

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST

VCAT REFERENCE NO. Z642 / 2018

CATCHWORDS

Firearm Prohibition Order – public interest – prohibition on acquiring, possessing, carrying or using firearms – grounds – criminal history – associates – connection between grounds and risk of firearm related crime – restrictive conditions of order – human rights – outlaw motorcycle gangs – Rebels outlaw motorcycle gang – *Firearms Act 1996* (Vic), Part 4A

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| APPLICANT | Colin Websdale |
| RESPONDENT | Chief Commissioner of Police |
| WHERE HELD | 55 King Street, Melbourne |
| BEFORE | Acting President Judge Hampel |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 1-2 April 2019 |
| DATE OF ORDER | 8 May 2019 |
| CITATION | <i>Websdale v Chief Commissioner of Police</i> (<i>Review and Regulation</i>) [2019] VCAT 666 |

ORDER

- 1 The decision of the Respondent of 29 May 2018 to make a firearm prohibition order in respect of the Applicant is set aside.


Judge Hampel
ACTING PRESIDENT



APPEARANCES:

| | |
|----------------|--------------------------|
| For Applicant | Mr J. Snow of counsel |
| For Respondent | Ms N. Hodgson of counsel |

REASONS

Procedural History

- 1 On 29 May 2018, the Chief Commissioner of Police¹ (**Respondent**) made a firearm prohibition order (**Order**) directed to Colin Websdale (**Applicant**) pursuant to s 112D of the *Firearms Act 1996* (Vic) (**Act**).
- 2 On 2 July 2018, the Order was served on the Applicant in accordance with s 112I of the Act. By s 112(J)(1) of the Act, the Order runs for 10 years from the date of service, that is, until 2 July 2028.
- 3 On 17 July 2018, the Applicant filed an application for review by the Victorian Civil and Administrative Tribunal (**Tribunal**) of the making of the Order pursuant to s 112L of the Act.
- 4 This is the first application for review of a firearm prohibition order and the first time the Tribunal has had to consider Part 4A of the Act.

The purpose of the Amending Act

- 5 The Minister for Police, the Honourable Lisa Neville MP, in her Second Reading Speech described the purpose of what became Part 4A in these terms:

“The Firearms Act 1996 (the Firearms Act) fundamental purpose is to ensure that the possession, carriage, use, acquisition and disposal of firearms are regulated in order to ensure public safety and peace. The Firearms Act does provide the Chief Commissioner of Police with mechanisms to meet this purpose through a system of licensing and regulating firearms as well as a prohibited person regime.

However, the dangers of firearms in the community has changed and the existing mechanisms and powers in the act do not provide Victoria Police with sufficient powers to protect the community from the risk of harm associated with this type of firearm-related offending.

...
Firearm Protection Orders (FPO’s) will be used in scenarios where no other appropriate mechanism exists to prevent a person from obtaining a firearm, but sufficient intelligence exists to indicate that it is contrary to the public interest for that person to possess a firearm.

...
The criteria for making a FPO has been left in broad terms in order to provide the chief commissioner with operational flexibility to proactively and quickly respond to fluid serious criminality, intricate criminal enterprises and counter-terrorism related operations”²

¹ By his delegate, appointed under s 112F of the *Firearms Act 1996* (Vic).

² Victoria, *Parliamentary Debates*, Legislative Assembly, 21 September 2017, 2962-2963 (Lisa Neville, Minister for Police).

- 6 The Minister tabled a Statement of Compatibility, in accordance with s 28 of the *Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter)*.³ She acknowledged the Bill was partially incompatible with the right to privacy and the right of children to such protection as is in their interests. She declared that she considered, nevertheless, that it was appropriate to proceed with the proposed Part 4A in order to protect the community from the risk of harm associated with firearm related offending.
- 7 The Minister declared that, in so far as the proposed amendments interfered with the rights to freedom of association and movement, fair hearing, privacy, property and protection against self-incrimination, the interference was reasonably justified in order to address an increase in firearm related offending where existing law enforcement powers had proven inadequate. She noted similar measures had proven effective in other jurisdictions. She said:

“Firearms crime, particularly in the context of serious and organised crime groups, represents a serious threat to community safety. There is clear evidence of an increase in firearm-related violence across Victoria, with crime statistics illustrating a significant rise in various offending that involves the use of firearms. Of significant concern is the level of ‘drive-by’ shootings, referring to the discharge of firearms in public places frequented by the public (such as shopping centres, parks and residential streets) and non-fatal shootings, often linked to these organised crime groups, with Victoria Police data indicating that drive-by shootings have risen from 27 non-fatal shootings in 2014, to 67 in 2016 and already 47 to date in 2017. Additionally, I am advised that at-risk persons in the counter terrorism context have been actively seeking firearms to execute their criminal activities.

Further, recent seizures of illicit firearms in Victoria also reveal an increase in the proliferation of illicit firearms in Victoria. The Australian Criminal Intelligence Commission reported that there has been a rise in illegal importation of undeclared firearms and particularly firearms parts into Australia. Offenders are developing more sophisticated methods of obtaining or creating firearms, using new technology and the mail system to import illegal firearm parts and accessories.

Consequently, based on advice from Victoria Police, in my opinion, the existing mechanisms and powers in the act do not provide Victoria Police with sufficient powers to protect the community from the risk of harm associated with this type of firearm-related offending.”⁴

³ Victoria, *Parliamentary Debates*, Legislative Assembly, 21 September 2017, 2955 – 2962 (Lisa Neville, Minister for Police).

⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 21 September 2017, 2955 – 2956 (Lisa Neville, Minister for Police).

Firearm Prohibition Orders

- 8 The *Firearms Amendment Act 2018* (Vic) (**Amending Act**) was duly passed and introduced Part 4A “firearm prohibition orders” into the Act. Part 4A came into effect on 9 May 2018.
- 9 A firearm prohibition order is defined in s 112D of the Act as an order made by the Chief Commissioner (**Commissioner**) prohibiting an individual from doing all or any of the following:
- (a) acquiring any firearm or firearm related item; and/or
 - (b) possessing, carrying or using any firearm or any firearm related item.
- 10 Section 112D(3) of the Act expressly provides that a firearm prohibition order can be made even though the individual against whom the order applies or is to apply has never acquired, possessed, carried or used a firearm or a firearm related item.
- 11 It is an offence under s 112B of the Act, punishable by up to 10 years imprisonment, for a person against whom a firearm prohibition order is made to acquire, possess, carry or use a firearm or firearm related item.

Consequences of a firearm prohibition order

- 12 The consequences of a firearm prohibition order extend well beyond the prohibition on acquiring, possessing, carrying or using a firearm or firearm related item and the fixing of such a high maximum sentence of imprisonment for breach. A person against whom a firearm prohibition order is made is prohibited from entering or remaining on any of the premises identified in s 112O(1) of the Act. They include not only firearms businesses, shooting clubs and shooting ranges,⁵ but also places where paintball activities are carried out.⁶ In addition, and more significantly in terms of the likely impact on a person subject to an order, prohibited premises include any place where firearms are stored.⁷ There is also a power to include other premises by prescription,⁸ although I am told no premises have yet been prescribed. An offence against s 112O is punishable by up to 50 penalty units or 12 months imprisonment.
- 13 Once a firearm prohibition has been made, any police officer, without warrant or consent, may by s 112R search a person against whom an order has been made and search any item, package or thing in their possession. By s 112Q, any police officer, without warrant or consent, may search any premises occupied, controlled or managed by a person against whom an order has been made and any vehicle, vessel or aircraft they are in. The search power is not limited to the person against whom an order has been made. By s 112S, it extends to searching any person in the company of a person against whom an order has been made. All that is required for a police officer to

⁵ *Firearms Act 1996* (Vic), s 112O(1)(a)-(f).

⁶ *Firearms Act 1996* (Vic), s 112O(1)(g).

⁷ *Firearms Act 1996* (Vic), s 112O(1)(h).

⁸ *Firearms Act 1996* (Vic), s 112O(1)(i).

conduct a search under ss 112Q, 112R and 112S is a reasonable suspicion that the person against whom the order has been made, or anyone accompanying them, has a firearm or firearm related item in their possession or is committing, or about to commit, an offence against the Act.

- 14 This is indeed, as the Statement of Compatibility recognises, legislation which has the capacity to significantly impinge on a person's rights and freedoms. Before the Amending Act was introduced, there were already significant restrictions on a person's right to own and use firearms. It is an offence to possess, carry or use a firearm unless the firearm is registered.⁹ It is an offence to possess, carry, or use a firearm unless you are licensed.¹⁰ To obtain a licence, a person must satisfy character and fitness criteria.¹¹ Many types of firearms are prohibited completely.¹² There are statutory prohibitions on owning or using firearms by reason of, amongst other things, a person's criminal convictions, their being a declared individual or subject to a Control Order under the *Criminal Organisations Control Act 2012* (Vic) or their being subject to a Family Violence or Personal Safety Intervention Order (**Prohibited Person**).¹³

Grounds for making a firearm prohibition order

- 15 The grounds on which a firearm prohibition order can be made are set out in s 112E of the Act:

The Chief Commissioner may make a firearm prohibition order only if the Chief Commissioner is satisfied that it is in the public interest to do so—

- (a) because of the criminal history of the individual; or*
 - (b) because of the behaviour of the individual; or*
 - (c) because of the people with whom the individual associates; or*
 - (d) because, on the basis of information known to the Chief Commissioner about the individual, the individual may pose a threat or risk to public safety.*
- 16 Section 112E can be broken down into three parts. First, the Commissioner must be satisfied it is in the public interest to make such an order. Secondly, the public interest in making the order must be assessed by the Commissioner by reference to one of four specified criteria: the criminal history of the person, their behaviour, the people with whom they associate, or the threat or risk they may pose to public safety. And thirdly, an order can only be made if the public interest test has been met by reference to one of those four criteria.

⁹ *Firearms Act 1996* (Vic), ss 6, 6A, 7, 7A and 7B.

¹⁰ *Firearms Act 1996* (Vic), ss 9, 15, 16A, 18, 21, 21A, 21B and 42.

¹¹ *Firearms Act 1996* (Vic), s 17.

¹² *Firearms Act 1996* (Vic), s 3A and 3B.

¹³ *Firearms Act 1996* (Vic); s 5 and see definition of "prohibited person" in s 3.

Public interest

17 When considering how to approach the determination of what is in the public interest under s 112E, I am guided by the following statements of principle.

18 In *DPP v Smith*, the Court of Appeal, in considering what ‘in the public interest’ meant in the context of the *Freedom of Information Act 1982* (Vic), said:

*“the public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and the well being of its members. The interest is therefore the interests of the public as distinct from the interests of an individual or individuals.”*¹⁴

19 The distinction between public and private interests is nuanced. In *Sinclair v Mining Warden at Maryborough*, Barwick CJ said:

*“the interest ... must be the interest of the public, and not mere individual interest which does not involve a public interest”*¹⁵

20 In *Bare v Independent Broad-Based Anti-Corruption Commission*, Santamaria JA held:

*“The injunction that the ‘public interest’ be considered requires a decision maker to step aside from the immediate circumstances that prompted or required the decision to be made and to consider a range of circumstances broader than those that are of immediate consequence to persons directly affected by the decision.”*¹⁶

21 In *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal*, French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ held (footnotes omitted):

*“It is well established that, when used in a statute, the expression “public interest” imports a discretionary value judgment to be made by reference to undefined factual matters. As Dixon J pointed out in *Water Conservation and Irrigation Commission (NSW) v Browning*, when a discretionary power of this kind is given, the power is “neither arbitrary nor completely unlimited” but is “unconfined except in so far as the subject matter and the scope and purpose of the statutory enactments may enable the Court to pronounce given reasons to be definitely extraneous to any objects the legislature could have had in view.”*¹⁷

¹⁴ [1991] 1 VR 63, 75.

¹⁵ (1975) 132 CLR 473, 480.

¹⁶ (2015) 48 VR 129, [549].

¹⁷ (2012) 246 CLR 379, [42].

22 In *McKinnon v Department of the Treasury*, Hayne J said:

“It may readily be accepted that most questions about what is in “the public interest” will require consideration of a number of competing arguments about, or features or “facets” of, the public interest.

..

That is why a question about “the public interest” will seldom be properly seen as having only one dimension.”¹⁸

23 In *Osland v Secretary to Department of Justice (No 2)*, French CJ, Gummow and Bell JJ observed that the public interest test:

“is, like many common law standards “predicated on fact-value complexes, not on mere facts” to be applied by the decision maker.”¹⁹

24 In *Bare v Independent Broad-Based Anti-Corruption Commission*, Tate JA considered the intersection of human rights with the public interest test. She noted:

“...for human rights considerations to be incorporated into the meaning of ‘public interest’ in s 40(4)(b)(i) is not to substitute a human rights test for a public interest test; rather, it is properly to acknowledge that the broad category of public interest considerations can extend to human rights when human rights are, as here, engaged.”²⁰

25 These statements of principle indicate that the following matters require consideration:

- (a) public interest embraces standards of conduct acknowledged to be for the good order of society and the well-being of its members;
- (b) it is the interests of the public, as distinct from the interests of individuals, which must be considered;
- (c) there is a difference between mere individual interest which does not involve a public interest, and individual interests which do involve a public interest;
- (d) a broader range of circumstances than those that are of immediate consequence to the person affected must be considered;
- (e) consideration of what is in the public interest requires a discretionary value judgment to be made by reference to undefined factual matters;
- (f) public interest requires consideration of “fact/value complexes”, not merely facts;
- (g) the scope and purpose of the Act are to be taken into account when considering what matters are relevant to the exercise of the discretion;

¹⁸ (2006) 228 CLR 423, [55].

¹⁹ (2010) 241 CLR 321, [14].

²⁰ (2015) 48 VR 129, [317].

- (h) public interest will seldom be seen as one dimensional – a number of competing arguments about, or features of, the public interest will likely need to be considered; and
 - (i) when human rights are engaged, public interest considerations extend to human rights considerations.
- 26 In considering what ‘in the public interest’ means in the Act, it is convenient to start with a consideration of the purposes of the Act and the consequences of the making of an order. It is clear Part 4A was intended to apply to circumstances where Parliament considered that the pre-existing restrictions on a person’s right to acquire, possess, carry or use a firearm were inadequate to protect against the escalating and changing nature of firearm related crime.
- 27 As I have noted, the Act, before Part 4A was introduced, already prohibited certain people from acquiring, possessing, carrying or using a firearm.
- 28 Subparagraphs (b), (c) and (d) of s 112E all introduce circumstances which are not caught by the existing definition of Prohibited Person and it is clear, in my view, from the second reading speech that the unqualified reference to a person’s criminal history in s 112E(a) intends to permit the making of a firearm prohibition order on the basis of a person’s criminal history, even if their criminal history was not one which would bring the person within the definition of a Prohibited Person in s 3.
- 29 The considerations for making an order in s 112E all relate to a specified individual – whether it is in the public interest that an order should be made against that individual by reason of that individual’s convictions, that individual’s behaviour, the persons with whom that individual associates or the threat or risk that individual poses to public safety.
- 30 It is not enough to establish an individual has a criminal history, behaves in a particular way, associates with particular people or poses a threat or risk to public safety. A firearm prohibition order can be made only if, because of one of those factors pertaining to that individual, it is in the public interest to do so. The public interest test can only be satisfied if one of the four considerations pertaining to that individual are present and causally connected to the public interest in making a firearm prohibition order. That is, no other factors are permitted to be taken into account in determining whether it is in the public interest to make such an order.
- 31 In considering whether it is in the public interest to make an order, the consequences, not only of the prohibition on acquiring, possessing, carrying or using a firearm itself and the significant maximum sentence available for breach, but also of the restrictions on freedom of movement and association and the power to search without warrant or consent, are relevant. That is, although it is the interests of the public, and not the private interests of the individual against whom a firearm prohibition order has been made, which must be considered, the public interest, in my view, is not limited to protecting the public against the escalating and changing nature of firearm

related violence and other firearm related crimes. The public interest includes subjecting people to no greater restriction on their freedom of movement and association and from search without warrant or consent than is reasonably necessary to give efficacy to protecting the public from firearm related crime which might occur if that individual were not prohibited from acquiring, possessing, carrying or using a firearm.

Power of the Tribunal on review

- 32 By s 112L, a person subject to an order can apply to the Tribunal for review of the Commissioner's decision to make a firearm prohibition order. On review, the Tribunal can consider any additional material filed by the parties in addition to the information which was before the Commissioner at the time of the making of the original decision. The Tribunal, by s 51(2), can affirm or vary the decision under review, set it aside and make another decision in substitution for it or remit the decision to the original decision maker for reconsideration.

Evidence

- 33 The Applicant filed a witness statement dated 3 December 2018 and was cross examined. In addition, he relied on statements from:
- (a) Amy Websdale, his wife, dated 3 December 2018;
 - (b) Robbyn Strickland, his father in law, dated 3 December 2018;
 - (c) Keith Kelton, his work supervisor, dated 3 December 2018; and
 - (d) Michelle Magri, his greyhound trainer, dated 3 December 2018.
- 34 The evidence of the Applicant's witnesses attested to his good character and to the inconvenience or hardship he had experienced as a result of the making of the Order. Although the Respondent did not accept that the Applicant was of good character (for reasons referred to below), it did not challenge the evidence of the restrictions on the Applicant's daily life activities since the Order had been made and did not require any of the Applicant's witnesses to submit to cross examination.
- 35 The restriction on entering premises on which firearms are stored imposed by s 112O(1)(h) has prevented the Applicant from visiting his parents in law and his greyhound trainer. Both his father in law and greyhound trainer live on rural properties. They deposed that, like many residents of rural areas, they keep firearms on their properties for reasons associated with rural living, such as euthanising injured livestock, killing rabbits, feral cats or other animals posing a threat to people or livestock. Mr Strickland and Ms Magri both deposed they were licensed, their firearms registered and stored in gun safes as required by law.
- 36 Before the Order was made, the Applicant had regularly visited his parents in law and his trainer. The inability to visit his parents in law is particularly burdensome for the Applicant and his family. They live in a different part of the State and his wife and young children's circumstances make it difficult

for them to visit her parents without his assistance. He has been unable to maintain regular visits with his trainer and view his dogs in training since the Order was made. He deposed he would often take his young children with him when viewing the dogs in training, which had given him and the children pleasure and provided a welcome respite for his wife.

- 37 I have referred to inconveniences, hardships and restrictions on daily life activities. That is not to belittle or disparage the evidence of the practical, day to day effect of the restrictive conditions that flow from the making of a firearm prohibition order. They are, in fact, practical, day to day examples of infringement of the fundamental human rights of freedom of movement and association which people who live in this State are accustomed to expect they should be able to enjoy. Although there is no evidence the Applicant, or anyone in his company, or any place he happens to be, has yet been searched, the evidence presented in this case revealed that police are exercising the power to search other people who are subject to a firearm prohibition order and to search any place they happen to be when they are stopped for searching. This, although authorised by the Act, is another example of an interference with fundamental human rights.
- 38 Although consideration of what is in the public interest does not include the Applicant's individual interests, the restrictions he has faced are illustrative of the sort of restrictions on fundamental rights and freedoms people subject to a firearm prohibition order are likely to experience. The statutorily authorised infringement of fundamental rights and freedoms on a class of persons by reason of their criminal history, behaviour, associates or at risk behaviour takes this beyond mere individual interests which do not involve a public interest to a higher order public interest relating to restrictions on the rights and freedoms of a class of persons.
- 39 The Respondent relied on two affidavits of Inspector Stephen Pucar dated 24 October 2018 and 1 April 2019 and an affidavit of Detective Inspector Wayne Cheesman dated 23 October 2019. Each of Inspectors Pucar and Cheesman has had considerable experience working in Echo Task Force, the anti-gang division of Victoria Police Crime Command. The task force was established in 2010 after Victoria Police Crime Command identified what it described as a high level of criminal activity in Victoria being undertaken by the people who identified themselves as belonging to outlaw motorcycle gangs (OMCGs). Each of them was cross examined.
- 40 The Respondent's evidence addressed the Applicant's criminal history, his connection with the Rebels Outlaw Motor Cycle Club (**Rebels**) and the activities of the Rebels and OMCGs more generally.
- 41 The Respondent's reasons for making the Applicant the subject of the Order centres around his connection with the Rebels and the activities of the Rebels. The Respondent's case was put in reliance on subparagraphs (a) and (c) of s 112E, namely that it was in the public interest to make the Order because of the Applicant's criminal convictions or the people with whom he associates.

As the Respondent's case focused primarily on the Applicant's association with the Rebels, it is convenient to deal with s 112E(c) first.

Section 112E(c)

The people with whom the Applicant associates

- 42 The Applicant is, as he freely acknowledges, a life member, and former long term President of the Geelong chapter and Victorian branch of the Rebels.
- 43 A considerable body of evidence was led about the Rebels and OMCGs generally. I consider that, subject to an assessment of its reliability, this general evidence is of assistance in providing a context to evaluate the more specific evidence about the significance of the Applicant's association with the Rebels and his adherence to their rules and code or beliefs. That, in turn, is relevant to assessing the significance of the connection between the people with whom the Applicant associates and the public interest in making him subject to the Order. The Applicant's connection with the Rebels is also relevant to an assessment of the context in which his criminal convictions should be evaluated.
- 44 Inspector Cheesman deposed that the term 'outlaw motorcycle gangs' has been in use since shortly after the end of the Second World War. He deposed:
- "In the aftermath of a riot that took place on 4 July 1947 at a motorcycle rally in Hollister California, the president of the American motorcycle Association reportedly said that 99% of motorcyclists were law-abiding citizens whilst 1% were troublemakers. Following those comments the 1% symbol was embraced by membership of those motorcycle clubs that consider themselves outlaws and not bound by the same laws as the rest of society.*
- ...
- OMCGs are recognised by governments and law enforcement agencies both internationally and nationally as organised crime groups.*
- ...
- OMCG members readily identify and label themselves as outlaws and ... [wear a] 1% patch on their clothing.*
- The 1% patch is recognised internationally as the primary identifier of membership of OMCGs."*
- 45 The Applicant, after some equivocating, ultimately acknowledged in cross examination that the Rebels call themselves an outlaw motorcycle gang. He agreed he became President of the Geelong chapter of the Rebels in about 2005. After some years he became State President. He remained State President up until 2014. He was then Vice President until 2016.
- 46 The Applicant acknowledges he is a "fully patched" life member of the Rebels. In addition to the standard patches or rockers identifying the Rebels, he wears a 1% patch, a patch bearing the number 13, a patch or rocker bearing

the word “elite” and a patch bearing the letters “RFFR”. Photographs taken of him riding his bike and fully patched at a national run staged by the Rebels on 5 October 2018, revealed his bike also bears the registration “RFFR 1”.

- 47 According to Inspector Cheesman, “13” represents the letter “M” and means the wearer uses and deals in marijuana or methamphetamine. “RFFR” means “Rebels Forever Forever Rebels” and signifies life membership and lifelong loyalty to the Rebels. According to Inspector Pucar, “elite” means having provided exceptional service to the Rebels and is a rare honour. Whilst being prepared to acknowledge the use of the terminology “outlaw” and the meanings of RFFR and 1% asserted by Inspectors Cheesman and Pucar, the Applicant did not accept the meanings attributed to 13 and elite. He said 13 was simply a reference to marijuana. He denied that it also referred to methamphetamine and denied that it indicated use or trafficking in those substances. He said that his elite rocker was awarded in recognition of the length of his service as State President and nothing more.
- 48 Rebels’ clubhouses, including the Geelong clubhouse (the Applicant’s “home chapter”) and the Sunshine clubhouse, which the Geelong chapter used after the Geelong clubhouse was destroyed by arson, are fortified and equipped with surveillance equipment. They display prominent signage of the Rebels’ colours and the 1% and 13 symbols.
- 49 The Applicant agreed the club has a hierarchical structure, with office bearers sitting above members. Ranked in order of seniority are the President, Vice President, Sergeant at Arms and Secretary. A past President ranks higher than a Sergeant at Arms. This hierarchy exists at international, state and local chapter level.
- 50 Although the Applicant professed never to have read the Rebels’ rules, he readily agreed the club rules required members to put loyalty to other members ahead of anything else, including the law. He agreed that the President of a chapter or state demanded and was given respect and obedience and that respect and deference continued to be afforded to him as a past President. He agreed that, when a member was called on to perform a task for the club, they were expected to do so and that disloyalty, or breaking the club rules, rendered that person liable to “discipline”. Discipline and enforcement was the responsibility of the Sergeant at Arms. “Discipline”, he acknowledged, included inflicting violence on errant members. He also agreed that the club rules prevented members from cooperating with the police or giving evidence that could implicate anybody.
- 51 As a past President of both the state branch and the Geelong chapter, the Applicant said he expected to be treated with respect and deference by state and Geelong chapter members. Although members were expected to carry out tasks if directed to by office bearers, as a former State President, he would not expect a member or the Sergeant at Arms to tell him what to do or direct him to carry out a task.

- 52 Inspectors Cheesman and Pucar also gave evidence of the relationships between various OMCGs. Inspector Cheesman deposed to his belief that there was a long-standing animosity between the Rebels and the Bandidos and current animosity between the Rebels and the Comancheros. He noted, however, that relationships between OMCGs were changeable with new alliances and new hostilities often forming. Inspector Pucar deposed to more recent tensions also between the Rebels and the Bros. The Bandidos, Comancheros and Bros are all OMCGs and have established a significant presence in Australia.
- 53 The matters set out below are illustrative of the tensions between the Rebels and the Bandidos in Geelong, set against the broader national context, during the early period of the Applicant's presidency:
- (a) In 1997, three members of the Bandidos, including the President and Sergeant at Arms of the Sydney inner-city chapter were shot dead. Two members of the Rebels were convicted of their murders.
 - (b) In 2006, approximately 15 members of the Sunshine chapter of the Rebels handed their colours back and formed the Sunshine North chapter of the Bandidos.
 - (c) Between February 2007 and August 2008, there were multiple drive-by shootings, assaults and arsons involving members of the Geelong branches of the Rebels and the Bandidos. Many of the drive-by shootings and assaults occurred in homes occupied by members of the two gangs. The arsons and other drive by shootings targeted their clubhouses. At one stage, police spoke to the Applicant in his capacity as State President, in an attempt to negotiate peace between the Rebels and the Bandidos. He told them he could not do much as it was a national conflict.
 - (d) On 22 October 2008, Ross Brand, the Sergeant at Arms of the Bandidos Geelong chapter, was shot dead at the entrance of the Bandidos' Geelong clubhouse. Another Bandidos member sustained non-fatal gunshot injuries. The Applicant's stepson, John Bedson, was convicted of murder and reckless conduct endangering life. The Applicant's son, Derek Bedson, was convicted of manslaughter and reckless conduct endangering life. John Bedson was a member of the Geelong chapter of the Rebels and head of Death Before Dishonour (DBD), a group Inspector Cheesman asserts was a 'feeder' group for the Rebels. The Applicant, who was President of both the state branch and the Geelong chapter of the Rebels at the time, was questioned by police about the events surrounding Brand's murder and declined to cooperate.
- 54 Inspectors Cheesman and Pucar deposed to the involvement of OMCGs, including the Rebels generally, in criminal activities including drug manufacture and trafficking, firearms and weapons offences, assaults, extortion and murder. Between June 2012 and December 2014, the Attero taskforce, established by the Australian Crime Commission, targeted the

activities of the Rebels. The investigation resulted in numerous illicit drug and proceeds of crime seizures from members of the Rebels.

- 55 The only evidence presented of the presence of firearms at the Geelong clubhouse dates back to 2007. In July 2007, a search warrant was executed at the Rebels' Geelong clubhouse. The Applicant attended during the search, in his capacity as Chapter President. His stepson, John Bedson, in his capacity as a member of the Geelong chapter, also attended. A firearm and other weapons were located on the premises. There was no, or insufficient evidence, to identify the owner, or person in possession of, the weapons and no charges were laid.
- 56 Turning then from the activities of the Rebels and other OMCGs more generally to identified individuals with whom the Applicant associates, the Respondent has compiled a document described as an Associate Analysis, which provides details of 104 persons with whom the Applicant has been known to associate. In creating the Associate Analysis, it has relied on two sources:
- (a) LEAP records held by Victoria Police which identify an association between the Applicant and other persons in the LEAP record. These associates are primarily members or associates of the Rebels' Geelong chapter and the Applicant's family.
 - (b) Corrections Victoria records which nominate the Applicant as an authorised phone call or visitor contact for persons serving a term of imprisonment.
- 57 I have already referred to the evidence of the tensions between the Geelong chapters of the Rebels and Bandidos in the period leading up to the killing of the Bandidos' Sergeant at Arms, Ross Brand, by the Applicant's Rebel member stepson, John, and son, Derek, in 2008.
- 58 The Associate Analysis reveals that the murder of Brand and the conviction and sentence of the Applicant's son and stepson for their involvement in his killing did not lead to a distancing of the Applicant from the Rebels.
- 59 The Associate Analysis instead reveals that the Applicant's association with members of the Rebels after Brand's murder continued unabated. It also reveals continuing criminal activity by Victorian members of the Rebels, including members of the Geelong chapter. The criminal activity included manufacture of and trafficking in drugs. Searches of various clubhouses, homes and cars of Rebels' members and office holders revealed considerable evidence of large scale, widespread drug manufacture and trafficking. Significant seizures of drugs, paraphernalia associated with the manufacture of methamphetamine and cash believed to be related to drug manufacture and trafficking were made. At many of the searches, firearms and ammunition were also found and seized.
- 60 The Applicant gave evidence he knew about 75% of the people listed on the Associate Analysis. Many of them he said he did not know well. He agreed,

apart from family members, most of the people listed in the Associate Analysis are members of the Rebels. The evidence revealed many of them have significant criminal records. That the Applicant does not know many of the listed associates “well” (if true) matters little. His evidence as to the expectation that Rebels members will act at the direction of office bearers is compelling proof of his ability to direct members to act in what he believes to be the Rebels’ interests, or what others above him in the Rebels hierarchy direct him to do in the Rebels’ interests, regardless of how well he knows another member.

- 61 Since 2008, the tensions between the Rebels and other OMCGs have continued. There have been multiple drive-by shootings, mostly directed at clubhouses or businesses associated with well-known office holders or members of other OMCGs. Property damage to clubhouses caused by fire or deliberate destruction of property, in addition to gunshot damage, has also occurred regularly. The evidence details numerous instances of assaults on members of the Rebels and other OMCGs. Inspectors Pucar and Cheesman depose to their belief that these assaults were perpetrated by members of opposing OMCGs and note few resulted in charges or convictions as, generally, victims and suspects refused to co-operate with police. I have no reason to doubt the reliability of their evidence about this.
- 62 The Applicant has been spoken to by police on a number of occasions in his capacity as State President, sometimes in relation to proposed “runs” by the Rebels, at other times in relation to confirming the establishment of new state chapters at Mildura and Croydon. At times he gave assurances that there would be no trouble from the Rebels when police had reason to believe there were tensions between them, the Bandidos, or other OMCGs including the Comancheros and the Bros. He was holding himself out, as State President, as authorised to speak on behalf of the state branch and local chapters as responsible for providing police with the contact details for the various state chapters and for liaising, when necessary, between police and the national leadership of the Rebels.
- 63 In the period after Brand’s murder, the Applicant was seen by police on a number of occasions in Mildura. He told them the Rebels were establishing a chapter there and that he was negotiating the purchase of premises to use as a clubhouse. He said that the Rebels were making their presence known in the town. I accept the evidence that the Rebels in Mildura have been associated with large-scale drug trafficking and engaged in behaviour designed to show other OMCGs that Mildura is their territory for drug trafficking.
- 64 In January 2014, 13 men wearing Rebels’ clothing and armed with various weapons took part in a “run through” of a house in Deer Park. An occupant of the house, Michael Ali Sleiman, suffered fatal injuries. He was subjected to a sustained attack of brutal force. He was repeatedly beaten with various weapons before being stabbed by members of the group. Four of the 13 men involved were charged with offences relating to the death of Sleiman and

ultimately two were convicted of manslaughter. They, and others, were also convicted of other charges relating to the “run through”.

- 65 Following the assault of Mick Murray, the national President of the Comancheros, by members of the Rebels in Darwin in May 2015, for two years there was a spate of drive-by shootings and arson attacks directed at clubhouses and businesses of the Rebels and the Comancheros in Victoria. The Nitro gyms owned and operated by Murray were included in the targets. There were also assaults of members of the Rebels and the Comancheros, including the running down of a member of the Comancheros by a car driven by a member of the Rebels.
- 66 The Applicant denied any personal involvement in these or any other criminal activities on behalf of or involving the Rebels. He has also denied any knowledge, during his time as President of the Geelong chapter and the Victorian branch, of any involvement by any other Rebel member under his control in any criminal activities on behalf of or involving the Rebels.
- 67 The Applicant’s denials of knowledge of any criminal activity by members of the Rebels are implausible and his attitude chilling. He characterised the fate of his stepson and son, convicted of the murder and manslaughter respectively of Ross Brand, as “the boys getting into a bit of trouble”. He initially denied any knowledge of any Rebel involvement in the events resulting in the killing of Michael Ali Sleiman. Later, in cross examination, he said that he had heard that two people involved were wearing Rebel clothing. He maintained his denial of any prior knowledge of the “run through” that culminated in the killing of Sleiman. He professed a remarkable, and unconvincing, ignorance of and lack of interest in finding out about the circumstances leading up to Sleiman’s killing or the fate of the Rebels’ members charged in connection with it. This despite his acceptance of the Rebels’ rules about members responding to calls to arms and not engaging in conduct that was contrary to the Rebels’ interests. Given his role as President at the time of both killings and what he had earlier said in cross examination about the hierarchical nature of the leadership structure of the Rebels, this is not credible.
- 68 The Applicant acknowledged he was aware that various members of the Rebels, including those directly under his authority, had been involved in criminal offences including drug trafficking and possession of firearms and other weapons. Although acknowledging that the Rebels’ code subjected members to sanctions if they were engaged in criminal activities that were contrary to the Rebels interests, he was unable to identify any instance where a member under his control had been disciplined for engaging in criminal activities without his knowledge or sanction.
- 69 Consistently with the Rebels’ code of conduct, the Applicant has declined to cooperate with the police in matters involving investigating criminal offences against or by members of the Rebels. That includes the setting alight of the

Rebels' clubhouse in Geelong in 2007 and the events surrounding the shooting of Brand in 2008.

- 70 The Applicant maintained that he has “done his time” and at times said that he now has no real power. At other times, he was adamant that, as a past President, he stood in the hierarchy above the Sergeant at Arms and was owed deference and respect by all members.
- 71 In my view, the latter position is the correct one. Compelling examples of this continued authority comes from the telephone calls made by prisoners and recorded by Corrections Victoria. These were calls from John Bedson (who is still serving his murder sentence) to the Applicant and other members of the Geelong chapter of the Rebels in 2017 and further calls between the Applicant and another of his sons, Wade Websdale, at a time that Wade was on remand for firearm offences in 2018.²¹ The tenor of all these calls demonstrated that the Applicant, John Bedson and Wade, as well as other members of the Rebels who were parties to the calls, acted on the basis the Applicant had the authority to direct violent action be taken, or not taken, to avenge past wrongs. More generally, they revealed that the Applicant continues to control activities related to the Rebels.
- 72 I am satisfied this demonstrates that the Applicant still has power and influence within the Rebels Geelong chapter and more broadly. I am satisfied this evidence also demonstrates that the Geelong chapter, and the Victorian branch of the Rebels are, as the Respondent contends, prominent in many aspects of serious and organised criminal activity, in particular the illicit drug trade, drive-by shootings and offences relating to possession of firearms and acts of violence including serious, even fatal assaults.

Evidence of possession of firearms by other Rebels' members or at Rebels' clubhouses

- 73 In August 2006, a firearm and ammunition were found in the possession of David Russell, when a search was conducted at Russell's home. John Bedson, the Applicant's stepson, who also lived in the house, was present at the search. Russell and Bedson's association with DBD was borne out by the DBD tattoos on their necks. Bedson acknowledged his membership of the Geelong chapter of the Rebels and had a set of keys to the Geelong clubhouse in his possession.
- 74 In July 2007, a firearm and other weapons were found during a search of the clubhouse of the Geelong chapter of the Rebels. As already noted, the Applicant and his stepson, John Bedson, were present when the search was conducted.
- 75 In November 2008, a substantial cache of firearms (15 longarm rifles, including three which were unregistered) were found during a search of the

²¹ The Applicant gave evidence that the charges against Wade were ultimately withdrawn.

home of Joel Davis, the then-Sergeant at Arms of the Rebels' Bendigo chapter in 2008.

- 76 In January 2011, four firearms (a pistol, a revolver, a handgun and a sawn off shotgun) were found during a search of the home of Ryan Field, a member of the Bendigo chapter of the Rebels:
- 77 In August 2011, firearms (a sawn off shotgun and a loaded handgun) and ammunition were found during a search of the home of Beau Edwards, the then Sergeant at Arms of the Bendigo chapter of the Rebels.
- 78 In September 2012, a sawn off shotgun was found during a search of the clubhouse of the Mildura chapter of the Rebels.
- 79 In October 2012, three firearms were found in the possession of Jason Geoffre, a member of DBD, the gang of which John Bedson was a member at the time of the murder of Ross Brand. The Applicant disputes the characterisation of DBD as a feeder group for the Geelong chapter of the Rebels. He said they were "just trouble".
- 80 The Applicant was State President at the time of all of these discoveries. I consider it likely the Applicant was aware of the existence of at least some of those firearms.
- 81 There have been discoveries of firearms and ammunition since the Applicant ceased being the State President in 2014. Again, having regard to the continuing authority of the Applicant by reason of his status as past State President, I consider it likely that the Applicant was aware of the existence of at least some of those firearms. They included a finding of a single firearm at a clandestine laboratory, when a warrant was executed in Mount Cottrell in August 2014, at premises occupied by three members of the Rebels, Mark Bialek, John McCurdy and Robert McCurdy and an imitation firearm and ammunition at the home of Mark Stoneman, the Sergeant at Arms of the Sunbury chapter of the Rebels.
- 82 In August 2018, ammunition and handgun holsters were found during a search of the home of Matthew Bruce, then believed to be a member of the Sunshine chapter of the Rebels. In February 2019, Bruce, by then believed to be the Sergeant at Arms of the Melbourne chapter of the Rebels, was charged with, amongst other things, possession of a trafficable quantity of unregistered firearms (an SKS military grade semiautomatic assault rifle with an empty magazine capable of holding 30 rounds of ammunition and 443 rounds of ammunition suitable for it, a bolt action rifle, a sawn off double barrel over under shotgun, a sawn-off rifle, a disassembled handgun and various calibre ammunition suitable for handguns, rifles and shotguns).

Evidence of the Applicant's possession of firearms

- 83 The direct evidence of the Applicant's involvement with firearms is scant. He has only one court appearance for firearms related offences; relating to possession of a category A firearm and ammunition. The firearm is described in the offence particulars as an antique longarm. The Applicant contends that

the firearm and ammunition were, without his knowledge, included with other possessions of a fellow Rebel, which the Applicant agreed to look after while the owner was in custody. I am unable to determine whether it was regarded by the Applicant as his to use if he wished. I use the Applicant's plea of guilty to possessing it as an admission that he at least knew of its presence.

A threat to shoot

84 In January 2009, following the murder of Ross Brand and whilst his son and stepson were awaiting trial for their roles in his killing, the Applicant told police that the Bandidos had a bounty on his head, that Bandidos were harassing and assaulting Rebels and that if he were approached or harassed by anyone associated with the Bandidos he would put a bullet in them.

Section 112E(a): The Applicant's criminal convictions

85 The Applicant is 62. He has a criminal history spanning more than 30 years, commencing in 1981 when he was 24. His last conviction was in 2012, when he was 56. On my count, he has been before courts on 15 occasions, with convictions being recorded on 12 of those. On my count, he has been convicted of, and sentenced for a total of, 20 offences across a wide spectrum of offending behaviour. They include:

- (a) minor street and dishonesty offences (indecent language, offensive behaviour and unlawful possession);
- (b) minor drug offences (possession, cultivation and use of cannabis, possession and use of amphetamine, possession of ecstasy and possession of steroids);
- (c) a single charge of fail to answer bail;
- (d) two charges of trafficking in amphetamines;
- (e) offences of violence (assault occasioning actual bodily harm, intentionally causing injury, recklessly cause injury); and
- (f) firearms and other weapons offences (possession of a Category A long arm rifle, possession of cartridge ammunition without a licence, possession of explosives and possession of a controlled weapon (knuckledusters) and prohibited weapons (a taser gun and an extendable baton)).

86 In September 1995, the Applicant was sentenced to a term of imprisonment of 2 years and 2 months with an 18 month non-parole period, for the two charges of amphetamine trafficking.

87 The firearms related charges were the most recent. The Applicant was dealt with for them in 2012. The Applicant maintained in this hearing that the firearm and ammunition were not his and he was unaware of their presence. As already noted, I treat his guilty plea as an admission that he was aware they were in his possession.

- 88 The Applicant relies strongly on the fact that he is no longer an office bearer with the Rebels and the absence of criminal convictions since 2012 in seeking to have the Order set aside. He submits he has lived a changed lifestyle since then, with his life revolving around his wife, his three youngest children (all under 10) and his work. He gave evidence that he works long hours as a construction worker on a major infrastructure project and said he otherwise spends most of his time at home with his wife and children. He noted his son, Wade (to whose recorded conversations with the Applicant whilst on remand in 2018 I have already referred), was ultimately bailed on conditions including that he reside with the Applicant. He submitted that showed he was found by the court which granted Wade bail to be a fit and proper person.
- 89 The Applicant gave evidence that his only connection with the Rebels currently was attendance “once or twice a month” for a “few hours at a time” at the Rebels’ clubhouse to catch up with and socialise with his friends. ‘Socialise’ is an understatement. As I have already noted, the calls recorded by Corrections Victoria in 2017 and 2018 reveal that he is still closely connected and influential with, at least, members of the Geelong chapter of the Rebels and that he still wields considerable authority.
- 90 Mr Snow, who appeared on behalf of the Applicant, put to Inspector Pucar that these matters showed the Applicant was now a law abiding citizen. Inspector Pucar disagreed. He said, and I accept on the evidence of the Applicant’s continued association with the Rebels and his evidence about the nature of his loyalty to fellow club members and adherence to the rules of the Rebels, that the highest it could be put was that the Applicant has not been charged with or convicted of any criminal offences since 2012.
- 91 The Applicant is entitled to have the absence of conviction since 2012 taken into account in his favour when considering whether, by reason only of his convictions,²² or associations,²³ it is in the public interest to subject him to a firearm prohibition order. However, based on the evidence I have canvassed above, I am not satisfied the evidence supports an affirmative conclusion in the Applicant’s favour that he has led a law abiding life since 2012.

Conclusions on evidence

- 92 I accept the Respondent’s submission that the evidence clearly establishes that the Applicant has for a long time adhered to and evidence his intention to continue to adhere to the Rebels code of conduct. He has a very long history of association with like-minded individuals who also adhere to the Rebels’ code of conduct. He again evidences his intention to continue these associations.
- 93 I accept that the evidence supports the conclusion that the people with whom the Applicant associates and who identify as members of the Rebels are prepared to engage in the range of serious criminal activities which have been

²² *Firearms Act 1996* (Vic), s 112E(a).

²³ *Firearms Act 1996* (Vic), s 112E(c).

identified, including possession and use of firearms. I accept the Respondent's submission that the Applicant has continued, by his association with the Rebels, to adopt and live out their code of conduct.

- 94 The Applicant himself confirmed that he was aware of past incidents involving the Rebels and other OMCGs, including the conflict between the Geelong chapters of the Rebels and the Bandidos, the Bendigo chapter of the Rebels and the Bros and of the various occasions on which Rebels' clubhouses had been attacked or were the subject of arson attempts. I am also satisfied the Applicant was aware of the various searches conducted by police of Rebels' clubhouses and of much of the extensive criminal activity in which members of the Rebels have been involved, including possession or use of firearms by members of the Rebels.
- 95 Whilst there is no evidence that the Applicant knew in advance of the fatal attacks on Ross Brand or Michael Ali Sleiman, it is clear each attack was carried out by members or associates of the Rebels. Ongoing hostility between the Rebels and the Bandidos provides the context for the Brand murder. Whether the fatal attack on Sleiman was connected to OMCG hostility, or simply to avenge a perceived wrong to someone associated with the Rebels, is unclear. What is clear is that the attack on Sleiman was ferocious and carried out by a group of men flaunting their connection with the Rebels. Although the Applicant denied knowing of any call to arms in relation to the run through and attack which led to Sleiman's death, the fact that the assailants were all wearing Rebels' clothing and that no disciplinary action was taken against any of them for acting contrary to the interests of the Rebels, indicates the attack was at least approved if not sanctioned or directed by the Rebels. If, as the Applicant claims, he did not know of these attacks in advance, his failure, as State President of the Rebels, to take disciplinary action against the assailants for carrying out attacks in the Rebels' name indicates, at least, retrospective approval or sanctioning of the conduct of the other Rebels involved.
- 96 I am also satisfied that the Applicant has consistently adopted and applied the Rebels' policy of non-cooperation with the police. It is further evidence, if it be needed, that his loyalty is to the Rebels. It is clear that he has continued to associate with, and remain loyal to, men who have committed serious, sometimes fatal offences of violence, including firearm related, fatal violence and serious property damage offences involving the use of firearms. It is also clear that he minimises the Rebels' connection with firearms and violence and the harm flowing from their conduct.
- 97 I accept the Respondent's submission that the activities of the Rebels, whether directly firearm related or not, pose a risk, not only to members of other OMCGs, but to the public at large. I accept the Respondent's submission that the Applicant is not concerned with the impact of his actions or those of the Rebels on the community at large.

- 98 There is no evidence that the Applicant has given directions in relation to the use of firearms or the possession and storage of firearms by other members of the Rebels. There is no evidence the Applicant has participated in, or directed others to participate in, shooting anyone, or using guns to threaten anyone, whether they be members of the Rebels, including those against whom disciplinary action is taken, the public or members of other OMCGs. There is no evidence that he has participated in, or directed others to participate in, any of the drive-by shootings of the clubhouses or other premises connected with dissident or former members of the Rebels or other OMCGs.
- 99 The Applicant does not have a history of acquiring, carrying or using a firearm. His history of possession of firearms and firearms related items is confined to the single instance in 2012 of possession of a single longarm firearm and ammunition. The firearm was not, in the state in which it was found, of the type more readily used in the sorts of firearm related activity in which the evidence reveals other members of the Rebels have engaged.
- 100 I also accept the evidence that, by reason of the Applicant's role in the hierarchy of the Rebels, that he is more likely to be a person giving directions than receiving them and that he is able and likely to distance himself from any direct involvement in criminal activity, including the possession or use of firearms.
- 101 There is some evidence that the Applicant himself has resorted to violence, but there is no evidence that he has ever armed himself or sought to arm himself with a firearm. The threat relayed to police, in the aftermath of the shooting murder of Ross Brand, about putting a bullet into any member or associate of the Bandidos who approached or threatened him, is a serious threat. That it did not materialise at the time does not mean it can be discounted. However, it must be viewed in the context of the absence of any like threat or any conduct carrying such a threat into effect over the very long period of the Applicant's association with the Rebels.
- 102 I accept there is evidence which suggests the Applicant in the past has been at risk of harm from members of other OMCGs by reason of the rivalries between the clubs. By reason of his association with and role in the Rebels, the prospect of being at threat now or in the future cannot be ruled out. However, there is no evidence that the Applicant has ever armed himself, whether offensively or to protect himself, against a real or perceived threat to his life.

The question for determination under s 112E(a) and (c)

- 103 All this leads me to conclude that the activities of the Rebels which I have detailed pose a threat to public safety and peace. Similarly, the activities of the individuals with whom the Applicant associates pose a threat to public safety and peace. And the Applicant, by his association with the Rebels and the individual members with whom he associates poses a threat to public safety and peace. I use the language of public safety and peace because they

are words appearing in the introductory words of s of the Act, which states the purpose of the Act. Section 1(a) begins:

“the possession, carriage, use, acquisition and disposal of firearms are conditional on the need to ensure public safety and peace”

- 104 I am also satisfied that the Applicant poses a continuing threat or risk to public safety by reason of his long-term and continuing identification with the Rebels, their values, and his continuing association with fellow members of the Rebels.
- 105 However, the question for determination under s 112E(a) and (c) is not whether the Rebels generally, or the Applicant specifically, pose a threat or risk to public safety. Were that the question, on the evidence before me, I would have no hesitation in answering it in the affirmative.
- 106 Nor is the question whether the Applicant, by reason of the people with whom he associates, or his criminal history, poses a threat or risk to public safety. The risk to public safety is clearly a matter which is proper to take into account in considering whether it is in the public interest to make a firearm prohibition order under s 112E(c) or (a), but it is not the question which is asked by s 112E(a) or (c).
- 107 Under s 112E(c), the question is whether it is in the public interest, because, and only because of the people with whom the Applicant associates, to prohibit him from acquiring, possessing, carrying or using a firearm and, as a result, subjecting him to a significant curtailment of his freedom of movement and association, and subjecting him, any person who is with him, and any place he is, or anything he has with him, to search without warrant or consent.
- 108 In determining whether it is in the public interest to make a firearm prohibition order under s 112E(c), consistently with the principles relevant to assessing public interest identified earlier, the following factual matters by which the discretionary value judgment must be considered are:
- (a) whether the Applicant poses a risk to public safety;
 - (b) the nature of any risk the Applicant poses to public safety;
 - (c) the level of risk the Applicant poses;
 - (d) the connection between the risk the Applicant poses to public safety and the people with whom he associates;
 - (e) the extent to which the Applicant’s criminal history bears on the assessment of the connection between the risk he poses to public safety and the people with whom he associates;
 - (f) the connection between the risk the Applicant poses to public safety because, and only because, of the people with whom he associates and the acquisition, possession, carrying or use of firearms or firearm related items by him;

- (g) the extent to which that risk would be abated by prohibiting the Applicant from acquiring, possessing, carrying or using firearms or firearm related items; and
 - (h) the proportionality between the prohibition on acquiring, possessing, carrying or using a firearm or firearm related item, the extent to which the risk would be abated by the making of an order and the curtailment of rights which flow from the making of an order.
- 109 In determining whether it is in the public interest to make a firearm prohibition order under s 112E(a), consistently with public interest principles identified earlier, the following factual matters by which the discretionary value judgment must be considered are:
- (a) whether the Applicant poses a risk to public safety;
 - (b) the nature of any risk the Applicant poses to public safety;
 - (c) the level of risk the Applicant poses;
 - (d) the connection between the risk the Applicant poses to public safety and his criminal convictions;
 - (e) the extent to which the Applicant's connection with the Rebels bears on the assessment of the risk he poses to public safety by reason of his criminal history;
 - (f) the connection between the risk the Applicant poses to public safety because, and only because, of his criminal history and the acquisition, possession, carrying or use of firearms or firearm related items by him;
 - (g) the extent to which that risk would be abated by prohibiting the Applicant from acquiring, possessing, carrying or using firearms or firearm related items; and
 - (h) the proportionality between the prohibition on acquiring, possessing, carrying or using a firearm or firearm related item, the extent to which the risk would be abated by the making of an order and the curtailment of rights which flow from the making of an order.

Conclusion

- 110 I am satisfied that the Applicant's membership of the Rebels, and his association with other members of the Rebels and adherence to their code of conduct, does pose a risk to public safety. In assessing the nature and level of risk, I rely on the evidence of Inspectors Cheesman and Pucar that OMCG's are involved in widespread and serious criminal activities, that the risk to public safety is not confined to other OMCGs but extends to the public at large and that they, and the Applicant, are not concerned with the impact of their actions on the public at large.
- 111 However, I am not satisfied on the evidence that the risk to the public safety the Applicant poses is connected to the acquisition, possession, carrying or use of a firearm or firearm-related item by him.

- 112 A firearm prohibition order is limited to prohibiting the individual who is the subject of the order from acquiring, possessing or using a firearm or firearm related item. It was part of the Respondent's case, and which I accept, that a person with the power and authority of the Applicant in the Rebels, is able and likely to distance himself from any direct involvement in any criminal activity, including the possession or use of firearms. Making the Applicant the subject of a firearm prohibition order will not prevent him from directing, or sanctioning the acquisition, possession, carrying or use of firearms or firearm related items by other members of the Rebels.
- 113 The evidence does not establish that the risk to public safety the Applicant poses would be abated by prohibiting him from acquiring or possessing, carrying or using any firearm or firearm related item. There is no evidence of a nexus between the acquisition, possession, carrying or use of a firearm or firearm related item by the Applicant and the threat or risk to public safety posed by him, by reason only of the people with whom he associates.
- 114 In those circumstances, it is not necessary to consider whether the risk to public safety by reason of the people with whom the Applicant associates and the extent to which the risk could be abated by prohibiting the Applicant from acquiring, possessing, carrying or using a firearm or firearm related item is proportionate to the consequences of the Order on the Applicant's freedom of movement and association and his exposure to search without warrant or consent.
- 115 For these reasons, I am not satisfied it is in the public interest to subject the Applicant to a firearm prohibition order under s 112E(c).
- 116 Dealing then with s 112E(a), I make the same findings in relation to the nature and level of risk the Applicant poses to public safety I made when considering s 112E(c). The Applicant's criminal history is significant and is properly to be regarded as more serious because of its, and his, association with the Rebels. By contrast to the obvious and direct link between the risk to public safety and the Applicant's association with the lawless activities of Rebels, the connection between the risk to public safety and the Applicant's criminal history, even when viewed through the prism of his association with the Rebels, is not strong.
- 117 More significantly, however, the Respondent has not established a connection or nexus between the risk to public safety by reason only of the Applicant's criminal history and the acquisition, possession, carrying or use of firearms or firearm related items by him. The evidence does not support the conclusion that any risk to public safety the Applicant poses by reason of his criminal history would be abated by prohibiting him from acquiring, possessing, carrying or using firearms or firearm related items.
- 118 There is no evidence of a nexus between the acquisition, possession, carrying or use of a firearm or firearm related item by the Applicant and the threat or risk to public safety posed by him, by reason only of his criminal history.

- 119 Again, this finding means it is not necessary to consider whether the risk to public safety by reason of the Applicant's criminal history and the extent to which the risk could be abated by prohibiting the Applicant from acquiring, possessing, carrying or using a firearm or firearm related item is proportionate to the consequences of the Order on the Applicant's freedom of movement and association and his exposure to search without warrant or consent.
- 120 For these reasons, I am not satisfied it is in the public interest to subject the Applicant to a firearm prohibition order under s 112E(a).
- 121 The decision of the Respondent of 29 May 2018 to make a firearm prohibition order in respect of the Applicant is set aside.


Judge Hampel
ACTING PRESIDENT

