

## LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

## WRITTEN QUESTION

Mr Wood

to Minister for Police, Fire and Emergency  
Services

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Firearms LicencesMinister, under Section 8A of the *Firearms Act* it says:

*The Commissioner must refuse to grant a licence if the Commissioner is of the opinion, having regard to any criminal intelligence report or other criminal information the Commissioner holds about the applicant or representative, that-*

- (a) the applicant or representative is a risk to public safety; and*
- (b) the grant of the licence would be contrary to the public interest.*

and under Section (8B)

*The Commissioner is not, under this or any other Act or law, required to give reasons for refusing to grant a licence on the grounds referred to in subsection (8A).*

**ANSWER**

1. **What protection is available to a person under Section (8A) of the Act who thinks they have been unfairly dealt with.**

The function of the *Firearms Act* limits the power to refuse an application to the Commissioner of Police. Section 5(1)(a) prevents the Commissioner from delegating the power to any other person.

The Commissioner exercises due diligence and care to ensure that such actions are only exercised where the applicant or representative is a risk to public safety and the grant of the licence would be contrary to the public interest.

Other NT Acts, such as the *Youth Justice Act*, *Community Welfare Act* and the *Victims of Crime Assistance Act*, contain similar provisions which prevent any appeal being brought. In those cases, reasons for the relevant decision may remove the right for natural justice.

2. **Why shouldn't a person have the right to be told what were the reasons used to reject their application for a licence.**

Unless an Act otherwise provides, administrative law principles only requires a person to be provided with written reasons where a person has a right of appeal or otherwise has a lawful legitimate expectation. There are no legitimate expectations for the grant of a firearms licence, as it is not a "renewal" of the licence. Section 14(3) of the Act clearly states that a licence is not renewed.

Similarly, there is no common law right of appeal. Accordingly, the doctrines of natural justice or procedural fairness do not apply.

The applicant is advised the application is refused on the grounds the person is a risk to public safety. No further reasons are required to be given under Section 10(8B) of the Act. To do so would amount to a waiver of the public interest immunity privilege.

3. **What safeguards are in place to make sure Section (8A) is not abused.**

As noted above, the Commissioner undertakes due diligence in determining whether to refuse to grant a firearms licence under Section 10(8A) of the Act.

Since the provision commenced operation, the Commissioner has only exercised his powers and refused to issue a firearms licence on three occasions.

Moreover, whether the applicant falls within the terms of Section 10(8A) is subject to a number of checks and balances as the decision to forward the application to the Commissioner for his determination passes through the Chain of Command. At each level of the Chain of Command the initial decision is reviewed and either progressed or rejected.

4. **Isn't Section (8A) depriving a person of natural justice.**

Further to advice provided in response to question 2, the principles of natural justice do not apply where a person has no benefit, such as a legitimate expectation of renewal of a licence.

In addition, providing the person with natural justice would amount to a waiver of the Crown's privilege over the sensitive intelligence.

## **Background**

The concept of refusing or revoking a licence based on criminal intelligence was introduced by NSW who presented their legislation to the APMC Firearms Policy Working Group meeting on 9 August 2002. The concept was given overwhelming support and was presented to the APMC Senior Officers Group for consideration at its meeting 2-3 October 2002.

The matter was supported and subsequently referred to the 43<sup>rd</sup> APMC meeting where council agreed to the national adoption of legislation which allows (without jeopardising police operations or revealing intelligence holdings) for the refusal of a firearm licence application where there is criminal intelligence that suggests the applicant is a risk to public safety.

In 2003 the *Firearms Act* was amended to meet the Territory's commitment to the National Handgun Reforms, and at the same time amendments were also introduced to adopt the APMC position regarding refusing and revoking licences on the basis of criminal intelligence. These provisions are contained within Sections 10(8A) & (8B), 40A and 93F of the *Firearms Act*.

The inclusion of the provision to exclude any appeal was inserted on the basis Police would claim privilege over all the intelligence holdings. Grounds for the claim derive from the fact that the disclosure of sensitive intelligence would significantly impede future Police investigations. In addition, it would enable the person and his associates to identify the names of informants, thus placing the informant and their family's safety in danger. This would have the effect of significantly altering the willingness of informants to deal with Police. Lastly, it would permit the person to become aware of the sensitive intelligence in the possession of Police in relation to the person or his associates. This would enable the person to alter their *modus operandi* which would have the effect of negating the efficacy of the intelligence, making a criminal prosecution less likely.

In addition, the information that is in the possession of the Commissioner upon which a decision may be made may come from other law enforcement agencies with caveats or may have legislatively based secrecy provision attached to them. In some cases, revelation of the source of the information, or of the information itself, may be a serious criminal offence.

The specific provisions were inserted into the *Firearms Act* amendment Bill No 25-2003. At the conclusion of the second reading speech, the Minister for Police, Fire and Emergency Services offered the following invitation '*I invite any Honourable Member to contact my office to arrange a briefing session to enable members to consider and debate the bill in June*'. Information is that no members of the Assembly took up that offer to discuss the provisions of Section 10(8A) or the other provisions relating to refusing or revoking a licence on the basis of criminal intelligence.

Since the 49<sup>th</sup> APMC decision, every jurisdiction has adopted legislation of a similar form to permit the refusal and revocation of firearm licences based on criminal intelligence. These all include the non-disclosure of the intelligence material to the person so refused.

It must always be remembered that the granting of a firearms licence is a decision to allow a person to own or possess a lethal weapon. The Commissioner of Police is tasked with the duty to ensure that all persons granted such licences are fit and proper persons. Where there is any doubt that an applicant is fit and proper the Commissioner must exercise his discretion and refuse the licence.

The Commissioner is in a position where he may be in possession of information, which it would be improper to reveal, that nevertheless makes a persuasive case that the applicant is not a fit and proper person to have a firearms licence. The alternative would be for the Commissioner to provide an applicant with a licence although he believes that the person is not a fit and proper person to hold such a licence.