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12 September 2019

Ms Fiona Patten, Chair
Legislative Council Legal and Social Issues Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Patten

Submission to Inquiry into Firearms Prohibition Legislation

Thank you for the opportunity to make a submission to the above inquiry.

The National Shooting Council (NSC) represents the political interests of the shooting and security industries. It is independent of shooting organisations, political parties and commercial interests and supported by extensive experience in government policy and regulatory frameworks.

The NSC is not opposed to efforts to target illegal guns but is concerned that the legislation is defective to the extent that its application goes well beyond those indicated in the original parliamentary debate.

The advice we have received is that if Victoria had followed the framework set down in New South Wales, the availability of an earlier right of review may have negated the problems arising from the Websdale matter.

Summary

Our concerns are:

- **The Firearm Prohibition Order (FPO) framework has come to your attention because of briefing defects which go back to the way policy advice got to government;**
- **More laws should not be considered until it can be demonstrated that the existing laws are unable to deliver on parliament's intent.**
- **FPOs can be applied well beyond the people envisaged during the original parliamentary debate. Unlike other jurisdictions, the laws in Victoria are applicable to other people Victoria Police do not like, such as those engaged in legitimate activities such as political activism, protests and to whistle-blowers;**
- **The FPO framework has insufficient avenues of review, undermining how the judiciary may view it and likely to lead to further successful legal challenges;**

Each of these concerns are explained below:

Origin of policy advice

Good policy involves a transparent process where stakeholder views have been properly considered before going to government. Victoria Police do not operate this way.

As the Herald Sun reported in 2016 (in an article about 'firearm reform legislation' proposed by Victoria Police that included the creation of the FPO regime), Victoria Police took its policy advice straight to government, which it accepted without engaging stakeholders. The result is that the advice the government acted on was not as informed or independent as it should be – and now this Committee is having to review the legislation.

The Combined Firearms Council of Victoria, which is a predecessor to the NSC, ran an action in VCAT to find out more about the advice that Victoria Police provided, however Victoria Police fought against its release.

Victoria Police is not (and never has been) open about its intentions, nor does it engage the sectors affected by firearm legislation.

Recommendation: We recommend that the defect in the policy process that led to the creation of the FPO regime is addressed so that the problem does not repeat itself. We believe that the government should amend the Statement of Expectations it has for Victoria Police to require it to demonstrate external consultation before any recommendations affecting firearms or security industry legislation go to government.

Overlap of police powers

While we are not suggesting that the FPO regime should not exist, or are we in any way defending the ability of criminals to access firearms, it is already a criminal offence for a person who does not have the appropriate licence to possess or use a firearm. This is punishable between 2 and 10 years jail, depending on which offence occurs.

The other issue regarding the operation of existing laws affecting criminals that should be recognised is that Victoria Police has discretion over who can get a licence, so already 'hold the cards' on who may or may not legally possess or use a firearm. The Act also disqualifies who may be permitted to hold a licence which includes criminals with a recent record.

There is therefore no way a criminal, or other person of concern, can possess or use a firearm without breaching the Act.

We understand the argument for the framework is the ability of police to act in relation to certain individuals who are in the *vicinity* of firearms where a direct connection with the firearm cannot be established. The FPO framework does address that but we suggest the Committee establishes where there is and is not overlap with the current offences under the *Firearms Act 1996*. That will better define the problem that Parliament is trying to resolve, and the matters that the legislation needs to address.

On her overview of the bill that led to the creation of the FPO regime, Minister Neville stated:

“Police are currently limited in their capacity to proactively respond to situations where sufficient intelligence exists to indicate that it is contrary to the public interest for an individual to possess a firearm.”

This concern is already covered by section 17(1)(c)(v) of the Act, and other similar provisions which only permit the Chief Commissioner to issue licences where *“the issue of the licence is not against the public interest”*.

If such a situation arose, Police can easily remove the licence which then creates an offence for any person who then possesses a firearm without a licence.

Recommendation: We recommend the committee better define the problem being addressed and consider the role that the current *Firearms Act 1996* and its enforcement play in keeping firearms out of the hands of criminals.

Focus on criminals and bikies

In formulating the FPO framework, the Government ignored representations from shooting community on the draft legislation. Appeal rights and other matters were raised, however the biggest issue the community had with the legislation was that it was not as targeted on criminals and bkie gangs as Parliament and the media were told.

Section 112E of the Act, which reflects what was in the bill, sets out the considerations that the Chief Commissioner must take into account in deciding whether to issue an FPO. Among them is subclause (e) which can be considered in isolation. It states that an FPO can be issued:

“because of the behaviour of the individual; or”

This means an FPO can be issued because the Chief Commissioner's delegate is satisfied that it is in the public interest to issue the FPO because of the way the individual is *behaving*. There is no qualification or limitation to what this means.

This broadens the reach of the regime to beyond criminal and bike activities and could be applied to those engaged in legitimate activities such as political activism, protesting and those who are whistleblowers.

If Parliament intended for FPOs to be applied to persons other than criminals or bikies, then this needs to be expressly stated.

Recommendation: It is recommended that section 112E be revised to remove any doubt about Parliament's intent of who the legislation is meant to target. Or alternatively Parliament needs to hear who the FPOs must only be applied to, so there is no question about its scope.

Appeal rights and other matters

During the parliamentary debate, the Government ignored sensible amendments that were proposed by the opposition which sought to address fairness and abuse concerns.

The major papers supported the Government's position, with *The Age* stating (on 1 February 2018):

"If [Mr O'Donohue] is really serious about cracking down on crime, he should ensure the passage of the legislation sooner rather than later, to prevent more such robberies that put some of the most lethal handguns available into the hands of criminals."

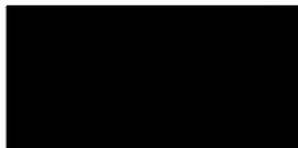
The position of some papers encouraged the government to reach a rushed decision, which is that the Committee is now trying to untangle.

Recommendation: We recommend the Committee:

- a) revisit the amendments originally moved by the opposition; and
- b) consider the inclusion of an internal right of review that mirrors the NSW FPO framework, that provides for an appeal within 28 days of service of an FPO and appeal to NCAT (VCAT equivalent) without qualification.

Finally, we note no interests representing the firearms or security industries have appeared before the Committee to reflect their views. This Council has the policy and regulatory expertise to help the Committee develop the argument it needs to ensure the FPO regime is more robust and better able to deliver on Parliament's intent. We therefore formally request the opportunity to appear before the Committee to do this.

Yours sincerely



Neil Jenkins
National Secretary

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