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SUBMISSION

TO : ECONOMIC POLICY SCRUTINY COMMITTEE

RE : FIREARMS LEGISLATION AMENDMENT BILL 2019

SUMMARY

The Northern Territory Firearms Council supports the broad intent, thrust and content of the bill in question in terms of the categories of persons & activities intended as its targets, constraints proposed to be imposed on such persons and associates and the processes proposed to maintain a watch over its ongoing introduction, effectiveness and apparent appropriateness.

Council does, however, have two issues of concern in relation to operation of the legislation. These include the disposal of some items seized under the legislation and the appropriateness or best fit of the NTCAT to hear appeals.

Issue 1 - Section 49ZA

Section 49AZ deals with items which have been seized, but which have not been forfeited to the Territory under the provisions of Section 49Z(3) or 49Z(4).

Where seized items are not forfeited to the Territory, legal ownership has not been extinguished and the owner has a right to claim those goods.

In the Firearm Amendment Bill, Section 49ZA(2) details how seized items may be disposed of by the Commissioner of Police. Subsections 49ZA(2) (a) and (b) are self-explanatory and appear to provide adequate regulatory direction how non-forfeited firearms and firearm related items may be disposed of by the Commissioner.

Section 49ZA(2)(c) appears to give the Commissioner the authority to deal with non-forfeited items in any manner he determines without the need to comply with either of the two previous subsections. Clearly, in doing so, the Commissioner is extinguishing the rights of the owner where the goods have not been forfeited to the Territory under this Act

Section 49ZA(2)(c) in its current form extinguishes a person's ownership of goods without any form of compensation or recourse. Prohibited items which could not be returned are dealt with in Section 49Z(3) and are automatically forfeited to the Territory and Council has no issue with this.

Council believes that the Commissioner should have to make reasonable attempts to comply with subsections 49ZA(2)(a) & (b) prior to exercising his or her powers under subsection (c).

Recommendation 1.

Subsection 49ZA(2)(c) should be amended to either:

Require the Commissioner to make reasonable attempts to comply with subsections 49ZA(2)(a) or (b) prior to him exercising the powers under Subsection 49ZA(2)(c).

Reference - Draft Provisions

49ZA Sale, disposal or return of firearms or firearm related items surrendered or seized under this Part

- (1) This section applies in relation to the following:
 - (a) a firearm or firearm related item:
 - (i) that is not forfeited to the Territory under section 49Z(3);
 - or
 - (ii) that is declared not subject to forfeiture under section 49Z(4);
 - (b) a firearm or firearm related item that is not required or no longer required under section 49Z(2).
- (2) The Commissioner may:
 - (a) by written notice, direct the owner of the firearm or firearm related item to sell or otherwise dispose of the firearm or firearm related item; or
 - (b) by written notice, direct the owner of the firearm or firearm related item to take possession of the firearm or firearm related item; or
 - (c) dispose of the firearm or firearm related item in the manner the Commissioner determines.
- (3) If the owner of a firearm does not comply with a direction under subsection (2)(a) or (b) within 28 days after the direction is given or any further time that the Commissioner specifies in the notice, the Commissioner may dispose of the firearm or firearm related item in accordance with section 166 of the Police Administration Act 1978 as if the firearm or firearm related item was unclaimed property.
- (4) The Regulations may prescribe fees that are payable in relation to the storage of a firearm or firearm related item by the Commissioner prior to the owner taking possession of the firearm or firearm related item.

Issue 2 - Appeal Provisions

The current appeal provisions in the Firearms Amendment Bill 2019 for Firearm Prohibition Orders include reference to the NT Civil & Administrative Tribunal (NTCAT).

Under the NT Firearms Act, a Firearms Appeal Tribunal (FAT) is established under Section 50 of the Act. This Tribunal has operated successfully and efficiently for the 22 years that the current Act has been in force. The same tribunal existed in the Firearms Act predating the National Firearms Agreement 1996 and the introduction of the current Act.

The FAT is a specialist body which deals solely with reviewing actions by the Commissioner under the Firearms Act. It is chaired by the Chief Judge of the Local Court and two members. One of these is a representative of the Commissioner (usually a senior Police Officer) and another drawn from the Executive of the NT Firearms Council. This body has considered complex appeals over a long period of time and is proven to provide strict and stringent outcomes in its application of the legislation. With members appointed for a period of 3 years, the tenure ensures consistent review of decisions through experience and from intimate working knowledge of the legislation.

With exception of the application of criminal intelligence issues, the FAT has already heard and determined appeals for all the other grounds set out in Section 49F of the Firearms Amendment Act 2019. While the introduction of criminal intelligence based orders may at first appear problematic, all members of the FAT are highly respected and experienced individuals and there should be no impediment in presenting such information to them in circumstances where that information is protected and cannot be released to any other party.

The NTCAT on the other hand is made up of 30 odd members who would not have dealt with Firearms appeals before. With the potential also of having more than one member chair an NTCAT appeal regarding a Firearms Prohibition Order there is a significantly increased likelihood of inconstant determinations by persons not familiar with existing firearms matters due processes. Given the previous experience and track record of the existing FAT, it only makes sense that appeals against Firearm Prohibition Orders should also be heard by the FAT, as are all other appeals under the Act, rather than now involving a separate body.

Recommendation 2

Amendment to the Firearms Amendment Bill 2019 is sought to refer any appeal under Section 49 to the Firearms Appeal Tribunal as established under Section 50 of the Firearms Act.

Yours Sincerely,



Alan Sprigg (Executive Officer) for

Andrew Armstrong
President

7 October 2019

Northern Territory Firearms Council

