

CITATION: *Earle, Connolly, May, Bellman and Gosper v The Commissioner of Police* [2020] NTLC019

PARTIES: BEN EARLE, BRUCE CONNOLLY,
RANID MAY, JOHN BELLMAN and
DAVID GOSPER

v

THE COMMISSIONER OF POLICE

TITLE OF COURT: FIREARMS APPEAL
TRIBUNAL

JURISDICTION: Firearms Act (NT)

FILE NO(s): 2020-02380-LC; 2020-02382-LC; 2020-
02579-LC; 2020-02578-LC; 2020-02580-
LC

DELIVERED ON: 3 December 2020

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JUDGMENT OF: Commander James O'Brien
Mr Tony Orr
Chief Judge Elizabeth Morris (Chairperson)

CATCHWORDS:

ADMINISTRATIVE LAW –TRIBUNALS – APPEALS –FIREARMS ACT (NT) 1997 – STATUTORY INTERPRETATION

Application for Category H (pistol) licence or permit - meaning of “genuine reason” - meaning of “genuine need” - meaning of “necessary” - definition of “contrary to public interest” - “business and employment” - whether volunteer can be in business or employment - whether restriction of eligible category excludes dual purpose - personal safety considerations - animal welfare - finishing shot - feral animal control - euthanasia for animal welfare.

Firearms Act 1997 (NT) s 3, s 3(1), s 4, s 10, s 10(8), s 11, s 31, s 31 (1)(fa), s 51, s 52, s 52(1) and (2), Pt III, Pt IV, Schedule 6, Category H

Interpretation Act 1978 (NT) s 62A, s 62B.

Firearms Regulations (NT) reg 6, reg 14, reg 14(b)

Yunupingu v Commissioner of Police [2009] NTMC 11, *Shaxson v Queensland Police Service, weapons licensing Branch* [2014] QCAT 309, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27, *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591; In re Fish; *Ingham v Raynor* [1894] 2 Ch 83, *Suter v Commissioner of Police* [1998] NTSC 81, *Wayne v Boldiston* (1992) 62 A Crim R 1, *Pelechowski v Registrar* (1999) 162 ALR 336, *Director of Public Prosecutions v Smith* [1991] 1 VR 63, *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 , applied

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REPRESENTATION:

Counsel:

Appellant: J Bortoli

Respondent: J Ingrames

Solicitors:

Appellant: J Bortoli

Respondent: Solicitor for the Northern Territory

Judgment category classification: A
Judgment ID number: 019
Number of paragraphs: 104

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

No: 2020-02380-LC
2020-02382-LC
2020-02579-LC
2020-02578-LC
2020-02580-LC

BETWEEN:

**BEN EARLE, BRUCE CONNOLLY,
RANID MAY, JOHN BELLMAN and
DAVID GOSPER**

Appellants

AND

THE COMMISSIONER OF POLICE

Respondent

REASONS FOR JUDGMENT

(3 December 2020)

THE TRIBUNAL

COMMANDER JAMES O'BRIEN
MR TONY ORR
CHIEF JUDGE ELIZABETH MORRIS (CHAIRPERSON)

INTRODUCTION

1. These are appeals against decisions of the Commissioner of Police brought pursuant to s 51(1) of the *Firearms Act (The Act)*.

BACKGROUND

2. Each of the Appellants May, Bellman and Gosper is seeking an order that upon paying the required fee, the Commissioner of Police grant them a temporary

permit to allow them to use a H class firearm for 12 months for the purposes of ‘finishing off’ a wounded animal when engaged in an approved activity of the Conservation & Pest Management (NT) Inc association.

3. Mr Earle, trading as NT Feral Animal Control and Batco Farming Pty Ltd, represented by Bruce Connolly are seeking to vary the corporate licence issued to them in order to permit them to possess and use category H firearms.
4. Category H firearms are described in Schedule 6 of *the Act* as “pistols and air pistols”. A pistol is defined in *the Act* as meaning a firearm that is (a) capable of being used in, or adapted to be aimed and discharged using, one hand only: and (b) capable of being concealed on or about the person.¹

APPLICATIONS AND THE DECISION

5. All of the appellants during 2019 or 2020 applied to the Commissioner for Police for the ability to use a pistol for a permitted purpose under *the Act*. All of the applications were refused. Mr Earle was informed his application could not be facilitated². Mr Connolly was advised that ‘primary production and vertebrate pest animal control, animal welfare and occupational requirements are specifically excluded as genuine reason(s) for possessing pistols.’³ Mr Bellman, Mr May and Mr Gosper were advised that the refusal was because to grant the permit ‘would be contrary to the public interest’⁴

THE APPEALS

6. Mr Ben Earle filed his appeal for NT Feral Animal Control on 28 May 2020. Mr Bruce Connolly filed his appeal for Batco Farming Pty Ltd on 5 June 2020. Mr John Bellman, Mr Ranid May and Mr David Gosper filed appeals on 14 July 2020. The appeals, by virtue of s 52(1) of the *Firearms Act*, are in the nature of a rehearing. This Tribunal, when ruling on the appeal, stands in the place of the Commissioner of Police when he rules on an application. The relevant matters are, by virtue of s 52(2), the same.
7. Various documents have been tendered to the Tribunal, including an Appeal Book, additional statutory declarations, letters, emails and a copy of a standard operating procedure. Mr Earle gave evidence before the Tribunal, as did Mr Connolly, Mr Phillip Duffield, Mr Timothy Robinson and Acting Superintendent Drew Slape.
8. Whilst the Appellants and Respondent have included statutory declarations in some part purporting to determine the meaning of the legislation and the history

¹ Firearms Act (Northern Territory) 1997 (3) (1)

² Letter, Gray-Spence, Appeal Book folio 10

³ Email, Gray-Spence, Appeal Book folio 17

⁴ Letter, A delegate, Appeal Book folio 20, 24, 28

of its development, with respect, interpretation of the Act is a matter for the Tribunal to determine after consideration of submissions. Whilst policy development leading to the passage of legislation may be interesting, it cannot be determinative of legal meaning, as there may be a myriad of reasons why Parliament has chosen to enact laws, some of which may be unknown to the developers and drafters.

THE FIREARMS ACT – PRINCIPLES, OBJECT AND PURPOSE

9. The *Firearms Act*, Act No 2 of 1997 was enacted by the NT Parliament in concert with legislation in the other States and Territories of Australia in a national response to community concerns about the misuse of firearms, the immediate catalyst for the national response being the Port Arthur massacre (28 April 1996).
10. As a result of this national response, ownership of repeating shotguns and self-loading centrefire rifles was banned. The competency of persons licensed to possess firearms was improved by implementing knowledge and competency requirements. Licences were restricted to various categories that required real and legitimate purposes for ownership, and the tracking and registration of each firearm itself was improved.
11. *The Act* in the long title provides that it is “An Act to provide for the regulation, control and registration of firearms, and for related purposes”
12. It is clear that the regime of restrictions and regulations means that the possession and use of firearms in the Northern Territory is a privilege not a right.⁵
13. In addition to other restrictions on various licences and classes of persons who may apply for licences, there is a general power for the Commissioner to refuse to grant a licence if the Commissioner considers that the grant of the licence would be contrary to the public interest.⁶

THE APPELLANTS’ CASE

14. It is the Appellants’ case that granting of a permit or licence is in the public interest and consistent with the policies and principles of the Act.
15. For May, Bellman and Gosper, the permit would allow wounded animals to be euthanised quickly and humanely, whilst ensuring the safety of CPM volunteers and surrounding animals and wildlife.
16. They point to the difference between a license and a permit and submit that s31(1)(fa), the section that allows for the temporary possession or use of a firearm by the holder of a licence for a specified reason not covered by the holder’s

⁵ Yunupingu v Commissioner of Police [2009] NTMC 11 at [20]

⁶ Firearms Act 1997 s 10 (8)

licence, gives greater flexibility in granting permits in circumstances where there is no power to issue a licence. The term 'specified reason' is intended to be a unique provision and therefore does not incorporate 'genuine reason or genuine need' as otherwise provided for in the Act. It is submitted that the Act allows a person who is already the holder of a licence to apply for a permit for a specific reason for which they would not otherwise be permitted to use or possess the firearm.

17. Ben Earle and Bruce Connolly submit that the H class endorsement is necessary in the conduct of their business and that there is a genuine need for them to possess and use a H class firearm. It is submitted that the term 'business or employment' can include occupational health and safety requirements, animal welfare concerns or feral animal control. They submit that the evidence tendered shows that handguns are the only practical and reasonable means of meeting their obligation to ensure animal welfare and workplace health and safety.

THE RESPONDENT'S CASE

18. It is the Respondent's submission that none of the licences or permits should be granted.
19. The respondent submits that an applicant must demonstrate that the permit or license sought must be necessary for the reason of business or employment, and says that necessary should mean 'something which is required, rather than something which is merely convenient or a matter of preference. In this context, it reasonably connotes that the requirement can not be met in some other way, and cannot currently be appropriately met.'⁷
20. The Respondent points out that 'animal welfare' is restricted by Regulation 8 to only certain classes of persons, and therefore only those persons who solely fall into that category have genuine reason in relation to animal welfare.
21. The Respondent points to the presumption that a category H firearm application will not be granted unless one of the limited genuine reasons apply and the applicant provides sufficient evidence to satisfy the genuine need for the possession or use.
22. The Respondent contends that in considering the term business or employment, matters listed in *the Act* as genuine reasons, but then excluded or not listed pursuant to a regulation, should not be subsumed into a different listed reason with the effect that the excluded reason continues to be a genuine reason for consideration.

⁷ *Shaxson v Queensland Police Service*, weapons licensing Branch [2014] QCAT 309 at [21]

23. The Respondent submits that none of the reasons provided by any of the Appellants, nor the evidence relied on, is sufficient to satisfy the tests that the Act requires.

FIT AND PROPER PERSON

24. Section 10(3) and (4) of the *Firearms Act* read:

- (3) Subject to subsections (6) and (6A), the Commissioner must not grant a licence unless satisfied the applicant or, for an application for a paintball operator licence, the representative:
- (a) is at least 18 years of age unless the licence applied for is a firearms club junior licence; or
 - (b) is a fit and proper person; or
 - (c) has completed an approved firearms training and safety course; or
 - (d) is able to meet the storage and safety requirements under this Act; or
 - (e) resides in the Territory or is about to become a resident of the Territory; or
 - (f) has not, within the period of 10 years before the application for the licence was made, been found guilty in the Territory or elsewhere of a disqualifying offence; or
 - (fa) has not, within the period of 5 years before the application for the licence was made, been found guilty in the Territory or elsewhere of an offence of violence; or
 - (g) is not subject to a final domestic violence order or has not, within the period of 5 years before the application for the licence was made, been subject to a final domestic violence order; or
 - (h) is not subject to an order, made in the Territory or elsewhere, to keep the peace.
- (4) Without limiting subsection (3)(b), the Commissioner is not to grant a licence if the Commissioner has reasonable cause to believe that the

applicant or representative may not personally exercise continuous and responsible control over firearms because of –

- (a) the applicant's or representative's way of living or domestic circumstances;
- (b) any attempts by the applicant or representative to commit suicide or cause a self-inflicted injury; or
- (c) the applicant's or representative's intemperate habits or being of unsound mind.

25. It is not submitted, nor has any evidence been tendered, that any of the appellants are not a fit and proper person. All of the appellants are eligible and indeed hold and have been granted other licences. The key issue is whether their reasons for seeking the Category H license or permit are genuine and meet the test of necessity as a genuine need.

INTERPRETATION OF LEGISLATION AND FIREARMS POLICY DEVELOPMENT

26. Whilst evidence has been tendered by the Appellants as to the policy behind various amendments to the Act⁸ the Tribunal does not consider the development of various policy positions as relevant to its consideration. The interpretation of legislation must come from the legislation itself. We agree with the submission by the Respondent,

“In interpreting a provision of an Act, a construction that promotes the purpose or object underlying the Act (whether the purpose of object is expressly stated in the Act or not) is to be preferred to a construction that does not promote the purpose or object.”⁹

And as per the High Court:

“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.”¹⁰

⁸ Statutory Declaration of Phillip Duffield, Exhibit 5

⁹ Interpretation Act, s62A

¹⁰ Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (Northern Territory) (2009) 239 CLR 27 at [47]

27. The task of courts and tribunals is to interpret the words used by Parliament. It is not to divine the intent of parliament¹¹: As Chief Justice Spigelman has stated, “In an era where a purpose approach to interpretation is emphasised, and required by statute, the distinction between interpretation and divination is not always observed.”¹²
28. Where there is ambiguity as to the meaning of a provision within legislation, section 62B of the *Interpretation Act 1978* allows for the use of various forms of extrinsic material to assist in ascertaining the meaning of that provision if that material is capable of assisting the interpretation if, amongst other things, the meaning is ambiguous or obscure. In our view such obscurity and/or ambiguity may exist in relation the scope of ‘business and employment’ and in relation to the amendment that inserted the ability to approve a temporary permit on an already existing licence for a specific purpose.
29. Relevantly section 62B(2) provides that the Court may refer to:
- (e) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of the Legislative Assembly by a Minister or other Member before the time when the provision was enacted;
 - (f) any explanatory speech or statement given by a Minister or other Member to the Legislative Assembly on introducing the Bill;

APPLICATIONS TO BE CONSIDERED ANEW

30. The evidence tendered before this Tribunal confirms that the appellants May, Bellman and Gosper have previously held the permit that they are seeking. A Commissioner is entitled to depart from a previously held decision should he or she have a different view, when considering an application and weighing the various factors. Mere expectation of continuance in light of no incident is not sufficient to warrant renewal or further grant. Each application must be weighed against the evidence and the strictures of the Act as the decision maker sees them.¹³

PERMIT FOR A SPECIFIED REASON NOT OTHERWISE PERMISSIBLE

31. The applicants for the permits argue that s 31(1)(fa) is a unique provision giving the Commissioner power to grant a temporary permit to a licence holder to

¹¹ *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591; *In re Fish*; *Ingham v Raynor* [1894] 2 Ch 83.

¹² JJ Spigelman CJ, “The poet’s rich resource: issues in statutory interpretation”, (2001) 21 *Aust Bar Rev* 224

¹³ *Suter v Commissioner of Police* [1998] NTSC 81 at 3

possess and use a firearm where this would not be otherwise permissible under the Act.

31 Grant of permits

(1) The Commissioner may grant a permit for one or more of the following purposes:

- (a) to authorise a person to purchase, hire, lease or acquire a firearm;
- (b) to authorise the possession or use of a firearm by a person residing temporarily in the Territory;
- (c) to authorise the use by the holder of a firearms collector licence of a firearm possessed under the licence;
- (d) to authorise the possession or use of firearms for film, theatrical productions or other artistic purposes;
- (e) to authorise the acquisition, sale or transfer of a firearm in such circumstances as may be prescribed;
- (f) to authorise the shortening or conversion of a firearm;
- (fa) to authorise the temporary possession or use of a firearm by the holder of a licence for a specified reason not covered by the holder's licence;
- (fb) to authorise a person to use under supervision a category H firearm for sports shooting at an approved firearms club;
- (fc) to authorise an approved firearms club to permit a person or class of persons to use under supervision a category H firearm for sports shooting at the firearms club;
- (fd) to authorise an approved paintball operator, and the representative, to possess and use paintball firearms and pellets for carrying on the operator's business specified in the permit at the temporary paintball range specified in the permit;
- (g) to authorise anything else for which provision is made by the Regulations and required by the Regulations to be authorised by a permit.

32. In our view, the use of the words 'specified reason not covered by the holder's licence' does not allow the Commissioner to grant a permit which would be otherwise impermissible under the Act. The use of the word 'specified' imports a 'specific' reason, rather than a general or broad reason. That is, a reason

‘unambiguously identified’¹⁴ But it is implicit and explicit that the Commissioner only has powers prescribed in the Act itself.

33. The second reading speech of the amendment bill that introduced this provision continues:

“A number of amendments have been made to Part 3, Licences and Part 4, Permits, of the Act. They are mostly of a general administrative nature designed to tighten present provisions, clarify what is required of an applicant or provide the Commissioner with greater flexibility to administer the Act. In particular, the impact of amendments in this and other parts of the Act will allow for the Commissioner to take into account the prior history of an applicant of a licence holder from outside the Territory when deciding whether to grant or revoke a licence or permit. This is a significant piece of legislation and greatly increases our powers to ensure that firearms are only placed in the hands of those people who should be legitimately authorised to possess or use a firearm.”¹⁵

34. We accept the submission of the Respondent that 31(1)(fa) does not and should not extend to a power to provide a permit for what has already been excluded or not otherwise provided for in *the Act*. It does of course, provide for a permit for a reason outside the licence, but to extend the limit of a statutory provision which would allow purposes not permissible under *the Act* stretches the bounds of interpretation.
35. Thus we find that the Commissioner has the discretion to grant a temporary permit under this section in the circumstances that the person is already the holder of a licence AND the person satisfies the Commissioner that they have a specified reason, not already permitted by their licence, that could be approved by the Commissioner under *the Act*.

GENUINE REASON

36. Section 11 of the *Firearms Act* prescribes that:

11 Genuine reason for licence

- (1) The Commissioner is not to grant a licence:
- (a) unless satisfied that the applicant has a genuine reason for possessing and using firearms;
 - (b) in respect of a category C firearm, category D firearm or category H

¹⁴ Words and Phrases Legally Defined, Lexis Nexis, fourth edition “Specified”

¹⁵ Second reading speech

firearm, unless satisfied that the applicant has a genuine need for possessing and using firearms of that category; and

(c) unless satisfied that the applicant meets the requirements under this Act in respect of that reason or need.

(2) The genuine reasons for possessing or using firearms are any of the following:

- (a) sports shooting;
- (b) recreational shooting or hunting;
- (c) primary production;
- (d) vertebrate pest animal control;
- (e) business or employment;
- (f) occupational requirements;
- (g) animal welfare;
- (h) firearms collection;
- (j) museum display;
- (k) inheritance;
- (m) instruction in firearms use and safety;
- (n) paintball operator or employee.

(3) The Regulations may provide that the genuine reasons for possessing or using a specified category of firearm are limited to only one or some of the reasons specified in subsection (2).

37. Thus any applicant must demonstrate both a genuine reason and a genuine need. The onus is on the applicant.

REGULATION 14 REDUCES LIST OF GENUINE REASONS

14 Restrictions on granting licences for category H firearms

The Commissioner is not to grant a licence authorising the possession or use of category H firearms unless:

- (a) the genuine reason established by the applicant for the licence is:

- (i) sport or target shooting;
- (ii) business or employment;
- (iii) firearms collection;
- (iv) museum display; or
- (v) instruction in firearms use and safety; and

(b) the applicant produces evidence to the Commissioner's satisfaction that there is a genuine need for the person to possess or use category H firearms.

38. The respondent submits that the absence of the reason 'primary production' in Regulation 14 means that it cannot then be subsumed into one of the other permissible categories, specifically 'business and employment'.
39. In the general sense of the term, of course 'primary production' could be a person's 'business or employment'. One can be employed as a farmer, or be in the business of running a farm. Likewise, your business could be vertebrate pest animal control or you could be a primary producer who at times must take vertebrate pest control actions.
40. In our view the list of genuine reasons as outlined in s 11(2) are not mutually exclusive categories but may overlap, for example 'primary production' and 'animal welfare'. A primary producer may on occasion require the use of a firearm for animal welfare purposes. This is recognised in the limitations placed on animal welfare by regulation 8, where 'an owner, transporter, drover or other handler of animals who may need to destroy animals to avoid suffering' is included as a genuine reason for possessing or using firearms. Not all primary producers may be owners and transporters of animals. Not all handlers or owners of animals may be primary producers.
41. Whilst regulation 14 then further limits these reasons for Category H firearms, in our view, this does mean that a business or employment which involves some aspect of the non-included genuine reasons in section 11 is precluded. Certainly if the non-included reasons were not also a business or employment they would be excluded.
42. There is no conflict between the section and the regulation to resolve with the general giving way to the specific.¹⁶
43. Whilst the principle applies that the mention of one thing on a list excludes all others¹⁷, it does not and cannot exclude the thing that it describes, merely because

¹⁶ Generalia specialibus non derogant

a thing may fall within two or more categories. It merely excludes the thing that falls solely within the excluded category.

DO THE APPELLANTS HAVE A GENUINE REASON?

44. All of the Appellants to some extent rely on the category of ‘business or employment’. These terms are not defined but we read them in their general meaning and usage. That is, business is a job, role or position, or entity, “engaged in commercial, professional or industrial activities. Businesses can be for-profit entities or they can be non-profit organisations that operate to fulfil a charitable mission or further a social cause.”¹⁸
45. Employment is ‘the act of employing...that on which someone is employed; work; occupation; business.’¹⁹
46. Mr Earle’s business is NT Feral Animal Control. Its purpose is to assist pastoralists, property owners and government in reducing the number of feral animals in return for financial consideration. As well as animal reduction, sometimes the work may involve removing dead animals from waterways and water sources. Firearms are an appropriate and necessary tool of the business. For this genuine reason he has been issued with other classes of firearm licence.
47. Mr Connolly’s business is Batco Farming Pty Ltd. It provides a range of farming services in the top end of the Northern Territory. These include weed control, mustering and inspection of cattle, fixing fences, fire watch, control, and transport of personnel to remote areas.

“The majority of my business involves travel in a helicopter to parts of properties that are otherwise not accessible or not easily accessible. I have a helicopter licence and own a helicopter as part of my business. This is what sets my business apart from others. I am able to access difficult or inaccessible parts of the property.

I do not undertake aerial feral animal control. I am not involved in aerial platform shooting. Feral animal control is a small part of my business and takes place on the ground. Long arm category A & B firearms are used in this situation.

My work is potentially dangerous. I often have to land my helicopter near waterways and in very thick scrub. Wild animals such as dogs, pigs, buffalo, bulls and crocodiles could attack at any time. A lot of my work takes place close to waterways where the risk of attack is increased. I

¹⁷ Expressio unius est exclusio alterius

¹⁸ What is Business? Adam Hayes 4 July 2020 investopedia.com/terms/b/business.asp

¹⁹ Macquarie Concise Dictionary; 3rd Edition

have previously had an engine failure where I had to land unexpectedly. There is always a danger of the helicopter malfunctioning and forcing me to land. My helicopter is fitted with an EPIRB and in the case of an emergency this will provide my location to emergency services, but this would not protect me from the danger of animal attack.²⁰

48. Both Appellants use firearms for their business. Mr Earle's business is killing animals. Mr Connolly's business involves being able to protect himself in remote areas from feral stock and dangerous wildlife. The evidence provided and tendered by both men includes reasons of occupational health and safety requirements, animal welfare concerns and feral animal control, however, only as they relate to their business and employment activities.
49. We are satisfied that the genuine reason of the Appellants Earle and Connolly are that their business or employment requires use of firearms.
50. The Activities of May, Bellman and Gosper are voluntary and do not receive remuneration for their involvement. They all belong to the Conservation and Pest Management (CPM) association. It is incorporated. The Association does not receive payment for the services of its members, 'all this without seeking costs.'²¹ However it has received grants under an environmental grants program in 2009 and 2010.²² They carry public liability insurance.
51. However, can a 'volunteer' that is, someone who is engaged in an activity without expectation of reward, financial or otherwise be engaged in 'business or employment'?
52. The Fairwork Australian Government website describes volunteering as:

A volunteer is someone who does work for the main purpose of benefitting someone else, such as a church, sporting club, government school, charity or community organisation. Volunteers are not employees and don't have to be paid. As with work experience and internship arrangements, all relevant factors must be considered to determine whether a person is a genuine volunteer or whether, in fact, an employment relationship exists even though the worker is called a 'volunteer'.

Key characteristics of a genuine volunteering arrangement include:

- the parties did not intend to create a legally binding employment relationship

²⁰ Statutory Declaration, Bruce Connolly 10 August 2020

²¹ Statutory declaration Phillip Duffield 10 August 2020 para 30

²² Statutory declaration Phillip Duffield 10 August 2020 para 32

- the volunteer is under no obligation to attend the workplace or perform work
- the volunteer doesn't expect to be paid for their work.

The more formalised that volunteer work arrangements become (for instance if the volunteer is expected to work according to a regular roster) the greater the possibility that an employment relationship will be found. It is less likely that an employment relationship will be found to exist where the volunteer work is undertaken for selfless purposes or for furthering a particular belief in the not-for-profit sector.²³

53. The Appellants rely on the evidence of Mr Phillip Duffield. Mr Duffield is a retired police officer with extensive firearms experience, both professionally and recreationally. He is the current Secretary of CPM. Mr Duffield's evidence is that CPM is an incorporated non-profit group made up of volunteers committed to providing a service to the NT Government Parks & Wildlife Service and the pastoral industry to control feral and pest animals.²⁴ It has an Australian Business Number (ABN).
54. Mr Duffield continues:

CPM (NT) was formed in 1999 through a joint initiative of the NT Government Parks & Wildlife Commission, in partnership with the Northern Territory Shooters Council and the NT Sporting Shooters Association of Australia (SSAA). The aim was to establish a pool of accredited volunteers who could assist the Parks and Wildlife Commission with the control of feral animals in NT National Parks. It is based on the highly successful SSAA program that started in South Australia in 1991 to control feral goats in the Flinders National Park.

The CPM foundation members undertook their shooting accreditation with the NT Parks & Wildlife Service. Since then CPM has developed our own accreditation program that has been approved by Parks and Wildlife.

We have operated in the Black Jungle Conservation Area, Wildman & Mary River National Parks, Manton Dam catchment areas, Gregory National Park and even within the Coburg National Park. Within Parks holding along, we have removed approximately 3,500 feral animals. As a whole, CPM has removed just over 47,000 feral and pest animals since its beginning. All this without seeking costs, our members self-fund their participation in our programs use their recreational leave to take

²³ <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/unpaid-work/unpaid-work> accessed 1 December 2020

²⁴ Statutory Declaration Phillip Duffield, exhibit 5

part.....We also provide the same services to the pastoral industry... Our activities provide a direct benefit to the Territory environment, preventing habitat destruction, erosion, the spread of noxious weeds and the loss of the Territory's fauna and flora caused by introduced animals which out compete many of our native species for food and water.²⁵

55. In our view, like many considerations of legal definition, to determine whether something is a 'business or employment' is a matter of fact and degree²⁶, to be found from consideration of all of the factors of each case in their context. On one hand, the members concerned are not remunerated. On the other, the Association and by implication the members assigned, are tasked by an outside entity to perform a certain task, which may take considerable time, skill, planning and execution. The organisation is a long standing one, it has developed practices and procedures, as well as accreditation processes. It has received grants to assist it in performing its objectives, it carries insurance for the protection of its members when they participate in the activities of the Association.
56. Having considered all of the evidence we are of the view that that Appellants, even though volunteers, are employed or in a business, through their tasking by CPM to provide the services that CPM offers. Thus their reason is a genuine one, that is, business or employment.

APPLICANT MUST DEMONSTRATE IT IS NECESSARY

57. Regulation 6 further requires that:

“An applicant for a licence whose genuine reason for possessing or using firearms is business or employment must demonstrate that it is necessary in the conduct of the applicant's business or employment to possess or use firearms for which the licence is sought”.

58. Regulation 14 (b) further repeats the genuine need requirement.

The Commissioner is not to grant a licence authorising the possession or use of category H firearms unless:

...

(b) the applicant produces evidence to the Commissioner's satisfaction that there is a genuine need for the person to possess or use category H firearms.

²⁵ Statutory Declaration, Phillip Duffield, 27 August 2020

²⁶ Wayne v Boldiston (1992) 62 A Crim R 1

59. The term ‘necessary’ is not defined in the Act. The Macquarie Dictionary defines necessary as ‘that cannot be dispensed with’.²⁷
60. However, Courts have defined ‘necessary’ as not necessarily essential but ‘subject to the touchstone of reasonableness’.²⁸
61. Black’s Law Dictionary considers ‘necessary’ may ‘mean something which in the accomplishment of a given object cannot be dispensed with, or it may mean something reasonably useful and proper, and of greater or lesser benefit or convenience, and its force and meaning must be determined with relation to the particular object sought’.²⁹
62. In our view the word must be read in its ordinary and grammatical sense in the proper context. That is, that the firearm sought is ‘needed’ in the conduct of the business or employment. It does not mean that there is ‘no other way’ but that balancing the factors of convenience, safety, purpose, including the purpose of animal welfare, and whether the firearm type is the most reasonable type for the conduct of that business. In determining what is necessary we can consider what is generally regarded as the standards, opinions and preferences of others in the particular industry or business or employment. Necessary implies more than just mere preference by an applicant. That preference must be considered objectively on the balance of the factors above and include the specific circumstances of the business or employment in which the applicant may be engaged. This is something that may change over time due to developments in technology and improvements in practice. For example an EPIRB would now be considered by most responsible businesses as necessary for most remote work off shore and on shore in the Northern Territory in order to assist in worker safety. Safety flares do not have the same ease of use, accuracy or effectiveness. Similarly whilst a lawyer may have access to a published copy of legislation on paper, access to electronic legislation is generally regarded as necessary to modern legal practice because of its ease, efficiency, cost and improved capacity to search.

HAVE THE APPELLANTS DEMONSTRATED A GENUINE NEED?

63. When considering this question the following factors are relevant: the extent to which other options and alternatives are available, the ease and practicality of those options, and the standard practice, procedures and guidelines of the particular industry or business.
64. We do not consider that the test necessarily requires the use of such a firearm to be common or frequent, whilst that may be a consideration. If the need includes the desire for personal protection, even if the circumstances requiring the actual

²⁷ Macquarie Concise Dictionary, Third Edition

²⁸ *Pelechowski v Registrar* (1999) 162 ALR 336 at 348 per Gaudron, Gummow and Callinan JJ

²⁹ Black’s Law Dictionary, 6th edition, 1990

use of the firearm never arise should they arise once then that may be enough to justify the need, because of the magnitude of the risk once it does arise.

65. Mr Connolly's evidence highlighted this issue:

The reality is, while the circumstances that you've described are possibilities, they haven't happened, as you pointed out. You haven't needed to rush for a weapon to defend yourself from an animal in the Territory busy, is that right?---No.

At the end of the day, whilst honestly believed, I don't doubt your sincerity of wanting to have a firearm, but the reality is that it's really just a 'just in case' tool?--- I suppose, yes, but every tool in my tool box is a 'just in case' tool. Every spanner in my tool box is a 'just in case' tool.³⁰

66. However, should the risk of personal harm not be of great magnitude and be of infrequent or little likelihood, then that may well not justify the need for the firearm. The risk should not be a fanciful one. The 'tool' to take the above analogy further, should not be for a problem not in contemplation, nor for a machine that would not be encountered.

67. We consider that determining need is a balancing exercise weighing the various factors of purpose, convenience, alternatives, risk and consequence.

FINISHING SHOT

68. The appellants May, Bellman and Gosper seek to use the category H weapons already within their other licence, that of a sporting shooter, to provide a 'safe and effective means of euthanising animals which have been shot and were on the ground, but where immediate death had not occurred. Earle and to a lesser extent, Connolly seek to use a pistol for a 'finishing shot' if required. Is a category H weapon 'needed' for this purpose?

69. Mr Duffield's evidence is that the CPM group has learnt:

"that using a high-powered centre fire rifle to euthanise an animal on the ground is inherently dangerous due to the risk of over penetration and the inability to prevent ricochets which pose a risk to the shooter, other CPM members and indeed, other animals and livestock in the area.

Likewise, trying to euthanise an animal on the ground from a distance with further shots from a high-powered centre fire rifle is neither quick

³⁰ Transcript p 28

not humane because there is often difficult being able to achieve a direct shot to the brain which is encased in heavy bone.”³¹

70. In cross examination it was put to Mr Duffield:

“And then to do that the Code of Practice in fact says a low-gauge shotgun or low-calibre rifle is best practice: ---it makes several suggestions when you look at the guidelines. The practicality of some of those suggestions is questionable. It certainly goes against the 20 years’ experience that we’ve had within CPM. And there’s some issues in using a low-powered rifle, so a longarm, when an animal is laying on the ground with its head on the side. So there are a number of positioning issues where our experience has shown a handgun is far safer than using a longarm.”³²

71. He continues:

...so historically before you were using pistols, at the times when pistols were unavailable because either someone doesn’t have a permit or they’re just not available? ---Yeah.

You were able to still successfully undertake your tasks for these organisations with the rifles that you have available to you? ---So, what we have to do is we have the change the way we operate. Whilst its achievable, the animal welfare aspect I don’t think is as good as when the handguns were used. So from an animal welfare perspective it’s quick – both quicker, more efficient and safer to euthanise animals using a handgun. When it’s not available then we still comply with the Code of Practice but I don’t – from a personal perspective I don’t think the animal welfare comes as positive. Those animals do take longer between when they’re first shot and they – when they die.

Because you’re not finishing them off with a second shot or---? The simple fact is you engage an animal from a distance with centrefire rifle. That animal is on the ground.

Yes?--- If I go up to that animal and it’s still alive and my only option is a centrefire rifle, I then have to make distance again.

Sure, so you walk away, get safe, do it, yes?---Yeah, and then if you say I’ve got five or six animals on the ground, those animals aren’t going to by lying necessarily close together, or laying all the same way. So you

³¹ Ibid

³² Transcript p 37

have to continually change position to find a safe way to be able to euthanase those animals with a centrefire rifle. That takes a lot longer.

So from an animal perspective you'd rather be able to walk up, if you have a pistol, and finish it off, or call out to someone that has the pistol and have them come over? --- Yes. That's a far better outcome.³³

72. Mr Earle's evidence included:

“The first use is to humanely euthanise feral animals which have been shot using another firearm from a distance but have not died and are in pain and distress. The H class firearm would allow us to get very close to the animal and fire a round through the animal's head or heart to quickly end its suffering.....Currently, we have to try and use our category A or B firearms to shoot the injured and distressed animal again at a distance of at least ten meters to avoid injury to ourselves. This can result in us again 'missing the shot' and cause the animal further pain and distress before we can successfully euthanise the animal. The animal is often rolling around in pain and distress during this time. I hate to see animals like this and want to euthanise feral animal(s) quickly and efficiently.³⁴”

73. And again:

“And, what's the difference between using a rifle and using a handgun for that finishing shot?---Okay, with the rifle, even though we take all precautions to have the correct round in there, as in high velocity, low velocity, whatever the case may be, it's still safer from a handguns perspective because it won't travel as far. So what we're actually doing is stepping back. And, we run the risk of ricochet if we're up close, sorry. If we step back we'll use a rifle because that the only option we've got at the moment. But, it will be a lot safer – and if there is any bystanders, to use a handgun because we know it's not going to go as far.³⁵”

74. Whilst 'animal welfare' is one of the genuine reasons removed from the list of permissible Category H firearms as a separate stand alone reason, in our view, if a business or employment involves the destruction and killing of animals, then the principles of animal welfare, including the minimisation or avoidance of suffering must be a consideration.

³³ Transcript p 38,39

³⁴ Statutory declaration, Ben Earle, p 2, 3

³⁵ Transcript p 20

BUSINESS AND EMPLOYMENT SAFETY CONSIDERATIONS

75. All of the Appellants rely to some extent on the need for personal safety in the conduct of their business. Any business or employment has a duty to provide a safe workplace, and occupational health and safety principles apply.
76. Mr Earle gave evidence of his current operating procedures around water. They include working in teams, with one person on the bank with both a shotgun and a .357 rifle to provide safety. The first option should a crocodile be spotted being to deter its progress. If a life was in danger, the rifle could be used to shoot the crocodile.³⁶ However, the procedures also include if the workers were aware of a crocodile they should leave the area. Mr Earle described an instance where he used a lever action 9 millimetre to scare a buffalo.

But the reality is you've been operating without a pistol? --- we've had to. But, we've -yes, Yeah we have.

You've had no incidences so far? --- No. and, it actually states in my statutory declaration that we've actually knocked back work if it's in a high danger area.

That's probably sensible. The handgun, at the end of the day, is mostly for peace of mind just in case? --- Not peace of mind, for safety.

But, just in case?---Well, yeah if we can use it to save somebody's life of course.

77. Acting Superintendent Slape proffers alternatives in relation to handguns in his statutory declaration.

“The carriage and use of firearms in helicopters can be accomplished with category A and B firearms without the need to utilise category H firearms. Many business operators with needs similar to Batco utilised short barrelled lever action rifles with handgun ammunition. These can perform the required functions outlined by Mr Connolly such as the destruction or scaring of animals.

As an example, a Rossi lever action .44 Magnum is a rifle with the same ballistic capacities as a .44 handgun. The consideration of space and weight can be overcome with such a firearm as it is short barrelled (16 inches) and as an example is only 700 grams heavier than a Smith and Wesson .44 Magnum revolver.”³⁷

78. Mr Duffield, in contrast, says:

³⁶ Transcript p 17

³⁷ Statutory Declaration, Drew Slape, 24 August 2020 p 3

“While the Rossi referred to by Mr Slape may be “short barrelled” at 16.5 inches, the actual firearm measures over 33 inches in length....This means that the firearm is considerably longer than a handgun and cannot be carried in a holster at a person’s side like a handgun. The only effective way to carry a rifle while having your hands free to undertake work would be over the shoulder sling. In such a position it would (be) significantly slower to access a rifle compared to a handgun to ensure your personal safety from an animal attack.....further I reject Mr Slape’s assertion that the Rossi and the Smith and Wesson using the same ammunition have the same ballistic capabilities. The Rossi would fire at greater velocity than the Smith and Wesson given the length of its barrel.....the Smith and Wesson 44 magnum handgun is simply not designed or intended for delivering a ‘finishing shot’...these handguns are not the firearms that are sought to be used by any of the appellants in the matters before the Tribunal.³⁸

79. Mr Connolly’s evidence as to his use and necessity was:

I use the handgun for – currently for carrying in the helicopter over wild or rugged country, heavily wooded scrubland, floodplain where there’s lots of wild animals, crocodile, buffalo, pigs, dogs, et ceterea. And, I carry that for the use of – the purpose of putting down maimed and mauled livestock, sick and injured animals. So, euthanising mostly cattle, but sometimes horses. And, if we have to – if we have to land the helicopter and walk in to fix a fence across a watercourse or something like that, then I holster the handgun and it’s on my hip. It’s not practical to be carrying a rifle as well as the fencing gear and pliers, and so forth into the creek crossing. So, there’s a level of personal safety there. Alternative – as well as that, often time you can’t land immediately beside a watercourse where there’s a mauled animal. You have to land well away and walk into that animal. Sometimes you’ve got to walk through scrub to get into that animal. It’s just not that easy to get in there. So it’s often not just that easy to walk through the scrub on your own, let alone carrying a longarm. Further to that, the category H firearm is the most appropriate to carry in the helicopter because of its size and its weight limitations. The weight limitation on all aircraft are that you need to minimise weight as much as you possibly can. And I have a small cargo compartment in the helicopter that doesn’t facilitate the longarms or rifles. So the category H firearm is the most appropriate to carry there.

...I currently have an employee licence under Tipperary Group of Stations corporate licence. So, I am currently employed in two fashions. I am the farm manager at Tipperary Station and as such my duties include various

³⁸ Statutory Declaration, Phillip Duffield, 27 August 2020, p1, 2

things around the station. But, I've been able to negotiate an expansion of my own private business within the Tipperary Group of Stations, wherein when I'm in the helicopter I am operating as my own specific entity, namely, Batco Farming, as stated in the statutory declaration. Now, that allows me also to contract to neighbouring stations outside of the Tipperary group. So, whilst I can carry a Tipperary Station owned Category H under my employees' licence at the moment, as soon as I fly over the boundary fence, I would be breaking the – breaking the current law. So, I can't - that why I've made application for my own corporate licence and upon the granting of the Category H, if that was to happen, then I will be able to carry the Category H in my own right.³⁹

80. He further responded to questions in cross-examination about the circumstances and frequency of risk:

In the circumstances of an injured animal that you might come across, of course, you're not going to know where that animal is?---Exactly.

Is that the only time you don't know – is that the only time you're at risk of crocodiles?---No, no, no, and it's not all – and it's not only crocodiles, it's all the feral animals that exist in the scrub out there. So, crocodiles infest every single waterway between here and well south of Katherine.

Yes?---And the simple fact is that we do not know where they are. They're an apex ambush predator, so we don't know where they are, and they can be completely hidden from view in as little as a foot of water, and that's just a crocodile. It is very easy to walk upon and surprise wild boars and a lot of people will tell you that they run off, but they don't always run off. Sometimes, if there are enough wild pigs around, they will gang up on you. This hasn't happened to myself, but I have heard people talk about it. Buffalo, both bulls and cows, will attack, if surprised, and you can surprise them walking through the scrub. They can be having a camp or having a bit of a wallow in a small waterhole and they can be very surprised and take great umbrage to it. In fact, several of the people that work on the property where I work have been (inaudible) by buffalo. The same thing with bulls and over-protective buffalo cows protecting their calves, protective Brahman cows protecting their calves, and we have lots of feral animals out there, both bulls and cows, cattle and buffalo, and dogs are a very big problem. So, pack animals, four or five dogs are going to take down a human, no trouble at all. They can take down a bull or a cow.

³⁹ Transcript p 22, 23

And any of these circumstances though haven't happened to you yet?---
Not yet; God forbid they ever do.⁴⁰

81. It is clear from his evidence that there are a combination of factors, that cannot be overcome without detriment, leading to the use of a handgun as the most appropriate tool. It is not just weight and size, but that is a factor. It is not just the ability to have hands free, but that is a factor. It is not just the isolated nature of the work and the inability or inefficiency to have a spotter, but that is a factor.
82. After consideration of all of the evidence provided, we are satisfied that Mr Connolly's company, Batco Pty Ltd, has a genuine need for a Category H licence in the conduct of his business.
83. Attack by animals was not the only workplace safety or risk issue. The other matter raised on evidence was regarding the likelihood of ricochet. Mr Earle advised that 'handguns have a significantly slower bullet speed and limits the risk of injury from ricochet.'⁴¹ Mr Duffield also evidenced that it was common for CPM to work in areas surrounded in rocks and that "a rifle cannot be used safely at very close range as the bullet often over penetrates and may strike a rock causing the bullet to ricochet."⁴²
84. Ultimately it is for the Appellant's to convince the Tribunal to the requisite standard of the genuine need for this particular type of firearm in their business and employment. The evidence produced by Mr Earle and the CPM members about the need for these firearms in their business focuses on the principles of animal welfare and human safety. No expert evidence to contradict the evidence tendered by the Appellants has been called. Acting Superintendent Slape does not hold himself to be either a firearms or ballistic expert.⁴³ Alternative options, including some of the guidelines produced by Pestsmart, have been put to the witnesses who gave evidence before us, and those witnesses have responded with their opinion as to why those alternatives would not be the most appropriate solution.
85. After consideration of the evidence and weighing the various factors of purpose, convenience, alternatives, risk and consequence, we are satisfied that Mr Earle has demonstrated a genuine need that a Category H firearm is necessary in the conduct of his business.
86. After consideration of the evidence and weighing the various factors of purpose, convenience, alternatives, risk and consequence, we are satisfied that Mr May, Mr Bellman and Mr Gosper have demonstrated a genuine need for that a Category H

⁴⁰ Transcript p 27

⁴¹ Statutory Declaration, Ben Earle, 2 August 2020

⁴² Statutory Declaration, Phillip Duffield, 27 August 2020, p 3

⁴³ Transcript p 52

firearm when they employed in the conduct of the business of CPM as outlined in the evidence.

87. In our view, the permit should and must specifically outline the purpose and restrictions of the business that it authorises. We invite further submissions from the parties as to those specifics.

CONTRARY TO THE PUBLIC INTEREST

88. The final consideration, an overarching one, is consideration of whether the grant of a licence or permit would be ‘contrary to the public interest’.⁴⁴
89. Given this restriction, in addition to all the other listed restrictions, it may be that there are circumstances where even if all the other requirements and restrictions are satisfied or overcome, granting a licence may be refused. Noting of course that the requirement is not that an application must be in the public interest, but that its granting would be ‘not’ in the public interest. Public interest is not defined in *the Act* or indeed in other legislation and has been considered in various cases:

The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the wellbeing of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals...⁴⁵

90. And from a decision of the Full Court of the Federal Court:

9. The expression ‘in the public interest’ directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances...

10. The expression ‘the public interest’ is often used in the sense of a consideration to be balanced against private interests or in contradistinction to the notion of individual interest. It is sometimes used as a sole criterion that is required to be taken into account as the basis for making a determination. In other instances, it appears in the form of a list of considerations to be taken into account as factors for evaluation when making a determination...

⁴⁴ Firearms Act, s10 (8)

⁴⁵ Director of Public Prosecutions v Smith [1991] 1 VR 63 (at 75), per Kaye, Fullagar and Ormiston JJ.

11. The indeterminate nature of the concept of ‘the public interest’ means that the relevant aspects or facets of the public interest must be sought by reference to the instrument that prescribes the public interest as a criterion for making a determination...⁴⁶

91. One commentator addresses the approach to public interest definition as:

The public interest is best seen as the objective of, or the approach to be adopted, in decision-making rather than a specific and immutable outcome to be achieved. The meaning of the term, or the approach indicated by the use of the term, is to direct consideration and action away from private, personal, parochial or partisan interests towards matters of broader (ie, more ‘public’) concern. The application of the concept is a separate issue and the answer to the question ‘what is in the public interest?’ will vary depending of the particular circumstances in which the question arises.

There are two separate components of the public interest – the process/ procedure component and the objectives/ outcomes component. In relation to the objectives/ outcome component, identifying what is in the public interest in any given situation is a primary obligation on public officials who are exercising discretionary powers. This is no simple task and in practice involves:

- who should be considered to be the relevant public?
- what are the relevant public interest issues that apply?
- what relative weightings should be given to various identified public interests and how should conflicting or competing public interests be addressed?⁴⁷

92. In adopting this approach, we would consider the community and citizens of the Northern Territory to be the relevant public. The public interest issues include the interest in the proper and fair ‘regulation, control and registration of firearms’, including their restriction for the safety and good governance of the Territory and in line with national agreements and obligations. It is in the public interest to minimise the number of firearms in the community. Acting Superintendent Slape in his statutory declaration says:

Pistols in Australia are highly restricted, and to meet licensing requirements is necessarily onerous. Pistols are the most sought after category of firearm by criminal elements due to their concealable nature

⁴⁶ McKinnon v Secretary, Department of Treasury [2005] FCAFC 142 per Tamberlin J (at 245).

and their high rate of fire comparative to manual action firearms. It is recognised by all States and Territories that the proliferation of pistols within the community should be avoided. This is evidence by the restrictive nature of the National Firearms Agreement and each jurisdictions firearms legislation⁴⁸

93. There is no evidence or reason for the Tribunal to find contrary to this.
94. Restriction and regulation of firearms seek to minimise the harm from unlawful use and possession of firearms, as well as accidental injury or death. However, the public interest also includes, in our view, the considerations of animal welfare, the preservation of the natural geological and biological environment, the support and development of the pastoral industry, and the ability of a business operator to protect themselves and their workers appropriately from the risk which arises when engaged in these particular activities and faced with feral stock and dangerous animals. For some categories of firearm (though not that being considered in this appeal), there is the public interest in supporting those with a legitimate recreational or sporting endeavour that they wish to pursue.
95. Some of these public interest issues are in conflict. These conflicts cannot be weighed to a nicety or an exact measure. In determining whether the granting of the licence or permit sort is ‘contrary’ to the public interest we balance whether the granting of the licence would be incompatible with some of those factors. And if so, does the risk of that incompatibility outweigh the other public benefit?
96. One factor, for example, is that the applications by the members of CPM do not increase the number of pistols in the community. The appellants already have sporting shooter licences for H category. Another factor is that all of these intended activities are conducted in remote and relatively sparsely populated areas of the Northern Territory, not in a high-density area.
97. The Territory’s environment is an old and fragile one and the eradication of introduced species has long been held to be of benefit to the preservation and conservation of the land, given the damage and destruction caused. The Northern Territory poses unique challenges reflected only in the northern most parts of Western Australia and Queensland, with rugged, remote and largely inaccessible country. Our wildlife is dangerous, with crocodiles and wild pigs – circumstances not contemplated on a national uniform agenda.
98. After consideration of all these factors, we are of the view that should the Appellants have satisfactorily provided the evidence for both a genuine reason, and a genuine need for a Category H permit or licence, then it would not be

⁴⁷ Wheeler, Chris, “The Public Interest - We know it’s important, but do we know what it means” AIAL Forum, No. 48. Australian Institute of Administrative Law, April 2006

⁴⁸ Statutory Declaration, Drew Slape 24 August 2020

contrary to the public interest to grant that permit or licence in each of their particular circumstances and intended use.

CONCLUSIONS AND DECISION

99. *The Act* requires that each application be carefully considered upon its own merits and with the evidence provided. It is clear that some of the initial applications by the Appellants did not provide thorough evidence as to the genuine reason and genuine need for the licence or permit, or in fact were seeking the grant for an impermissible reason. Historically this may have been sufficient, but the Commissioner is entitled to and indeed must consider each application anew. Whilst this decision may provide guidance as to the kinds of considerations and factors weighed in applications for a business and employment Category H licence or permit, the responsibility lies with any decision maker to consider each application individually and apply the relevant requirements.
100. It is the Tribunal's decision, after consideration of the evidence that the following orders should be made:

BATCO FARMING PTY LTD– BRUCE CONNOLLY:

101. The appeal is allowed. Within seven days of the making of the order the Respondent is to vary the corporate licence issued to the Appellant in order to permit the Appellant to possess and use category H firearms.

BEN EARLE, TRADING AS NT FERAL ANIMAL CONTROL

102. The appeal is allowed. Within seven days of the making of the order the Respondent is to vary the corporate licence issued to the Appellant in order to permit the Appellant to possess and use category H firearms.

RANID MAY, JOHN BELLMAN AND DAVID GOSPER

103. The appeal is allowed. We will hear the parties further as to the specified reasons, restrictions and time period of any permit.

104. We will hear the parties as to costs.

Dated this 3rd day of December 2020.

COMMANDER JAMES O'BRIEN

MR TONY ORR

CHIEF JUDGE ELIZABETH MORRIS