

Our Ref:AGR:MCM:22-0099:003

14 September 2022

Shooters Union Western Australia Pty Ltd
(ACN 640 493 474)
61 Arthur Street
DALBY QLD 4405

Attention: Steve Harrison

By email: wasupport@shootersunion.com.au

ADVICE IN RESPECT OF POTENTIAL CAUSE OF ACTION IN RESPECT OF MINISTERIAL DECISION

1. We refer to your recent telephone conversations with our Martin Muk and confirm the Shooters Union Western Australia Pty Ltd (**The Union**) have sought our advice with respect to potential cause(s) of action that may have arisen against the Minister for Police and or the Western Australian Police in respect of a decision to publish a “modified de-identified” map of firearm ownership and firearm density across the Perth metropolitan area.
2. We have been provided with a number of documents as follows:
 - 2.1. several news articles of various dates published by various outlets which contain the map complained of;
 - 2.2. an email from the Police Complaints to The Union dated 29 April 2022;
 - 2.3. a redacted letter from the Minister for Police dated 29 April 2022; and
 - 2.4. a letter dated 14 July 2022 from the Corruption and Crime Commission.

Background/Facts

3. We are instructed as follows:
 - 3.1. on 22 March 2022, the West Australian published a “modified de-identified” map of all registered firearm owners in the greater Perth metropolitan area (**Map**) on their website and in that day’s newspaper;
 - 3.2. the Map was provided to the West Australian by the Western Australia Police (**WAPOL**) from its database of registered firearm owners.
 - 3.3. a number of The Union’s members have expressed concerns that the Map may identify their address and location, putting them at risk, in particular members that live in more rural areas;
 - 3.4. there have been, since the Map was published, a number of incidents which have raised safety concerns for The Union’s members, which include:

- 3.4.1. a home robbery where the owner's firearms were stolen and the owner was set on fire;
 - 3.4.2. a news article identifying two digital experts who were able to deconstruct the map to identify the personal particulars of firearm owner locations identified on the Map; and
 - 3.4.3. an isolated member who lives on the outskirts of Perth who is the only "dot" on the map within a large radius and potentially easily identifiable by unscrupulous individuals.
- 3.5. there may be additional security measures that The Union's members may need to take in order to protect themselves or expenses they will be required to incur;
- 3.6. you are not yet aware of any evidence of tangible loss that is directly attributable to the Map being published.
4. Please advise if any of the matters stated above are incorrect in any way as this may affect the advice that follows.
5. You seek our advice as to whether The Union, and or its members have any potential cause of action against WAPOL, the Minister for Police (**Minister**) or any other appropriate defendant in respect of the publication of the Map.

The Map

6. From the numerous sources and articles provided to our office, it appears that the Map was provided to the numerous media outlets by WAPOL.
7. It would appear that this decision is solely attributable to WAPOL, although there is suggestion by media outlets and the Union that this decision was made at the behest of the Minister.

Potential action

8. In our view, any potential cause(s) of action that may be available would be against either WAPOL or the Minister.
9. It is appropriate to initially examine the potential causes of action and then consider whether there is a sufficient basis upon which to pursue any such action.
10. At first glance, it appeared to us that there may be an argument in relation to breach of privacy insofar as WAPOL and/or the Minister have provided information regarding registered firearm owners to the public in a manner not reasonably expected. We have attempted to examine whether any remedies might be available to the Union or its members, based on a perceived breach, or if there are any civil remedies available for the misuse of information for that purpose.

Privacy Considerations

11. In Australia, at common law, the courts do not presently appear to recognise a general actionable right of the individual to privacy. The existence of a tort of invasion of privacy has been considered in a number of High Court of Australia cases. While there have been two lower court cases in an originating court (County Court of Victoria) which support a tort of invasion of privacy, neither of these were appealed and this issue has not been determined by an appellate court.
12. There does exist a swathe of legislation at Commonwealth and State levels which is designed to protect the privacy of personal information and data collected by government agencies. At the Commonwealth level, the *Privacy Act 1988* (Cth) governs how individuals' personal information is handled. Unfortunately, this Act generally only applies to federal government agencies and organisations and does not apply to state government departments, including WAPOL.
13. At the state level, Western Australia and South Australia are the only jurisdictions that have not enacted legislation regarding the collection, management and disclosure by state government agencies.
14. In Western Australia, some provisions relating to privacy are found in the freedom of information legislation and health related legislation. However, these provisions relate to the ability of interested parties to make application for information under "FOI principles" and do not extend to providing civil remedies or general protections to individuals who have complaints about how their personal information has been handled.

Administrative review of decision

15. The decision to publish the Map is one that is considered to be an administrative decision, as is, arguably, the decision to continue to publish the Map after being requested to remove it. The relevant decision maker in respect of WAPOL is likely to be either the Commissioner of Police (**Commissioner**) or the Minister.
16. There are, generally, two types of review applications that can be made, merits review and judicial review. As suggested by the name, merits review involves a review of the merits of the decision and can result in a different decision being made or the decision maker being told to reconsider its decision with due consideration of certain relevant information. Judicial review, on the other hand is concerned with the extent of power of a decision maker and the legality of its exercise.

Merits review

17. In Western Australia, the State Administrative Tribunal (**SAT**) is ordinarily the venue through which the merits review of administrative decisions are conducted. However, in order for a review to come within the jurisdiction of SAT, section 17 of the *State Administrative Tribunal Act 2004* (WA) states that an enabling Act must give SAT jurisdiction to review that decision.
18. Unfortunately, it does not appear that the decision to publish the Map was one which lends itself to review by the SAT pursuant to an "enabling Act".

19. The *Firearms Act 1973 (WA)* only creates jurisdiction for the SAT to review decisions relating to issuance/non-issuance of firearms licenses.
20. The role of the Commissioner is established pursuant to the *Police Act 1852 (WA) (Police Act)*, by which the Commissioner is charged and vested with the “general control and management of the Police Force”. It seems likely that the power to publish the Map would be derived from this or a similar overarching power of due administration of the offices of the WAPOL.
21. Again, while the Police Act confers some limited jurisdiction on the SAT to review certain decisions of the Commissioner (e.g. to charge for police services at major events) it does not provide power for the SAT to review all decisions of the Commissioner or of WAPOL.
22. It therefore appears to be unlikely that there is a basis for the Union or its members to seek a review of the decision to publish, or continue to publish, the Map in the SAT.

Judicial review

23. The Supreme Court of Western Australia (**Court**) has a much broader jurisdiction to review administrative decisions of Western Australian government bodies and decision makers. This jurisdiction is conferred by section 16 of the *Supreme Court Act 1935 (WA)*.
24. In order to make an application to the Court for judicial review of a decision, it must be established that:
 - 24.1. firstly, a decision was made; and
 - 24.2. secondly, there is a valid ground for review of that decision.
25. If the Union is able to make these grounds out, the remedies available can include a writ of certiorari (where a decision is set aside), declarations and injunctive relief. So, for example, in this case, one might seek orders that:
 - 25.1. the decision to publish the Map, or continue to publish the Map, be set aside;
 - 25.2. a declaration to the effect that the decision to publish the Map or misuse the license holders’ personal information in this way was wrong; and/or
 - 25.3. an injunction restraining the ongoing or future publication of the Map.

Decision

26. In order to establish that a reviewable decision was made, we would first need to identify:
 - 26.1. what decision was made;
 - 26.2. who made the decision; and

- 26.3. where the decision maker derived power to make that decision/whether the decision maker had the power to make the decision.
27. A secondary consideration, which will be relevant in respect of the grounds for review of that decision, is what, if any, requirements exist in respect of the making of the decision, and whether any factors are stipulated that should or should not be considered in respect of making the decision.
28. In respect of these circumstances, we have identified the following:
- 28.1. the decision complained of is in respect of the publication (or continued publication) of the Map;
- 28.2. the decision maker was either the Commissioner or the Minister;
- 28.3. the decision maker's power:
- 28.3.1. in respect of the Commissioner, likely derives from the Police Act; and
- 28.3.2. in respect of the Minister, likely derives from prerogative power as a Minister of the State of Western Australia; and
- 28.4. save for the WAPOL code of conduct, there are no published guidelines which govern the decision making process in relation to such decisions.
29. If an application for judicial review is to be considered, it will be necessary to obtain further information as to which of the Commissioner and Minister made the decision to publish the map and how that decision was made by the relevant decision maker.
30. This is not likely to be a simple task or one that delivers a satisfactory or useful answer. It may well be the case that the decision maker had no obligation to consider what we consider to be key issues relating to the safety and privacy of license holders when making its decision, and that there is, in fact, no record of any consideration having been given to any matters before the decision was made. And it may well be the case that this is within the decision maker's power.

Grounds for review

31. There are, generally, several recognised categories of grounds for judicial review, which include:
- 31.1. jurisdictional error;
- 31.2. legal unreasonableness of a decision;
- 31.3. breach of the rules of natural justice/procedural fairness— which has two components:
- 31.3.1. the hearing rule; and

- 31.3.2. the rule against bias
- 31.4. fraud; and
- 31.5. an error of law appearing on the face of the record

Jurisdictional error

32. The most common grounds for applications for judicial review, is in circumstances where it can be shown that there was “jurisdictional error” on the part of the decision maker. This was described by Hayne J in *Refugee Review Tribunal, Re: Ex part Aala* (2000) 204 CLR 82 as follows:

There is jurisdictional error if the decision-maker makes a decision outside the limits of the functions and powers conferred on him or her, or does something which he or she lacks power to do. By contrast, incorrectly deciding something which the decision-maker is authorised to decide is an error within jurisdiction. (This is sometimes described as authority to go wrong, that is, to decide matters within jurisdiction incorrectly.) The former kind of error concerns departures from limits upon the exercise of power. The latter does not.

33. Jurisdictional error as a ground of review has been the subject of many cases and over the years there have emerged several established categories of jurisdictional error which include but are not limited to:

- 33.1. a mistaken assertion or denial of the existence of jurisdiction;
- 33.2. a misapprehension or disregard of the nature of limits of the decision maker’s functions or powers in a case where the decision-maker correctly recognises the existence of jurisdiction;
- 33.3. a decision-maker misconstruing the statute establishing it and conferring jurisdiction in such a way as to misconceive the nature or function which it is performing or extent of its powers;
- 33.4. a decision-maker disregarding a relevant consideration or taking into account an irrelevant consideration where the statute establishing it and conferring its jurisdiction requires that that particular matter be taken into account or ignored as a precondition of the existence of any authority to make an order or decision in the circumstances of the case;
- 33.5. a failure to accord procedural fairness;

34. As we have discussed above, we have identified in general terms what we consider is the statutory basis on which the Minister or Commissioner have relied in making the decision to publish and/or continue to publish, the Map. However, in order to consider whether a decision falls within the grounds of jurisdictional error, we will need to understand how the decision was arrived at. In the current circumstances, it does not appear that there is any explanation provided by any party.

35. It may be possible to make a freedom of information application to WAPOL in respect of the decisions to release, and continue to release, the Map. However, it may be that WAPOL consider that such information is not suitable for public release.
36. Without the information relating to the decision maker's process, it will be difficult to assess whether the decision to publish the Map falls within any of the established categories of jurisdictional error.
37. While we would be surprised if, at some level, WAPOL did not have some power to make the decision it has made, there is no guarantee it has done everything correctly here. However, if it has made a purely technical error, in the way that it has made its decision, it may be that the court will send the matter back to the decision maker to follow the correct procedure and make the same decision again.

Fraud

38. This ground of review is generally available when the decision complained of has been flavoured or affected by actual fraud of a third party.
39. On the information and instructions provided to us to date, there does not appear to be any basis to allege fraud.

Legal unreasonableness

40. In *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 the High Court held that legal unreasonableness is not confined to "irrational" or "bizarre" decisions, such as one that is so unreasonable that no reasonable person could have arrived at it.
41. The Court said that the question of unreasonableness is whether, with reference to the scope and purpose of the relevant statutory provision, the decision-maker has committed a particular error in reasoning, given disproportionate weight to some factor, or reasoned illogically or irrationally.
42. It could be argued that the Commissioner/Minister, in making the decision to publish the Map (or to continue to publish the Map after you had identified the ability for people to identify license holders), made an unreasonable decision. However, in examining the question of whether this was unreasonable, reference must be had to the scope and purpose of the statutory provisions. As stated above, the most likely source of power to make the relevant decision here is the general powers of administration conferred on the decision maker as opposed to any specific clause or section of an Act that might also set out relevant considerations required before the decision is made.
43. This means that in order to establish legal unreasonableness, the Union would need to demonstrate that the discretion exercised by the Commissioner in deciding to publish the map or continue its publication was based on flawed or illogical reasoning. We understand that the unreasonableness complained of is that the Commissioner failed to reasonably consider factors related to the safety of legal and registered firearm owners when deciding to publish the Map or continue to publish it after issues with their de-identification were raised.

44. The stated purpose of the Commissioner is to control and manage the police force, who in turn, are guided by an interest to provide trusted policing of Western Australia. It could be suggested that, in considering the purpose of the Commissioner, or even a member of WAPOL, it is necessary and important to consider the safety impact of publishing the Map on legal and registered firearm owners.
45. Without access to the considerations that were taken into account by the decision maker when making the decision to publish the Map (or continue its publication), it will be difficult to establish an argument that there was unreasonableness in the making of that decision. However, it is apparent from the news articles that the “deidentification” of the Map was insufficient to protect the identity of firearm owners because technology experts were able to decrypt that information, which may suggest that:
- 45.1. some consideration was given to protect the identity of registered firearm owners , as they made a point of “de-identifying” the information published;
 - 45.2. however, there was a failure to properly consider all relevant factors upon learning that the de-identification was ineffective;
 - 45.3. the only reasonable course upon learning the de-identification was ineffective/defective was to reconsider the decision to publish the Map and then withdraw it from publication.
46. In this regard, the Minister’s response dated 29 April 2022 could be argued to be a decision either not to reconsider the initial decision to publish the Map or not to withdraw the Map from publication.
47. However, again, even if it could be established that this was a subsequent decision capable of review, the issue will be establishing and demonstrating how the exercise of the power to make the decision was legally defective.
48. In our view, there may be some basis to apply for judicial review on the basis of legal unreasonableness of the subsequent decision not to reconsider and/or withdraw the Map. However we are not currently in a position to speak to the prospects of success of such an application and would recommend you instructing us to brief counsel for an opinion on this issue as well as to seek further information on the decision making process through a FOI request, if you are inclined to take this matter further.

Rules of natural justice

49. The doctrine of natural justice has two components, the hearing rule and the bias rule. The hearing rule recognises a duty on the decision-maker (usually a tribunal or court) to inform a person of the case against them, provide an opportunity to be heard and provide prior notice of a decision that adversely affects their interests.
50. This opportunity to be heard usually involves informing a person of what information will be used against them in a prosecutorial or administrative decision making process. The rule is intended to ensure that the respondent to

such a decision has a fair opportunity to respond to information that may be used against them.

51. While it could be argued that each firearm owner's interest was adversely affected by the decision to publish the Map and therefore the hearing rule ought to apply, the commentary suggests that this is not the position in Australian law.
52. The rationale behind this is that when a decision affects a class of persons, it is arguably an exercise of government policy and individuals or groups who consider themselves likely to be affected by the decision are not entitled to personally intervene in the decision making process unless they are otherwise statutorily entitled to do so. This sentiment appears to be echoed in the correspondence received from the Minister. Additionally, in circumstances where the decision complained of involved the exercise of a discretion and not one that is subject to a statutory process that includes inviting public comment, it is unlikely that the hearing rule would apply to such decision.
53. The rule against bias applies to both actual and apprehended bias. In respect of actual bias, we would need to be able to assess the state of mind of the decision maker and distinctly and clearly prove the existence of bias against registered firearm owners at the time of making the decision. This would require cogent evidence of bias that would be unlikely to exist, particularly given this was likely a discretionary decision requiring little or no consultation or documentation prior to being made.
54. In respect of apprehended bias, the test applied by the courts is whether "a fair-minded lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the question the decision-maker is required to decide".
55. In our view it will be difficult, on the facts before us, to point to or establish that the Commissioner, in making his decision showed any indication of being partial against registered firearm owners, or that there was any apprehended bias in the making of the decision.
56. On the information before us there appears to be limited prospect of the potential to successfully bring an application for judicial review.
57. However, if you have further information for us to consider that you believe may impact our view, please contact us urgently. The reason for this is that there is a deadline of 6 months from the date of a decision within which to make such an application.
58. Given that the original decision to publish the Map was made on or around 22 March 2022, the deadline by which a judicial review application would need to be made in respect of that is **20 September 2022**.
59. However, as noted above, to the extent that there are any prospects of a successful judicial review, the target of that review would most likely be the subsequent decision not to reconsider the original decision to publish the Map or withdraw the Map from publication. The earliest date of notice of that decision appears to be 29 April 2022, which would create a deadline of 29 October 2022 to file any application. Alternatively, as the publication of the Map is ongoing,

we could look at whether it is possible to renew the request for reconsideration, setting out all relevant bases that we say need to be considered, and use that as a basis for any future application.

60. Again, however, we note that without further information and evidence which relates to what the Minister or Commissioner considered in making the decision, there will likely be difficulty substantiating any of the above grounds of judicial review in this matter.

Civil action

61. In circumstances where it is alleged there is harm/loss or damage caused by one person/entity to another person or entity, it is common that the basis upon which a party will seek compensation is either in contract or, where none exists, breach of common law obligations (torts).
62. On our review, it does not appear that there are any contractual obligations owed by the WAPOL or the Minister to the Union, its membership or any registered firearm owner.
63. As to common law obligations, a review of the case law has revealed there are several factors which must be satisfied in order to be successful in bringing any action. These are, relevantly:
- 63.1. an established common law obligation (e.g. duty of care) between the parties;
 - 63.2. a breach of that obligation; and
 - 63.3. loss or damage has been suffered as a result of that breach.
64. We have identified a number of potential common law obligations that WAPOL or the Minister can be argued to owe to the Union's members that may arguably have been breached in publishing the Map, such as the tort of misfeasance and breach of duty of care (more commonly known as the law of negligence).
65. A breach of a duty of care arises when one party has done or failed to do something which may result in injury to another and that action/inaction causes the other party to suffer loss. If the harm suffered was a reasonably foreseeable consequence of the action/inaction taken by the party, and can be shown as having been directly caused by the action/inaction, then the injured party may have a right to be compensated for any loss or damage suffered as a result.
66. The tort of misfeasance in public office is a civil wrong that may lead to an award of compensatory damages if it can be shown that there was an intentional misuse of public power by a public officer in the purported discharge of his or her duty, and that this misconduct caused loss to a plaintiff.
67. However, in each instance where these obligations have been considered by the Court, it is evident that the complainant must be able to establish that, in addition to proving that the defendant's action was in breach of an obligation, it actually caused the plaintiff to suffer loss and damage.

68. For example, there has been a chain of litigation in recent years between the Federal Minister for the Environment and Sharma where children have sought to be recognised as a general class of people who are owed a duty of care by the Minister for the Environment (**Environment Minister**) to protect them against the detrimental effects of climate change. These cases involved a class action brought by a group of children for an injunction against the Environment minister's decision to approve a fossil fuel project. The Full Federal Court of Australia (on appeal) ultimately ruled that the Environment Minister did not owe a duty of care to the children in respect of climate change. However, in obiter, a key consideration was the inability to quantify or identify any damage suffered by the children. In fact, the Court considered that it was not appropriate to even make a declaration (which was sought by the children) that a duty of care was owed because there was no "completed cause of action", such as damage.
69. We note that this decision is still potentially the subject of an application for special leave to appeal to the High Court of Australia.
70. From this case it appears that the judiciary has, at this stage expressed a reluctance to impose a duty of care on government to private or general classes of individuals with the intention being that the political process will govern the government's need to consider and protect such rights and interests. Perhaps more importantly, this case has indicated that the court is unlikely to provide relief unless a complainant can point to real damage suffered as a result of an unnecessary disclosure.
71. In respect of the conduct of police, it appears that since the United Kingdom case of *Hill v Chief Constable of West Yorkshire* [1989] 2 AC 53 (**Hill**), there has been created a police "doctrine of immunity", that police do not owe a duty to members of the public generally to protect against harm caused by criminal conduct. This case was determined on a policy basis that for the efficiency of a police force, it cannot be investigated by an action for damages but only an inquiry instituted by a national or local authority responsible to the electorate for that efficiency.
72. The approach from the Hill case (in respect of the police's duty of care to members of the public) has been adopted in Australia in two recent cases in Victoria and NSW, being *Smith v State of Victoria* [2018] VSC 475 and *Fuller-Wilson v State of New South Wales* [2018] NSWCA 218. In both cases, family members of a deceased person commenced proceedings against the relevant police force for psychological harm. In both jurisdictions it was recognised that the principles from Hill applied. However, of note, in the Fuller-Wilson case, the Court made comment in obiter that there was a gap in High Court of Australia authority as to whether a wider scope of liability could be recognised.
73. Unfortunately, there have not been any cases in Western Australia that have considered this issue. However, we note that section 137 of the Police Act is a similar provision to the NSW jurisdiction in respect of providing protection to members of the police from personal liability.
74. In contrast, the case of *Nyoni v Shire of Kellerberrin* [2017] FCAFC 59 involved a successful prosecution of the tort of misfeasance in public office. Here a pharmacy brought an action against the CEO of a shire council where the CEO was persuading regulators to constantly take action against the pharmacist. Mr

Nyoni was successful in establishing the tort of misfeasance in public office. The misfeasance was established because it was shown that the CEO, in public office, engaged in conduct that was specifically intended to injure Mr Nyoni.

75. On the instructions we have received to date, while it might be the case that little regard has been given to the safety and security of registered firearm owners it does not appear likely that it can be established that WAPOL or any officer of WAPOL published the MAP with any malice or intent to cause harm to registered firearm owners. In fact, the explanation proffered to date has been that the Map was “de-identified” to protect the identity of registered firearm owners, and this appears likely to be the case.
76. It would appear that in respect of both potential causes of action that, even if the Union were able to establish the elements of the action, the difficulty will be demonstrating:
 - 76.1. initially, that any damage has been suffered; and
 - 76.2. if there has been damage suffered, being able to establish causation between the Map and such damage
77. We note that we also considered the possibility of pursuing an injunction on the basis of an impending and likely threat of damage resulting from what will be alleged is the negligent conduct of WAPOL/Minister by publishing the Map.
78. The general principles from the commentary and case law we reviewed appeared to be that in order to obtain an injunction, the plaintiff must ordinarily demonstrate a legal wrong has occurred. The only circumstance which a plaintiff may be able to obtain an interim injunction is if the application is based on the need to preserve the subject matter of a litigation.
79. The case law and commentary we reviewed appeared to suggest there may be scope (although there do not appear to be any reported cases of this having occurred) to obtain an injunction in respect of negligent conduct, whether threatened or continuing.
80. In all the circumstances, based on the current evidence available to us, we consider it unlikely that we have sufficient evidence of imminent likely loss and damage to registered firearm owners as a direct result of the publication of the Map to have a claim for negligence. If further evidence were able to be put together that went to demonstrate a real and present risk to the safety of registered firearm owners and/or their property that is being caused directly by the ongoing publication of the Map then there might, in those circumstances, be a basis for an injunction application. However, at this stage, we have not seen any evidence we consider would be sufficient to establish a real, present and substantial risk of this type.

Ombudsman

81. The *Parliamentary Commissioner Act 1971* (WA) enables a parliamentary commissioner (**Ombudsman**) to be appointed who may investigate any decision that has been made that affects any person or body of persons.

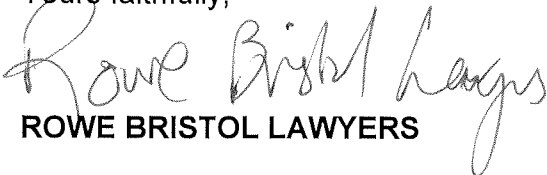
82. The aim of the Act is to reduce the need to rely upon the tort of misfeasance to hold WAPOL or its officers accountable. The Ombudsman's role extends beyond merely police and it can investigate most decisions and actions of state government.
83. The parliamentary commissioner, for the purposes of the Act is the Ombudsman of Western Australia.
84. Once an investigation is completed, the Ombudsman could recommend that the decision making body take certain actions which include rectifying the effects of the action taken.
85. In this instance, for example, the Ombudsman could recommend a range of outcomes including but not limited to:
 - 85.1. that WAPOL reverse its decision and withdraw the Map; or
 - 85.2. that WAPOL has done nothing wrong and is entitled to continue to publish the Map.
86. In making its decision the Ombudsman will investigate the complaint in its own fashion and is not obliged to, and may not, reach the same conclusion as you about the dangers associated with the publication of the Map;
87. We note that the Ombudsman's powers are investigative and not compulsory in the sense that any recommendation made to WAPOL is only a recommendation and WAPOL is not compelled to follow or comply with it. However, we note that a refusal to follow such a recommendation may be a basis for further review or any damages claim in the unfortunate event anyone suffers damages as a result of this conduct.
88. We also note that, if the Ombudsman does not agree that the publication of the Map was a security risk to some if not all firearm owners, it may embolden WAPOL and the Minister to continue its conduct.
89. Further, if the responses you have personally received from the CCC and WAPOL ethics team are an indication, it is possible that the Ombudsman may support WAPOL's original decision. However, there are no discernible immediate legal ramifications from this occurring.
90. In light of the above, our view is that a complaint should be made to the Ombudsman that fully details the concerns arising from the ongoing publication of the Map and the perceived danger to registered firearm owners.

Conclusion

91. Unfortunately, while it appears there has been a level of disregard as to the safety and security of registered firearm owners, unless we receive evidence of ongoing danger to the safety and security of registered firearm owners as a direct result of the continued publication of the Map, we have not been able to identify any civil cause of action available to the Union or its members that would enable us to commence proceedings at this stage either for damages or injunctive relief. The primary reasons for this is that:

- 91.1. there is no obligation on WAPOL to preserve the confidentiality of firearm owners;
 - 91.2. the Courts are unlikely (at present) to impose a duty of care on the Minister or WAPOL in respect of decisions which may be made by the executive branch of government;
 - 91.3. even if a Court were to impose such a duty, it is likely to be difficult to establish causation i.e. that the publication of the Map has directly caused or is likely to cause damage to be suffered by a plaintiff; and
 - 91.4. most importantly there has, to date, been no damage which can be attributed to the publication of the Map (perhaps fortunately).
92. In respect of other action available to the Union, a complaint to the Ombudsman is available. However as we have outlined above, the Ombudsman will conduct its own investigation and there is no ability to predict the outcome, so there is a possibility it will come to the same conclusion as the CCC and the WAPOL ethics team.
93. Further, there may be some prospect of a successful administrative review of the Commissioner or Minister's decision to refuse to reconsider the ongoing publication of the Map after the failure of their "de-identification" was brought to their attention. If you wish to pursue this further, we would suggest briefing counsel to provide an opinion on the prospects of such an application.
94. We trust this advice sufficiently addresses the issues at hand. However, given the number of matters discussed, we would suggest a meeting (either in person or over the telephone) with our Damien Bristol and Martin Muk to discuss this advice and any queries you may have, once you have had a chance to consider the above.

Yours faithfully,


ROWE BRISTOL LAWYERS