

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Salmon v Queensland Police Service (Weapons Licensing Branch)* [2018] QCAT 202

PARTIES: **DANIEL JOHN SALMON**
(applicant)
v
QUEENSLAND POLICE SERVICE (WEAPONS LICENSING BRANCH)
(respondent)

APPLICATION NO/S: GAR308-17

MATTER TYPE: General administrative review matters

DELIVERED ON: 3 July 2018

HEARING DATE: 7 June 2018

HEARD AT: Brisbane

DECISION OF: Member Clifford

ORDERS: **That the decision of the Respondent to reject the renewal of a concealable firearms licence is set aside, and replaced with the decision that the renewal of a concealable firearms licence is approved.**

CATCHWORDS: FIRE, EXPLOSIVES AND FIREARMS – LICENCES AND RELATED MATTERS – LICENCES – ISSUE OF AND GENERALLY – where applicant seeks review of decision to reject renewal of licence for a Category H weapon – where applicant has held the licence for over 20 years – where applicant uses weapon to control feral pigs and dogs on his property – whether requirements to use Category H weapon necessary – whether requirements can be met in another way using another weapon of another category

Queensland Civil and Administrative Tribunal Act 2009
(Qld)
Weapons Act 1990 (Qld)

Cseke v Queensland Police Service (Weapons Licensing branch) & Anor [2005] QCA 466
Geary v Queensland Police Service Weapons Licensing
[2017] QCAT 6
Harm v Queensland Police Service [2010] QCAT 518
Shaxson v Queensland Police Service Weapons Licensing Branch [2014] QCAT 309

APPEARANCES &
REPRESENTATION:

Applicant: Neuendorf D, of Robert Bax & Associates

Respondent: Acting Sergeant Paz Landim

REASONS FOR DECISION

- [1] The applicant Daniel Salmon and his wife are the owners and occupiers of an around 60,000 acres property known as Ardoch Station, situated at Lot 4371 Thargomindah Road, Quilpie. They breed and sell sheep (9,000) and cattle (1,500 head). The applicant has held a Category H weapons license since 1996 (Smith & Wesson .22 calibre revolver) to control and eradicate pests, specifically wild pigs and dogs.
- [2] The applicant sought renewal of the licence in May 2017 but the Respondent rejected the application for renewal on 28 September 2017 on the basis the decision-maker was not satisfied the applicant had a genuine need or reason, and that there were alternate means to meeting the applicant's requirements using a weapon of a different category. The applicant sought review of that decision with the Tribunal.
- [3] Under the review provisions of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) the Tribunal hears the matter afresh to reach the correct and preferable decision. The Tribunal may confirm or set aside the decision of the Respondent.¹ In reviewing the decision the Tribunal must consider the framework and objectives of the enabling law. In the applicant's case this is the *Weapons Act 1990*.
- [4] The applicant provided statements dated 1 February and 15 March 2018 on which he was examined. Mr Neuendorf gave final oral submissions and handed up written submissions. The Tribunal also considered the material provided by the Respondent under letter received 18 December 2017 and referenced 001876 – 001934. The Respondent had the opportunity to cross-exam the applicant and gave final oral submissions.

Legal framework

- [5] The object of the *Weapons Act* (the Act) is to prevent misuse of weapons. The principles provide that weapon possession and use are subordinate to the need to ensure public and individual safety, and that that safety is improved by imposing strict control on the possession of weapons and their storage and carriage.² The Act provides a licensing regime whereby a person wishing to possess a firearm under licence must demonstrate a genuine reason for possessing³ a firearm. One of the genuine reasons includes an occupational requirement for rural purposes,⁴ however

¹ *Queensland Civil and Administrative Tribunal Act, 2009* sections 17-24.

² *Weapons Act 1990* section 3.

³ *Ibid* section 4.

⁴ *Ibid* section 11.

the applicant must state why the weapon is necessary in the circumstances of it being an occupational requirement.⁵

Is there a genuine reason for possessing the firearm, and if so, is a Category H firearm necessary for the applicant's occupational requirement for rural purposes?

- [6] The applicant testified that his property is around 60,000 acres and that around 1/3rd of it is Mulga that the livestock use as fodder, particularly in drought conditions. The applicant described the Mulga as thick, sharp and abrasive low trees that drop lots of sticks and branches and advised that when it grows too high it has to be knocked over for the livestock to get at it. He stated that the best way of getting through it is by motorbike. He opined quad bikes are suitable for flood country but that a motorbike is required for channel country.
- [7] The applicant testified that he has to muster the livestock around four times each year. The applicant stated that apart from eating the fodder the livestock hide in the Mulga to try and avoid the muster, and he opined this was to stop the removal of their calves. The applicant described the process of mustering, firstly with a helicopter or aeroplane look, then he, his wife and daughter, all on motorbikes and with 2-way radios keep the cattle in front of the plane and bike. The applicant testified that he is the only one carrying a weapon and that he is the only one who enters the Mulga as wild pigs and dogs follow the livestock into it and that the wild pigs in particular can charge at you. The applicant described an event 2 years earlier where he had been knocked over and off the bike by a feral pig, and how he lost some skin but managed to shoot the pig. He opined he would not have been able to do so with a long-arm weapon. It is for these reasons the applicant states that he requires a concealed weapon/pistol licence.
- [8] The applicant testified that he had tried a long-arm but stated it gets tangled up in the Mulga and caught when you bend down. The applicant also stated that with a long-arm weapon he would have to stop the motorbike as he would need to use both hands for firing the weapon. He opined this would put him in danger of being attacked by a feral pig. The applicant confirmed in cross-examination he did not know of the fold down rifles as suggested by the Respondent and that he had never tried the rifle carrying equipment identified by the Respondent. But whilst he opined they 'still may get tangled up', he agreed they 'may work'. However, the applicant further testified that he spoke with other farmers who found a pistol the most convenient.
- [9] The Respondent, citing and relying on the cases of *Geary*, *Harm* and *Shaxson*,⁶ submitted that the applicant had not made out a necessity to use a concealed weapon, that the majority of the property was accessible and that the applicant had not tried the fold-down rifles and had only discussed alternatives with neighbours. The Respondent further submitted that neither, the terrain or special circumstances

⁵ Ibid section 13(5.)

⁶ *Geary v Queensland Police Service Weapons Licensing* [2017] QCAT 6;
Harm v Queensland Police Service [2010] QCAT 518;
Shaxson v Queensland Police Service Weapons Licensing Branch [2014] QCAT 309.

existed that made it impractical or impossible for the applicant to use alternate weapons.

- [10] The applicant, also citing and distinguishing the cases of *Geary, Harm, Shaxson* and *Cseke*,⁷ submitted that the applicant has a genuine need for the use of Category H weapons licence as it is a genuine requirement for the operation of his business, that the licence is necessary and is required rather than merely convenient because his property is 1/3rd covered by rugged terrain that is inaccessible by 4WD and through which he has to travel to muster livestock. The applicant submitted that without the Category H licence he would not be able to properly defend his property and livestock from damaging and destructive pests. The applicant further submitted that alternate methods such as a sling, rifle mount or carrying case would be impractical and /or impossible through Mulga country because transporting such a weapon would pose a danger to the applicant or livestock.
- [11] It is undisputed the applicant is a fit and proper person to hold a weapons licence. He and his wife own and essentially manage a very large property in Quilpie on their own. They run livestock that requires mustering four times each year. Whilst only 1/3rd of the property is Mulga this part of the property constitutes around 20,000 acres, a large parcel of land in its own right. The livestock are attracted to the Mulga for fodder particularly in the current drought conditions, and hide there when mustering is in commenced. Charging feral pigs and wild dogs, both a threat to the livestock, also hide in that terrain. The applicant wants to control the negative impact these animals have on his livestock and his business. He testified that a motor bike is the only way he can access the Mulga and that alternate weapons to his Smith & Wesson pistol are impractical to use given the charging nature of feral pigs and the need to get a shot off quickly to eradicate the pests in a safe manner.
- [12] The applicant presented to the Tribunal as a genuine and practical person. He was forthright in his responses to the Tribunal's inquiries. He gave a good description of his property, the mustering process, feral and wild animal control and the euthanizing of his livestock when they had been attacked by wild animals or injured in other ways.
- [13] The Tribunal is satisfied that there is a genuine reason for possessing a firearm, that is, as an occupational requirement for rural purposes, as testified by the applicant, and essentially uncontested.
- [14] The Tribunal is further satisfied, that a Category H concealable weapon is necessary in the circumstances as described by the applicant. On such a large and inaccessible area, except by motorbike, with the high possibility feral pigs may charge during the mustering period, the Tribunal accepts the applicant's descriptive testimony that it would be impractical to manage the feral pigs while trying to muster the livestock in an efficient and practical manner. The Tribunal accepts that long-arm firearms, whether mounted, carried in a shoulder/cross body holster or are of a fold-down type, necessitate bringing the motorbike to a stop so that the weapon can be accessed, or assembled, and then operated/discharged with both hands on the

7. *Geary, Harm and Shaxson*. Ibid;
Cseke v Queensland Police Service (Weapons Licensing branch) & Anor [2005] QCA 466.

weapon. The Tribunal is satisfied that seconds of time delay in a charging feral pig circumstance could be detrimental to the applicant's safety in carrying on his business, and that such stopping and starting could unduly interfere with and extend an already intense mustering process.

- [15] In the matter of *Geary*⁸ the learned Member having considered the cases of *Harm* and *Shaxson*⁹ concluded that the use of concealable weapons will only be necessary where the terrain or special circumstances make use of a rifle/long-arm weapon impractical or impossible. This Tribunal agrees with that conclusion but adds that the circumstances have to be considered on a case-by-case basis. In this matter whilst it may not be impossible to utilise another weapon other than a concealed one, the Tribunal is satisfied that in the applicant's circumstances as a sole weapon holder, operating in such a large and inaccessible area against a background of an intense mustering process and the high possibility of the presence of charging feral pigs, renders the use of alternate weapons as described and or suggested by the Respondent impractical.
- [16] Overall the Tribunal is satisfied the applicant has a genuine reason for possessing a weapon, an occupational requirement for rural purposes, and that a concealed weapon is necessary in all the circumstances as alternate weapons of a different category or impractical. Therefore the decision of the Respondent to reject the renewal of a concealable firearms licence is set aside, and replaced with the decision that the renewal of a concealable firearms licence is approved. The Tribunal orders accordingly.

⁸ *Geary*; Op.cit.

⁹ *Harm and Shaxson*; Op.cit.