

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Firearms Prohibition Legislation

Melbourne—Monday, 2 September 2019

MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

Ms Tania Maxwell

Mr Craig Ondarchie

Dr Samantha Ratnam

Ms Kaushaliya Vaghela

PARTICIPATING MEMBERS

Ms Melina Bath

Mr Rodney Barton

Ms Georgie Crozier

Dr Catherine Cumming

Mr Stuart Grimley

Mr David Limbrick

Mr Edward O'Donohue

Mr Tim Quilty

WITNESS

Ms Corri McKenzie, Deputy Secretary, Police, Fines and Crime Prevention, Department of Justice and Community Safety.

The CHAIR: As you know, this is an Inquiry into Firearms Prohibition Legislation, and the evidence taken at this hearing is protected by parliamentary privilege, so you are protected by law for anything you say today. Of course any comment repeated outside the hearing does not have the same protection, and any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament. As you can see, the evidence is being recorded, and you will be provided with a proof version of the transcript, which ultimately will end up on our website.

If I can ask, because on the other side of this wall we have quite a bit of action going on—

Ms McKENZIE: Of course. I passed through it, yes!

The CHAIR: It is like the harbour bridge—once we get to one end, we start again. So if I could ask that, for the assistance of Hansard, you speak into the microphone if you can. If we could hear some opening remarks and then open it up for questions, that would be great.

Ms McKENZIE: Absolutely. Thank you very much, and thank you very much to the Committee for providing the department with the opportunity to give evidence today. Just by way of introduction, I am the Deputy Secretary. I have responsibility within the Department of Justice and Community Safety for the portfolios of police, fines and crime prevention, so a fairly significant proportion of our policing responsibilities is about working with Victoria Police on the legislative and policy-setting environments for the purposes of operational policing. Obviously there are a number of operational policing questions which you have obviously just had the opportunity to speak about with Victoria Police, so I will defer to them. We obviously take significant advice from police on operational matters, and that includes in relation to the Minister's responsibilities and the department's responsibilities to support the Minister in the administration of the firearms legislation and how that relates. So that is the groundwork primarily.

Of course the department worked very closely with Victoria Police in preparing the original FPO amendment to the *Firearms Act*, and we have been continuing to work with them both at a state level and obviously it is also an issue of some significance nationally in the national intergovernmental arrangements as well, so we continue to be involved at that level too.

The CHAIR: Yes, great. Thank you. Again, thanks for making time, and as we heard from Detective Superintendent Brigham, there are probably areas that they would like to see improvement in. From the department's position, are you already starting to see some limitations to the scheme currently? Given that VCAT appeal and the decision that was made there, has that given the department time to—

Ms McKENZIE: Pause for thought?

The CHAIR: Yes, pause for thought.

Ms McKENZIE: Look, I should probably just draw on the fact that the firearms prohibition orders have been in place for only slightly longer than 12 months at this point, and without wanting to comment on the operational decisions of Victoria Police and their deployment at all, which is obviously a matter for the chief commissioner, I think the previous witness would have talked to you about taking quite a measured approach to the introduction so that the new orders can be understood in operation as well. So I would flag that. So I think from the department's perspective we are continuing to liaise with police about their operation in practice, and Victoria Police are continuing to issue orders. We are also obviously mindful of any impending court decisions. But given that a number of matters are currently before the courts, the department would not comment on those at this point.

The CHAIR: Could you explain, hopefully, the reasons for the appeal process going to VCAT rather than through the courts? The firearms prohibition order is a fairly important order. I must say, I think during the second-reading debate we were somewhat surprised that VCAT was the preferred appeal option.

Ms McKENZIE: I think each of these orders sits within a suite of existing legislative and regulatory activity, and so consistency with the broader regulatory activity of that Act is obviously an important consideration in informing the pathways for appeal mechanism. Obviously, as we are seeing at the moment, an administrative decision of VCAT is also able to be appealed to the Court of Appeal, so there are obviously also mechanisms by which that can be brought into the broader court system as well.

The CHAIR: In saying that, are there any other similar, I suppose, orders that go through VCAT that you drew from in recommending the VCAT pathway for these orders?

Ms McKENZIE: I would have to take that on notice, but I will come back to you on that.

Dr KIEU: Thank you for coming. Just to follow up the question from the Chair, the active appeal avenue that is with VCAT that you mentioned is within the larger regulatory framework. Would that mean that it would be very difficult to change that, if we need to change that, to another different judicial avenue, other than VCAT, if this need to be changed?

Ms McKENZIE: The legislation obviously prescribes the appeal avenues, so that would be a legislative change. So if there was to be any change to that appeal avenue, that would require a legislative amendment, and then all of the normal scrutiny that comes through a legislative amendment in terms of if there are budget resourcing implications arising, which we would normally do in the course of parliamentary consideration.

Dr KIEU: Just to follow on, the department was involved in drafting the last amendment, which has now become an Act.

Ms McKENZIE: Yes.

Dr KIEU: You mentioned that it has been in operation just more than 12 months. The previous witness for the police said there is a rolling out period and that is why the rate of serving FPOs is actually not there yet as compared to New South Wales or other jurisdictions. You also have been liaising with the police. This is difficult because this is still in an appeals process and the police have to wait and see what the outcome will be. But there is some concern—and also expressed concern—about the wideranging scripting of section 4A. For example, for a normal person on the street, a person would have to satisfy certain criteria before he or she was to be served with an FPO. Now an appeals officer would say because that would infringe on human rights like being able to see friends, family or go to the greyhounds or some other thing and it is not for a normal person, that is not a good enough reason to overturn that for people who have been to prison. But people have been in prison because of certain convictions, and they lose their rights to go outside and to go to nightclubs and see people. So in that sense the interpretation is open too much for certain decisions to be handed down and overturn the FPO. Would the department have any consideration of that?

Ms McKENZIE: I am sorry, just to clarify your question: consideration of the outcome of the appeal of the VCAT decision, is that your question?

Dr KIEU: Yes.

Ms McKENZIE: The department would not have any comments on matters before the court currently. Given that the particular VCAT decision that I think you are referring to is currently the subject of an appeal, and that there are a number of others in train, we would wait and see the outcome of those judicial hearings.

Dr KIEU: Okay, I understand that. In terms of the question raised earlier with the previous witness, with the rapidly changing landscape of new and emerging technologies—one is 3D, but there could be some other things. We know, for example, that 3D printing is not widespread yet, also it could only fire one single shot and also it is more likely than not to be harmful to the user because of the construction. Because of the rapidly changing adaptation of technology that could potentially be another channel for illicit firearms. Do you think that should be incorporated in order to move with the times?

Ms McKENZIE: I would say that we will obviously continue to take the advice of Victoria Police in terms of the emergence of particular weapons or weapon types. I would say that in the Act the definition of ‘Firearm’ and ‘Firearm related item’ are two separate definitions. Both are designed to describe the action of a firearm rather than the specific nature of a firearm. Specifically for the purpose of the question that you raised, which is that we are always seeing an evolution—3D printing is obviously an immediate one that is very current in public discourse at the moment—but there is always the emergence of different mechanisms and manufacturing processes or practices. So the two definitions are really designed to reflect the function of the item rather than to describe the item in itself, and that is really because the function is what causes any potential harm rather than the fact of an instrument or an object in itself.

Dr KIEU: The description of which could become obsolete very soon.

Ms McKENZIE: Yes, exactly, and so the way firearm is articulated in the Act to someone reading it on the street—I am not sure how many people pick up the *Firearms Act* on the street, but if they did, it does not seem necessarily immediate, but really that is exactly the purpose, which is that there is a particular kind of function of an object which would cause harm. That is what is sought to be described in the act, really, to pick up that evolution and the changing nature of firearms, but then also the kind of adjacent, related items that might be developed.

Mr O’DONOHUE: Thank you, Ms McKenzie, for being here today and for your evidence. You mentioned in your response to the Chair’s question that the context of the appeal process, the initial appeal process to VCAT, needs to be considered as part of the administrative framework of the system and that VCAT considers administrative appeals. The FPOs deal with, according to the Minister and Victoria Police, some of the most dangerous offenders in Victoria. Can you name another list or another appeal process which deals at VCAT with some of the most dangerous criminals in Victoria?

Ms McKENZIE: I took the Chair’s question on notice on a similar question, Mr O’Donohue, so I am very happy to come back to you on that.

Mr O’DONOHUE: I think it was a different—

Ms McKENZIE: Sorry.

Mr O’DONOHUE: You are not able to answer the question?

Ms McKENZIE: Not off the top of my head, but I am very happy to come back to you. I will take that on notice.

Mr O’DONOHUE: Okay, sure. As a follow up if I may, Chair, just a couple more questions. You mentioned in your earlier answers, as the Victoria Police did too, the need to work across jurisdictions and that there are intergovernmental agreements being worked on and that are in place in relation to these issues. As part of the department’s advice to the Government, did it consider adopting the New South Wales legislation so that there was jurisdictional certainty between the two states?

Ms McKENZIE: I cannot comment specifically on the department’s advice to the Government in the context of that in-confidence piece of advice. However, I would say that in preparing the legislation, what became the FPO amendments, the department and the scheme were broadly informed and were certainly drawn from the New South Wales scheme. I think the Minister referred to that in her second-reading speech. Then also of course the New South Wales scheme had been in operation for a couple of years prior to that too. The South Australian scheme was obviously an information point, as was the 2016 Ombudsman’s review of the operation of the FPO scheme in New South Wales. So certainly the Victorian scheme drew very heavily on the New South Wales scheme and, as I said, that was reflected, but there are obviously a range of different information points that informed the particular design of the scheme itself.

Mr O’DONOHUE: Sure. Just one more follow-up, if I may. I noted that Detective Superintendent Brigham in his evidence just now said—well, in his view, anyway—that the Victorian scheme is more restrictive than the New South Wales scheme. Is the department surprised that there have only been 223 FPOs issued given that Deputy Commissioner Patton identified 2200 potential people who could be the subject of an FPO prior to the

legislation being passed, and given that New South Wales has issued 730 FPOs per year on average over the five-year period to 30 June 2018?

Ms McKENZIE: I think, without wanting to be cute about your question, Mr O'Donohue, the question of the number of FPOs issued is really a question about how Victoria Police operationalise the use of the order. So from the department's perspective we are obviously looking to understand how the scheme is operating in practice, and we will continue to take advice from Victoria Police, but in terms of the numbers issued we would really defer to Victoria Police on how the scheme itself is being operationalised and how they choose to deploy that as part of their ongoing and broader suite of operations.

Mr O'DONOHUE: Final question, Chair, if I can. Just noting that you will take advice from Victoria Police and work with Victoria Police, and the chief commissioner's public comments that if the appeal on 10 October is unsuccessful he will ask Government for amendments to the FPO legislation, has the department prepared or is the department preparing legislative change in the event that Justice Hampel's decision is upheld?

Ms McKENZIE: We have not been provided any formal request from Victoria Police to make any changes, and we would not comment on any matter before the courts.

Ms VAGHELA: Thank you, Ms McKenzie, for your time today. In your view, do you think FPOs are effective in preventing access to illicit firearms? And if the answer is yes or no, what do you think are the limitations of the FPO scheme?

Ms McKENZIE: Very good question. I will not offer a personal opinion on the effectiveness—

Ms VAGHELA: Department's.

Ms McKENZIE: I think there are a suite of tools available to Victoria Police, and that includes the range of licensing and regulation capabilities, including those set out in the *Firearms Act* and including FPOs to tackle the illegal use of both legal weapons and illegal weapons in Victoria in the interest of community safety. As Detective Superintendent Brigham referred to earlier, Victoria Police are issuing FPOs and there have been instances of both seizure and charge as a result of the use of those powers, and I would infer from that that they are one component of the suite of interventions available to curb the illegal use of weapons.

Ms VAGHELA: You mentioned that the department played a role in amendments. Would you come up with any amendments down the track if the department was involved? What sort of amendments would you come up with for the current FPO scheme?

Ms McKENZIE: The department would obviously take the advice of Victoria Police, particularly in the operations of the scheme and the need for those operations to inform any future amendments, which of course would be subject to the decision of Government.

Ms GARRETT: Just in terms of the current draft of the legislation—I have not read Hampel's entire decision—looking at the extracted quotes about it it appears there is a reference to perhaps somebody having a right, so to speak, to have the firearm unless it is proven otherwise. Do you think that needs to be strengthened, or do you have a view about that?

Ms McKENZIE: Obviously without wanting to comment on current judicial proceedings, of course.

Ms GARRETT: Yes, just the Act itself, the drafting—does it need to be tightened?

Ms McKENZIE: I think in terms of the operation of the Act, the Act is drafted clearly at present. This is the broader Act, not just in relation to the FPOs, to regulate the use and possession of weapons, of firearms, in Victoria. So I think it is important in considering the treatment of particularly that public interest test in the FPO amendments. I think it is important to consider the regulatory framework for the use and possession of firearms more broadly in the state. This is a sort of subset component being targeted, so a very specific set of circumstances. I think there has been some commentary on the public interest test component of the FPO scheme, and I think obviously I would say that the public interest test, in that sense, reflects the legislation in other jurisdictions too. It is also present in the New South Wales legislation, for example. It is a term fairly

widely used in and across the legislative framework for providing a judicial reference point for decision-making, and it is obviously also the chief commissioner's reference point for decision-making in the deployment of orders. But I think the other component that is specific in the FPO components is the connection between the public interest test and the terms which are set out, so it is really because of the criminal history of the individual—because of the behaviour of the individual, because of the people with whom an individual associates. So it is a defined public interest test the way this legislation is currently drafted. Again, that is set within the broader piece.

Ms GARRETT: Do you think that is strong enough in your view, in the department's view?

Ms McKENZIE: Certainly the department was informed of the development of the legislation and we were involved in the process. I think we would be informed by its operation, and obviously that is a consideration for courts at the moment.

Ms GARRETT: I understand you cannot comment on the specific case, but obviously the case has caused significant consternation about the way in which the Act is functioning.

Ms McKENZIE: I understand, yes.

Ms GARRETT: So, yes, we will wait for the outcome of the case, but I do not imagine people envisaged that that would be the outcome of the legislation. I assume we are all sitting here for a reason. Obviously you are not able to comment, but clearly if it needed to be tightened?

Ms McKENZIE: I think certainly, as I said before, we are continuing to liaise with police in relation to the operation of the legislation, and they are continuing to issue orders under the Act. That is certainly important for us in understanding the operation of the scheme independently of judicial considerations.

The CHAIR: Going on from that, I think it is interesting that the finding was that actually the restrictions placed were too onerous and that the limitations on a person's liberty and who they can associate with were too onerous. Is that a path that the department is alive to—the restrictions that the FPO places on the individual?

Ms McKENZIE: I think we will continue to monitor the operation of the Act in all of its guises. As I said before, obviously the FPOs are really significant and, as you said, Ms Garrett, subject to the attention of the Committee. They are obviously a very significant component of the Act, but the *Firearms Act* and its operation overall is a pretty significant component and part of our work is that we very actively monitor its use and application as well. That operationally, obviously, is informed by Victoria Police, but we will absolutely continue to do that in the context of FPOs and in the broader *Firearms Act* as well.

The CHAIR: There have been 205 searches of people with firearms protection orders and, out of that, 139 charges have occurred. The previous witness told us that 12 of those were firearms offences. Given that the whole purpose of this amendment and of this legislation was to address firearm offences, are you concerned how many charges are non-firearm-related charges as a result of firearm protection orders?

Ms McKENZIE: I think it is hard to draw an inference without having the operational information and detail of the way those charges were laid and how those, for example, drug-related offences might co-occur with weapons offences. We know that there is a prevalence of that in crime statistics reporting, for example. It is hard to infer from the numbers alone for me how that actually applies in practice. I think we would certainly continue to monitor it to understand how the FPOs were being administered and how they were kind of being operated and what the operational implications of that might be in the longer term. But I think particularly on the numbers, both the fact that it has been 12 months, which in operational legislative times is not the longest period of time in the world, I think there is that to bear in mind. You would want to see a period of time to see a pattern of behaviour emerging to understand what that might actually look like. But on that point I would say that the Crime Statistics Agency's information and data on some of the co-location of different offences and how they occurred together is important to reflect on in this setting.

The CHAIR: Yes. Well, the information provided to us by the police was 120 searches of the 205 searches detected an offence, and 139 individual charges were laid. We have just heard that only 12 of those related to firearms. Is the department collecting their own data on the effectiveness of the firearm protections orders?

Ms McKENZIE: The Crime Statistics Agency is our primary source, which comes directly from the police's database.

Dr KIEU: The department has been working in consultation with and receiving advice from the police, but another function of the department is also working in partnership with community. Have you, from the perspective of information from the department, seen any increase in infiltration or availability of firearms in the more general community as opposed to organised crime which is more a statistic kept by the police?

Ms McKENZIE: I think as a department we would not necessarily, outside Victoria Police—obviously the licensing and regulatory division of Victoria Police is the front line of that regulatory capability and licensing capability—see a prevalence of firearms beyond through the statistics that the Chair mentioned just earlier. Certainly our engagement on the issue of firearms and the regulation and licensing environment is broader than Victoria Police, as you say. We support a number of firearms engagements both with industry and with the sporting shooters, for example, and then with broader community as well in both legal and non-legal settings. There is a broad range of community engagement more broadly, but no data source that I am aware of that would add to the crime statistics and the licensing information from police.

Mr O'DONOHUE: Can I just first of all ask a follow-up question to Dr Kieu, talking about the engagement with the department: can you confirm that the department's firearms consultation committee has not been meeting in the last 18 months to two years?

Ms McKENZIE: I will have to take that on notice, but I think it has met. I will take it on notice; let me confirm for you, Mr O'Donohue.

Mr O'DONOHUE: Perhaps if you could confirm how many times it has met in the last two years, that would be great.

Is it the department's view that the delegation to superintendent or above for an FPO is appropriate?

Ms McKENZIE: Certainly that is what is reflected in the Act and that is how the practice seems to be occurring in a reasonable way, so I do not think there is a particular perspective the department would bring to that.

Mr O'DONOHUE: And similarly—noting the questions the Chair asked just in the previous set of questions—does the department view the issuing of FPOs for a 10-year period as an appropriate length, or do you think that is too long? Or conversely, too short?

Ms McKENZIE: I do not think the department would have a particular perspective on that beyond what is in the legislation currently.

The CHAIR: Thank you, Ms McKenzie. Just following up again from Dr Kieu and your response to other measures to control illicit firearms, and you were mentioning some of the community engagement, could you provide us with a couple of examples of those other measures that the department is rolling out?

Ms McKENZIE: Sorry; my apologies if I misspoke earlier. The consultation is not necessarily about the curbing of illegal or illicit firearms, though obviously there are a range of circumstances and engagements that the department undertakes where the issue may arise. We do undertake a range of consultations—Mr O'Donohue mentioned the firearms consultative committee earlier—so that there is a range of both standing and informal engagements with a really broad range of stakeholders and organisations with particular perspectives, and obviously firearms is an area of licensing and regulation which draws particular attention from a really diverse group of community members. So we will continue to do that in both, as I say, those formal and also informal settings. I am thinking about a lot of the community legal centres, for example, with whom we would engage on a fairly regular basis both informally and through other formal mechanisms who would have a perspective, but not necessarily through a formal mechanism like the firearms consultative committee.

Ms PATTEN: So on that, I suppose, I am just looking at what other measures the department is undertaking to control illicit firearms. Certainly we have got our licensing regulation, we have now got firearms protection orders and we have got a general Act. Are there any other measures that the department is undertaking?

Ms McKENZIE: The department also participates particularly in intergovernmental work and, as I think the superintendent mentioned before, there is obviously significant attention to cross-border and indeed international flow of weapons in the same way that there would be elsewhere. So the department particularly is continuing to engage with our colleagues in other jurisdictions about the ongoing monitoring—both the use of and inflow and various flows of weapons—and will continue to do so, particularly with a focus, given our areas of responsibility, on the kind of policy and legislative settings that would support improved community safety as a result of reducing illicit weapons.

Ms PATTEN: Any further questions? Thank you very much, Ms McKenzie, and I appreciate you taking some of those questions on notice.

Ms McKENZIE: Will do. I will follow up asap. Thanks very much.

Ms PATTEN: Thank you.

Witness withdrew.