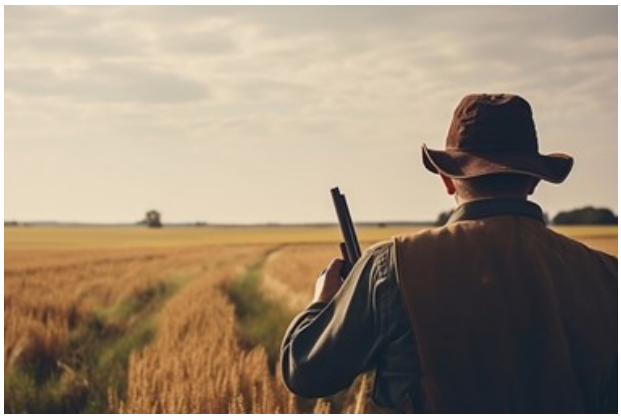
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LEGAL PRACTICE



Case review - unrecorded convictions in weapons licensing decisions

Author: Patrick Quinn
Email: pquinn@gnl.com.au
Phone: 0415 463 966
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In a decision delivered in January 2025 by the Queensland Civil and Administrative Tribunal (QCAT) in the case of **XPR v Queensland Police Service – Weapons Licensing [2025] QCAT 1**, the Tribunal considered the critical issue of whether unrecorded convictions can be taken into account by the decision maker when deciding an application for a weapons license.

Background – applicant sought review of firearms license application refusal

The applicant, XPR, sought a review of the Queensland Police Service's (**QPS**) decision to refuse his application for a firearms license.

The refusal was based on XPR's previous drug-related offences, for which no convictions were recorded. The key legal question was whether these unrecorded convictions could be taken into account in determining XPR's fitness to hold a weapons license.

Legal framework

The Tribunal's decision hinged on the interpretation of several key legislative provisions.

1. Penalties and Sentences Act 1992 (Qld) (PSA):

- Section 12(3) of the PSA states that a conviction without recording the conviction is taken not to be a conviction for any purpose.

- This provision aims to protect individuals from the stigma associated with a criminal conviction, promoting rehabilitation and reintegration into society.

1. *Weapons Act 1990* (Qld) (WA):

- Section 10B outlines the criteria for determining whether a person is a fit and proper person to hold a weapons license.
- The QPS argued that the absence of an express limitation in Section 10B(1) allowed consideration of unrecorded convictions.

1. *Criminal Law (Rehabilitation of Offenders) Act* 1986 (Qld) (CLROA):

- Section 5(2) prohibits requiring or asking a person to disclose a conviction that is not part of their criminal history.

Tribunal grants the application for a weapons license

The Tribunal (Mellifont J and Member Olding) concluded that unrecorded convictions should **not** be considered when assessing whether a person is 'fit and proper' under s10B(1) of the WA.

Key points from the analysis include:

- **Statutory fiction**: Section 12(3) of the PSA creates a statutory fiction that unrecorded convictions are not convictions for any purpose. This means that licensing authorities cannot consider these convictions or the underlying facts and circumstances.
- **Legislative intent**: The PSA and CLROA aim to protect individuals from the ongoing consequences of their past offences, provided no conviction was recorded. Allowing licensing authorities to consider unrecorded convictions would undermine this protective intent.
- **Public interest and rehabilitation**: The Tribunal emphasised the balance between public safety and the rehabilitation of offenders. It noted that the decision to not record a conviction reflects a judicial determination that the individual should not suffer the full consequences of a criminal conviction.

The Tribunal set aside the QPS's decision and granted XPR's application for a weapons license. This case clarifies the principle that unrecorded convictions **cannot** be considered in licensing decisions, ensuring that individuals who have been given the benefit of non-recording are not unduly penalised in their future endeavours.

This decision underscores the importance of adhering to legislative protections designed to support the rehabilitation and reintegration of individuals into society while also maintaining public safety through appropriate licensing criteria.

The QPS has filed an appeal in the Court of Appeal against the decision.

Get help from a lawyer experienced in weapons licensing

Gilshenan &Luton has extensive experience in responding to adverse decisions related to weapons licence applications. If your weapons license has been refused and you feel that decision is unfair or unreasonable, contact us for advice and assistance.

Contacting Gilshenan &Luton Lawyers

07 3361 0222 (24/7)

gnl@gnl.com.au

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