



Civil and Administrative Tribunal  
New South Wales

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Case Name: Tukel v Commissioner of Police

Medium Neutral Citation: [2022] NSWCATAD 104

Hearing Date(s): 11 November 2021

Date of Orders: 25 March 2022

Decision Date: 25 March 2022

Jurisdiction: Administrative and Equal Opportunity Division

Before: S Montgomery, Senior Member

Decision: (1) The decision under review is affirmed.

Catchwords: Administrative Law – firearms – firearms prohibition order – whether person ‘not fit, in the public interest’ – association with an outlaw motorcycle gang

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW)  
Administrative Decisions Review Act 1997 (NSW)  
Firearms Act 1996 (NSW)  
Weapons Prohibition Act 1998 (NSW)

Cases Cited: Adams v Commissioner of Police, New South Wales Police Force [2017] NSWCATAD 194  
Addison v Commissioner of Police, NSW Police Force [2019] NSWCATAD 99  
Azzopardi v Commissioner of Police New South Wales Police Force [2013] NSWADT 205  
Bassal v Commissioner of Police, New South Wales Police Force [2017] NSWCATAD 276  
Commissioner of Police, NSW Police Force v Bazzi & Ors [2021] NSWSC 1150  
Constantin v Commissioner of Police, New South Wales Police Force [2013] NSWADTAP 16  
Dalziell v Commissioner of Police, NSW Police Force [2018] NSWCATAD 79

Drake v Minister for Immigration and Ethnic Affairs  
(1979) 2 ALD 60 at 77  
Fahma v Director of Public Prosecutions (NSW) [2021]  
NSWDC 329  
Hamid v Commissioner of Police, New South Wales  
Police Force [2018] NSWCATAD 43  
Kocic v Commissioner of Police, NSW Police Force  
(2014) 88 NSWLR 159  
Sciberras v Commissioner of Police, New South Wales  
Police Force [2015] NSWCATAD 206.  
Stamatelatos v Commissioner of Police, NSW Police  
Force [2018] NSWCATAD 156  
Stealth Enterprises Pty Ltd v Calliden Insurance Ltd  
[2015] NSWSC 1270  
Tolley v Commissioner of Police, New South Wales  
Police Service [2006] NSWADT 149  
Tukel v Commissioner of Police, New South Wales  
Police Force [2020] NSWCATAD 63.  
Tukel v Commissioner of Police, NSW Police Force  
[2021] NSWCATAD 60

Texts Cited:

None cited

Category:

Principal judgment

Parties:

Fidel Tukel (Applicant)  
Commissioner of Police (Respondent)

Representation:

Counsel:  
G Stanton (Applicant)  
C Mantziaris (Respondent)

Solicitors:  
Cunningham Solicitors (Applicant)  
Crown Solicitor (Respondent)

File Number(s):

2019/00289323

Publication Restriction:

Pursuant to section 64(1) of the Civil and Administrative  
Tribunal Act 2013, the content of the material that was  
filed by the Respondent on a confidential basis is not to  
be disclosed without further order of the Tribunal.

Those paragraphs of these reasons identified as “not  
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## REASONS FOR DECISION

### Introduction

- 1 This is an application for review of a decision by a delegate of the Commissioner of Police (“the Respondent” or “the Commissioner”) to issue a Firearms Prohibition Order (“FPO”) under section 73(1) of the *Firearms Act 1996* (NSW)(“the Act”) against Mr Tukul (“the Applicant”).
- 2 Section 73(1) of the *Firearms Act 1996* states that the Commissioner may make an order prohibiting a person from having possession of or using any firearm if in the opinion of the Commissioner, the person is not fit, in the public interest, to have possession of a firearm.
- 3 The Commissioner formed the opinion that Mr Tukul is not fit, in the public interest, to have possession of a firearm on the grounds that he had been issued with four consorting warnings in 2014 and 2015, and that he was associated with the Comanchero Outlaw Motor Cycle Gang (“the Comancheros”), which is an organized criminal group.
- 4 A decision that imposes an FPO is initiated by the Commissioner. The FPO creates powers in favour of the NSW Police Force, including power to search premises occupied by a person who is subject to such an order. Section 74A in Part 7 of the Act provides:

Part 7 – Firearms prohibition orders

...

74A Powers of police to search for firearms in possession of person subject to firearms prohibition order

- (1) The powers of a police officer under this section may be exercised as reasonably required for the purposes of determining whether a person who is subject to a firearms prohibition order has committed an offence under section 74 (1), (2) or (3).
- (2) A police officer may:
  - (a) detain a person who is subject to a firearms prohibition order, or

(b) enter any premises occupied by or under the control or management of such a person, or

(c) stop and detain any vehicle, vessel or aircraft occupied by or under the control or management of such a person,

and conduct a search of the person, or of the premises, vehicle, vessel or aircraft, for any firearms, firearm parts or ammunition.

(3) In this section, "premises" includes any place, whether built on or not.

- 5 There is no requirement that a police officer give a person who has been served with an FPO a reasonable opportunity to comply with the FPO before undertaking searches: *Fahma v Director of Public Prosecutions (NSW)* [2021] NSWDC 329 at paragraph [38].
- 6 The Applicant has applied to the Tribunal for administrative review of the Commissioner's decision. It is not in dispute that he was a member of the Comancheros. However, he says that he ended his association with the Comancheros in April 2016 and that in December 2016 he handed in his colours.

### **Related applications**

- 7 In addition to the FPO, the Commissioner also determined to issue a Weapons Prohibition Order ("WPO") under section 33(1) of the *Weapons Prohibition Act 1998* (NSW) against the Applicant, relying on the same grounds as for the FPO. The Applicant sought review of that order however the Tribunal found that there is no jurisdiction to entertain an application to review the making of a weapons prohibition order: *Tukel v Commissioner of Police, New South Wales Police Force* [2020] NSWCATAD 63.
- 8 The relevant background is discussed in the decision in *Tukel v Commissioner of Police, NSW Police Force* [2021] NSWCATAD 60 ("the section 59 decision"). In that matter Senior Member Frost dealt with an application under section 59 of the *Administrative Decisions Review Act 1997 (NSW)* ("the ADR Act").
- 9 In accordance with standard practice, the Tribunal made orders for the Commissioner to lodge material in the substantive matter pursuant to section 58 of the ADR Act, and the Commissioner filed and served a bundle of documents. However, Senior Member Frost ordered under section 59 of the

ADR Act that the Respondent was not required to lodge copies of some specified material (“the Confidential Documents”). He also made various confidentiality orders under section 64 of the *Civil and Administrative Tribunal Act 2013* (NSW) (“the NCAT Act”).

- 10 The section 59 decision discusses the application of sections 49 and 64 of the NCAT Act in some detail. Senior Member Frost stated at paragraphs [38] – [39]:

38. In this case I was satisfied, on the basis of the material in DS Groenewegen’s affidavit, that I should conduct part of the interlocutory proceeding in private, and in the absence of Mr Tukul and his legal representatives. In my view, and despite the submissions to the contrary made on Mr Tukul’s behalf, that course is authorised by NCAT s 49. If, in the alternative, that part of the proceeding had been conducted simply in the absence of members of the public – so as to exclude everyone other than the parties and their representatives – and it had emerged that some of the material may properly be the subject of an order under s 64(1)(d), the utility of such an order would necessarily have been undermined.

39. On similar reasoning it seems appropriate to expand the order under NCAT s 49 to cover the substantive hearing as well. In that way the Tribunal, as constituted to hear the substantive application, can conduct part of the hearing in private. Of course, it remains open to the Tribunal as so constituted to revoke the order to that extent should it be considered inappropriate or no longer necessary.

- 11 Senior Member Frost also found that the Tribunal has the power to prohibit disclosure to a party’s legal representative. At paragraph [49] of the section 59 decision he stated:

The confidential nature of the material can only properly be protected if the order under NCAT s 64(1)(d) also prohibits disclosure to Mr Tukul’s legal representatives.

- 12 I do not propose to revisit those issues in these reasons.
- 13 The section 59 decision also discusses evidence given by Detective Sergeant Bruce Groenewegen. DS Groenewegen has provided evidence in these proceedings and the background provided in regard to his experience is therefore relevant.

## The issues

- 14 The issues for determination are whether the Applicant is not fit, in the public interest, to have possession of a firearm and whether it is in the public interest for the FPO to be issued against the Applicant.

## Legal Principles

- 15 The Act establishes a legislative framework to regulate the possession, use, acquisition and supply of firearms.
- 16 Section 75(1)(f) of the Act confers jurisdiction on the Tribunal to hear and determine the Application. Section 63 of the ADR Act requires the Tribunal to make the correct and preferable decision on the basis of the evidence available at the time, together with any additional or later material: *Drake v Minister for Immigration and Ethnic Affairs* (1979) 2 ALD 60 at 77.
- 17 Section 3 of the Act states:

### 3 Principles and objects of Act

#### (1) The underlying principles of this Act are -

- (a) to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety, and
- (b) to improve public safety—
  - (i) by imposing strict controls on the possession and use of firearms, and
  - (ii) by promoting the safe and responsible storage and use of firearms, and

...

#### (2) The objects of this Act are as follows—

...

- (b) to establish an integrated licensing and registration scheme for all firearms,
- (c) to require each person who possesses or uses a firearm under the authority of a licence to prove a genuine reason for possessing or using the firearm,
- (d) to provide strict requirements that must be satisfied in relation to licensing of firearms and the acquisition and supply of firearms,

(e) to ensure that firearms are stored and conveyed in a safe and secure manner,

...

18 The power to grant an application for a firearms licence under section 11 of the Act is "tightly constrained": *Kocic v Commissioner of Police, NSW Police Force* (2014) 88 NSWLR 159 at [1].

19 As noted above, section 73 of the Act confers on the Respondent the power to issue a FPO if, in the opinion of the Commissioner, the person is not fit, in the public interest, to have possession of a firearm.

*Not fit, in the public interest, to have possession of a firearm*

20 In *Addison v Commissioner of Police, NSW Police Force* [2019] NSWCATAD 99, Senior Member Leal considered a number of authorities in relation to the meaning of the expression "not fit, in the public interest, to have possession of a firearm" as found in section 73(1) of the Act. She stated:

Not fit, in the public interest to have possession of a firearm

15. In determining what it means to be 'not fit, in the public interest to have possession of a firearm', I am assisted by the underlying principles of the Firearms Act that declare firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety.' (s3(1) of the Firearms Act)

16. I am also assisted by those provisions of the Firearms Act which provide that a licence must not be issued:

(1) unless the Commissioner is satisfied that the applicant is a fit and proper person and can be trusted to have possession of firearms without danger to public safety or to the peace (s11(3));

(2) if the Commissioner is of the opinion, having regard to any criminal intelligence report or other criminal information held in relation to the person, that (a) the person is a risk to public safety and (b) the issuing of the licence would be contrary to the public interest. (s11(5A))

(3) if it would be contrary to the public interest. (s11(7))

17. Although Mr Addison is not applying for a firearms licence or permit, I agree with the reasoning of Senior Member Walker who, in the decision of *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43, found that the approach illustrated by those licensing provisions in the Firearms Act is applicable by analogy when considering the power to issue a Firearms Prohibition Order.

18. In particular, I agree with Senior Member Walker that the language used 'not fit, in the public interest' – being materially different from the 'fit and proper person' test in the Firearm Act's licensing provisions – implies that even though a person may have an unblemished record, public interest considerations may render the person unfit and make it appropriate to issue a firearms prohibition order against him or her.

19. As set out in *Constantin v Commissioner of Police, New South Wales Police Force* [2013] NSWADTAP 16, the concept of public interest allows for matters going beyond the applicant's character to be taken into account. These may include concerns in relation to public protection, public safety and public confidence in the administration.

20. I agree with the following discussion of the public interest in *Tolley v Commissioner of Police, New South Wales Police Service* [2006] NSWADT 149 at [31] that 'given the breadth of the Commissioner's discretion and the overriding object of public safety, there is no basis for differentiating between conduct of the Applicant themselves and conduct of another which may impact on public safety in the context of a firearms licence':

21. In both *Hamid v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 43 and *Dalziell v Commissioner of Police, NSW Police Force* [2018] NSWCATAD 79, it was held that where an applicant voluntarily associated with persons having significant criminal histories or involvement with criminal organisations and activities, that association may create the danger to public safety with which the Commissioner is concerned and that person may therefore be not fit, in the public interest, to be in possession of a firearm. In those circumstances, a firearms prohibition order may be justified.

22. The NSW Court of Appeal has acknowledged that it is commonly recognized that outlaw motorcycle gangs are involved in criminal activities: *Stealth Enterprises Pty Ltd v Calliden Insurance Ltd* [2015] NSWSC 1270

23. The enactment of the Crimes (Criminal Organizations Control) Act 2012, which can limit the activities of certain outlaw motorcycle gangs for specific periods, indicates that the legislature regards the activities of outlaw motorcycle gangs and their members as a risk to public safety: *Sciberras v Commissioner of Police, New South Wales Police Force* [2015] NSWCATAD 206.

24. In *Bassal v Commissioner of Police, New South Wales Police Force* [2017] NSWCATAD 276, Senior Member Walker found that 'where there is evidence demonstrating that an applicant is a member of an outlaw motorcycle gang whose members are known to have engaged in criminal activity but the applicant refuses to dissociate himself or herself from it, it is appropriate to refuse the applicant a firearms licence.' In light of the overriding principles of the Firearms Act that firearm possession and use is a privilege that is conditional on the overriding need to ensure public safety, I agree with these findings.



- 21 When considering the Applicant's potential future conduct, the Tribunal may consider past conduct as a significant guide. In *Stamatelatos v Commissioner of Police, NSW Police Force* [2018] NSWCATAD 156 Senior Member Scahill noted:

In *Adams v Commissioner of Police, New South Wales Police Force* [2017] NSWCATAD 194, the Tribunal reviewed a decision to refuse to issue a category AB firearms licence for the purpose of hunting. The applicant was a member of the Outcasts OMCG, and the Tribunal found that he had a continuing association with that group: at [78]. In upholding the decision to refuse Mr Adams' firearms licence application, the Tribunal said, at [90], that:

"... Although there is no evidence that the applicant has personally engaged in any drug dealing, firearms trafficking, violence or similar criminal activities, he could, as the Respondent contends, come under pressure to make guns or ammunition available to members of the Outcasts if he continues to associate with them. On the basis of all the evidence, I find that the applicant is not a fit and proper person to be licensed to possess or use firearms"

And, at [98]:

"I have found that the applicant retains an association with the Outcasts and even now equivocates about whether he would remain a member if he were to accept that it is in fact an OMCG. He admits that he has made no effort to dissociate himself from the Outcasts. The Tribunal in *Azzopardi* has recognized that OMCG membership in itself entails a firearms risk. See *Azzopardi v Commissioner of Police New South Wales Police Force* [2013] NSWADT 205 Further, confidence in the firearms licensing system could suffer if its elaborate requirements failed to prevent the licensing of a person known to be associated with an organization having a propensity for violence and other criminal conduct."

- 22 Senior Member Scahill found that Mr Stamatelatos was a member of the Mongols OMCG and she also accepted Detective Sergeant Groenewegen's evidence about the violent characteristics of OMCGs and the Mongols. Nevertheless, she found that there was no nexus drawn between the accepted characteristics of OMCGs and the Mongols and Mr Stamatelatos himself.
- 23 I have been referred to the decision of Bellew J in *Commissioner of Police, NSW Police Force v Bazzi & Ors* [2021] NSWSC 1150 which provides the following background in relation to OMCGs at paragraphs [4] – [5]:

## The Comancheros Outlaw Motorcycle Gang Club

4. The Comancheros Outlaw Motorcycle Club (the Comancheros) is an outlaw motorcycle club gang (OMCG). OMCGs and their members consider themselves, and are considered by others, including their rivals, as “outlaws” who are not bound by the same laws as the rest of society. Their members advertise themselves as such by way of various indicia including patches, jewellery and tattoos, and defend their exclusive right to wear and display the indicia of the club to which they belong.

5. OMCGs generally have a hierarchical structure, and are governed by rules which are often enforced by violence. Their members are often involved in the commission of serious criminal activity including murder, drug manufacture, cultivation and distribution, organised property theft, fraud, violence, extortion, intimidation, riot, affray, corruption of justice and weapons-related offences. OMCGs are recognised by law enforcement agencies throughout Australia, and in various parts of the world, as organised criminal groups, the members of which pose a significant threat to public safety.

### **Evidence and Submissions**

- 24 The Respondent relies on the documents filed pursuant to section 58 of the ADR Act, the evidence of DS Groenewegen and both the non-confidential evidence presented at the open hearing, and confidential evidence presented in the 'closed hearing' pursuant to section 49 of the NCAT Act.
- 25 The Applicant provided affidavit evidence and a number of character references in support of his application.
- 26 Counsel for both parties have provided written and oral submissions. Both DS Groenewegen and the Applicant were cross examined at the hearing.

### *DS Groenewegen*

#### 27 **[NOT FOR PUBLICATION]**

- 28 As noted DS Groenewegen provided both open and confidential evidence. He appeared at the hearing and was cross examined. His open evidence has been provided to the Applicant. His affidavit is dated 30 August 2021 and annexes a report which comprises 333 pages (“the Report”). The Report is in segments. It partly provides general information regarding OMCGs, partly provides specific information regarding the Comancheros and partly provides specific information regarding the Applicant.

- 29 Additional material, which includes COPS entries, events and information reports and criminal histories of various other members of the Comancheros, is also referenced. DS Groenewegen also provided affidavit evidence in relation to the interlocutory Application.
- 30 DS Groenewegen provided evidence in relation to the Applicant's various OMCG ranks and associations as a member of the Comancheros. The information is in the event reports, information reports, and a criminal history and bail report. The Report includes photographic evidence of colours and patches.
- 31 Under cross examination DS Groenewegen conceded that he has not dealt with the Applicant in his role as a police officer; he accessed intelligence reports and events in the preparation of the Report but he did not author any of the reports. He was using reports prepared by others and did not question any of those individuals; none of the reports prepared in relation to the Applicant were electronically recorded or signed by the Applicant as a true and accurate record of the account. DS Groenewegen is aware that the Applicant has disputed several of the records in regard to what he is alleged to have said but he didn't ask the Applicant about the disputed reports. He is not aware of any material in which a police officer has indicated that the Applicant has claimed to be a retired member of the Comancheros. He accepted that the value of the Report rests on the credibility of the authors if the information reports or intelligence reports.
- 32 DS Groenewegen's evidence is that the Applicant:
- was a member of the Comancheros from sometime in 2010-2011;
  - openly displayed Comanchero club colours and patches until sometime in December 2016. He held patches which were markers of significant status and respect within the organisation;
  - held the position of 'Lieutenant' of the Comanchero East Crew from at least 2013 to 2015. The rank of Lieutenant is a senior office, which equates to the office of Vice President in other OMCGs;
  - shared or was proposed for the sharing of the position of National Commander of the Comancheros with Ali Bazzi in about 2016;
  - functioned as a spokesperson for the Comancheros in interactions with the police;

- transitioned from being a Chapter Member of the Comancheros to being a Nomad Member of the Comancheros in about 2016. Nomad status is rarely afforded to a member, and is of greater status than Chapter membership; and
- has maintained ongoing contact with senior figures within the Comancheros.

33 In the Report DS Groenewegen expressed the following opinion:

Based on my experience, training and specialised knowledge of the Comanchero OMCG, its nature and distinguishing characteristics, and the information available to me, I am of the opinion that Fidel Tukul:

(i) was a member of the Rebels OMCG from at least 2003 to at least 2006;

(ii) is likely to have been a Nominee Member of the Comanchero during 2010;

(iii) became a Full Member of the Comanchero in or about May 2011;

(iv) was the Lieutenant of the Comanchero East Crew from at least 2013 to 2015;

(v) has claimed to no longer be a Member of the Comanchero and to have signed a Statutory Declaration to that effect;

(vi) in the absence of any verifiable information to the contrary, may still be a Full Member of the Comanchero, regardless of his unsubstantiated claims;

(vii) if not a Full Member of the Comanchero, maintains close contact with senior and influential Members, particularly Office Bearers and by extension, the OMCG. This close contact is through:

- having a long history of Membership;
- earning a "COMOS" patch for "significant service";
- earning a "Loyalist" patch;
- holding the rank of "Lieutenant", an office never recorded on any other Comanchero Member;
- maintaining contact with senior and influential Members of the Comanchero, including Office Bearers;
- holding National Office Bearer positions; and having been permitted the rare status of Nomad Member.

34 When asked for the basis of his view that the Applicant may still be a full member of the Comancheros he agreed that the Applicant may not be a full member of the Comancheros. He based his view on the lack of verifiable evidence.

*Fidel Tukul*

- 35 The Applicant provided an Affidavit in relation to the interlocutory Application. That Affidavit, dated 8 February 2021, is largely repeated in his Affidavit of 19 July 2021 which was filed in relation to the substantive Application.
- 36 The Applicant's evidence is that he is no longer associated with the Comancheros. He ended his association in April 2016 and handed in his club colours in December 2016.
- 37 He expressed his concern in regard to the Tribunal's process of conducting confidential hearings in his absence and believes that it is unfair to him that the process is not open and transparent.
- 38 He raised a number of issues in regard to inaccuracies and material omissions in the open material which was provided to him.
- 39 He noted that he has never applied for a firearms licence and stated that he does not seek to do so and nor has he ever owned a firearm.
- 40 He noted that the FPO refers to four Consorting Warnings. He stated that two of the events were instances in relation to annual motor bike rides in 2014 and 2015. He stated that the annual rides referred to were conducted with the prior knowledge and liaison with the NSW Police in which he personally liaised with the police to let them know all the details of the rides. The police were fully informed of not only the route but where organised stops would be held along the route for fuel and food breaks. He said that the warnings are well past the point of ceasing to have effect and that no charges were ever laid and no convictions ever recorded in that regard.
- 41 He stated that the FPO reference to his currently being associated with the Comancheros is incorrect and he denies any current association to an organised criminal group.
- 42 In relation to the FPO Warnings he stated that the other events were a public BBQ and a brief encounter with a person at a restaurant. On Saturday 25 January 2014 he was at an Australia day BBQ at a public park at Dolls point. Those at the BBQ included both members of the club and others who were unconnected who were simply there for the BBQ. Police stopped and took

details of all those who were present. He was later given a consorting warning because a list of those at the BBQ had convictions.

- 43 The other event was at a restaurant in Brighton-Le-Sands when he bumped into someone he knew and had a brief conversation on the balcony. It was a chance meeting and an exchange of simple pleasantries. When he left the restaurant police approached him and stated that he had been talking to a 'convicted offender'. He spoke with the police for about 15 minutes and acknowledged the warning.
- 44 In regard to some comments in the Respondent's material that are attributed to him, he denied:
- stating that he made no secret of association with the Comancheros;
  - that he entered into discussion of being 'privileged and honoured to be invited to be involved in managing the Ladles Rugby 7's team;
  - stating that he resided at Coogee;
  - presented himself as a "property developer with substantial finance";
  - that when he attended the funeral for Mark Buddle's mother the passenger in his vehicle was wearing Comanchero OMCG supporter clothing. He stated that the passenger was in fact wearing a street wear pullover purchased at a men's shop with the writing "anti-social social club". It was definitely not 'Comanchero support wear. He explained that he had known Mrs Buddle for around 15 years. She had trouble walking and on occasions he undertook some shopping for her. The funeral was only some 1500 metres from where he lived; and
  - stating that he had signed a statutory declaration in regard to his leaving the Comancheros when he spoke with Constable Ryan Ketch of Maroubra police station on 9 December 2020. He explained that he had offered to sign a Statutory Declaration for Detective Inspector Beeche of the Raptor Task Force in 2016 but Inspector Beeche had said that it was not necessary.
- 45 In relation to the opinion provided by DS Groenewegan he stated:
- his actual position with the Rebels was as a nominee for a period of 5 months and thereafter his association with the Rebels was terminated;
  - he was only a Comancheros Nominee for the month of March 2011;
  - he is no longer a member of the Comancheros but he never signed a statutory declaration confirming the claim of not being a member of the Comancheros and it was never requested. He stated that he advised Detective Beeche that his membership with the Comancheros had been terminated, which included the return of Colours to Turkey;

- he strongly disputed the proposition put by DS Groenewegan that he "may" still be a Full Member of the Comancheros due to an absence of verifiable information; and
  - he is not a full member of the Comancheros
- 46 The Applicant gave evidence of Police Searches that have been conducted since the FPO was issued. Searches were made of his house on 4 September 2020 and his car on 22 September 2020. He was subjected to a body search on 20 March 2021 and 21 May 2021. He stated that it appeared to him that the sole focus of the searches was to disrupt and harass.
- 47 In regard to Operation Ironside he stated that the operation involved some 1,100 encrypted phones operating in Australia and that police monitored some 27 million messages between criminals. In Australia it resulted in the arrest of 224 offenders with 526 charges laid in every mainland Australian state. However, he was not subject to any house, car or body search during the operation.
- 48 He set out a detailed summary of his involvement in community sports. These include boxing, basketball, Oztag and women's rugby teams. With the Maroubra Magic Women's 7's team he has travelled to international tournaments in Dubai, the US, Hong Kong and Paris along with competing at national events.
- 49 In his evidence before the Tribunal he denied that he was either still a full member of the Comancheros or a close contact. He stated that he retired from the Comancheros in December 2016, by posting his colours to Turkey. This move was prompted by a conversation with Inspector Beeche when he was met with restrictions on his ability to travel to New Zealand. He said that Inspector Beeche told him that he would help him if he just quit the club.
- 50 He left on good terms with the Comancheros and is able to continue to communicate with members of the organisation. He is able to send casual text messages to Comanchero members and he continues to talk to members casually. He communicates with them as people as distinct from in their roles as Comanchero members. The line of communication is still open.

- 51 He visited Turkey in March 2017, and while he was there he caught up for dinner with Mark Buddle, Daux Ngakuru, Baris Tukel and other Comanchero Members. He had lunch with Mark Buddle at a Thai restaurant in Dubai in December 2017. His last contact with Mark Buddle was a message left on Facebook in about 2018.
- 52 He last spent time with Ali Bazzi at a 'running of the bulls' event in Guadalajara, Spain in around 2015/2016. He also met another Comanchero in Spain at that time, a Samoan known as Samson.
- 53 He has not had a falling out with Ali Bazzi and he exchanges text messages with him. The most recent was during Ramadan in 2021. He sent a text to Ali Bazzi passing on condolences when his father died in late 2019 or early 2020. He sometimes says hello on WhatsApp or text.
- 54 He acknowledged that Baris Tukel was an international Nomad with the Comancheros and that the role has significance and importance in the Comancheros. The Nomad is able to resolve conflicts between different chapters of the organisation and to represent the Comancheros to outsiders.
- 55 He claims that he stopped talking to Baris in 2018/2019. His last contact with Hakan Tukel was in March 2018 at an eighteenth birthday party for Hakan Tukel's son. On that occasion, the Applicant and Hakan had a disagreement when the Applicant wanted to give Hakan Tukel's son a new vehicle for his birthday.
- 56 He is aware that Pasilika Naufahu was deported from Australia, was the National President of the New Zealand Comancheros and is now serving a prison sentence for his activities. The Applicant travelled to Auckland in early 2016 where he caught up with Pasilika Naufahu. He travelled to New Zealand in July/August 2016 to introduce Pasilika Naufahu to people that the Applicant knew and to make sure he was comforted.
- 57 The Applicant is a godparent to Pasilika Naufahu's oldest son; and the Applicant's wife continues to maintain a close relationship with Pasilika Naufahu's wife Emma. Emma and Pasilika Naufahu's children visit the Applicant's house when they come to Sydney. The Applicant agreed that being



a godparent is a serious obligation; and that he continues to uphold that relationship and obligation.

58 In recent years he has travelled to New Zealand regularly, mostly to Palmerton North via Wellington. He also travelled to Queenstown in July 2016.

59 The Applicant is a relative of Hakan Ayik. His last contact with Hakan Ayik was a chance meeting in June/July 2015 when he saw him while in a coffee shop in Istanbul.

#### *Character references*

60 The writers of the character references provide a positive picture of the man they know and have been associated with in bringing sport to the local community, they attest to the person they have been associated with for the most part week in week out going on for the last 10 years. The character references are from people who meet directly with the Applicant on a weekly basis in common voluntary capacities for the benefit of their communities.

#### **Submissions**

##### *The Applicant's submissions*

61 Mr Stanton, Counsel for the Applicant, submitted that the evidence of DS Groenewegen lacked credibility, cogency and independence. He submitted that, given the available evidence, the Report should have concluded that it was equally likely that the Applicant is not a full member of the Comancheros and that the Applicant is not maintaining close associations.

62 He submitted that the cross examination of DS Groenewegen reinforced the irrational and untenable findings upon which his opinion was made and expressed. He did nothing to make enquiries of relevant and available witnesses. He has accepted what was asserted by police officers in documents such as event reports, intelligence reports and he peremptorily dismissed any denial or contrary position which the Applicant made. He accepted that the documents were recorded in circumstances that afforded the Applicant no opportunity to confirm and adopt or deny and reject what was being asserted against him.

- 63 They were not either electronically recorded and adopted by the Applicant or electronically recorded and signed by him as a true and accurate record of the account despite being circumstances in which he was said to be a participant under observation or party to a conversation in which various representations made by him.
- 64 DS Groenewegen agreed that he never approached the Applicant or his representative for his version in respect of what was being asserted against him.
- 65 The Applicant referred to conversations with Detective Beeche in regard to proposed arrangements for his severance from the Comanchero OMCG. DS Groenewegen agreed that he never approached Detective Beeche in regard to that evidence.
- 66 Further, Mr Stanton submitted that DS Groenewegen could not explain what he meant by the use of the phrase 'maintains close contact' or 'close connection'. DS Groenewegen could not identify factual circumstances known to him as to instances of contact which have occurred in recent times. He submitted that the Respondent has not been able to demonstrate or disprove the Applicant's complete severance from the Comancheros.
- 67 In the circumstances, the Applicant's view is that the Commissioner has erred in forming the opinion and that the Applicant is not fit in the public interest to have possession of a firearm.

*The Respondent's submissions*

- 68 Mr Mantziaris, Counsel for the Respondent, submitted that the Applicant does not dispute that he previously held a national office-bearing role in the Comancheros, that he obtained the position of 'Life Member' in the Comancheros, and that he was a Nomad Member, being a rare and important role in the Comancheros.
- 69 The Applicant's evidence is that he retired from the Comancheros in December 2016. However, the Respondent contends that the Applicant has continued to communicate and associate with prominent and influential members, including office bearers, of the Comancheros. The members he has continued to

associate with include the current International President of the Comanchero and the former New Zealand President of the Comanchero. His evidence is that the lines of communication between him and members of the Comanchero remain open and that he has ongoing communication with certain members.

- 70 Mr Mantziaris submitted that in determining what is in the public interest, the Tribunal should consider whether there is a threat to public safety. He referred to the decision in *Azzopardi* at paragraph [50] where the Tribunal accepted that people who associate with OMCG members may be a source of public risk in relation to firearm possession.
- 71 The Respondent's submission is that the Applicant continues to voluntarily associate with prominent and senior members of the Comancheros. The Comancheros is a prominent OMCG which has a culture of violence and firearms offences. The Respondent submits that this ongoing association creates a danger to public safety and public protection.
- 72 As a result, the Tribunal should find that the Applicant is 'not fit, in the public interest', to have possession of a firearm. The Applicant's application should be dismissed.

### **Discussion**

- 73 As noted, the Respondent relies on both open and confidential evidence. Neither the Applicant nor his legal advisors have had access to the confidential evidence and they have not been in a position to test the evidence. Nevertheless, I have taken that evidence into account and given it significant weight.
- 74 I have referred to the confidential evidence above at paragraph [27]. I accept that the Applicant does not have access to that part of these reasons and is therefore at a significant disadvantage.
- 75 The Applicant's evidence is that he ended his association with the Comancheros in April 2016 and that in December 2016 he handed in his colours. However, his own evidence is that in March 2017 he visited Turkey and while he was there he caught up for dinner with Mark Buddle, Daux Ngakuru, Baris Tukel and other Comanchero Members. He also had lunch with

Mark Buddle in Dubai in December 2017. In my view, these meetings can be categorised as associating with OMCG members as discussed in *Azzopardi*.

76 **[NOT FOR PUBLICATION]**

77 **[NOT FOR PUBLICATION]**

78 It is not clear on the evidence that the Applicant continues to be a member of the Comancheros. However, on the evidence before me I am satisfied that the Applicant has continued to associate with senior members of the club. I agree with the views expressed in *Azzopardi* that this association may be a source of public risk in relation to firearm possession. I agree that where an applicant voluntarily associates with persons having significant criminal histories or involvement with criminal organisations and activities, that association may create the danger to public safety with which the Commissioner is concerned.

79 Bellew J in *Commissioner of Police, NSW Police Force v Bazzi & Ors* explained the nature of the potential risk:

16. The unchallenged evidence of Detective Groenewegen is that:

continued membership of any OMCG exposes the first defendant “to a very high likelihood that [he] will be involved in future conduct which would constitute an offence” such as drug trafficking, theft, fraud, forgery, money-laundering, extortion and violence; [11]

the risk that the first defendant will be involved in serious crime related activity is increased by his long and close involvement with OMCGs, and compounded by his seniority within, and associations with other senior and influential members of, such groups; [12]

even if the first defendant did not directly engage in illegal conduct, his position and seniority within the Comancheros would enable him to sanction the commission of criminal activity by others; [13] and

it is extremely likely that the first defendant would have knowledge of the commission of illegal conduct, before or after it occurred, and would have a propensity to conceal material particulars of such conduct from the authorities. [14]

17. As I have indicated, it is not necessary for me to determine whether there is a real or significant risk that the first defendant himself will commit a serious criminal offence. In that respect, I make no finding. However, on the basis of the evidence to which I have referred, I am

satisfied that there is a real and significant risk that the first defendant will be involved in serious crime related activities.

80 In the circumstances of this matter I am satisfied that the Applicant's former roles within the Comancheros places him in a similar position. I am satisfied that there is a real and significant risk that the Applicant will be involved in serious crime related activities. In my view, at this time Mr Tukul is not fit, in the public interest, to have possession of a firearm. It is in the public interest for the FPO to be issued against him.

81 It follows that the correct and preferable decision is to issue a Firearms Prohibition Order against Mr Tukul under section 73(1) of the Firearms Act 1996.

### **Order**

(1) The decision under review is affirmed.

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I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.  
Registrar

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