

Parliament of Victoria - Legal and Social Issues Standing Committee – Legislative Council

Inquiry into Firearms Prohibition Legislation

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

Public Hearing 2 September 2019 – Responses to questions taken on notice

1. With reference to the FPO review process going to VCAT, are there any other similar orders that go through VCAT that you drew from in recommending the VCAT pathway for these orders?

The VCAT review pathway was not based on consideration of similar orders that go through VCAT but was based on other important considerations.

Consideration was given to other jurisdictional schemes and the Victorian FPO scheme is modelled on the New South Wales (NSW) scheme. In NSW, a person who has been served with an FPO has 28 days in which to request that the NSW Police Force review the decision to make the FPO. If the internal review by the NSW Police Force is unsuccessful, some FPO subjects are eligible to apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of the decision (see section 75 of the *Firearms Act 1996* (NSW)).

There is no information to suggest that NCAT has encountered any difficulties in handling FPO review matters. Like Victoria, NSW FPOs have been used for very serious cases. The NSW police informed Victoria Police that FPOs have been successfully issued in counter-terrorism cases, against outlaw motorcycle gangs and against other high-risk individuals.

Similarly, in South Australia FPO reviews are heard by the South Australian Civil and Administrative Tribunal (SACAT) (see section 47 of the *Firearms Act 2015* (SA)). Tasmania also has FPOs but as that jurisdiction is the only state in Australia that does not have a civil and administrative tribunal like VCAT, NCAT or SACAT, FPO reviews are heard by the Administrative Appeals Division of its Magistrates' Court. A Private Members Bill was introduced into the Queensland Parliament on 1 May 2019 to amend the *Weapons Act 1990* (QLD) to introduce an FPO scheme for that jurisdiction. The Bill includes an amendment to section 142 of the *Weapons Act* to provide for a right of review from FPO decisions to the Queensland Civil and Administrative Tribunal (QCAT).

If, in the future, agreement is reached on a National FPO mutual recognition approach, it would be preferable that jurisdictions' FPO schemes are as closely aligned as possible, including in relation to review mechanisms.

Victoria's long-standing approach to administrative review matters was also a key consideration. The decision to make an FPO is an administrative decision of the Chief Commissioner of Police or delegate in accordance with the *Firearms Act 1996* (the Act). VCAT's core function is to review administrative decisions. As a result, VCAT has a legislative framework in place which makes clear how reviews will be handled. By contrast, the Magistrates' Court, for example, is very rarely provided with the power to review administrative decisions and does not have laws and procedures in place setting out how they would be handled. For example, it would not be clear what type of review the Court would be expected to engage in, what evidence it could rely on and how it would handle confidential intelligence information.

Another consideration was to ensure a consistent framework for administrative reviews under the Act. The legislative review framework for FPOs is consistent with the long-established administrative review model available to persons affected by decisions of the Chief Commissioner of Police to cancel a firearms licence, refuse an application for a firearms licence, impose licence conditions or refuse to issue a permit to acquire. Being decisions of an administrative nature, they are not amenable to appeal to a court (such as the Magistrates' or County Court) but are subject to a merits review of an administrative decision. Those decisions are subject to review at first instance by the Firearms Appeals Committee (FAC) and then VCAT at second instance.

FPO review applications are made directly to VCAT because the FAC is not an appropriate body to hear and determine reviews of FPO decisions. Hearings of the FAC are convened by the Department of Justice and Community Safety, which provides secretariat services. It is a small statutory review body comprised of only 15 members with a limited remit. VCAT also has the benefit of a fully functioning court style registry, making it more appropriate to deal with sensitive, complex and confidential material.

Finally, providing for review by VCAT does not exclude the courts from reviewing FPO decisions. Review decisions by VCAT can be appealed to the Supreme Court, and judicial review is also available. Further, VCAT has the skills and expertise to appropriately deal with FPO reviews. The President of VCAT is a Supreme Court judge and thirteen County Court judges serve as VCAT Vice Presidents.

2. 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?

VCAT deals with a wide range of matters affecting a broad cross section of the community including related to serious criminal matters. This can include disputes over goods and services, building and construction or planning matters, retail and commercial leases and rental disputes amongst many other types of matter. Other specific examples include Freedom of Information and discrimination proceedings which are sometimes brought by prisoners against Corrections Victoria.

As the Victorian Law Reform Commission identified in its '*Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries*' Final Report (February 2016), some lawful occupations and industries are prone to infiltration by organised crime groups seeking to support their illicit activities and to provide new opportunities for profit and influence. Where legislative schemes exist to licence participants in particular industries, they often involve administrative licensing decisions that are subject to review by VCAT.

Some examples include reviews of licensing refusals on the basis that a person is not fit and proper or it is not in the public interest that a person be licensed under the *Private Security Act 2004*, reviews from licensing decisions of the Professional Boxing and Combat Sports Board under the *Professional Boxing and Combat Sports Act 1985* and reviews of licensing decisions of the Business Licensing Authority under the *Sex Work Act 1994*.

Reviews of negative assessment notices in relation to sexual offending, amongst other reasons, are also undertaken by VCAT under the *Working with Children Act 2005* and reviews of case planning decisions in relation to some children in the child protection system are undertaken by VCAT and can involve cases where children have been sexually or violently abused by a parent or guardian.

3. Can you confirm that the department's firearms consultation committee has not been meeting in the last 18 months to two years?

I can confirm that the Victorian Firearms Consultative Committee (VFCC) has met in the last 18 months on three separate occasions.

In December 2018, the Minister for Police and Emergency Services formally appointed Mr Paul Edbrooke MP, Parliamentary Secretary for Police and Emergency services, as the new Chair of the VFCC. The first meeting of the reconvened VFCC took place on 20 December 2018.

The VFCC is a non-statutory expert advisory group for the Minister for Police and Emergency Services (as the Minister responsible for the *Firearms Act 1996*). The VFCC meets quarterly and two of the four scheduled meetings for 2019 have already taken place – on 12 March and 11 June 2019. The next scheduled meeting will take place on 24 September 2019. One final meeting for 2019 is scheduled to take place in December.

VFCC members include representatives from peak firearms bodies including Field and Game Victoria, the Shooting Sports Council of Victoria, the Australian Deer Association, the Firearms Traders Association, Firearm Safety Foundation, Sporting Shooters Association of Australia (Vic), the Victorian Amateur Pistol Association and the Victorian Clay Target Association. Other key members include the Police Association, the Law Institute of Victoria, the Australian Security Industry Association Limited and Melbourne and LaTrobe Universities.