

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Gehrke v Queensland Police Service – Weapons Licensing* [2020] QCAT 256

PARTIES: **DESMOND WILLIAM GEHRKE**  
(applicant)

v

**QUEENSLAND POLICE SERVICE – WEAPONS LICENSING**  
(respondent)

APPLICATION NO/S: GAR324-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 30 June 2020

HEARING DATE: 25 June 2020

HEARD AT: Brisbane

DECISION OF: Member Cranwell

ORDERS: **The decision made by the Queensland Police Service – Weapons Licensing on 19 June 2020, to revoke Desmond Williams Gehrke’s firearms licence, is confirmed.**

CATCHWORDS: FIRE, EXPLOSIVES AND FIREARMS – FIREARMS – LICENSING AND REGISTRATION – APPLICATION FOR LICENCE OR PERMIT – OTHER MATTERS – where applicant breached licence conditions – whether applicant’s firearms licence should be revoked

*Weapons Act 1990 (Qld), s 3, s 29, s 60*  
*Weapons Regulation 2016 (Qld), s 93, s 94*

APPEARANCES &  
REPRESENTATION:

Applicant: Self-represented

Respondent: Sergeant D Ayscough

## REASONS FOR DECISION

- [1] Mr Gehrke’s firearms licence was revoked on 19 June 2019. He has sought to have that decision reviewed by the Tribunal.

### Legislative framework

- [2] Section 29 of the *Weapons Act* 1990 (Qld) ('the Act') gives an authorised officer the power to revoke a firearms licence. It relevantly provides:

(1) An authorised officer may, by a revocation notice given to a licensee, revoke the licensee's licence if the authorised officer is satisfied of any of the following things—

- (a) the licence has been obtained through fraud or deception;
- (b) the licensee has been convicted of an offence against any law in force in Queensland or elsewhere involving the use, carriage, discharge or possession of a weapon;
- (c) the licensee has contravened a condition, participation condition or special condition of the licence;
- (d) the licensee is no longer a fit and proper person to hold a licence;

...

(2) Also, if a licensee reports or states to a police officer that a weapon or 1 or more weapons of which the licensee is the registered owner were lost or stolen, an authorised officer may, by a revocation notice given to the licensee, revoke the licensee's licence if—

- (a) the licensee fails to satisfy the authorised officer that the licensee took reasonable precautions to prevent the loss or theft; or
- (b) the authorised officer reasonably believes that the licensee has unlawfully disposed of the weapon.

- [3] Section 60(1) of the Act imposes the following condition on a firearms licence:

A licensee who has control of a weapon at a place must keep the weapon in secure storage facilities at the place when a person is not in physical possession of the weapon.

Maximum penalty—100 penalty units or 2 years imprisonment.

- [4] This condition is further particularised in the *Weapons Regulation* 2016 (Qld) ('the Regulations'):

#### **93 Firearms to be kept unloaded other than when being used to shoot**

(1) A person who has a firearm under the person's control (whether or not another person has custody of it) must ensure the firearm is unloaded, other than when it is being used to shoot.

...

Maximum penalty—10 penalty units.

...

#### **94 Storage of particular weapons not in person's physical possession—secure storage facilities**

...

(2) A person who possesses a weapon must, when the weapon is not in the person's physical possession, store it unloaded in a locked container

complying with subsections (5) and (6), with the weapon's bolt removed or its action broken.

...

(5) For subsection (2), the container must—

...

(b) for any other weapon—

(i) be a rigid structure made of solid steel or solid timber; and

(ii) if the container weighs less than 150kg—be securely fixed to the frame or floor of a permanent building.

(6) Also for subsection (2), the container must also—

(a) have a sturdy combination lock, keyed lock or keyed padlock; and

(b) always be locked (other than for the time necessary to insert or remove a weapon, or something else, for a proper purpose).

### **History**

- [5] Mr Gehrke has held a firearms licence since 15 February 1992.
- [6] According to the Queensland Police Service ('QPS'), he has lost or had stolen 22 firearms in his possession during the period he has had his licence. I note that Mr Gehrke disputed this figure at the hearing, and stated that he had had only eight or nine firearms stolen. He told the Tribunal that the firearms had been stolen by family members living with him, who broke into his safe when he was at church or on holidays.
- [7] On 1 May 2019, the QPS attended Mr Gehrke's property. They found a rifle registered to Mr Gehrke under a cushion in a caravan. The firearm was loaded. The QPS brief records the following:
- The defendant stated that he had hidden a firearm in there, so he could use it more easily to shoot wild dogs who were hunting his sheep. The defendant also stated that the .270 round found inside the weapon was his last remaining round.
- The defendant argued that he had done nothing wrong and stated that he should be able to store his weapons anyway [sic] that he sees fit.
- [8] At the hearing, Mr Gehrke stated that he did not know whether he had made the last statement relating to being able to store his weapons any way that he sees fit. He stated that this is not his attitude, as he is aware that he cannot afford to make a mistake.
- [9] Mr Gehrke pleaded guilty to offences relating to this incident, including an offence under s 60(1) of the Act. He was ordered to pay a recognisance of \$500 and had a good behaviour period of 12 months imposed on him. No conviction was recorded.
- [10] Mr Gehrke told the Tribunal that he needs a firearms licence so that he can control wild dogs on his property. His son now lives on the property with him and has a new firearms safe, although Mr Gehrke does not know how to get into it.

### **Consideration**

- [11] Through his guilty plea, Mr Gehrke admitted to a contravention of a condition of his firearms licence for the purposes of s 29(1)(c) of the Act. This gives an authorised officer, or the Tribunal standing in their place, a discretion to cancel Mr Gehrke's firearms licence.
- [12] For completeness, having found a ground for revocation exists under s 29(1)(c), I note that it is unnecessary for me to consider the alternate ground contained in s 29(2) of the Act.

#### *Exercise of discretion*

- [13] Given the absence of a denial by Mr Gehrke, I accept that Mr Gehrke told the QPS that he should be able to store his weapons any way he sees fit. It was apparent from Mr Gehrke's evidence that he recognised that maintaining that attitude before the Tribunal was problematic for the purposes of these proceedings. It is clear to me that Mr Gehrke had stored his rifle in the caravan for the purposes of convenience, and that this was a deliberate decision rather than an act of inadvertence.
- [14] I also accept that Mr Gehrke has had 22 firearms lost or stolen. While Mr Gehrke admitted to having eight or nine firearms stolen, I am satisfied that the QPS records before me prove that the number was considerably higher. It has not been necessary for me to consider whether Mr Gehrke took reasonable precautions to prevent each individual loss or theft, and I do not have sufficient evidence before me to undertake that exercise in respect of all 22 firearms in any event. However, there comes a point where the sheer number of firearms lost or stolen is capable of giving rise to an inference that Mr Gehrke has been at the very least careless in the storage of his firearms. I draw that inference in this case.
- [15] While Mr Gehrke's son has installed a new firearms safe at his property, Mr Gehrke's evidence was that he does not know how to operate that safe.
- [16] I accept that Mr Gehrke will suffer some inconvenience in not having a firearms licence, in that it will be more difficult for him to control wild dogs on his property. However, the principles of the Act include a statement in s 3(1)(b) that "public and individual safety is improved by imposing strict controls on the possession of weapons and requiring the safe and secure storage and carriage of weapons". It is trite to state that a firearm stored under a cushion gives rise to a risk to public safety, as does every firearm which is stolen. Mr Gehrke's history regarding the storage of firearms, and the risk that this gives rise to, strongly outweighs any inconvenience to him. I will exercise the discretion to revoke Mr Gehrke's firearms licence.
- [17] The decision under review is affirmed.