

CITATION: *CAT v Queensland Police Service* [2017] QCAT 43

PARTIES: CAT (Applicant/Appellant)
v
Queensland Police Service
(Respondent)

APPLICATION NUMBER: APL302-15

MATTER TYPE: Appeals

HEARING DATE: 21 March 2016

HEARD AT: Brisbane

DECISION OF: **Senior Member Brown**
Member J Allen

DELIVERED ON: 11 April 2017

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The appeal is allowed.**
- 2. The decision of the Tribunal dated 12 June 2015 is set aside.**
- 3. The matter is remitted to the Tribunal for reconsideration according to law and in accordance with these reasons.**
- 4. Publication is prohibited of evidence given before the Tribunal in this proceeding and in GAR205-14 which may identify the Applicant's spouse.**
- 5. These reasons, and any reasons in GAR205-14, including any further reasons, may be published only in a de-identified format.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW

FIRE, EXPLOSIVES AND FIREARMS – FIREARMS – LICENSES AND RELATED MATTERS – where licensee failed to hold weapons in secure storage – where licensee gave undertaking not to possess or acquire

weapons in context of an application for a temporary protection order – where licensee assisted unlicensed persons to use his weapons – whether licensee is a fit and proper person to hold a weapons license

Australian Broadcasting Tribunal v Bond v Bond (1990) 94 ALR 11
CAT v Queensland Police Service, Weapons Licensing Branch [2015] QCAT 264
Hughes and Vale Pty Ltd v NSW (No 2) (Transport Case) (1955) 93 CLR 127
Magary v Queensland Police Service Weapons Licensing Branch [2012] QCAT 378
Smith v Commissioner of Police NSW and Ors [2014] NSWCATAD 184
Stower v Smart [2007] QDC 004.

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 142(1), s 142(3)(b) s 147(1), s 147(2), s 147(3)
Weapons Act 1990 (Qld) s 3(1)(a), a 3(1)(b), s 3(2), s 10(2)(b), s 10(2)(c), s 10(2)(e), s 10B(1), s 10B(2)(a)(ii), s 10B(2)(b), s 24(2)(b)(i), s 29(1)(d), s 49A(1), s 50(1), s 50A(1), s 52(1), s 53(2), s 53, s 142(1), s 142(3)(b), s 155(1)(a), Schedule 2

APPLICANT: Mr M. White of Counsel instructed by Butler McDermott Lawyers

RESPONDENT: Mr M. Nicolson of Counsel instructed by the Public Safety Business Agency

REASONS FOR DECISION

What is this appeal about?

[1] CAT was the holder of a weapons licence which was revoked by the Queensland Police Service (QPS) on 22 May 2014. CAT applied to the Tribunal to review that decision. The Tribunal confirmed the original decision. CAT has appealed the Tribunal's decision.

The statutory framework – the *Weapons Act 1990* (Qld) (“the WA”)

[2] The object of the WA is to prevent the misuse of weapons.¹ Two principles underlay the WA. The first is that weapon possession and use are

¹ WA, s 3(2).

subordinate to the need to ensure public and individual safety.² The second is 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.³

- [3] A weapons licence may only be issued to an individual if the person is, among other things, a fit and proper person to hold a licence.⁴ In deciding or considering whether a person is fit and proper, an authorised officer (that is, a decision maker) must consider, among other things, a number of matters including whether a domestic violence order has been made against the person, the mental and physical fitness of the person, and the public interest.⁵
- [4] A person is not fit and proper to hold a weapons licence if the person has been convicted of an offence involving the use or threatened use of violence⁶ or a domestic violence order has been made against the person.⁷
- [5] The term “fit and proper person” is not defined in the WA.
- [6] An authorised officer may, by revocation notice, revoke a weapons licence if, among other things, the authorised officer is satisfied that the applicant is no longer a fit and proper person to hold a licence.⁸

The appeal framework

- [7] An appeal on a question of law is as of right.⁹ An appeal on a question of fact or mixed law and fact may only be made with the leave of the Appeal Tribunal.¹⁰
- [8] The relevant principles to be applied in determining whether to grant leave to appeal include: Is there a reasonably arguable case of error in the primary decision;¹¹ Is there a reasonable prospect that the applicant will obtain substantive relief;¹² Is leave necessary to correct a substantial injustice to the applicant caused by some error;¹³ Is there a question of general importance upon which further argument, and a decision of the appellate court or tribunal, would be to the public advantage.¹⁴

² WA s 3(1)(a).

³ Ibid s 3(1)(b).

⁴ Ibid s 10(2)(e).

⁵ Ibid s 10B(1).

⁶ Ibid s 10B(2)(a)(ii).

⁷ Ibid s 10B(2)(b).

⁸ Ibid s 29(1)(d).

⁹ *Queensland Civil and Administrative Act 2009* (Qld) (“QCAT Act”), s 142(1).

¹⁰ Ibid, s 142(3)(b).

¹¹ *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

¹² *Cachia v Grech* [2009] NSWCA 232 at [13].

¹³ *Slater v Wilkes* [2012] QCATA 12 at [6], citing *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41; *Drew v Bundaberg Regional Council* [2011] QCA 359 at [19].

¹⁴ *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388 at 389; *Mclver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1988] 2 Qd R 577 at 578, 580.

- [9] If an appeal is against a decision on a question of fact only or a question of mixed law and fact the appeal must be decided by way of rehearing with or without the hearing of additional evidence as decided by the Appeal Tribunal.¹⁵ In deciding the appeal, the Appeal Tribunal may confirm or amend the decision or set aside the decision and substitute its own decision.¹⁶
- [10] An appeal on a question of law is not a rehearing. Unless the determination of the question of law is capable of determining the matter as a whole in the applicant's favour, the proceeding must be sent back to the Tribunal or the relevant decision maker for reconsideration.¹⁷

Findings by the learned member

- [11] The learned member below made a number of findings relevant to the present appeal:
- a) CAT failed to hold some of his weapons in secure storage;¹⁸
 - b) CAT's conduct in failing to hold weapons in secure storage gave rise to proper grounds for revocation of his weapons licence;¹⁹
 - c) A person who does not abide by the conditions of a weapons licence is not a fit and proper person to hold a licence as they have breached the trust imposed upon them to abide by the conditions of their licence;²⁰
 - d) The fact that CAT, in the context of an application for a temporary protection order, provided an undertaking not to possess or acquire any weapon or weapons licence was relevant to whether CAT was a fit and proper person to hold a weapons licence;²¹
 - e) The undertaking provided by CAT was cast in the nature of a domestic violence order;²²
 - f) It would not be appropriate for a person who provided an undertaking such as that given by CAT to continue to possess a weapons licence;²³
 - g) In providing the undertaking, the Tribunal was prevented from looking behind the undertaking to understand whether CAT had engaged in any acts of domestic violence;²⁴

¹⁵ QCAT Act, s 147(1) and (2).

¹⁶ Ibid s 147(3).

¹⁷ *Ericson v Queensland Building and Construction Commission* [2014] QCA 297 at [3], [10], [13] and [16].

¹⁸ *CAT v Queensland Police Service, Weapons Licensing Branch* [2015] QCAT 264 [7] ("Reasons").

¹⁹ Ibid.

²⁰ Ibid [9].

²¹ Ibid [15].

²² Ibid [20].

²³ Ibid.

²⁴ Ibid [21].

- h) CAT consented to the revocation of his weapons licence in the event of a finding that he was a fit and proper person to hold a licence;²⁵
- i) The presence of one unlicensed weapon in CAT's premises could properly give rise to grounds for the revocation of his licence;²⁶
- j) The passage of time between the occurrence of the weapons offences and the hearing of the review application was insufficient to satisfy the Tribunal that CAT had sufficiently matured²⁷ and possessed the traits necessary for a person to be considered of good character in relation to weapons licensing;²⁸
- k) The relevant test for a "fit and proper person" to hold a weapons licence requires the Tribunal to consider whether a person understands the nature of his obligations as a licensee under the WA;²⁹
- l) The behaviour of CAT in assisting unlicensed persons to use his weapons whilst on camping trips was at best naïve and at worst reckless; that the weapons licensing regime ensures that only licensed persons are able to use registered weapons for specific purposes; and that CAT's behaviour suggested he did not have the mature understanding of his responsibilities under the WA necessary for a finding that he was a fit and proper person to hold a licence.³⁰

Consideration and discussion

[12] We will consider each of the grounds of appeal, referring to the submissions by the parties and the relevant legislative and legal framework. CAT has withdrawn grounds 7 and 10 of the grounds of appeal.

[13] The appeal by CAT raises questions of law, questions of fact and questions of mixed law and fact.

[14] The distinction between these different grounds of appeal can be subtle. A useful summary of those differences can be found in *Canada (Director of Investigation and Research) v Southam Inc.*³¹

Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests.

[15] If we are satisfied there is an error of law, unless the determination of the question of law is capable of disposing of the matter as a whole in the

²⁵ Reasons [23].

²⁶ Ibid [28].

²⁷ Ibid [29].

²⁸ Ibid [35].

²⁹ Ibid [34].

³⁰ Ibid [36] – [38].

³¹ [1997] 1 SCR 748, [35].

applicant's favour, the proceeding must be sent back to the Tribunal for reconsideration.³²

Grounds 1, 2, 4 and 12

- [16] These grounds may be conveniently grouped together. CAT says that the learned Member failed to apply the correct test as established in *Stower v Smart*³³ in determining whether he is a fit and proper person to hold a weapons licence. CAT says that the learned Member also failed to give consideration to the decision of the Tribunal in *Magarry v Queensland Police Service Weapons Licensing Branch*.³⁴
- [17] CAT says that the correct approach to determine whether a person is fit and proper for the purposes of s 29 of the WA, and in accordance with *Stower* and *Magarry*, is:
- a) A consideration is required of the object of the WA found in s 3(2), "to prevent the misuse of weapons";
 - b) the proper exercise of discretion requires an evaluation of the evidence of the applicant's character;
 - c) The proper exercise of discretion would then lead to a consideration of the following questions:-
 - i) Whether, in the circumstances, there is any real prospect of the applicant misusing weapons so that his licence should be revoked;
 - ii) Whether the applicant's right to possess firearms is a real risk to public and individual safety.
- [18] The learned member, says CAT, failed to adopt the correct approach and in particular failed to address the considerations identified at (c) above. CAT refers to the reasons at paragraphs [32] to [38] and says that proper consideration was not given to the evidence as to his character and that, in particular, at [32] of the reasons the learned Member misapplied the relevant test. CAT specifically refers to eleven (11) character references which he says were not taken into consideration.
- [19] CAT says that the learned Member failed to give appropriate consideration to the circumstances which contributed to his offending being the death of his close friend, RI.
- [20] CAT says that if the learned Member had adopted the (correct) approach in *Stower* and *Magarry*, she would have come to a different conclusion as to CAT's suitability to hold a weapons licence.
- [21] The QPS says that the approach in *Magarry* is expressed thus:

³² *Ericson v Queensland Building and Construction Commission* [2014] QCA 297 at [3], [10], [13] and [16].

³³ [2007] QDC 004.

³⁴ [2012] QCAT 378.

The principle underlying the *Weapons Act 1990* is that weapons possession and use are subordinate to the need to ensure public individual safety and the object of the Act is to prevent the misuse of weapons.³⁵

- [22] There is nothing to suggest, says the QPS, that the Tribunal's discretion was exercised in such a way that it was unjust to CAT. The law requires that the discretion be exercised in a way that promotes the object and principles of the WA.³⁶
- [23] The QPS says that *Stower* and *Magarry* were the subject of address in the hearing below by both CAT³⁷ and the QPS.³⁸
- [24] The QPS submits that the Tribunal correctly applied the WA and that s 10B sets out clearly the mandatory considerations in determining whether a person is fit and proper. An assessment of whether a person is fit and proper is different from, but related to, an assessment of whether a person is of good character. These considerations are determined individually, on their merits, on a case by case basis.
- [25] The QPS says that the facts in *Stower* and *Magarry* must be distinguished from CAT's circumstances and that proper regard to CAT's character was given appropriate weight by the learned member.³⁹ The QPS says that the test applied by the learned Member was whether CAT was a fit and proper person to hold a weapons licence not whether he was of good character.⁴⁰ The QPS says that the learned Member's finding as to whether CAT was fit and proper was clear.
- [26] The relevant principles in *Stower* were succinctly stated in *Magarry*:⁴¹
- a) It is of extreme importance to bear in mind the object of the Act which is stated in s 3(2) to be "to prevent the misuse of weapons".
 - b) The proper exercise of discretion would require the decision maker to evaluate the evidence of the character of the applicant.
 - c) The proper exercise of discretion would then lead to the questions "in these circumstances is there any real prospect of the applicant misusing his weapons so that his licence should be suspended? Is his right to possess firearms a real risk to public and individual safety?"
- [27] The importance of the exercise of the relevant discretion is expressed in *Stower* thus:

...The discretion given by s 28 to the learned Magistrate can hardly be wholly dependent on satisfaction that *Stower* had been charged with an offence falling under s 28(1)(a)(i)(B). A decision based only on that would

³⁵ [2012] QCAT 378, 7 [25].

³⁶ *Ibid.*

³⁷ Transcript of 19 February 2015, 1-123; 1-124.

³⁸ T1-128.

³⁹ Reasons [32]-[34].

⁴⁰ T1-58 L-11-19.

⁴¹ [2013] QCATA 147.

not be a discretionary decision but a simple finding of fact. Moreover a finding of fact which is almost certainly uncontested and uncontestable.⁴²

- [28] In *Stower*, the applicant became involved in a fracas with another member of an historical society. Mr Stower pushed and shoved the other member (the assault in respect of which Mr Stower was charged) following which Mr Stower immediately apologised. Skoein DCJ found that the discretion of the Magistrate miscarried in finding that Mr Stower was not a fit and proper person to hold a weapons licence. Skoein DCJ found that the Magistrate had failed to consider the circumstances of Mr Stower's offending and the unchallenged evidence of Mr Stower's good character and of his responsible behaviour with firearms and compliance with the provisions of the WA.
- [29] In *Magarry* the applicant illegally imported weapons for the purposes of constructing plaques. In finding that Mr Magarry was a fit and proper person, the Tribunal referred to a range of relevant factors and evidence, including the sentencing remarks relating to Mr Magarry's relevant offending, medical evidence and character references provided on Mr Magarry's behalf.⁴³ In finding that "special circumstances" pertained, the Tribunal did not consider that:
- ...a finding that Mr Magarry is fit and proper to hold a license in circumstances where he has engaged in wrongful behaviour in any way sets a precedent for lowering the standard of behaviour that the public should expect of license holders. This is a case of special circumstances and should not be regarded as a precedent.⁴⁴
- [30] *Smith v Commissioner of Police NSW and Ors*⁴⁵ considered the meaning of "fit and proper" and the concept of "public interest". It was held that the assessment of whether a person is *fit and proper* to be the holder of a licence is different from the assessment of whether the person is of *good character*.
- [31] The question whether a person is a fit and proper person is one of value judgment.⁴⁶ A person's fitness is to be gauged in the light of the nature and purpose of the activities that person will undertake.⁴⁷ In *Smith* it was held that the concept of public interest is an inherently broad one giving the Commissioner of Police the ability to have regard to a wide range of factors in choosing whether to exercise the discretion adversely to the applicant. An applicant's personal interest in retaining a licence cannot outweigh the public interest in having full confidence in the regulation of the WA.⁴⁸

⁴² [2007] QDC 004, 3 [12].

⁴³ [2012] QCAT 378, 9-10 [41] to [44].

⁴⁴ *Ibid* 12 [56].

⁴⁵ [2014] NSWCATAD 184.

⁴⁶ *Australian Broadcasting Tribunal v Bond* (1990) 94 ALR 11 at 62.

⁴⁷ *Hughes and Vale Pty Ltd v NSW (No 2) (Transport Case)* (1955) 93 CLR 127.

⁴⁸ *Op cit* 46.

[32] In *Australian Broadcasting Tribunal v Bond*⁴⁹ Mason CJ held that while the seriousness or otherwise of conduct is a matter for consideration, so is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration. The character and reputation of an applicant are also relevant considerations.⁵⁰

[33] The learned Member found:

When someone obtains a licence, and then does not abide by the conditions attached to that licence, the authorised officer in charge of weapons licencing can, and should, revoke that licence. A person who does not abide by the conditions of a weapons licence is not, in the context of the Act, 'a fit and proper person' to hold a licence. They have breached the trust imposed upon them to abide by the conditions of their licence.⁵¹

[34] The learned Member erred in finding as she did. The finding was predicated on there having occurred a deeming event giving rise to an automatic revocation. It is only where a person is convicted of an offence involving the use, carriage or possession of a weapon that they are deemed not to be fit and proper in accordance with s 10B(2)(a)(iii) of the WA. In any other circumstance, a decision to revoke requires the exercise of a discretion.

[35] The learned member found:⁵²

[32] It is the Tribunal's view that CAT has misunderstood the fit and proper person test that is applicable to weapons licensing. There has been significant attention given in his affidavit material, and at hearing, of CAT's general character, Christian values, self-reported desire to prevent his former wife from enduring any discomfort in Court, service to the community and other sundry good deeds.

[33] CAT may well be these things, but that is not the test applicable here. The test is whether CAT is fit and proper **to hold a weapon's licence**. Conceivably, one can be a regular church-attending volunteer who cares for their family and community, and still **not be** a fit and proper for these purposes.

[34] Resolution of the question as to whether CAT is fit and proper requires that the Tribunal consider whether he understands the nature of his obligations as a licensee under the Act.

[36] The statement by the learned Member at reasons [33] is not, with respect, an articulation of the relevant test. It is a re-statement of the statutory requirement found at s 10(2)(e) of the WA. Similarly, the learned Member's finding at reasons [34] conflates two quite separate considerations required by the WA. Firstly, an applicant must, among other things, have an adequate knowledge of safety practices for the use, storage and maintenance of the weapon or category of weapon⁵³ and

⁴⁹ (1990) 94 ALR 11.

⁵⁰ (1990) 94 ALR 11 at 65, per Gaudron and Toohey JJ.

⁵¹ Reasons [9].

⁵² Ibid [32]-[34].

⁵³ WA, s 10(2)(b).

access to secure storage facilities for the weapon.⁵⁴ These are the obligations as a licensee to which the learned Member appears to have been referring. Secondly, an applicant must be a fit and proper person.⁵⁵ Satisfaction of the first consideration may assist in informing a decision about the second consideration, but it will not be conclusive. Whether a person is fit and proper requires a much wider enquiry as to, among other things, the character of the applicant, the insight the applicant displays into the behaviour giving rise to the revocation or suspension and the conduct of the applicant subsequent to the events giving rise to the consideration of the applicant's entitlement to hold a licence.

- [37] It is clear from the learned Member's reasons that she did not consider that evidence of CAT's character was a relevant consideration in determining whether he was a fit and proper person to hold a weapons licence.
- [38] The circumstances in which CAT obtained weapons from his friend, RI, was the subject of evidence at the hearing.⁵⁶ In the proceedings below, CAT admitted that he had obtained several guns from an unnamed source only a week before the police raid on his house.⁵⁷
- [39] The reasons refer to the death of RI and deal briefly with the circumstances in which CAT came into possession of RI's weapons.⁵⁸
- [40] The circumstances surrounding how CAT came into possession of unregistered and unlawful weapons was a relevant consideration in the exercise of the discretion as to whether CAT is a fit and proper person to hold a weapons licence. Other than the brief reference to RI's decision to gift his unregistered weapons collection to CAT, the learned Member's reasons make no reference to the circumstances in which CAT came to be in possession of the collection or of his remorse at his actions in not having the weapons registered. The absence of any such reference leads us to conclude that the learned Member did not take these circumstances into consideration and to this extent, there was a failure to properly consider all of the relevant circumstances in the exercise of the discretion by the learned Member.
- [41] The appropriate exercise of the discretion by the learned Member required her to undertake an evaluation of the evidence as to CAT's character and the circumstances in which he came to be in possession of unregistered weapons. This the learned member failed to do, only taking into consideration the seriousness of CAT's conduct and not considering the weight, if any, to be given to evidence that might be said to favour CAT.
- [42] The proper exercise of the discretion in s 10B(1) of the WA requires consideration of the matters identified in *Stower* and *Magarry* having

⁵⁴ Ibid, s 10(2)(c).

⁵⁵ Ibid, s 10(2)(e).

⁵⁶ T1-29,1-30,1-31, 1-41, 1-42, 1-43, 1-58, 1-60, 1-61,1-64, 1-69, 1-70, 1-71. 1-91.

⁵⁷ T1-36.

⁵⁸ Reasons [30].

regard to the objects of the WA. The learned Member was required to consider:

- a) the conduct of CAT giving rise to the decision to remove his licence; and
- b) the evidence relevant to CAT's character including his general character, his insight into the behaviour giving rise to the licence removal, his understanding of the WA and his obligations under the Act.

The learned Member was required to exercise her discretion and make a finding as to whether CAT was a fit and proper person in the context of the relevant considerations, the findings on the evidence and in accordance with the object of the Act.

- [43] It is an error of law to fail to identify the relevant legal test or apply the correct test.⁵⁹ It is an error of law to fail to consider a relevant factor in arriving at a decision.⁶⁰ Where there is an exercise of a discretion, it is an error of law if the decision maker fails to take into account some material consideration.⁶¹
- [44] In failing to consider the evidence as to CAT's character, the learned Member erred in failing to take into consideration all of the matters necessary for the proper exercise of the discretion in deciding whether CAT was a fit and proper person to hold a weapons licence.

Ground 3

- [45] CAT says that the learned Member failed to give consideration to the fact that the Magistrate in the criminal proceedings did not make an order to revoke CAT's licence as he could have done under s 155 of the WA.⁶²
- [46] During the hearing below, CAT submitted it was relevant that the Magistrate could have revoked CAT's weapons licence and that the Magistrate did not do so instead ordering that the unregistered firearms could be returned to CAT on the basis that he execute permits to acquire.
- [47] The QPS says that the fact that a declaration to revoke CAT's licence was not made by the Magistrate is not a relevant consideration in determining whether CAT is a fit and proper person to hold a weapons licence. The QPS says that the Magistrate was not compelled to exercise the discretion and that the power of the respondent under s 29 of the WA is not excluded in circumstances where a Magistrate does not exercise the power under s 155.
- [48] Section 155 of the WA provides that where a person is convicted of an offence the court may declare any licence, permit to acquire or approval

⁵⁹ *Federal Commission of Taxation v Trail Brothers Steel & Plastics Pty Ltd* (2010) 186 FCR 410.

⁶⁰ *Kuswardana v Minister for Immigration & Ethnic Affairs* (1981) 35 ALR 186.

⁶¹ *Perry v Comcare* [2006] FCA 33 at [39] per Greenwood J.

⁶² T1-125.

held by the person convicted to be revoked.⁶³ The transcript of the hearing in the Magistrates Court was not before the Tribunal below. There was nothing before the Tribunal below indicating or explaining why the Magistrate made no order under s 155 or indeed whether the possibility of such an order was raised.

- [49] In the circumstances, the absence of an order by the Magistrate pursuant to s 155(1) of the WA was not a relevant consideration in determining whether CAT is a fit and proper person.
- [50] There is no demonstrated error by the learned Member. This ground of appeal is not made out.

Grounds 5, 6, and 8

- [51] Relevant to these grounds of appeal are domestic violence proceedings initiated by CE following the police raid on 18 November 2013 which led to CAT being charged with weapons offences (“the DV proceedings”). The DV proceedings did not progress to a hearing and an undertaking was entered into by CAT on 6 May 2014.
- [52] CAT refers to the heading preceding paragraphs [10] to [22] of the reasons, “CAT is subject to a Domestic Violence Order” and says that while he was subject to a Temporary Protection Order from 18 November 2013 to 4 May 2014, at no stage was CAT subject to a Domestic Violence order. CAT’s former wife made an application for a domestic violence order which was withdrawn on the basis that CAT enter into a private undertaking.
- [53] CAT says that whilst it is accepted that headings do not ordinarily form substantive findings of a decision, the reference is erroneous and indicates a failure by the learned Member to properly consider the matter.
- [54] The QPS says that the Tribunal accepted that there was no finding of a domestic violence order having been made against CAT and that while the heading in the reasons may have indicated a finding that CAT was subject to a domestic violence order, no such finding was made.
- [55] The learned Member did not make a finding that CAT was the subject of a domestic violence order. Whilst the wording used by the learned Member was unfortunate we do not accept that the heading of itself indicates any failure by the learned Member to properly consider the facts.
- [56] This ground of appeal is not made out.
- [57] CAT says that the learned Member incorrectly found that he failed to comply with s 24 of the WA by not advising police of his entry into the undertaking.⁶⁴ CAT says that his entering into the undertaking was not one of the events referred to in s 24(2) of the WA.

⁶³ WA, s 155(1)(a).

⁶⁴ Reasons [13]-[14].

- [58] The QPS says that once CAT entered into the undertaking not to acquire or possess a weapon or weapon's licence, a change in the reason or need for possessing or using a weapon occurred as contemplated by s 24(2)(b)(i) of the WA. This, says the QPS, enlivened CAT's obligation to notify the QPS of the change within 14 days.
- [59] Section 24 of the WA provides that it is a condition of a licence that a licensee must notify the officer in charge within fourteen (14) days of the happening of one of a number of specified events set out in s 24(2) including a change in the licensee's reason or need for possessing or using a weapon.⁶⁵
- [60] The learned Member found that CAT was required to disclose the fact of the entry into the undertaking and that CAT had made such disclosure though not within the period required.⁶⁶
- [61] While it is arguable whether or not the fact of the undertaking was an event for the purposes of s 24(2) of the WA, the learned Member was satisfied that CAT had notified the QPS of the fact of the undertaking. It is tolerably clear from the reasons that any delay by CAT in giving notice was not a determinative factor in the learned Member finding that CAT was not a fit and proper person.
- [62] This ground of appeal is not made out.
- [63] CAT says that the learned Member gave inappropriate weight to the legal effect of the undertaking and incorrectly considered that the terms of the undertaking affected his rights under the WA.
- [64] The learned Member described the undertaking as being cast in the nature of a domestic violence order.⁶⁷ CAT says that the undertaking and its effect is not relevant to the assessment of whether CAT is a fit and proper person.
- [65] In particular, says CAT, the learned member erred in finding that:
- [t]he undertaking expires on 31 December 2015. It is beyond dispute that CAT is not a fit and proper person to possess a weapon's licence at least until expiry of this period, and quite possibly longer.⁶⁸
- [66] CAT says that the undertaking was a private agreement between he and his wife and is not prima facie evidence that he is not a fit and proper person to hold a weapons licence.
- [67] The QPS says that holding a weapons licence is a privilege, is not something that the licensee can privately bargain away to suit his personal circumstances and that such an arrangement is contrary to the objects of the WA.

⁶⁵ WA, s 24(2)(b)(i).

⁶⁶ Reasons [13]-[14].

⁶⁷ Ibid [22].

⁶⁸ Ibid.

- [68] A domestic violence order is defined in the WA as a domestic violence order under the *Domestic and Family Violence Protection Act 2012* (Qld).⁶⁹ It is not controversial between the parties that no such order was made. The learned Member quite correctly found that the existence of the undertaking was a factor to be considered in the review proceeding.⁷⁰ However, the learned Member went further, finding that by entering into the undertaking, CAT was not an appropriate person to hold a weapons licence. In so doing, the learned Member impermissibly treated the undertaking as a disqualifying event by virtue of which CAT was not a fit and proper person to hold a licence. As we have observed the only events by reason of which a person is not fit and proper are to be found at s 10B(2), (2A), (3) and (4) of the WA. The undertaking entered into by CAT could not be characterised as falling within any of these provisions.
- [69] Accordingly we find that the learned Member erred in finding that CAT was not a fit and proper person as a consequence of his entering into the undertaking.

Ground 9

- [70] CAT says that the learned Member erred in finding that he was naïve and/or reckless in acting as a supervisor for unlicensed persons to use firearms.
- [71] The learned Member found:
- [36] ... During the course of the hearing, CAT admitted that he had frequently been on camping trips with friends, at which junctures he would assist other unlicensed persons in the shooting of weapons, for recreational purposes. In other words, persons who wished to shoot various weapons, but who did not possess the requisite licences, would do so with CAT watching vigil over them. CAT explained that he thought this was permissible.
- [37] At best this is naïve, and at worst reckless. It is, or should be, readily apparent that a weapons licensing regime exist in Queensland to ensure that only licensed persons are able to use registered weapons, for the specific purpose that they are licensed for. Were it otherwise, it would be virtually impossible for the police to enforce the regime.
- [72] CAT acknowledged at the appeal hearing that he did not have a legal right to supervise the use of his weapons by unlicensed persons however he submitted that he had a genuine belief that he did have that right. CAT says that the learned Member erred in finding that CAT was naïve and/or reckless in acting as a supervisor for unlicensed persons to use firearms.
- [73] The QPS says that:
- a) CAT admitted at the hearing that his weapons and his friend's weapons, registered and unregistered, were taken on camping trips.

⁶⁹ WA, Schedule 2.

⁷⁰ Reasons [15].

While CAT denied using the unregistered firearms, he admitted to providing firearms to his friends, whether they were licensed or unlicensed. CAT thought that as long as he stood behind them while they were shooting, it was lawful. CAT states that these persons were all adults.⁷¹

- b) The WA provides for specific circumstances wherein an unlicensed person may access a firearm. The scenario permitted is for unlicensed persons (adults) being able to access firearms in a shooting range under the supervision of a range officer under s 53 of the WA.
- c) The Tribunal said that there is nothing in the WA which allows for a regime wherein an unlicensed person may have a “look, see and a try” in the manner that CAT has been doing at those camping/shooting trips.⁷²

[74] CAT gave evidence at the hearing below that his brother had been warned by two police officers while he was supervising unlicensed persons and the warning was later removed after another police officer who was a friend’s father made representations to the weapons licensing branch.⁷³

[75] Part 4 of the WA deals with the possession and use of weapons. A weapons licence authorises a licensee to possess and use a weapon or category of weapon.⁷⁴ A person must not unlawfully possess a weapon.⁷⁵ ‘Unlawful’ is defined.⁷⁶ ‘Possession’ is defined.⁷⁷ A licensee must not possess an unregistered firearm.⁷⁸ A minor who is at least 11 years of age may have physical possession and use of a specified weapon if supervised by a licensee.⁷⁹ An unlicensed person may possess and use a weapon at an approved range subject to a number of requirements including the supervision of the person by a range officer.⁸⁰

[76] Other than as outlined above, the WA contains no provision entitling an unlicensed person to have physical possession and use of a weapon whilst being supervised by a licensed person.

[77] We express no concluded view about what CAT says is a lacuna in the WA other than to observe that the absence of a provision as we have identified appears to indicate an intention by the parliament to significantly restrict the physical possession and use of weapons by unlicensed persons to those circumstances identified in Part 4 of the WA. This view is reinforced when one has consideration of the object and principles of the WA.

71 T1-69 – 1-73.

72 T1-73 – 1-74.

73 Ibid.

74 WA, s 49A(1).

75 Ibid s 50(1).

76 Ibid Schedule 2.

77 Ibid.

78 Ibid s 50A(1).

79 Ibid s 52(1) and (2).

80 Ibid s 53.

- [78] CAT gave evidence about how and why he had formed the genuinely held belief that he had not breached the WA by permitting unlicensed persons to use his weapons. This was a factor which should have been taken into account by the learned Member when determining how to characterise CAT's actions in regard to the use of weapons by unlicensed persons. The learned Member's reasons do not reveal whether she took into consideration CAT's explanation and if she did, how that consideration was relevant to the final decision.
- [79] If the learned Member did not take into consideration the explanation offered by CAT as to his genuinely held belief that he was permitted to supervise unlicensed persons using his weapons, this was an error by the learned Member. If the explanation was taken into consideration, the reasons do not adequately reveal this. Either way, there is an error of law.

Ground 11

- [80] CAT says that the learned Member erred in finding that the events relating to the revocation were so recent in time that CAT could not be considered a person of good character in relation to weapons licensing.

- [81] CAT refers to the following passage from the reasons:

[35] The Tribunal has concluded that although CAT may well have learned from this episode, the events are so recent in time, that it is not possible to say that he presently possesses the traits necessary for somebody to be considered of good character in relation to weapons licensing. CAT himself admits that he possessed, knowing that he should not have, numerous unregistered weapons.

- [82] CAT says that there had been an 18 month passage of time between his being dealt with for the offences under the WA and the Tribunal's final decision. CAT says that it is unclear on what basis the learned member found that the passage of time was insufficient for him to have matured significantly and that the finding by the learned Member is vague and incapable of being addressed properly by CAT.
- [83] The QPS says that the Tribunal did not find that CAT was a bad person or a person of general bad character and that what the learned member found was that CAT did not have the mature understanding of the responsibilities imposed on him by the WA.⁸¹

- [84] The learned Member found:

[27] CAT asserts that he has learned from the experience he had following the execution of the search warrant...

...

[29] Self-evidently, CAT remains youthful – there has not been a sufficient passage of time between the weapons offences. Let alone circumstances

⁸¹ Reasons [38].

leading to the domestic violence undertaking, such that any reasonable Tribunal could consider that CAT had matured significantly

- [85] We accept that the length of time since the relevant offending is a factor which should be taken into consideration in determining whether CAT is a fit and proper person to hold a weapons licence. A relatively short passage of time since the commission of an offence may be a relevant factor weighing for or against an applicant. The duration of that passage of time is not however determinative without more. Evidence of the steps taken by an applicant to improve their understanding of the WA and of their obligations under the Act and of their general behaviour since the offending is also relevant as is the insight an applicant has into their behaviour and their obligations under the WA. A person who demonstrates, through insight and the passage of time sufficient to demonstrate the practical application of that insight, that they have a mature understanding of their conduct and the effect of that conduct, is more likely to comply with their obligations under the WA and less likely to fail to comply with those obligations.
- [86] In our view the learned Member erred in law in failing to give adequate reasons as to why it was that the recency of events forced the conclusion that CAT did not possess the necessary traits to be considered a person of good character in relation to weapons licensing.

Conclusion

- [87] CAT has been successful on a number of the grounds of appeal. The errors found are errors of law. We order that the decision of the Tribunal dated 12 June 2015 be set aside and that the matter be remitted to the Tribunal for reconsideration according to law and in accordance with these reasons.
- [88] The matter may be reheard on the papers subject to the parties being given the opportunity to make any further submissions.
- [89] The material before the Tribunal below and in this appeal contains allegations by CAT's spouse of domestic violence which is of a highly sensitive nature. It would be contrary to the public interest for the identity of CAT's spouse to be publicly disclosed, or any other information which may identify her. It would also be contrary to the public interest for these reasons to be published other than in de-identified format.
- [90] We note that a non-publication order was not made in the proceeding below. Accordingly, we order that publication is prohibited of evidence given before the Tribunal in this proceeding and in GAR205-14 which may identify the Applicant's spouse and that these reasons, and any reasons in GAR205-14, including any further reasons, may be published only in a de-identified format.