expect to use, their firearms. The responses were as follows:

Protection of self or business	- - -	21.4%
No stated reason	- - - - -	5.1%
Part of business or job	- - - -	1.3%
Sport	- - - - -	66.8%
Souvenir	- - - - -	4.7%

As mentioned previously, inclusion of the whole rural population would probably tend to increase the proportion of respondents for whom a firearm is a work-tool. Also, it seems that some ambiguity in the questionnaire may have caused some respondents whose principal need for a firearm is to shoot vermin to categorise this as "sport" rather than as "part of business or job".

Nevertheless, it is to be expected that the main occasion on which shooter incompetence would reveal itself is in hunting situations. This was in fact the case, 49% of accidents occurring in such circumstances.

(iv) Safety consciousness

A crucial component of safety consciousness is the understanding that, however well-versed in firearms handling one is oneself, it is necessary to ensure that the weapon should not be available for unsupervised use by others who are not so well-versed. In the earlier Western Australian survey, it was possible to measure this aspect by cross-tabulating the following factors: (a) firearm kept in a working condition, (b) in an unlocked and accessible place, (c) with ammunition also in the household, (d) in an unlocked and accessible place. For the Perth area a figure of 70% workable firearms in an accessible place cross-tabulated with ammunition availability to produce a figure of 58% usable firearms readily available to persons in the household other than the owner; for the rest of the State the figures were 73% and 57% respectively.

For South Australia it has not yet been possible to make comparable cross-tabulations. However, it emerged that 70.9% of firearms were kept in a usable state in some readily accessible place (overall figure for W.A., 70.7%) and that 73.9% of owners possess some ammunition (W.A., 70%). It would certainly be surprising, therefore, if South Australian cross-tabulations, when they can be made, produce a substantially different picture from the W.A. one. In all probability, between 55% and 60% of private firearms in South Australia are in an accessible place and a readily usable state. It is not surprising in this context that a quarter of firearm accidents in South Australia involve shooters who have not been authorised to use the firearm on the particular occasion.¹⁷

3. Firearms Accidents in South Australia

(A) CHARACTERISTICS OF SHOOTERS INVOLVED IN ACCIDENTS

In the period under review, there were 141 firearm accidents resulting in casualties. Of these, 45 (31.9%) were self-inflicted. Almost three victims

17. 24.8% of cases fell into this category, *i.e.*, 32 out of 130 about which this information was available. See also the text to n.24, *infra*.

in five were less than 20 years of age, a pattern similar to that in the three other States for which figures are available.

TABLE 4

Age of Victim	S.A. 1973/77	Qld. 1973/75	N.S.W. 1973/74	W.A. 1973/74
< 20	59.1%	53.3%	60.0%	57.0%
20-29	30.7%	27.0%	—	—
30-39	3.6%	9.8%	—	—
40-49	4.4%	6.6%	—	—
50 +	2.2%	3.3%	—	—
	N = 141	N = 123	N = 136	N = 30

The age distribution of shooters involved in accidents showed a comparable pattern, with young people apparently very much over-represented. In this regard as Table 5 indicates, the South Australia position is very similar to that in other States.

TABLE 5

Age of Shooter	S.A. 1973/77	Qld. 1974/75	N.S.W. 1973/74	W.A. 1973/74
< 10	9.3%	6.8%	2.3%	10.3%
10-14	10.1%	47.9%	18.6%	24.2%
15-19	35.7%		38.0%	17.3%
20-24	19.4%	15.4%	15.5%	24.2%
25-29	15.5%	10.3%	9.3%	10.3%
30-34	3.1%	7.7%	7.0%	3.3%
35-39	2.3%	2.6%	3.0%	—
40 +	4.7%	9.4%	6.2%	10.3%
	N = 141	N = 123	N = 136	N = 29

It can thus be seen that in South Australia shooters under 20 are involved in 55.1% of firearms casualty-accidents; in Queensland the comparable figure is 54.7%, in New South Wales 58.9%, and in Western Australia 51.8%. As this age-group apparently has a low ownership rate (8.5%),¹⁸ it can be seen that it is grossly over-represented in accident situations.

If the at-risk group is extended to shooters below the age of 25, it can be seen that 3 out of 4 accidents are caused by such persons (*cf.* Queensland 70%, New South Wales 74%, Western Australia 76%). Yet this group apparently supplies only about one-quarter of firearms owners.¹⁹

Even allowing for the possibility that young owners actually use their firearms more than older owners—as is possibly the case, for example,

18. But see the argument (*supra*, p.274) that this apparent ownership rate may be too low.

19. The computer print-outs indicate that 23.3% of South Australian firearms owners are below the age of 25; this is subject once more to the argument that the under 20 age-group may be underestimated.

with motor vehicles²⁰—such persons seem significantly over-represented in accident statistics.

Obviously, when so many shooters involved in accidents are so young, one would also expect inexperience to show up as a feature. This is in fact the case.

TABLE 6

	S.A.	Qld.	N.S.W.	W.A.
Experience of Shooter	1973/77	1973/75	1973/74	1973/74
Less than a year	38.5%	35.4%	36.0%	47.4%
1-4 years - - -	31.7%	29.3%	35.2%	31.6%
5-9 years - - -	12.5%	11.1%	9.0%	10.5%
10+ years - -	17.3%	24.2%	19.8%	10.5%
	N = 111	N = 99	N = 111	N = 19

However, it did not emerge that inexperience was a significant factor independent of youthfulness. Shooters over 25 involved in accidents were very experienced, 74% of them having more than ten years' experience. As the causes of accidents involving such shooters showed the same sort of distribution for younger shooters, and as more than 90% of such causes boil down to shooter incompetence of one kind or another,²¹ it may be that such shooters have a peculiar inability to profit from experience. In view of the data about the training of South Australian shooters,²² it may well be also that such shooters were inadequately trained in the first place.

(B) CIRCUMSTANCES OF ACCIDENTS

Police firearms casualty report forms set out various possible causes of the accident, of which the reporting officer may nominate only one. In addition, the circumstances of the particular accident are briefly summarised on the report form. When one reads these summaries, two factors become apparent: first, that some accidents could as well be categorised one way as another (*e.g.*, "victim moved into line of fire" may overlap with "victim out of sight of shooter"); and, secondly, that a category of "general mishandling" is needed, to indicate that the accident arose in the course of conduct in relation to a firearm which no properly trained shooter should indulge in. To illustrate this point, consider the following cases.

Case 1: The deceased, aged 16, and his friend, aged 15, were playing with a rifle. The friend pointed the rifle at the deceased, cocked it and three times pulled the trigger. On the first two occasions the weapon did not discharge; but the third time it did, killing the victim. An examination of the firearm revealed a faulty feed mechanism. On this basis evidently, the police report characterized

20. This is by no means clear. Klein, "The Role of the Psychologist in Accident Research" (Paper presented at the meeting of the American Psychological Association, 1967) argues that teenagers drive more than any other age-group of drivers. Cleland and Kirkham, "The Relative Involvement of Young Drivers in Traffic Accidents" (Research Report No. 2, University of Western Australia Department of Psychology, 1971) report data contrary to this, but indicate that the 21-24 age-group drive most.

21. *Infra*, p.280.

22. See Table 3, *supra*.

the accident as due to the weapon's defectiveness; I have categorized it as due to "general mishandling" inasmuch as the conduct preceding the accident is archetypal of what should never be done with any firearm.

Case 2: The shooter was cleaning the telescopic sight of his rifle. He was unaware that the rifle was loaded. As he placed the rifle on the floor, it discharged. The bullet hit a boy in a school playground some way away. The police nominated "Other cause" on the accident report form. I have treated it as an example of "general mishandling", since to clean any part of a firearm without making sure it is unloaded is to ignore the most elementary safeguard.

Case 3: A shooter had shot and wounded a wild dog. He then went over to the dog, it jumped up at him, and he jabbed at it with the butt of his rifle. It discharged on impact with the dog's head, and the shooter himself was injured. The police were evidently non-plussed by the sheer folly of this conduct and did not categorize it in any way at all; I have characterized it as "general mishandling".

The creation of this category for South Australian accidents means that comparisons with causes of accidents in other States is not precise, and Table 7, which follows, must accordingly be evaluated in that context.²³

TABLE 7

Cause of Accident	S.A.	Qld.	N.S.W.	W.A.
	1973/74	1973/75	1973/74	1973/74
1. Victim moved into line of fire - - - -	8.9%	5.5%	8.2%	10.3%
2. Victim out of sight of shooter - - - -	4.4%	3.6%	3.1%	—
3. Shooter stumbled - - - - -	4.4%	10.0%	12.0%	6.9%
4. Weapon fell from insecure rest - - - -	3.0%	7.3%	4.6%	3.4%
5. Ricochet - - - - -	5.2%	11.8%	7.4%	6.9%
6. Trigger caught in some external object -	1.5%	4.5%	5.2%	10.3%
7. Firearm being transferred into or out of motor vehicle - - - - -	9.6%	5.5%	8.2%	10.3%
8. Riding in motor vehicle with loaded firearm - - - - -	12.6%	4.5%	3.8%	3.4%
9. Horseplay - - - - -	7.4%	25.5%	12.0%	13.7%
10. Crossing obstacle with firearm - - - -	2.2%	1.8%	4.6%	—
11. Mishandling				
(a) in loading 0.7%				
(b) in unloading 6.7%	32.6%	10.9%	10.6%	17.2%
(c) generally 25.2%				
12. Victim mistaken for game - - - - -	1.5%	—	—	—
13. Defective				
(a) weapon 5.2%	5.9%	5.5%	3.7%	10.3%
(b) ammunition 0.7%				
14. Other - - - - -	0.7%	3.6%	16.4%	6.9%
	N = 137	N = 123	N = 108	N = 29

The first twelve accident causes set out in Table 7 above *prima facie* proceed from breach of one or more of the elementary rules of gun-handling. This is so not only in abstract analysis but also when the actual situations, as described in the Firearms Casualty Reports, are examined; there are virtually no occasions when breach of these prohibitions has

23. The data in Table 7 are all taken from police uniform firearms casualty reports for the applicable periods.

occurred as a concomitant of prudent behaviour. On that basis, 93.4% of South Australian firearm accidents are due to shooter incompetence. This is a somewhat greater percentage than in Queensland (90.9%), New South Wales (82%), and Western Australia (80%).

As mentioned above,²⁴ a quarter of the recorded accidents were caused by persons other than the owner of the firearm. In the bulk of such cases the shooter was below the age at which a firearm can lawfully be owned in South Australia: 41% of these shooters were less than 10, 17% were 10-12 years old, and 31% were 13 or 14. Typical situations were as follows:

- Case 1:* The owner left his loaded rifle in his car. His children found it and started to play with it.
- Case 2:* The owner left his loaded rifle in a bedroom. His three children, all aged less than 10, took it and played with it.
- Case 3:* The owner left his unloaded rifle in a wardrobe and his ammunition in a dressing-table drawer. His 9-year-old son took the rifle, searched for and found the ammunition, loaded it and began to play with it.
- Case 4:* The owner put his loaded rifle onto the back seat of his car, then put his two young children into the back seat. During the subsequent journey, one of the children shot the other.

The accidents arising in these situations could readily have been avoided by a modicum of common sense and adherence to the elementary rule that firearms and ammunition should not be left in a place where others, particularly children, may gain access to them.

As stated earlier,²⁵ it is estimated that between 55% and 60% of South Australian firearms owners systematically ignore this simple rule.

4. The Firearms Act, 1977 (S.A.)

The data set out and analysed above are not wholly satisfactory in that they cannot support statistically significant correlations. Ideally, one would wish to be able to prove that the two phenomena I have described—firearms accident patterns and the characteristics of South Australian gun owners—really do intersect and do not merely exist in parallel. Unfortunately, it is not methodologically possible to do this. The only source of accident information is police reports; and police have not so far concerned themselves with ascertaining facts about the training of persons who are actually involved in accidents. It is suggested later that they should do so.

It is clear, however, that firearm accidents constitute a real social problem. It is equally clear that the characteristics of South Australian gun owners are such that the problem will not spontaneously abate. And common sense indicates that the central cause of the problem—shooter incompetence—is one which is susceptible at least to partial cure by proper training. The question arises: are the provisions of the new Firearms Act such that a cure is a practical possibility, or merely an abstract hope?

24. *Supra*, n.17.

25. *Supra*, p.276.

The first thing that should be said is that the Firearms Act, 1977 (S.A.), is a framework only, needing to be supplemented by a body of statutory regulations.²⁶ Its general shape is as follows.

All firearms, of whatever type, must be registered.²⁷ The registration system is intended to enable the Registrar—who is the Commissioner of Police²⁸—to possess, at any given moment, a virtually up-to-date register of what firearms are owned by whom;²⁹ accordingly, changes of ownership must be notified.³⁰ Only persons who hold a firearm licence may own or possess a firearm.³¹ Application for a licence must be made to the Registrar.³² The normal expectation is that an applicant who is over the age of fifteen³³ will be granted a licence except where the Registrar refuses to grant one on the ground that “he is not satisfied that the applicant is a fit and proper person.”³⁴ The Registrar is also empowered to refuse a licence application “for any other reason.”³⁵ Comprehensive provisions, apparently designed very much from the point of view that denial of a firearms licence is *prima facie* an interference with a legitimate civil liberty, create appeal rights against any such refusal.³⁶

As mentioned, the Act must be supplemented by regulations. In the context of firearms accidents, the point at which the problem may be tackled is in the requirement that applicants for licences should be “fit and proper persons”. This sort of formula has never been effectively utilised to take account of safety consciousness;³⁷ traditionally, police authorities seem to regard it principally as a basis for refusing licences to persons with criminal records or histories of mental instability.³⁸

It is my submission that this head could readily accommodate a policy of denying licences to persons who cannot demonstrate that they have undergone and passed an appropriate training course designed to instil a proper sense of safety-consciousness. Such a requirement would, of course, parallel what is now a standard requirement in relation to another dangerous weapon which needs to be handled with a proper sense of safety-consciousness—the motor vehicle.

26. Relatively major provisions that need to be filled out by regulation are contained in ss.5(1), 11(3), 11(5)(f), 12(4), 14(4), 15, 22(d) and 39. Minor matters are found in ss.5(1)(c), 12(1), 14(1), 20(1) and 24.

27. See generally Part IV of the Act and, in particular, s.23.

28. *Id.*, s.6(1).

29. *Id.*, s.27.

30. *Id.*, s.25.

31. *Id.*, s.11(1), subject to the exceptions set out in s.11(5).

32. *Id.*, s.12(1).

33. *Id.*, s.12(5).

34. *Id.*, ss.12(2), 12(3)(a).

35. *Id.*, s.12(3)(b).

36. See s.12(3) with regard to the role of the Consultative Committee; see also s.21.

37. In Western Australia, Firearms Regulation 7(6) of 1974 provides that:

“For the purposes of enabling the suitability of the applicant to be assessed, the applicant may be required to answer a written questionnaire relating to the Firearms Act 1973 and Regulations, and knowledge of firearms safety.”

Although this goes further than the present law in any other Australian State, it is obviously inadequate, being directed to theoretical knowledge only. See further Harding, *loc. cit.* (*supra*, n.9), 134-135.

38. This is not an area of law which finds its way into the law reports much. See generally Greenwood, *Firearms Control* (1972), 188-189, 203-210, who indicates that the English practice may be somewhat more restrictive than suggested in the text.

The general regulation-making power permits "such regulations to be made as are contemplated by the Act or as are necessary or expedient for the purposes of the Act".³⁹ It is stressed in the Act that the generality of this provision is not intended to be limited by any other provision of the Act relating to the making of regulations.⁴⁰ Accordingly the policy of encouraging practical competence in the handling of firearms could be implemented by regulations.

Alternatively, if such regulations were not made, the Police Commissioner as Registrar could grasp the nettle and decide not to grant a licence to an inadequately trained applicant. His duty would then be to refer the matter to the Firearms Consultative Committee,⁴¹ and if that committee concurred in his view, a licence could then be refused. The disappointed applicant could then appeal to a special magistrate. In other words, denial of a licence in this way would be hazardous in that two separate reviews of the decision would be possible. But if for some reason the executive government was not prepared to exercise its regulation-making power in the way suggested above, at least there would still be the possibility of evolving a comparable position by an exercise of administrative discretion.

The first approach is to be preferred, however. If proven practical competence is to be a licence prerequisite, a comprehensive system would have to be set up to enable persons to acquire such competence and to test that they have in fact acquired it. It is unlikely that in the short term police authorities have the resources to carry out directly all such training and testing. In all probability they would have to be prepared to delegate some or all of these tasks. If so, it is suggested that the Registrar should be empowered to approve as training and testing authorities such shooters' clubs, registered under the regulations, as he should so decide, and that a certificate of competence issued by such a club would be *prima facie* evidence that the applicant was a "fit and proper person" to be granted a licence.⁴²

This approach would keep the system administratively feasible; the Registrar would keep an eye on the activities of his delegates, rather than on thousands of new potential shooters. The general standards of clubs could be monitored; this could be done by inspections and also by analysis of firearms casualty reports. An integral part of such a proposal is that the Report Form be redesigned so as to provide a more comprehensive range of relevant information about the circumstances of accidents and the characteristics of those who are involved in them. If the trainees of any particular club began to turn up too frequently in such reports in circumstances indicating inadequate safety consciousness, the position of the club itself would be able to be reviewed by the Registrar.

For the shooters' clubs the dual incentive could be finance and status. Training costs money; each shooter could pay. It is not now regarded as an unwarranted imposition to pay considerable fees to driving schools if

39. Firearms Act, 1977 (S.A.), s.39(1).

40. *Id.*, s.39(2).

41. *Id.*, ss.7-10.

42. Of course, however safety-conscious and competent the applicant is, the Registrar would still be entitled to refuse him a licence on the basis that he is, for some other reason, not a fit and proper person. In other words, the scheme suggested in the text does not remove responsibility from the person with whom it properly resides, the Registrar.

one is to learn how to drive a car, nor should it be so regarded to learn how to handle a firearm safely.

A proposal such as this needs a great deal of detailed implementation. This is not the place to attempt to supply such detail. The point of this article is to urge a new approach, an approach which takes account of the realities of shooting and the social problems it can pose. The recent South Australian legislation creates an opportunity to take such a new approach, and it could accordingly become a model for firearms laws in the rest of Australia. However, if the opportunity is not grasped, the problem of firearms accidents will continue unabated.