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Dear Dr Buckley

FIREARMS LEGISLATION AMENDMENT BILL 2019

Law Society Northern Territory (**Society**) appreciates the opportunity to provide a submission about the *Firearms Amendment Bill 2019* (**Bill**).

The Society generally supports legislation addressing gun crime. However, the Society would like to draw certain issues to the Committee's attention:

- s.49F – no definition of Public Interest.
- s.49F(C) is problematic as it infringes on the ability of an individual to freely associate – the Commissioner can make an order simply based on association, and not on the actions of the individual subject to the order.
- s.49K(2) applies if the person subject of a firearms order is an officer of a body corporate (e.g. the pistol club) and operates to cancel the licence of *the body corporate*. This could mean that, for example, if the treasurer of the pistol club is subject to one of these orders, the entire club has its licence cancelled (which would obviously have significant ramifications). That seems to go beyond what is reasonably required for the purpose of the Bill and has the potential to infringe on the legitimate participation in lawful organisations by members of the public. It's also not clear, in that circumstance, whether the club would have standing to challenge the order made or they would have to expel the member in question and then re-apply for their licence.
- S.49U gives a police officer the power to search and detain a person, and to seize items without a warrant if it is *reasonably required* in order to determine if a person to whom the Firearms Protection Order (**FPO**) relates is in contravention of that FPO. The threshold to conduct a search is simply if it is *reasonably required*, which is a lower threshold than the well-established principle of *reasonable grounds*.
- s.49V gives police the power to search an associate of someone subject to an order, without warrant or consent. In our view, this is a dangerous expansion of police powers, as it expands the power to search (which is fundamentally an invasion of privacy and, if done without power, a battery tort) to people who may be innocently associating with someone the subject of a firearm order. The reasonable belief required by s.49V(1)(a) and (b) may barely be enough to ensure this is balanced, but it's a very fine line. The legislation allows the police to detain a person who is in the company of a person holding a FPO for 'as long as necessary'

- s.49X is similar as it allows the police, without warrant or consent, to search any person who happens to be at a premises occupied by a person subject to a firearm order. In our view this is beyond what is necessary for the Bill.

This regime stands in contrast to the ordinary requirement that law enforcement obtain a warrant issued by a judge or justice of the peace to exercise such powers. The issuance of such a warrant by an independent office is a central safeguard as to what would otherwise constitute trespass. The rule of law also generally requires that the use of executive powers should be subject to meaningful parliamentary and judicial oversight, including regarding powers to enter private premises, to seize property and to copy and seize information.

Such powers must also be a necessary and proportionate response to potential threats and not unduly impinge on the values and freedoms on which our democracy is founded – and which the public rightly expect Parliament to protect at the same time.

The Bill is obviously designed to provide police with very broad powers in dealing with firearms. These powers need to be balanced to ensure that they're not encroaching on the rights of people who are *not* subject to the orders contemplated by the Bill.

In our view, the Bill gives police virtually unfettered search powers which are susceptible to overuse, as seen in other jurisdictions, and potentially interfere with legitimate personal and private rights. The breadth of the new search powers raise concerns that police may use them arbitrarily or unreasonably.

We would like to draw the Committee's attention to the operation of this legislation in other jurisdictions such as New South Wales and Victoria. In both jurisdictions the objective of the legislation was principally to address firearms offences. However, what initially resulted was people being charged with other offences, like drug offences, not firearms offences or an offence under the relevant firearm legislation.

According to a newspapers FOI inquiry between 2015 and 2018 FPO's in NSW increased more than 650% with over 3900 FPO's in place at the time. That is over 3900 people and their associates who are able to be searched without a warrant¹

In NSW, the first two years of operation saw the police conduct approximately 200 unlawful searches².

The NSW Ombudsman report found that police were often searching people because they were associated with an outlawed motorcycle club and not because they held a belief that a person subject to a FPO was breaching that FPO.

The decision of Judge Hampel³ in the VCAT found a FPO was not issued lawfully as it was not in the *public interest* to issue a FPO to the applicant. In that case the applicant had a significant criminal record and was a past President and life member of the Rebels motorcycle club.

In Victoria there have been 223 FPOs⁴ made, 205 searches executed under those orders, and 139 charges arising from those searches – with only being 12 firearm charges.

Partly as a result of the decision of Justice Hampel, Victoria is currently holding a parliamentary inquiry in to its Firearms Prohibition Legislation⁵, the *Firearms Act 1996*.

¹ <https://www.dailytelegraph.com.au/newslocal/central-coast/firearm-prohibition-orders-soar-but-gun-crime-remains-stable/news-story/7b0fe9a150a3a57de4d20fe9aed5521c>

²

³

<https://www.vcat.vic.gov.au/sites/default/files/resources/Websdale%20v%20Chief%20Commissioner%20of%20Police%20%5B2019%5D%20VCAT%20666.pdf>

⁴

https://www.researchgate.net/publication/330242299_Review_of_police_use_of_the_firearms_prohibition_order_search_powers_NSW_Ombudsman_NSW_Australia


⁵ <https://www.parliament.vic.gov.au/lpic-lc/article/4246>

The Society recommends including in the Bill a provision for an avenue of appeal to the court regarding the validity of searches, on the basis of whether the search was unreasonable or an abuse of power.

It is evident from the experience and judicial decision in NSW and Victoria that the police did not fully understand the operation or requirements of the legislation and as a result illegal searches were conducted. The Society suggests that it is important that the police receive thorough training around the scope of the FPO search powers once the Bill is passed.

The Society also recommends that there be a Public Register of those subject to a FPO similar to that in place in South Australia.

Should you have any queries in relation to this response, please do not hesitate to contact me.



Yours faithfully

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