

CITATION: *Ronald Nishimura Sterry v The Commissioner of Police* [2022] NTLC 028

PARTIES: RONALD NISHIMURA STERRY

v

COMMISSIONER OF POLICE

TITLE OF COURT: FIREARMS APPEAL TRIBUNAL

JURISDICTION: Firearms Act (NT)

FILE NO(s): 2022-01865-LC

DELIVERED ON: 20 December 2022

DELIVERED AT: Darwin

HEARING DATE(s): 26 October 2022

JUDGMENT OF: Chief Judge Elizabeth Morris (Chairperson)

**CATCHWORDS:**

ADMINISTRATIVE LAW – FIREARMS APPEAL TRIBUNAL – APPEALS –LOCAL COURT ORDERS

Finding of guilt in Local Court – return of firearms licence – Commissioner’s statutory powers – revocation of licence – order of Local Court made without power – restriction on powers of Commissioner

*Firearms Act 1997* (NT), s 10(2A), s 40(3), s 51(1), s54B(1), s 93A, s 93D, s 93E;

*Weapons Control Act 2001* (NT), s 7(1), s 20;

*Local Court (Criminal Procedure) Act 2015* (NT), s 130B

*State of NSW v Kable* (2013) 252 CLR 118; *Minister for Immigration and Multicultural Affairs v Bjardwaj* (2002) 209 CLR 598; *Posner v Collector for Interstate Destitute Person (Victoria)* (1946) 74 CLR 461; *Suter v Commissioner of Police of the Northern Territory* (1998) 147 FLR 111, applied

ADMINISTRATIVE LAW – FIREARMS APPEAL TRIBUNAL – APPEALS – OFFENCES - PENALTIES

Finding of guilt in Local Court – disqualification of firearms licence – revocation of licence – length of disqualification – punctuation of Act – difference between semicolon and comma

*Firearms Act 1997* (NT), s 10(2A); *Interpretation Act 1978* (NT), s 62B

*Burrarrwanga v Rigby* [2009] NTSC 57, applied and distinguished

*Leigh v Heath* [2016] NTSC 50; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27; *Re Collins; Ex parte Hockings* (1989) 167 CLR 522; *Mainteck Services Pty Ltd v Stein Heurtey SA* (2014) 89 NSWLR 633; *Minister for Immigration and Multicultural Affairs v Savvin* (2000) 171 ALR 483

Pearce, D.C. *Statutory Interpretation in Australia*, 9<sup>th</sup> ed, LexisNexus Butterworths, 1997.

Quirk, Greenbaum, Leech et al. *A Comprehensive Grammar of the English Language*, Longman, London, 1985.

## REPRESENTATION:

### *Counsel:*

Appellant:	J Bortoli
Respondent:	M McCarthy

### *Solicitors:*

Appellant:	Counsel
Respondent:	Solicitor for the Northern Territory

Judgment category classification:	A
Judgment ID number:	[2022] NTLC 028
Number of paragraphs:	78

IN THE FIREARMS APPEAL TRIBUNAL  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

2022-01865-LC

BETWEEN:

**RONALD NISHIMURA STERRY**  
Appellant

AND:

**COMMISSIONER OF POLICE**  
Respondent

REASONS FOR DETERMINATION

(5 DECEMBER 2022)

**THE TRIBUNAL**

CHIEF JUDGE ELIZABETH MORRIS (CHAIRPERSON)

**INTRODUCTION**

1. An appeal has been lodged with the Firearms Tribunal by Ronald Nishimura Sterry, pursuant to s 51(1) of the *Firearms Act (NT)* 1997 (*the Act*) against a decision of the Commissioner of Police.
2. Mr Sterry is seeking that the decision of the Commissioner be revoked, that his shooter's licence be returned to him and costs ordered.
3. The Respondent has submitted that the decision of the Commissioner should be confirmed and the appeal dismissed.
4. The Act allows a question of law or procedure to be determined by the Chairperson alone, without the need to convene the Tribunal.<sup>1</sup>

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<sup>1</sup> *Firearms Act* 1997 (NT) s 54B (1)

5. This appeal raises questions of law that are appropriate to be heard and determined by the Chairperson alone.

## **THE DECISION**

6. On 5 July 2022, a delegate of the Commissioner of Police determined to revoke Mr Sterry's shooter's licence (no. 1045252), any certificate of registration for firearms, and any permits. This determination was purported to be pursuant to s 40(3), read with s 10(2A)(a)(i) of *the Act*.

## **THE PRELIMINARY QUESTIONS OF LAW**

7. The questions of law raised by the appeal are:
  1. Whether an order made by the Local Court in Alice Springs on 11 February 2022 restricted the Commissioner from exercising his statutory power to revoke Mr Sterry's licence; and
  2. Whether s 10(2A)(a)(i) of *the Act* disqualifies Mr Sterry from obtaining a shooter's licence for two years from the date he was found guilty of an offence against the *Weapons Control Act 2001 (NT)*.

## **BACKGROUND**

8. Mr Sterry was charged with various offences arising out of an incident that occurred near his home in Alice Springs on 27 April 2021. These charges included:

Count 1: Within the boundaries of a town, municipality or community government, carry a loaded firearm exposed to view in a public place, contrary to section 78(3) of the *Firearms Act*.

Count 2: Within the boundaries of a town, carry a firearm exposed to public view in a public place, contrary to section 78(2) of the *Firearms Act*.

Count 3: Go armed in public without lawful occasion and in such a manner as to cause fear to a person of reasonable firmness and courage, contrary to section 69 of the *Criminal Code*.

Count 4: Without lawful excuse, carry a controlled weapon (bayonet) in a public place, contrary to section 7(1) of the *Weapons Control Act*.

Count 5: Possess a firearm contrary to the purpose established as being the genuine reason for possessing the firearm, contrary to section 58(2) of the *Firearms Act*.

9. On 27 July 2021 a delegate of the Commissioner of Police suspended Mr Sterry's shooter's licence and advised him by letter that he was;

"charged with offences against the Act – namely, Carry a Loaded Firearm in A Public Place & others. Should these offences be proved, your licence will automatically be revoked and you will not be eligible to hold a licence for a minimum period of 2 years.

This suspension will remain in force until all matters pertaining to Case 22115270 have been dealt with by a court of law, and includes any statute appeal period.

In accordance with Section 42(2), you are required to immediately surrender your photographic Shooter's Licence and any further firearms and ammunition in your possession to Police upon service of this notice."<sup>2</sup>

10. The charges proceeded in the Local Court at Alice Springs on 19 October 2021 as a contested hearing on all charges. Various facts and matters were admitted and Mr Sterry gave evidence. Counts 2, 3 and 5 were withdrawn by the Prosecution at the conclusion of the evidence. The matter was adjourned for decision in relation to Counts 1 and 4.

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<sup>2</sup> Letter dated 27 July, 2021 to Mr Sterry signed by a delegate of the Commissioner of Police (Sgt 3073)

11. The Court handed down its decision on 11 February 2022. Count 1 was dismissed, but Mr Sterry was found guilty in relation to Count 4, the offence pursuant to the Weapons Control Act. The Court proceeded to sentence Mr Sterry, without conviction, to a 6 month good behaviour bond.
12. The transcript reflects the following exchange and orders of the Court.

MR BORTOLI: Your Honour, I would be seeking in this case, given his prior good character and given, of course, that count 1 has been dismissed, that your Honour would consider a without conviction bond in the matter. Mr Sterry is a 28-year old who has never been in trouble with police before. He has a very positive working history. Your Honour, I can go through all the details if you wish, but you did hear quite a lot of that in his evidence, in any event.

HIS HONOUR: Yes.

MR BORTOLI: I do note that what my friend has just said and we would be asking, in the circumstances, that the weapon be returned to him. Obviously, it is involved in the offending; but, otherwise, he is able to lawfully possess that weapon, albeit, as your Honour has found, not in the circumstances that he was at the relevant time.

MS HAYWARD: Also, your Honour, if I might just add, just so that there's no confusion with the offence - the firearm, in relation to count 1 - I think it's 93D of the Firearms Act, an order be made that it be returned to Mr Sterry, your Honour, and that he has been found not guilty of that offence.

HIS HONOUR: Do I need to make any order in relation to his licence?

MS HAYWARD: No, your Honour.

HIS HONOUR: Because it's been suspended, it hasn't been cancelled, I presume, by the Commissioner, or it has been?

MS HAYWARD: No, it hasn't.

THE DEFENDANT: It's suspended, I believe.

HIS HONOUR: Yes.

MS HAYWARD: No. So, that Act's really silent on that, your Honour. The court may make the order to disqualify. So, or not - or re-apply for a licence. But there is no - now that he is found not guilty a firearm offence, that should be - - -

HIS HONOUR: Yes, all right. Yes.

MS HAYWARD: - - - lifted.

HIS HONOUR: Well, Mr Sterry, on this particular day, you acted as a Good Samaritan and took steps that you considered to be appropriate in all of the circumstances. I am certainly in agreement with you, as you have heard, in respect of charge 1. But, I am of the view that it wasn't appropriate to fix that bayonet to the rifle, in all of the circumstances. I do agree with Mr Bortoli's submission, that you are a person of excellent character. You have always been a person who has been a responsible gun owner and that is reflected in the fact that you do have a licence and have had one for some time, prior to this matter. I will make the relevant orders, returning the items to you today.

I am satisfied, in the circumstances, in regard to count 2, that I should proceed without recording a conviction, and I accept the submission from your legal representative that I can deal with the matter by way of a good behaviour bond, which I will make for a very short period of time, noting the fact and taking into account your age and your prior good character.

In respect to count 2, without conviction, you will be released today on entering into a good behaviour bond in the sum of \$500, with your undertaking to remain out of trouble for the next six months. I impose a victim's levy of \$150. I order that the bayonet may be returned to you and, pursuant to s 93D of the Firearms Act, I order that the defendant's rifles and ammunition, as well as his licence, be returned to him.

Any other orders?

MS HAYWARD: Just for clarification, your Honour, it's count 4, I believe, is the count - - -

HIS HONOUR: Count 4, I beg your pardon. Yes.

MS HAYWARD: The other charges were withdrawn.

HIS HONOUR: Yes, in respect of count 4. So, I am not quite sure what the process might be with the Commissioner, in you making the relevant requests for the return of all of those items. But, I presume, you would just go to the police station, would you?

MS HAYWARD: I think that would be the first port of call, your Honour.

13. The Judge's orders were reduced to writing, with the bond being signed by Mr Sterry on 11 February 2022. The order regarding the other matters was signed by a Court Registrar and sealed with the Court seal. This order states:

THE COURT ORDERS THAT:

Bayonet to be returned to the Defendant, Mr Ronald Sterry.

Pursuant to Sect 93(d) of Firearms Act, the Defendants rifles, ammunition and license are to be returned to him.

14. It is very unfortunate that the Court's attention was not drawn by either Counsel to the full relevant provisions of the *Firearms Act*, particularly in relation to findings of guilt of an offence against the *Weapons Control Act*. The Prosecutor appears to make mention of a discretionary power but continues her submission "But there is no - now that he is found not guilty a firearm offence, that should be - - - .....- - - lifted."<sup>3</sup>
15. Subsection 40(3) of the *Firearms Act* states

(3) The Commissioner may, by written notice served on the holder of a licence, permit or certificate of registration, revoke the licence, permit or certificate:

(a) for any reason for which the holder would be required to be refused a licence or permit of the same kind or a certificate of registration;

16. Section 10 of the *Firearms Act* states:

**10 General restrictions on grant of licence**

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<sup>3</sup> Transcript of Court Proceedings No. 22115270 11 February 2022, p9



(1) The Commissioner, on receiving an application for a licence, may grant or refuse to grant the licence.

(2) ...

(2A) The Commissioner is not to grant a licence to a person who has been found guilty of an offence against this Act or the *Weapons Control Act 2001* or in which a firearm was involved unless:

(a) in a case where, on the trial or hearing in relation to the offence:

(i) an order under section 10 or 11 of the *Sentencing Act 1995* or mentioned in section 130(2) of that Act (or a provision of a law in force in the jurisdiction in which the offence was committed that, in the opinion of the Commissioner, is of similar effect) has been made directing that the person be discharged on giving security in accordance with the section; or

(ii) a pecuniary penalty only has been imposed;

and not less than 2 years have elapsed since the person was found guilty of the offence; and

(b) in the case where a custodial sentence was imposed – 5 years have elapsed since the applicant was found guilty of the offence or released from custody, whichever is the later.

17. Section 93D referred to by the Judge and noted in the Court order is as below:

**93D Court may order forfeiture**

(1) If the court is satisfied that the person in whose name the firearm to which the offence mentioned in section 93A relates is registered:

(a) is implicated in the offence – the court may order that the firearm (and any ammunition in the possession of the person) is forfeited to the Territory; or

(b) is not implicated in the offence – the court may not order the firearm to be forfeited but may order that it be returned to that person.

(2) Subsection (1) applies to a firearm in the possession of a person mentioned in that subsection despite that the firearm is not registered in that person's name.

18. The provisions of s 93D are clearly reliant on an offence mentioned in s 93A. Section 93A provides for the circumstances where ‘a court finds a person guilty of an offence against this Act or the *Weapons Control Act 2001 (NT)* or involving a firearm’ and then specifically provides for revocation and disqualification.
19. It is clear that the s 93D provision provides a basis for forfeiture or return of a firearm or firearms and ammunition, not a licence. Indeed the next section of *the Act* continues:

**93E No effect on general power**

A decision or action of the court under section 93A, 93B or 93D does not affect any power under this Act to revoke or suspend a licence, permit or certificate of registration.

20. On 11 February 2022 Mr Sterry’s rifle, bayonet, ammunition and a hard copy of his licence were returned to him.
21. No appeal by either Mr Sterry or the Complainant in the criminal charges was filed. Nor was any application made pursuant to s 112 of the *Sentencing Act 1995 (NT)* to reopen proceedings to correct sentencing errors.
22. After some correspondence between the delegate of the Commissioner of Police, Mr Sterry and his legal representative, including various actions of the Police which are not relevant to this proceeding, on 5 July 2022 the Decision was made. This decision revokes Mr Sterry’s shooter’s licence,

any certificate of registration for firearms; and any permits<sup>4</sup>. Mr Sterry was served notice of that decision on 8 July 2022.

23. An offence contrary to the *Weapons Control Act* is not defined as a ‘disqualifying offence’ pursuant to the *Firearms Act and Regulations 1997 (NT)*<sup>5</sup>. Thus Mr Sterry’s licence was not automatically revoked pursuant to s 40(1) of *the Act*.
24. The Notice of Revocation relies on the power of the Commissioner to revoke in certain circumstance pursuant to s 40(3)(a) of *the Act*, in conjunction with the directive in s 10(2A) of *the Act* preventing a person from obtaining a licence for a period of two years from the date of the finding of guilt of an offence against the *Weapons Control Act 2001(NT)*.

## **DECISION CONTRARY TO ORDER OF LOCAL COURT**

25. The Appellant contends that the decision of the delegate of the Commissioner to revoke his licence was contrary to the decision and order of the Local Court on 11 February 2022 that his licence be returned to him.
26. The Respondent submits that the order, even if valid or effective, did not purport to prevent or fetter the Commissioner from subsequently exercising the statutory power conferred on him to revoke the Appellant’s licence; or alternatively the order was invalid and a nullity, which was not binding on the Commissioner.
27. At the time of the making of the Local Court order, the physical licence was in the possession of the police, having been seized along with his firearms on or around 27 April 2021, at the time of the initial incident.
28. It is important to note that the granting of a licence and direction not to grant a licence pursuant to s 10 of *the Act* is one of the Commissioner, not the Local Court. The Court’s involvement in relation to this section is as to

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<sup>4</sup> Notice of Appeal, Attachment A

what penalty is imposed for a finding of guilt for an offence. The consequences for a Defendant of the various penalties for future licence applications is often the subject of submissions on sentence in cases involving firearms and weapons. The Court can of course, upon a finding of guilt, also impose a further disqualification for a specified period pursuant to s 93A.

29. It is clear from his Honour's words that he did not intend to exercise any statutory discretionary power to further disqualify Mr Sterry from holding a shooter's licence and possessing firearms pursuant to s 93A<sup>6</sup>. At that point in time the suspension of the licence was no longer maintained and the license was not yet subject to any revocation.
30. The Local Court Judge, in my view, did not have the power to either reinstate a licence or allow the authority to possess a firearm, only the power to revoke and disqualify. The power used to order return of the firearms themselves does not encompass licensing matters. Thus, for the order to be valid, the Judge must have been referring to the license as a 'physical thing' in his decision. I note he referred to 'the return of all of those items'<sup>7</sup> after making the orders.
31. I do not accept the submission that it could be implied that s 93D should be interpreted by necessary implication to empower a Court to order the return of the ability to hold a firearms licence, because only license holders can possess such. Whilst only licence holders may 'possess' a firearm, there would be instances where 'ownership' as distinct from 'possession' should

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<sup>5</sup> *Firearms Act, 1997 (NT)* s 3(1); *Firearms Regulations, 1997 (NT)*, reg 1(A).

<sup>6</sup> **93A Revocation and disqualification**

(1) If a court finds a person guilty of an offence against this Act or the *Weapons Control Act 2001* or involving a firearm, the court may:

(a) revoke the person's licence or permit and disqualify the person from holding a specified licence or permit for the period specified by the court; and  
(b) order that the person is not to apply for a licence or permit or to register a firearm for the period of disqualification.

(2) The period for which a court may disqualify the person is in addition to any period of automatic disqualification under this Act.

be returned. This would thus allow someone to benefit from the sale of, or otherwise transfer ownership of a firearm to another party. The clear absence of the mention of a licence in s 93D limits its power to firearms and ammunition as defined only.

32. In Mr Sterry's circumstances, no order under s 93D may have been necessary for the return of his firearms. He had not, nor had anyone, been found guilty of an offence to which his 'firearm' relates. His firearms should have merely been returned in the normal course of events following the withdrawal of the *Firearms Act* charges against him, had he not been found guilty of a disqualifying offence.
33. Whilst there is no indication the Judge was utilising any other power, such as the general civil jurisdiction to deal with a claim concerning a right of ownership of property referred to by the Appellant<sup>8</sup>, there is a power for the Court to return property which has come into possession of police on application of a claimant as the Court sees fit<sup>9</sup>.
34. It is clear from the transcript that the order returning the bayonet itself purported to be pursuant to the *Weapons Control Act 2001 (NT)*.<sup>10</sup> Again it is unfortunate that the Court's attention was not drawn to the specific provisions of *that Act*, particularly s 20(2):

#### **20 Forfeiture by courts**

(1) If a person is found guilty of an offence against section 6, 7, 8, 9,

10, 13 or 14(5):

(a) the court may order that the weapon or body armour to which

the offence relates be returned to a specified person; or

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<sup>7</sup> Transcript of proceedings 11 February 2022 p 10

<sup>8</sup> *Local Court Act 2015 (NT)* s 13(3)

<sup>9</sup> *Local Court (Criminal Procedure) Act 2015 (NT)* s 130B

<sup>10</sup> Transcript of proceedings 11 February 2022 p 8

(b) if the court does not make an order under paragraph (a) – the weapon or body armour to which the offence relates is forfeited to the Territory.

(2) The court may only make an order under subsection (1)(a) if:

(a) the person to whom the weapon or body armour is to be returned is not the person found guilty of the offence; and

(b) the person to whom the weapon or body armour is to be returned is, in the opinion of the court, the owner of the weapon or body armour; and

(c) the court is satisfied that the person to whom the weapon or body armour is to be returned is authorised to possess the weapon or body armour under this Act.

35. Clearly Mr Sterry was a person found guilty of the offence, and thus should have been precluded from the making of such an order.

36. The Appellant submits there is an obligation on all persons, including the Executive, to obey a Court order unless and until that order is set aside or stayed pending the outcome of an appeal.<sup>11</sup>

37. However, as the Respondent rightly points out, the *Kable* principles apply to superior courts. His Honour Gageler J observed that;

“There is, however a critical distinction between a superior court and an inferior court concerning the authority belonging to a judicial order that is made without jurisdiction. A judicial order of an inferior court made without jurisdiction has no legal force as an order of that court. One consequence is that failure to obey the order cannot be a contempt of court. Another is that order may be challenged collaterally in a subsequent

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<sup>11</sup> *State of NSW v Kable* (2013) 252 CLR 11; *Minister for Immigration and Multicultural Affairs v Bjardwaj* (2002) 209 CLR 597.

proceeding in which reliance is sought to be placed on it. Where there is doubt about whether a judicial order of an inferior court is made within jurisdiction, the validity of the order “must always remain an outstanding question” unless and until that question is authoritatively determined by some other court in the exercise of judicial power within its own jurisdiction.”<sup>12</sup>

38. Which is not to say that an order of an inferior court is necessarily a nullity even if erroneously made.<sup>13</sup>
39. Should the nature of a court order be unclear, the starting point for its interpretation must be that it is a valid order within the jurisdiction of the Court to make. That being the case, and there being no power for the Local Court to grant a shooters licence, only to revoke it or disqualify, the Courts order for return of the licence, in my view, refers solely to the licence as a thing.
40. The Appellant submits the license as a physical thing cannot be separated from the authority that being granted or holding a licence entails. However, similar to a physical driver’s licence and a Court order disqualifying someone from driving or holding a licence for a period of time, a licence is both the piece of plastic, which can sometimes be used for other things, such as identification; and the right to drive a car on public roads. There may be good policy reasons for the seizing or destruction of the thing, so that someone cannot hold themselves out to be so licensed, but a licence is capable of separate physical confirmation in card form.
41. Ultimately consideration of the legitimacy or otherwise of the orders of the Local Court returning various pieces of property to Mr Sterry, including the bayonet, rifles, ammunition and his licence, is not a necessary predeterminate to the Tribunal’s determination. This is because, whatever the orders, they do not and cannot override the Commissioner’s duty not to

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<sup>12</sup> *State of NSW v Kable* (2013) 252 CLR 118, at [56] Gageler J – citations omitted

<sup>13</sup> *Posner v Collector for Interstate Destitute Person (Victoria)* (1946) 74 CLR 461; *Suter v Commissioner of Police of the Northern Territory* (1998) 147 FLR 111.

grant a licence in certain circumstances. A decision, or a purported decision, under s 93D does not affect any power under *the Act* to revoke, or suspend a licence, permit or certificate of registration.<sup>14</sup>

42. I accept the contention of the Respondent that the order of the Local Court, whether valid or effective or invalid and a nullity, did not purport to prevent or fetter the Commissioner from subsequently exercising the statutory power conferred on him to revoke the Appellant's licence.

### **THE MEANING OF SECTION 10(2A) AND ITS SUBSEQUENT AMENDMENT**

43. The Tribunal accepts and is bound by, the decision in *Burrarrwanga v Rigby* [2009] NTSC 57 (*Burrarrwanga*) for the legislation as it was at that time. His Honour Justice Southwood states:

“[11] In my opinion, s 10(2A) of the Firearms Act provides for mandatory suspension of a firearms licence in two circumstances. First, if a person is found guilty of an offence against the Firearms Act and a pecuniary penalty is imposed, a person is prevented from obtaining a firearms licence for a period of two years from the date when the person was found guilty of the offence. Secondly, if the person is found guilty of an offence against the Firearms Act and a custodial sentence is imposed, a person is prevented from obtaining a firearms licence for a period of five years from the date when the offender was found guilty of the offence or the date when the person is released from custody, whichever is the latter.

44. His Honour had in the paragraph prior outlined the reasoning thus:

The meaning of s 10(2A) of the Firearms Act is a little unclear. The intention of the legislature would have been clearer if the word ‘and’ appearing at the beginning of the second last line of s 10(2A)(a) had immediately followed the comma at the end of the first line of s 10(2A)(a)(ii); and if all possible sentencing dispositions had been covered. Nonetheless, given that s 10(2A)(a) is divided into two subparagraphs, the semi colon interposed after the word

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<sup>14</sup> *Firearms Act 1997 (NT)* s 93E.



‘section’ at the end of s 10(2A)(a)(i), the word ‘or’ appearing at the end of s10(2a) (a) (i), which is disjunctive, and the semi colon interposed after the word ‘offence’ at the end of s 10 (2A)(a), the structure of s 10(2A) is such that it is has three parts. The parts are based on the three kinds of sentencing disposition that are referred to in the subsection namely, non-conviction discharge or bond, fine and custodial sentence. The length of the time for which a licence cannot be granted by the Commissioner following the revocation of a licence by the operation of s 40(1) of the Act varies in accordance with the severity of the three kinds of sentencing disposition referred to in the subsection.

45. Since the decision of *Burrarrwanga* delivered 6 November 2009, the *Firearms Act* has been amended. Relevantly s 10(2A) was amended by the *Justices and other Legislation Amendment Act 2011 (NT)*.

(1) Section 10(2A)(a)(i)

omit

referred to

insert

mentioned

(2) Section 10(2A)(a)(ii)

omit

imposed,

insert

imposed;

46. Thus the comma previously mid in the relevant part of the sentence “a pecuniary penalty only has been imposed, and not less than 2 years have elapsed since the person found guilty of the offence:” has been replaced with a semicolon.

47. It is the Appellant's submission that this amendment does not alter the interpretation of the section as outlined by his Honour in *Burrarrwanga*. If it were intended to do so, then other amendments would have been made to address some of the issues that his Honour highlighted. It is further submitted that when considering the second reading speech, and noting the absurd results that would flow, as well as the text and structure; the meaning is otherwise unaltered from its consideration in *Burrarrwanga*.
48. The Respondent submits that, for various statutory interpretation reasons, the substitution of the semicolon with the comma does alter the legislative intent of the section, and thus, the two year impediment to granting of a licence now applies to all of the preceding sentencing options.
49. The section has been referred to in one other matter since the amendment. In *Leigh v Heath* [2016] NTSC 50, his Honour, Justice Hiley considered an appeal from the Local Court where it was contended that there was an error by the Local Court in not taking into account the mandatory disqualification when imposing a discretionary disqualification. The punctuation change was not referred to and there was not detailed consideration of the construction of the section.
50. In that case Mr Leigh had been convicted and fined for his offences. Thus the '*Burrarrwanga*' interpretation of the previous legislation was not necessarily enlivened, as it was commonly understood that the two year period applied to fines. The *Burrarrwanga* question being, did it also apply to the previous subsection mentioning s 10 and s11 orders. His Honour in *Leigh v Heath* did note "Indeed counsel for the appellant sought a finding of guilt without conviction, which finding may well have triggered the operation of s 10(2A)(i) and thus the automatic two year disqualification".<sup>15</sup>

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<sup>15</sup> Leigh v Heath [2016] NTSC at 18

51. However, the case did not turn on the construction of the part of the section that concerns the instance before this Tribunal and provides little assistance in that regard.

52. It is well recognised that the starting point for statutory interpretation is the consideration of the text itself. As stated;

“The Court has stated on many occasions that the task of statutory interpretation must begin with a consideration of the text itself. Historical considerations and extrinsic materials cannot be relied on to displace the clear meaning of the text. The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy.”<sup>16</sup>

53. Consideration of the text necessarily involves consideration of the words, the punctuation and other intrinsic or grammatical aids to interpretation.

54. Their Honours Toohey and McHugh JJ in *Re Collins; Ex parte Hockings* (1989) 167 CLR 522 at 525 confirm;

“There is no reason why the use of a comma after the words "breach of the rules of an organization or of a branch of an organization" should be discarded or thought to serve no purpose in the construction of the definition”

55. However Leeming JA in *Mainteck Services Pty Ltd v Stein Heurtey SA* (2014) 89 NSWLR 633 warned “a prerequisite to relying on punctuation is being satisfied that it has been used consciously and not haphazardly”.

56. In the text *Statutory Interpretation in Australia*, 9<sup>th</sup> ed. (1997) the author considers the recognition to be afforded consideration of punctuation;

“However, the courts should recognise that drafters usually punctuate with a view to enhancing the understanding of their legislation. To ignore this fact is to make the task of both drafter and interpreter more difficult and is likely to lead to a misunderstanding of the legislation in question.”

57. The author later alerts the reader;

“If regard is to be had to punctuation, it is important that its grammatical use be properly understood and applied:...”<sup>17</sup>

58. The work *A Comprehensive Grammar of the English Language* (1985) is cited by her Honour Katz J in *Minister for Immigration and Multicultural Affairs v Savvin* (2000) 171 ALR 483 at [83];

“The authors point out (at 1622) that, typically, the semicolon is used as replacement for the word ‘and’, in order to show that ‘two independent clauses are regarded as being sufficiently related to belong to one sentence’. They further point out, however (at 1623), that the use of a semicolon may sometimes be followed by the use of the word ‘and’, ‘but’ or ‘or’. As to the use of the semicolon in the latter circumstances, they say (emphasis added):

Such a use (in effect, replacing a comma) is chiefly found in rather formal writing and in sentences whose complexity already involves the use of one or more commas and whose major divisions call for a hierarchical superior punctuation mark if the reader is not to be momentarily puzzled or mislead.”

59. In considering s 10(2A) of the Act, it is noted that;

1. The semicolon in subsection (a)(i) is followed by ‘or’ and the new semicolon in subsection (a)(ii) is followed by ‘and’.

2. The legislation was ‘consciously’ amended following the decision in *Burrarrwanga*, with the Explanatory Statement for the amending Bill stating

“This clause amends section 10 of the Firearms Act. The majority of amendments made by this clause either update the use of conjunctions, correct the use of punctuation marks, omit surplus words or aim to bring the Firearms Act into conformity with the current drafting style.”

3. The paragraph and indent of the layout of the section puts the two year lapse on a new line tabulated to the same point as both parts (i) and (ii).

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<sup>16</sup> *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 at [47].

## Referral to Second Reading Speech

60. Section 62B of the *Interpretation Act 1978 (NT)* states;

### **62B Use of extrinsic material in interpreting Act**

(1) In interpreting a provision of an Act, if material not forming part of the Act is capable of assisting in ascertaining the meaning of the provision, the material may be considered:

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or

(b) to determine the meaning of the provision when:

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.

61. The section then goes on to list, without limiting, some of the types of material that may be considered.

62. The *Interpretation Act* permits consideration of the Second Reading Speech to confirm the meaning is the ordinary meaning. Section 10(2A) has been mentioned in various Second Reading Speech's throughout its legislative life.

63. The provision was initially inserted by s 7 of the *Firearms Amendment Act (no.2) 2000 (NT)*. In the section originally inserted, subparagraph 10(2A)(a)(ii) ended with a comma. Then in 2003 the *Firearms Amendment Act 2003 (NT)* amended the section again. This amendment changed the period of disqualification from 12 months to two years and extended the period for custodial penalties to five years, as well as including offences pursuant to the *Weapons Control Act 2001 (NT)*.

64. The Second Reading Speech of the 2003 Bill states:

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<sup>17</sup> Pearce D C, *Statutory Interpretation in Australia*, 9<sup>th</sup> ed. (1997) at 4.78, p 205

“The current provisions relating to the period of disqualification for a person applying to register a firearm for an offence under the act are confusing and ambiguous. The bill will provide a new procedure, simplifying the regime into a three-tier system as follows: where a person has been found guilty of an offence, and a court has imposed a pecuniary penalty, the person cannot apply to register a firearm for a period of two years. Where, however, the court has imposed a period of imprisonment, the period will be five years. In some instances, a breach of the act may be more appropriately dealt with by the issue of an infringement notice. Therefore, an infringement notice similar to an offence under the Traffic Act, may be issued by a member of the police force in certain circumstances.”<sup>18</sup>

65. It appears that the three tiered system referred to involved fines, custody, and minor matters where an infringement scheme could be imposed, the penalties imposed under s 10 and s 11 were not mentioned at all. However, his Honour in *Burrarrwanga* considered this Speech and determined the three tiered system as previously referenced.

66. The explanatory memorandum for the amendment that replaced the comma includes:

“The majority of amendments made by this clause either update the use of conjunctions, correct the use of punctuation marks, omit surplus words or aim to bring the Firearms Act into conformity with the current drafting style.”

67. The second reading speech merely states that

“The Bill also makes a number of amendments to the Firearms Act and Weapons Control Act. The majority of these amendments are minor statute law revisions.”<sup>19</sup>

68. After consideration of the extensive and thorough submissions of the Appellant, as well as the Respondent around statutory construction, in my view, the change from comma to semicolon does have an effect on the legislation, such that the determination of its meaning in *Burrarrwanga* is

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<sup>18</sup> Second reading speech to the Firearms Amendment Bill: Northern Territory, Parliamentary Debates, Legislative Assembly, 28 May 2003 (Paul Henderson)

<sup>19</sup> Second reading speech to the Justices and Other Legislation Amendment Bill: Northern Territory, Parliamentary Debates, Legislative Assembly, 23 February 2011 (Delia Lawrie)

now distinguished. I do so, not by rejecting his Honour's reasoning, but following it and applying it to the section as it now reads.

69. I reject the Appellant's submission that the change is merely to 'reflect current drafting style' and the submission that it is used as replacement or alternative comma, without grammatical change.
70. I am satisfied that the use of the semicolon was a deliberate drafting and grammatical device, operating to show that two independent clauses are sufficiently related to belong to one sentence. Following the approach taken by her Honour Katz J, the paragraph must be read as whole and unsevered paragraph, with both specific circumstances expressed in subsection a(i) and subsection a(ii) subject to the two year time condition.
71. By following the interpretative path described in *Burrarrwanga*, but with the amendment of the semicolon, section (2A) is still in three parts. Firstly; orders under section 10 and 11; secondly fine only; and thirdly a custodial sentence. However, "and not less than 2 years have elapsed since the person was found guilty of the offence;" applies both to orders under subsection (i) – the s 10 and s 11 orders, as well as orders under subsection (ii), fine only offences. This is because the semicolon creates a separation, not of the section as a whole, but of the following part of the sentence, so it refers to both preceding circumstances.
72. That being the case, a two year lapse since a finding of guilt applies to all of the following sentencing dispositions of the Local Court for offences against the *Firearms Act* or the *Weapons Control Act*, or in which a firearm was involved:
  1. An order under s 10 – a dismissal without conviction
  2. An order under s 11 – without recording a conviction a release on giving security to be of good behaviour (a no-conviction bond)

3. A similar order under old legislation or from another jurisdiction

4. A pecuniary penalty (a fine, with or without conviction)

73. A five year lapse is required for an offence where a custodial sentence was imposed.

74. Whilst I note that his Honour in *Burrarrwanga* goes on to say:

“[12] If a person who is found guilty of committing an offence against the Firearms Act receives neither a pecuniary penalty nor a custodial sentence, the person may be re-granted a firearms licence forthwith by the Commissioner.”

it appears that an alternative interpretation may be that such a person may never be able to be granted a licence. This is because s (2A) commences with the words;

“The Commissioner is not to grant a licence to a person who has been found guilty of an offence against this Act or the Weapons Control Act 2001 or in which a firearm was involved unless...”

The options that follow, including periods of suspension, are the only circumstances in which this mandatory exclusion can be overcome. This would mean that a person who has had any other sentence imposed after a finding of guilt, whether convicted or not, cannot be granted a licence. Thus penalties involving for example, community work orders, a conviction and bond, or community based orders could result in the inability to ever obtain a licence.

75. Whichever reading of the section is accepted, incongruity and absurdity in relation to the penalty of the suspension arises. How can being convicted and released on a bond, incur a lesser mandatory restriction than not being convicted and having the charge dismissed? However given the penalty imposed in this case, the broader implications and possible interpretations of the restriction are not before this Tribunal for necessary determination.



76. In summary:

1. The order of the Judge on 11 February 2022 was that the actual licence as a thing must be returned to Mr Sterry.
2. That order does not change or bind the Commissioner in the exercise of their duties pursuant to *the Act*, to revoke a licence when required to do so.
3. The Commissioner was required to do so in the circumstances where there was a finding of guilt for an offence pursuant to the *Weapons Control Act 2001 (NT)*.
4. Given the penalty that was imposed by the Local Court Judge, Mr Sterry is not to be granted a licence unless two years have elapsed from the date he was found guilty of the offence, being 11 February 2022, thus eligibility commences on 11 February 2024.

77. The two questions of law raised by the appeal are answered thus:

1. Whether an order made by the Local Court in Alice Springs on 11 February 2022 restricted the Commissioner from exercising his statutory power to revoke Mr Sterry's licence?

No.

and

2. Whether s 10(2A)(a)(i) of *the Act* disqualifies Mr Sterry from obtaining a shooter's licence for two years from the date he was found guilty of an offence against the *Weapons Control Act*?

Yes.

78. The appeal is dismissed and I confirm the decision of the delegate of the Commissioner dated 5 July 2022.

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