



QUEENSLAND POLICE SERVICE

WEAPONS LICENSING GROUP

LEGAL DIVISION

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<https://www.police.qld.gov.au/units/weapons-licensing>



IMPORTANT INFORMATION

CONCEALABLE FIREARMS LICENCE (CATEGORY H)

OCCUPATIONAL OR PRIMARY PRODUCERS

During the assessment of a New Application or Application to Renew a Concealable Firearms Licence (Category H), an Authorised Officer within the Weapons Licensing Group uses the following tools to make decision on an application:

- The *Weapons Act 1990*, Weapons Regulation 2016 and Weapons Categories Regulation 1997.
- The results of decisions handed down by the QLD Civil and Administrative Tribunal (QCAT) when a person has appealed the decision by an Authorised Officer to reject a weapons licence application.
- The clauses detailed in the National Firearms Agreement (NFA) in relation to Primary Producers and the possession of a category H firearm.
- Queensland Globe technology provided by the Queensland Government. This is an online interactive tool which displays physical, geographic and spatial data about a location in map format. The spatial data displays layers on QLD roads, property, topography, land valuations, land parcel information and more.
<https://qldglobe.information.qld.gov.au/>
- Colour photographs of the terrain and surrounding features to demonstrate any special circumstances that make the use of a rifle or long-arm weapon impracticable or impossible.
- Animal welfare guidelines such as the [Australian Animal Welfare Standards and Guidelines for Cattle](#), the [CSIRO Model Code of Practice for the Welfare of Animals](#) and [Pestsmart Standard Operational Procedures for controlling feral animals](#). These codes of practice do not advocate handguns for the humane destruction of feral animals and euthanasia of livestock.

Examples will be outlined later in this document.

GENERAL INFORMATION

1. Section 15(3) and 18(5) of the *Weapons Act 1990* stipulates that in determining an application for the issue or renewal of a licence, an authorised officer may consider anything at the officer's disposal.

In addition to this, the authorised officer must consider the information outlined below, including the applicable legislation and relevant case law decisions.

2. If you have previously held a concealable licence for occupational purposes, this does not necessarily mean you will automatically be approved for another one upon application for renewal. You must include all information and material to substantiate your application.

The principle applied from a previous Tribunal decision is:-

The fact that a licence has been previously issued does not give rise to any legitimate expectation that the licence will be renewed indefinitely and may be rejected with or without any further information.

Sobey v Commercial and Private Agents Board [22 S.A.S.R 1979] 72

3. The use of category H firearms for recreational shooting is specifically prohibited by section 22(2) of the Weapons Regulation 2016.
4. Personal protection is not a genuine reason for acquiring, possessing or using a firearm.
5. Easy carriage is not a genuine reason for a concealable licence.

CONSIDERATIONS

1. Section 10 of the *Weapons Act 1990* provides the limitations on the issue of a licence and outlines the strict requirements that must be met for the issue of a licence.
2. Sections 15(3) and 18(5) of the *Weapons Act 1990* stipulates that in deciding the application, the authorised officer may consider anything at the officer's disposal.
3. To apply for the concealable licence, you must have a genuine reason for the possession of a category H firearm:
 - a. Section 11(c) of the *Weapons Act 1990* stipulates that one of the **genuine reasons** for the possession of a weapon includes "an occupational requirement, including an occupational requirement for rural purposes".
 - b. Therefore, the genuine reason for a farmer could be for an occupational requirement for a rural purpose as a primary producer.
4. To determine if you are a primary producer, the Authorised Officer considers the definition of primary producer in the *Weapons Act 1990* and how the courts have previously interpreted the word 'primarily'.
5. The definition of a primary producer under the *Weapons Act 1990* is not the same as the definition by the Australian Taxation Office (ATO), and any decision made by an Authorised Officer within the Weapons Licensing Group will not impact your status with the ATO.
6. Concealable licences are not generally issued for the purpose of feral animal control in primary production due to the limited range and accuracy of a concealable firearm.

Definition of a Primary Producer

primary producer means a person (not being a person engaged in primary production as an employee on wages or piecework rates) primarily engaged in the occupation of —

- (a) dairy farmer; or

(b) wheat, maize, or cereal grower; or

(c) cane grower; or

(d) fruit grower; or

(e) grazier; or

(f) farmer, whether engaged in general or mixed farming, cotton, potato, or vegetable growing, or poultry or pig raising;

and includes a person prescribed by regulation.

QCAT Decisions

Previous QCAT decisions and principles an Authorised Officer considers include:

Occupational Requirement

If it is a requirement of the applicant's occupation that they be able to use a pistol, the occupational requirement had to be genuine.

Cseke v Queensland Police Service [2005] QCAT 466

Principle applied: It had to be a requirement of the applicant's occupation that he be able to use the pistol. Moreover, the occupational requirement had to be genuine. The decision maker cannot be criticized for being more conscientious than previous decision maker.

Necessary

As required by Section 13(5) of the *Weapons Act 1990*, the applicant must show "why possession of a weapon is **necessary** in the conduct of the applicant's business or employment". Further, why it gives rise to a special need to be issued with a licence for category H firearms.

The Tribunal has previously considered the term 'necessary' as used in section 13(5) of *Weapons Act 1990* and determined that convenience or preference does not meet this test.

The applicant must justify:

- why the possession of a category H firearm is necessary in the conduct of the applicant's business as a primary producer; and,
- why the use of a category H firearm is required, and why the use of a long arm such as category A or B firearm could not meet the same need. Please note that convenience, preference or self-protection is not a genuine reason.

Shaxson v Queensland Police Service, Weapons Licensing Branch [2014] QCAT 309
'Necessary,' according to common usage, connotes something which is required, rather than something which is merely convenient or a matter of preference. In the context, it reasonably connotes that the requirement cannot be met in some other way, and cannot currently be appropriately met...special need for a handgun would not have been established.

Further clarification of **necessary** and **special need** has been provided by QCAT and the Authorised Officer will consider:

- The size of your property.
- The terrain of your property; and,
- Special circumstances that make the use of a rifle or long-arm weapon impracticable or impossible. (i.e. limited access to the majority of the property due to vegetation and steep hills.)

An Authorised Officer will utilize Queensland Globe, and all provided documentation to assess whether the size, demographics and vegetation on your property is of such a nature that a category H firearm is required to carry out the humane destruction of stock that may be injured in remote parts of your property.

Previous QCAT decisions provide guidance here:

The issue of a concealable licence for the use of occupational primary production is generally restricted to very large land holdings which have excessively rugged terrain requiring the extensive use of motorbikes or horseback to access.

These properties generally must be of a size that if any firearm was not carried and livestock is located and needed to be put down, the delay in returning to retrieve a firearm would cause inhumane suffering to the animal.

QCAT has previously considered a property of 16,400 hectares, or 42,000 acres, that only had limited four-wheel drive access with most of it being accessed on horseback and with less than 0.9% of open grazing land. QCAT decided that this established a '*special need*' which supported the issue of an occupational Concealable Firearms Licence (category H).

Further, QCAT considered that if there was better vehicle access to a greater proportion of the property and **not necessarily all of the property**, it would have resulted in the '*special need*' not being established. *Harm v Queensland Police Service [2010] QCAT 518*, Senior Tribunal Member Oliver.

You should also be aware that if your property consists of a leasehold agreement with the Queensland Parks and Wildlife Service (QPWS), you require a letter of permission from the Regional Director to use firearms on that portion of your property.

QPWS generally only authorize the use of category A and B weapons on leasehold areas.

Further case law considered in making this decision includes:

Feeney v Queensland Police Service (Weapons Licensing Branch)[2017] QCAT 203

The Authorised Officer must consider whether there is a "special need" that would warrant the issue of an occupational licence and whether or not the need can be met in another way, including the use of another category of firearm.

It is important to note:

- The mere use of a horse or motorcycle, or earthmoving machinery in itself does not lead to a requirement for a handgun.
- The *Weapons Act 1990* precludes a person from being licensed for the purposes of self-protection.

<https://www.sclqld.org.au/caselaw/QCAT/2017/203>

Harm v Queensland Police Service [2010] QCAT 518

Principle applied: Property size, terrain and access are considerations in determining if a 'special need' for the issue of a concealable firearms licence is established.

<https://www.sclqld.org.au/caselaw/QCAT/2010/518>

Geary v Queensland Police Service Weapons Licensing [2017] QCAT 6

Principle applied: use of concealable weapons will only be necessary where the terrain or special circumstances make the use of a rifle or long-arm weapon impractical or impossible... The mere use of a horse or motor cycle, or earthmoving machinery, in itself does not lead to a requirement for a handgun.

<https://www.sclqld.org.au/caselaw/QCAT/2017/6>

Bergmann and Commissioner of Police [2009] WASAT 233

Principle applied: the Weapons Act precludes a person from being licensed for the purposes of self-protection.

Baker v Queensland Police Service Weapons Licensing [2019] QCAT

Principle applied: the size of the property, the terrain and the extent to which he has demonstrated a need to use a pistol in the past... could equally attend to all of the occupational needs with a rifle. Being able to carry a pistol may be more convenient but there is a reasonable alternative. Carrying a rifle when necessary is not an unreasonable burden in the proper management of the rural enterprise. In addition, that weapon possession and use, here a pistol, is subordinate to the need to ensure public and individual safety.

Some of the things that you could include in your application are:

- The situation which previously required the use of a concealable firearm on your property. Including where you were on the property, what happened, how often this has happened and why a long-arm would have been ineffective. (Remembering - convenience is not a justification/reason for possessing a concealable firearm).
- The frequency and need of humane destruction of livestock with a concealable firearm and if you used a concealable firearm, why?
- The quantity and type of livestock you run on your property.
- The frequency and use of a long-arm to affect the euthanasia of an animal or feral animal, the details, location on the property and the frequency of this occurring
- Describing the type of land required to traverse and why a concealable weapon is the only option. Include information why a long-arm could not be used.
- Whether the commercial firearm carrying product options available on the market to aid in the safe carriage of a long-arm been explored.

NATIONAL FIREARMS AGREEMENT (NFA)

Due to the Port Arthur Massacre in 1996, all sides of Government (Federal and State) agreed to the implementation of the NFA in 1996. The Monash University Shootings in 2002 reaffirmed the need to control handguns for community safety.

The NFA constitutes a national approach to the regulation of firearms. The Agreement affirms that firearms possession and use, is a privilege that is conditional on the overriding need to ensure public safety, and that public safety is improved by the safe and responsible possession, carriage, use, registration, storage and transfer of firearms.

In 2017 the Federal and all State Governments through the Council of Australian Governments (COAG) signed off on the update 2017 NFA. The 2017 NFA did not change

Queensland's approach to the licensing of category H firearms. Queensland Weapons Licensing continues to vary from the NFA in that, upon legislative requirements being met, it will still licence primary producers to possess a Category H firearm.

APPLICABLE ANIMAL WELFARE GUIDELINES

An Authorised Officer will also consider the following animal welfare guidelines which provide guidance on the suitability of types of firearms for humane destruction of livestock.

The CSIRO provide the general "Model Code of Practice for the Welfare of Animals: Feral Livestock Animals". A link to this code can be found at <http://www.publish.csiro.au/book/370/>

More species-specific guidelines are put out by a section of the Federal Government known as PestSmart. There are guides for Dogs, Foxes, Rabbits, Pigs, Cats, Goats, Deer, Camels and Horses. A link to this site can be found at <https://www.pestsmart.org.au/>

Each model code has specific requirements for the types of firearms and ammunition considered suitable for specific animals:

PIG003 Ground Shooting Feral Pigs - Large calibre, high-powered rifles (at least equal to .243 performance), fitted with a telescopic sight are recommended. Hollow-point or soft-nosed (minimum 80 grain) ammunition should be used. 12-gauge shotguns with heavy shot sizes of SG or SSG, may be effective, but only up to a distance of 20 metres from the target animal.

DOG003: Ground Shooting Wild Dogs - Small bore, high velocity, centre fire rifles fitted with a telescopic sight are preferred e.g. .22-250, .22 Hornet, .222 Remington, .223 or .243 Winchester. Hollow-point or soft nosed ammunition should always be used. • Rimfire weapons with lower muzzle energy are not recommended because of the greater risk of non-lethal wounding. • 12-gauge shotguns with heavy shot sizes of No. 2, SSG, BB or AAA may be effective, but only up to a distance of 20 metres from the target animal.

Livestock – the humane killing of Livestock is covered by the QLD Government guidelines found on the Business and Industry portal called Humane Killing of Injured Livestock, it recommends a rifle for the destruction of livestock. A .22 or .22 magnum calibre rifle is adequate for most animals if the shot is correctly positioned. A link to this site can be located at <https://www.business.qld.gov.au/industries/farms-fishing-forestry/agriculture/livestock/animal-welfare/humane-killing>

Livestock Transportation – there is a specific Model Code of Practice for the Welfare of Animals: Land Transport of Cattle. it recommends rifle or captive bolt killers, not concealable firearms. Called Australian Animal Welfare Standards and Guidelines Land Transport of Livestock, (2012) and is available on online at <http://www.animalwelfarestandards.net.au/files/2011/02/Land-transport-of-livestock-Standards-and-Guidelines-Version-1.-1-21-September-2012.pdf>

Slaughter Yards – there is a specific model code of practice for the slaughter of livestock within a slaughtering establishment which recommends rifle or captive bolt killers, not concealable firearms. This is the Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments, it is available on online at <http://www.publish.csiro.au/book/2975/>

CARRIAGE OF FIREARMS OF MOTORBIKES AND HORSEBACK

There are commercially available products for the carriage of long-arms on motorbikes and horses and the mere fact you use these methods to access parts of the property does not lead to the requirement for a handgun.

IN CONCLUSION

Queensland is one of the only States that continues to issue concealable licences to primary producers.

Authorised Officers are still issuing licences for category H firearms to primary producers who have shown they meet the requirements.

This information sheet is not to be construed as legal advice. Should you wish, please seek your own independent legal advice.

Kind Regards

**WEAPONS LICENSING
QUEENSLAND POLICE SERVICE
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