

**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

13<sup>th</sup> Assembly

**ECONOMIC POLICY SCRUTINY COMMITTEE**

**Public Briefing Transcript**

**Firearms Legislation Amendment Bill 2019**

12.00 pm, Tuesday, 24 September 2019  
Litchfield Room, Level 3, Parliament House

**Members:** Mr Tony Sievers MLA, Chair, Member for Brennan  
Mrs Kate Worden MLA, Member for Sanderson  
Mrs Lia Finocchiaro MLA, Member for Spillett  
Mr Jeff Collins MLA, Member for Fong Lim

**Participating Member** Mr Gerry Wood MLA, Member for Nelson

**Witnesses:** **Northern Territory Police, Fire and Emergency Services**  
Commander Tony Fuller APM, Territory Support  
Commander Martin Dole, Crime Command  
Superintendent Shaun Gill, APM Territory Support Services  
Ms Isabel Roper, Law Reform Legal Officer  
Senior Sergeant Drew Slape, Firearms Policy Unit

## FIREARMS LEGISLATION AMENDMENT BILL 2019

### Northern Territory Police, Fire and Emergency Services

**Mr CHAIR:** On behalf of the committee, I welcome everyone to this public briefing on the Firearms Legislation Amendment Bill 2019. I acknowledge my fellow committee members in attendance today: Kate Worden, Member for Sanderson; Lia Finocchiaro, Member for Spillett, via teleconference; Jeff Collins, Member for Fong Lim; and Gerry Wood, Member for Nelson.

I welcome to the table to give evidence to the committee Commander Tony Fuller APM, Territory Support, Commander Martin Dole, Crime Command, Superintendent Shaun Gill, APM Territory Support Services, Ms Isabel Roper, Law Reform Legal Officer, Senior Sergeant Drew Slape, Firearms Policy and Recording Unit. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use by the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private. I will ask you to state your name for the record and the capacity in which you appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions. Could you please state your name and the capacity in which you are appearing this afternoon?

Tony, if you would like to make an opening statement to the committee. Please state your name and your full title before we go in to the opening statement.

**Ms ROPER:** Isabel Roper, Law Reform Legal Officer from the Police Law Reform Unit.

**Superintendent GILL:** Shaun Gill, Superintendent, Territory Support Services. I am Superintendent in charge of Firearms Policy and Recording Unit.

**Commander FULLER:** Tony Fuller, Commander, Territory Support Command.

**Commander DOLE:** Martin Dole, Commander in charge of Crime Command.

**Senior Sergeant SLAPE:** Senior Sergeant Drew Slape, I am the officer in charge of the Firearms Policy and Recording Unit.

**Mr CHAIR:** Tony, would you like to make an opening statement?

**Commander FULLER:** Good afternoon. Thank you all for the opportunity to address this committee. Each of the officers have already identified themselves in their role.

NT Police have been seeking firearms prohibition orders for several years now, but the events of Christchurch and those in Darwin recently in June this year underpin the urgency and necessity of having this legislation introduced.

This legislation will bring us in line with New South Wales, South Australia, Victoria and Tasmania. The legislation is aimed at targeting organised crime and people of adverse character who have or have shown a propensity to use violence, particularly violence involving firearms. The vast majority of those who may receive an FPO, Firearms Prohibition Order, will not have a firearms licence or be able to obtain a licence under the current licensing regime.

It is not targeting law abiding gun owners, in fact, it will actually support gun owners as there will be a greater deterrent for people to steal firearms knowing that if they are found in possession of them and are on an FPO they will likely go to gaol.

Our intentions by having this legislation is to de-escalate the level of violence and the prevalence of gun related crime in our community. Currently, for example, a drug trafficker may carry an illegal firearm to protect themselves against other drug dealers stealing their product or to exert some duress over those that have outstanding drug debts. If that person is caught with an illegal firearm, the carriage and possession of the

firearm carries a regulatory offence and in most cases will result in a monetary fine. If that drug dealer was on an FPO, then should they be caught with a firearm, they will face a criminal charge and gaol time. Currently, this does not occur.

The threat environment in the Northern Territory is changing dynamically and we are trying to get our legislation to the prevention space as opposed to the response phase. Whatever we can do to prevent or deter those who will use violence in the commission of a crime from getting access to a firearm is our intention with this legislation.

We are happy to field questions.

**Mr CHAIR:** Great. We understand the primary purpose of the proposed legislation. What are some of the key features of the bill, some of the key changes?

**Senior Sergeant SLAPE:** Probably the key feature is, we are essentially moving to a framework that criminalises the possession of firearms by a specific group of people that are going to be targeted. At the moment, as the Commander mentioned, we work in a regulatory space. The *Firearms Act* is established primarily to regulate lawful firearms ownership and the offences relating to the possession of firearms more relate to regulatory offences through lack of compliance with the *Firearms Act*.

This allows police to be able to identify high risk individuals, issue them with a firearms prohibition order and then in turn that will criminalise the possession of the firearms, which these people do not have through lapses of registration and licensing, they possess these firearms for criminal purposes.

That is probably the key feature of the legislation. Everything else is ancillary to that. There are a number of other amendments which are run of the mill, but in addition to that that, this legislation enables police powers to ensure compliance with firearms prohibition orders.

**Mr CHAIR:** What consultation has taken place?

**Senior Sergeant SLAPE:** During the drafting process we had consultation with both Territory Families, because obviously there was impact on youth being under the age of 18 who may be issued with these orders, although we do not foresee a huge number of those, as well as Attorney-General's. We made initial notification to the Firearms Council that the legislation was in its progression. They were not provided a copy of the draft bill because of Cabinet-in-Confidence, however, they have access to that now and our intention is to meet with them either later this week or early next week to obtain their perspective on the legislation.

We have had preliminary conversations with them. There was some question around the view of why the appeal mechanism would be heard in NTCAT rather the Firearms Appeals Tribunal which is established under the *Firearms Act*, but I saw in the paper today they have come out and basically said there is fairly significant general support for the legislation.

**Mr CHAIR:** I will open it up to our panel.

**Mrs WORDEN:** How do you identify and pick and choose who you will give a prohibition order to? Is it just through your own intel?

**Senior Sergeant SLAPE:** Well, there will a range of mechanisms that need to be triggered in regard to why we would issue a firearm prohibition order. The legislation is quite broad, but it will come down to, it is unlikely that we will have a single one of the triggers which would then enact the order. We would likely be relying on a combination. We might have somebody with criminal history, with criminal intelligence holdings against them and associates with criminal elements. Someone who meets multiple thresholds would be the target of these orders.

Criminal history alone, except in exceptional circumstances, would not normally be a trigger for these types of orders.

**Mrs WORDEN:** Supplementary to that, if legislation goes ahead as is, do you expect that all of a sudden you would be issuing a raft of them? You would have a list of people you already know that you will provide these prohibition orders against?

**Senior Sergeant SLAPE:** We would be looking at people who would be appropriate, in the interests of public safety, for having these orders. That will grow as time progresses because we will not necessarily be able to

identify every person immediately who should be subject to a firearms prohibition order. Through our policing activities, we will come across, no doubt, individuals as they commit offences or as we have contact with these people, that bring these people to light and then allows us to take appropriate action.

**Mrs WORDEN:** I note that you are looking, obviously, based off some of what Victoria has done. Can you comment on the success and what benefits it has had in Victoria?

**Senior Sergeant SLAPE:** I know that New South Wales has had particular success. The legislation is similar throughout Victoria, New South Wales and South Australia. I know New South Wales has had some significant success in dismantling some elements of organised crime through their activities. Obviously, there was an independent Ombudsman report that was conducted after the initial period of legislation which found that the legislation as a whole was not overly problematic. That was again refined when they brought in the Victorian legislation.

From my conversations with my interstate colleagues, this is effective legislation that has been used as a tool successfully across the jurisdictions in which it has been introduced.

**Mrs FINOCCHIARO:** What rank of police officer has to make the decision? Does it include constables in the ordinary course of their duties, or there a higher process?

**Commander Fuller:** I will take that. The process ...

**Mr CHAIR:** Sorry, Tony, for the record, can you state your name before you talk so we have it.

**Commander Fuller:** Tony Fuller. Ma'am, it will be up to the Constables to provide a brief that will go through to our Firearms Unit. The decision will be with the Superintendent of Firearms or someone above the rank of that person. We want to maintain some sort of consistency on the vetting process. It will not be carte blanche and everyone gets the opportunity to issue these FPOs.

There is a process that we will instil. They will fill in the appropriate paperwork, it will be submitted, then we will vet that and decide whether or not that FPO should be issued.

**Mrs FINOCCHIARO:** Is there a time frame on the FPO, or is it until police determine the person is no longer a threat?

**Senior Sergeant SLAPE:** It is a 10-year time frame for adults and a five-year time frame for people under the age of 18. They cannot be issued to people under the age of 14.

**Mrs FINOCCHIARO:** And they are appealable by the person?

**Senior Sergeant SLAPE:** Correct. There is a 28-day appeal mechanism to NTCAT. Then, for adult orders, at the expiration of five years they can have a review of the order. For youths, they can have it reviewed every 12 months. That is despite any initial review that they may have had before NTCAT.

**Mr CHAIR:** I was going to ask is it issued like a writ? They have a warrant or a ...

**Senior Sergeant SLAPE:** Yes. Basically, the order will be authorised through our internal processes. There is a range of mechanisms under the legislation. The order has to meet certain criteria with explanations. Then there is also a requirement on the police officer serving it on the person subject to the order, to explain the order and its consequences.

**Mr WOOD:** I want to ask about when it goes to NTCAT, why can you not appeal? You can appeal once and then you cannot appeal until another five years goes past? Is that what the process is?

**Senior Sergeant SLAPE:** Basically, the way the legislation is structured for adults is, you can initially appeal the decision, obviously because it would be an outcome that would be further appealable, whatever the outcome is, to other courts. But at the expiration of five years, regardless of whatever outcome any initial appeal was, they can reappeal it.

It is a check and balance to ensure that after half the lifetime of the order, this person is still appropriate and it is still necessary in the interest of public safety to ensure that this person continues with an FPO.

**Ms ROPER:** To add to that, our orders are standing in contrast to, for example, the South Australian orders which are in depth, appealable but indefinite in duration. We have tried to achieve a balance between having an order for an appropriate amount of time but not indefinitely.

**Mr WOOD:** South Australia have not get any appeal rights after they have once had an appeal rejected, is that correct?

**Ms ROPER:** I will have to take that on notice, I do not have the South Australian bill with me.

**Mr WOOD:** I was just listening to what you said, I did not know whether they had no appeal rights, which sounded a bit vague.

**Senior Sergeant SLAPE:** I do know they have appeals initially, they do not have a mechanism for a review after the initial appeal, but I imagine obviously, again, it would be appealable to the other courts if an unfavourable decision was made.

**Mr WOOD:** In the second reading, it talked about outlaw motorcycle gangs. Does that enable you to say if you are a member of that gang we will have an automatic prohibition order on you?

**Senior Sergeant SLAPE:** No, that is not the intention. The intention is to draw together a range of reasons as to why a person might need to be subject to one of these orders. I cannot imagine a circumstance where, through someone's association or membership alone, would be sufficient to enact an order. I do not foresee that occurring and, in my mind, that is not the intention of the legislation.

The way I see it operating is there would need to be multiple triggers that build a picture that there is a significant risk to public safety if that individual was in the possession of firearms. In a circumstance such as that, the membership of an outlaw motorcycle group may form one component. They may have a history of violence, unlawful use of firearms, criminal intelligence against them detailing a history of drug possession and supply. Those factors considered, may form the basis, whereas one factor standing alone by itself would not.

**Mrs FINOCCHIARO:** I wanted to ask that myself. I think earlier it was said whilst the understanding the intention might be that it is a cumulative picture and that it would be unlikely or rare that there would be one trigger that causes the order, but as it is drafted can you confirm if, in a technical sense, one trigger could result in the order being placed?

**Senior Sergeant SLAPE:** I think, yes you can and I think there probably needs to be allowances for that. There would be exceptional circumstances in which it would be quite reasonable for one of those triggers to be enacted that would necessitate a firearms prohibition order.

If you had, for example, a person without any criminal history or intelligence holdings, and they engage in a significant event that resulted in the loss of life through the unlawful possession and use of a firearm, all you have is a criminal history. In those circumstances, it would probably be perfectly reasonable and in the public interest to ensure that person is issued with a firearm prohibition order.

Although that would be the exception to the rule, I think the legislation needs to be broad enough to make sure we have those allowances, but not so restrictive that we cannot take into consideration a range of factors. I think that is the reason why the legislation is structured in the way that it is.

**Mrs FINOCCHIARO:** Would some of those processes be dealt with by internal police policy or guidelines or is that something dealt with by regulation?

**Senior Sergeant SLAPE:** That would be dealt with through internal policy. There are a number of checks and balances built in. We have obviously our internal governance, we are limiting it to one stream of command within the police force to ensure we have appropriate governance and consistency in the applications of these orders.

In addition, there is also a provision for an independent review by the Ombudsman's office. They will have access—we have not worked out the intricacies—to all the orders, how we came about our decision-making process as well as the searches that are undertaken to ensure we have got transparency in the way police are utilising these orders and the powers that will be exercised as a result.

**Mrs FINOCCHIARO:** Thank you. I have one last question. At that five-year review point, is that a positive requirement of police for a reminder system or database or something like that, and it is incumbent upon police to conduct the review, or is it up to the person to say, 'Hey, can you please review my position?'

**Senior Sergeant SLAPE:** It will be up to the person subject to the firearm prohibition order.

**Mr COLLINS:** I would like to say the intent of the act is great and it has my complete support. Anything that keeps firearms out of the hands of these sorts of people should be supported.

I have a slight concern about—although you mentioned New South Wales and the review of what has been happening there. I would have thought these sort of people are probably are not the ones who will be too concerned about criminalisation of their guns. But, hopefully, as I said, all power—complete support.

**Mr WOOD:** What I was getting at in my question about whether you looked at a whole gang and said, 'You all have a prohibition order'. I am trying to look at the practical side. Gangs may have about 20 members and two of them have guns but do not come under your considerations because they are not known, and they 'lend' the gun to someone ...

**Senior Sergeant SLAPE:** I think that is dealt with in other provisions. Unless you want to come in on that, sir.

**Commander FULLER:** Yes. That is part of the FPOs. They will be told that they are not to go anywhere near a gun. If they are caught on premises where they know there is a gun, they are committing an offence. That is the deterrent.

**Mr WOOD:** So, It is not a matter of actually handling the gun or having it in ...

**Commander FULLER:** No. It is banned anywhere near a firearm.

**Mr WOOD:** ... the clubhouse ...

**Commander FULLER:** If there is a firearm in the clubhouse and they are in the clubhouse and have an FPO, they are committing a crime.

**Mr WOOD:** Okay.

**Commander FULLER:** That is the whole gist of the legislation—to stop those people going anywhere near a firearm. It has worked very well in New South Wales with the Middle Eastern organised crime. Effectively, it has stopped them associating with others who have firearms.

**Mr DEPUTY CHAIR:** All rights. I think that is all the questions. Submissions will be coming in over the next few weeks. We look forward to those. We thank you for your work on this and coming in today. Thank you.

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The committee concluded.

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