



Civil and Administrative Tribunal

New South Wales

Case Name: Davies v Commissioner of Police, NSW Police Force

Medium Neutral Citation: [2025] NSWCATAD 258

Hearing Date(s): 15 August 2025

Date of Orders: 22 October 2025

Decision Date: 22 October 2025

Jurisdiction: Administrative and Equal Opportunity Division

Before: J Ledda, Senior Member

Decision: (1) The decision of the Respondent to refuse the Applicant's application for a Category AB firearms licence is affirmed.

(2) The Respondent's application for costs is refused.

(3) Pursuant to ss 64(1)(c) and (d) of the Civil and Administrative Tribunal Act 2013 (NSW), the contents of all paragraphs in these reasons marked "NOT FOR PUBLICATION" are not to be published or disclosed to the Applicant or the public.

Catchwords: ADMINISTRATIVE LAW — administrative review of refusal to issue firearms licence under Firearms Act 1996 (NSW) — whether applicant fit and proper person or refusal in public interest — relevance of applicant's attitude towards police — impact of previous Tribunal findings

COSTS — requirement for special circumstances warranting order for costs — whether current case hopeless rerun of earlier case

Legislation Cited: Administrative Appeals Tribunal Act 1975 (Cth)
Administrative Decisions Review Act 1997 (NSW)

Civil and Administrative Tribunal Act 2013 (NSW)
Firearms Act 1996 (NSW)
Interpretation Act 1987 (NSW)
Security Industry Act 1997 (NSW)

Cases Cited:

Balle v Commissioner of Police [2021] NSWCATAP 389
Camilleri v Commissioner of Police, NSW Police Force [2024] NSWCATAD 62
Collins v Department of Fair Trading [2019] NSWCATAP 199
Commissioner of Police v Toleafoa [1999] NSWADTAP 9
Commissioner of Police, NSW Police Force v Davies [2025] NSWCATAP 36
Constantin v Commissioner of Police, NSW Police Force [2013] NSWADTAP 16
Ceszko v Commissioner of Police, NSW Police Force (No 2) [2017] NSWCATAD 88
Cusumano v Commissioner of Police [2001] NSWADT 50
Davies v Commissioner of Police, NSW Police Force [2024] NSWCATAD 210
Dubroja v Kabir [2025] NSWCATAP 162
GGW v Commissioner of Police, NSW Police Force [2024] NSWCATAP 88
Gleeson v The Owners – Strata Plan No 48226 [2018] NSWCATAP 204
Grabovsky v Department of Communities and Justice [2025] NSWCATAP 192
Hovey v Commissioner of Police, NSW Police Force [2023] NSWCATAD 245
Kocic v Commissioner of Police, NSW Police Force (2014) 88 NSWLR 159; [2014] NSWCA 368
Martin v Commissioner of Police, New South Wales Police Force [2017] NSWCATAD 97
Masterson v Commissioner of Police, New South Wales [2017] NSWCATAP 206
Meacham v Commissioner of Police [2020] NSWCATAP 107
New South Wales v Wojciechowska [2025] HCA 27
NSW Self Insurance Corporation v EEH [2023] NSWCATAP 181
O'Neill v Commissioner of Police, NSW Police Force [2025] NSWCATAP 175

Plenty v Dillon (1991) 171 CLR 635
Plunkett v Commissioner of Police, NSW Police Force
[2009] NSWADT 104
Rial v Commissioner of Police, NSW Police Force
[2023] NSWCATAP 162
Romani v State of New South Wales [2023] NSWSC 49
Shi v Migration Agents Registration Authority (2008)
235 CLR 286; [2008] HCA 31
Sikka v Roads and Maritime Services (No 2) [2016]
NSWCATOD 98
Slager v Commissioner of Police, NSW Police Force
[2025] NSWCATAD 20
Special Protection Services (NSW) Pty Ltd v
Commissioner of Police, NSW Police Force; Constantin
v Commissioner of Police, NSW Police Force [2015]
NSWCATOD 112
Spuds Surf Chatswood Pty Ltd v PT Ltd (No 4) [2015]
NSWCATAP 11
Stiles v Commissioner for Fair Trading & Anor [2017]
NSWCATAP 44
Ungaro v Matijevic [2025] NSWCATAP 163
Ward v Commissioner of Police [2000] NSWADT 28
Webb v Commissioner of Police, New South Wales
Police Service [2004] NSWADT 110

Texts Cited: Council of Australasian Tribunals, Guide to Tribunal
Practice (6th ed, 2025)

Category: Principal judgment

Parties: Jarrod Davies (Applicant)
Commissioner of Police, NSW Police Force
(Respondent)

Representation: Counsel:
Dr J Donnelly (Applicant)
P Sharp and A Richards (Respondent)

Solicitors:
Levitt Robinson Solicitors (Applicant)
Lander & Rogers (Respondent)

File Number(s): 2025/00161303

Publication Restriction: Pursuant to ss 64(1)(c) and (d) of the Civil and
Administrative Tribunal Act 2013 (NSW), the contents

of all paragraphs in these reasons marked “NOT FOR PUBLICATION” are not to be published or disclosed to the Applicant or the public

REASONS FOR DECISION

Overview

- 1 This is an administrative review application (the Review Application) made by Mr Jarrod Davies (the Applicant). He seeks an administrative review under the *Administrative Decisions Review Act 1997* (NSW) (ADR Act) of a decision of the Commissioner of Police (the Respondent) to refuse the Applicant’s application for a Category AB firearms licence (the Licence Refusal Decision). The decision was made under the *Firearms Act 1996* (NSW) (Firearms Act) by a delegate of the Respondent.
- 2 The Tribunal in *Davies v Commissioner of Police, NSW Police Force* [2024] NSWCATAD 210 (*Davies No 1*) set aside a previous decision of the Respondent to revoke the Applicant’s Category ABH firearms licence and large calibre pistol permit. The Tribunal remitted the matter to the Respondent for reconsideration with the recommendation that the licence and permit be reinstated if the Applicant successfully completed a course in relation to his obligations under the Firearms Act.
- 3 The decision of the Tribunal in *Davies No 1* was set aside by the Appeal Panel in *Commissioner of Police, NSW Police Force v Davies* [2025] NSWCATAP 36 (*Davies No 2*). The Appeal Panel decided the Tribunal could not remit the matter to the Tribunal and, in substitution, the Panel affirmed the Respondent’s decision to revoke the licence and permit.
- 4 The Applicant applied to the Respondent for the Category AB firearms licence earlier this year. Before doing so, the Applicant completed the course recommended by the Tribunal in *Davies No 1*. The Respondent nevertheless refused the Applicant’s application. The Applicant contends the Respondent was wrong to do so. He contends that the correct and preferable decision is to issue him with the licence.
- 5 I made orders on the day of the hearing on 15 August 2025. The orders prohibit the disclosure or publication of certain confidential material to the

Applicant, the Applicant's legal representatives and the public. The confidential material was lodged with the Tribunal by the Respondent. My reasons for making the orders are set out below.

- 6 The paragraphs in these reasons marked "NOT FOR PUBLICATION" refer to material contained in this confidential material. Consequently, I have decided to make a further order under s 64(1)(c) and (d) of the *Civil and Administrative Tribunal Act 2013* (NSW) (NCAT Act) to prevent the publication or disclosure to the Applicant and the public of the contents of those paragraphs.
- 7 For the reasons given below, I have decided that the correct and preferable decision is to refuse the Applicant's application for a Category AB firearms licence. Accordingly, the Licence Refusal Decision must be affirmed.

Background

- 8 The Applicant and his now former stepmother fell out at the beginning of 2023. Incidents relating to, or resulting from, this falling out provide some relevant context for the Review Application.
- 9 It is not necessary to detail all the incidents involved. However, I note the following:
 - (1) The Applicant's stepmother was reported to have punched the Applicant's father in the face while he was in a hospital bed recovering from cancer surgery.
 - (2) It was also reported that the Applicant's stepmother threatened the Applicant's father and tried to make him sign a new will against his wishes.
 - (3) An apprehended domestic violence order was issued against the Applicant's stepmother to protect his father.
 - (4) The Applicant sought to enter his father's property on several occasions after the incident involving his father. Police officers attended on one of those occasions to prevent a breach of the peace.
 - (5) Members of the NSW Police Force (the NSWPF) applied in February 2023 for an Interim Apprehended Domestic Violence Order against the Applicant (the Interim AVDO) to protect his stepmother and to prevent him from going to his father's property. This followed an expression of concern from the Applicant's stepmother about her safety.
 - (6) In September 2023, the interim ADVDO was withdrawn and the application for the order was dismissed by the Local Court.

10 On 6 April 2023, solicitors acting for the Applicant and his wife wrote a letter to the Commander of the Sutherland PAC (the Implied Licence Withdrawal Letter) concerning entry into the property of the Applicant and his wife (the Shared Property). It stated:

- (1) The Applicant and his wife withdrew from “all members of the NSW Police Force and their agent/s” any implied licence that existed under the common law to enter the Shared Property
- (2) Any member of the NSWPF or their agents who entered the Shared Property without a lawful purpose and without their express invitation would be committing the tort of trespass and may be sued in trespass.
- (3) For abundant clarity “be aware that any entry upon the Property by a member of the NSW Police Force or their agent/s, without warrant is, from this date forward, a trespass”. Also, entry by any member of the NSWPF or their agents for the purpose of conducting an “AVO compliance check” would be a trespass.
- (4) The recent NSW Supreme Court decision of *Romani v State of New South Wales* [2023] NSWSC 49 was referred to for its statement of the current common law about the implied licence to enter property.
- (5) Additionally, the Applicant and his wife no longer wished to be directly contacted by any member of the NSWPF or their agents. “All communication” from the NSWPF or their agents was to be directed to their solicitor by email until further notice.
- (6) The Applicant reserved the right, at any time and without further notice to the NSWPF, to reinstate the implied licence under the common law to enter the Shared Property.

11 The Applicant and his wife also erected a sign in the front yard of the Shared Property (the No Trespassing Sign), which provided as follows:

- (1) It commanded “ATTENTION” by the NSWPF, including by the Sutherland Police Station Local Area Command and a particular police officer.
- (2) It stated the Shared Property was Private Property and it would be a trespass if persons entered without a warrant or admittance by invitation and that “Penalties Apply”.
- (3) In smaller print at the bottom of the Sign next to the heading “LEGAL NOTICE”, it stated:

“To all persons and entities including Police/Undercover Police & Informants/Government/Sheriff/Bailiff/Process Server/council /RSPCA/ Private Investigator/Corporations”

“TRESPASS DAMAGES shall apply upon one step onto the private property at”

“Minimum Penalty AUD \$10,000.00”

- (4) It referred, again in smaller print at the bottom of the Sign, to the High Court decision in *Plenty v Dillon* (1991) 171 CLR 635.
- 12 I note that in *Plenty* at 647, Gaudron and McHugh JJ said (with the cited cases omitted):
- “A person who enters the property of another must justify that entry by showing that he or she either entered with the consent of the occupier or otherwise had lawful authority to enter the premises ... Except in the cases provided for by the common law and by statute, constables of police and those acting under the Crown have no special rights to enter land ... Consent to an entry is implied if the person enters for a lawful purpose ... However, the licence may be withdrawn by giving notice of its withdrawal. A person who enters or remains on property after the withdrawal of the licence is a trespasser.”
- 13 Until late 2023, the Applicant held a Category ABH licence and large calibre pistol permit. However, on 28 November 2023 a delegate of the Respondent decided to revoke the licence and permit because the Applicant was no longer a fit and proper person to hold the licence and permit and because it was no longer in the public interest for him to do so. The reasons on which the Respondent relied for the revocation included:
- (1) There had been two apprehended domestic violence orders in place following disputes between the Applicant and his stepmother.
 - (2) There had been several interactions between the members of the NSWPF and the Applicant and his wife that the NSWPF labelled “hostile”, including in relation to the service of the interim ADVO on the Applicant.
 - (3) The Applicant and his wife sent the Implied Licence Withdrawal Letter.
 - (4) The Applicant and his wife had arranged for the erection of the No Trespassing Sign in the front yard of the Shared Property.
- 14 This decision to revoke the licence and permit was affirmed on 9 January 2024 by an internal review. The internal review decision occasioned the administrative review application that was determined by the Tribunal in *Davies No 1*.
- 15 On 29 July 2024, the Tribunal in *Davies No 1* decided to set aside the decision to revoke the Applicant’s licence and permit and remitted the matter to the Respondent for reconsideration with a recommendation that the licence and permit be reinstated if the Applicant completed a course concerning his obligations under the Firearms Act. The Tribunal purported to do so using the

power conferred on the Tribunal by s 63(3)(d) of the ADR Act. That provision enables the Tribunal to determine an administrative review application by setting aside the decision under review and remitting the matter for reconsideration by the decision-maker in accordance with any directions or recommendations of the Tribunal. The Tribunal reasoned as follows at [84]–[89]:

“84 ... I note that the Applicant’s solicitor has asserted that there was no intention to restrict access by police to carry out inspections and to ensure compliance with the Act. However, concerns remain in regard to the Applicant’s understanding of the obligations of a licensee because of the lack of evidence from the Applicant in regard to the intention of the [No Trespassing Sign] and the [Implied Licence Withdrawal Letter] to the Respondent’s Area Commander and the wording of the signage and the letter.

85 In my view, there remains a risk to the public if licensees do not understand their obligations under the Act and the need to comply with other aspects of the firearms legislation. The Applicant will need to address this issue before he should be permitted to again have access to firearms.

86 In my view, the Applicant would need to take steps to remove any basis for these concerns before I would be comfortable that there is virtually no risk to the public if he is to be reissued with a firearms licence. This could be achieved by completing a course in relation to a licensee’s obligations in regard to compliance with the Act. The Applicant should be given the opportunity to take that step.

87 With the exception of the concern that I have expressed in relation to the signage and the April 2023 letter, I do not consider that there are any other issues of fitness and propriety or the public interest that would prevent the reissuing of a firearms licence to the Applicant.

88 In the circumstances, it is my view that the decision under review should be set aside, and the matter should be remitted for redetermination by the Respondent, taking into account the views that I have expressed above”.

“89 If the Applicant completes a course in relation to his obligations under the Act successfully, I recommend that the category ABH firearms licence and large calibre pistol permit be reinstated.”

16 On 29 August 2024, the Applicant successfully completed an “Advanced Course” of study on firearms ownership, possession and use (the Completed Firearms Course). Firearm Safety and Training Council Limited (FTSC) provided the course. In a statement dated 1 November 2024, Mr Timythie Featonby (who is the CEO of FTSC) stated:

- (1) FSTC is a Registered Training Organisation that is approved by the NSW Firearms Registry for the delivery of the Firearms Pre-licence Qualification course, which is a mandatory course for all NSW firearms licence holders.

- (2) The course provided by FSTC is designed to improve the general knowledge of firearms laws in NSW and covers a firearm licence holders' responsibility as to matters including safe storage, transportation and the use/carriage/possession of firearms.
- (3) The course undertaken by the Applicant with FSTC included an examination of the issues that gave rise to the revocation of the Applicant's firearms licence and the knowledge and measures necessary to prevent any recurrence.
- 17 The Respondent does not appear to dispute what Mr Featonby says.
- 18 On 20 February 2025, the Appeal Panel in *Davies No 2* set aside the decision of the Tribunal in *Davies No 1* and made a substitute decision to affirm the Respondent's decision to revoke the Applicant's licence and permit. After considering the effect of comparable provisions in the now repealed *Administrative Appeals Tribunal Act 1975* (Cth) along with relevant cases and commentary on those provisions, the Appeal Panel concluded at [27]–[28]:
- “27 Similarly, s 63(3)(c) and (d) of the [ADR Act] empower the Tribunal to set aside the decision and do one of two things. Under s 63(3)(c), the Tribunal may make a decision in substitution for the decision set aside. In that case, the Tribunal exercises and exhausts the powers of the administrator. Alternatively, under s 63(3)(d), the Tribunal has power to remit the matter to the administrator for reconsideration. But the Tribunal may only do so where it is ‘unable to make’ or is ‘not in a position to formulate’ a decision in substitution for the decision set aside. That will be the case where there is ‘some residual function to be performed by the primary decision maker involving the exercise of the relevant statutory power’. Examples include where a requirement or condition must be satisfied before a decision can be made or where a calculation needs to be made which the Tribunal is not in a position to make”.
- “28 In this case, the Tribunal was satisfied that it was not in the public interest for Mr Davies to continue to hold the licence or permit. At that point in the decision making process, the Tribunal was in a position to make a decision in substitution for the decision set aside. There was no residual function to be performed by the administrator involving the exercise of the relevant statutory power. The correct decision was to affirm the Commissioner's decision.”
- 19 On 20 February 2025, the Applicant made an application to the Respondent for a Category AB firearms licence. On 21 March 2025, a delegate of the Respondent initially decided to refuse the application.
- 20 The Applicant then sought an internal review of this initial decision to refuse the application. On 23 April 2025, the internal reviewer decided to affirm this initial decision. The reviewer gave the following reasons for doing so:
- “By way of background, the Notice of Refusal dated 28 November 2023 and Internal Review Statement of Reasons dated 9 January 2024 that outline

details of the events that have given rise to concerns regarding your access to firearms and to your various submissions. I believe it would serve no purpose to discuss all those details again in this document.

On 19 January 2024 you lodged an application for external review of the decision to revoke your licence and permit. On 29 July 2024 the Decision of the Tribunal found that it was not satisfied that you posed virtually no risk to public safety if given access to a firearm and recommended that you complete a course in relation to your obligations under the Act, prior to you being 'reissued' a firearms licence. At that time, the Tribunal set aside the decision to revoke your licence and permit and remitted the matter for redetermination, on the provision of successful completion of a course in relation to your obligations under the Act.

An appeal against the Tribunal's Decision was lodged and following a stay application on 18 September 2024, the Appeal was granted. On 29 November 2024 the Appeal Panel found that the Tribunal had fallen into error, finding that the Tribunal exceeded its powers under section 63 (3) of the Administrative Decisions Review Act 1997. The Appeal Panel accepted that the Tribunal made a decision in a purported exercise of power when that power was not available.

In this regard the Appeal Panel found that the Tribunal was satisfied that it was not in the public interest for you to continue to hold a licence or permit. At that point the Tribunal was in a position for the affirmation for the decision set aside. There was no residual function to be performed by the administrator involving the exercise of the relevant statutory power and that the correct decision was to affirm the Commissioner's decision. On 20 February 2025 the Appeal Panel set aside the Decision of 29 July 2024 and in substitution affirmed the decision to revoke your Category ABH firearms licence and your large calibre pistol permit.

Despite your legal representative's submissions, the Tribunal's recommendation for you to undertake a firearms course did not affect any of the Tribunal's findings that you did not have sufficient knowledge of your obligations under the Firearms Act and that there remained an extant risk in you holding a firearms licence. It was found that there remained a risk in you holding a firearms licence and that it was not in the public interest for you to hold a licence".

"Accordingly, I find that the refusal of your firearms licence application is the correct and preferable decision."

- 21 The Applicant lodged the Review Application in April 2025. The hearing was held before me on 15 August 2025.

Legislation regulating firearms

- 22 Section 3(1)(a) of the Firearms Act expressly states that one of the underlying principles of the Act is that firearm possession and use is a privilege that is conditional on the overriding need to ensure public safety. This principle makes it clear that the community's interest in public safety must prevail over an individual's personal interest in possessing or using a firearm.

- 23 Another principle is to improve public safety by imposing strict controls on the possession and use of firearms and promote the safe and responsible storage and use of firearms: Firearms Act, s 3(1)(b).
- 24 The powers conferred by the Firearms Act, including the power to issue licences for firearms, must be exercised in a way that promotes these principles: *Cusumano v Commissioner of Police* [2001] NSWADT 50 at [23].
- 25 Section 7A(1) makes it an offence for a person to possess or use a firearm unless the person is authorised to do so by a licence or permit. Section 7(1) creates a similar offence with respect to the possession or use of a pistol or prohibited firearm without the authority of a licence or permit.
- 26 The Firearms Act gives the Commissioner various functions. The Commissioner is defined to mean the Commissioner of Police: Firearms Act, s 4(1) (definition of “Commissioner”). The Respondent is the Commissioner of Police.
- 27 The Respondent may delegate the Respondent’s functions under the Firearms Act or the regulations for the Act to an authorised person: Firearms Act, s 81. A delegated function that is duly exercised by a delegate is to be taken to have been exercised by the delegator: *Interpretation Act 1987* (NSW), s 49(6). There is no suggestion that the function of making the Licence Refusal Decision was not duly exercised by a delegate of the Respondent. Accordingly, the Decision should be treated as being the decision of the Respondent.
- 28 Section 11 of the Firearms Act empowers the Respondent to issue firearms licences subject to certain restrictions. It provides as follows:

11 General restrictions on issue of licences

- (1) The Commissioner may issue a licence in respect of an application, or refuse any such application.
- (2) A licence must not be issued until after the end of the period of 28 days following the day on which the application is made.
- (2A) Subsection (2) does not apply if the application is for the renewal of a licence (including the renewal of a category A or B licence that involves the addition of either of those licence categories to the previous licence).
- (3) A licence must not be issued unless—

(a) 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, and

(b) in the case of a person who has never held a licence (including a firearms licence under a previous Act), the applicant has completed, to the satisfaction of the Commissioner, such firearms training and safety courses as are prescribed by the regulations in respect of the licence concerned, and

(c) the Commissioner is satisfied that the storage and safety requirements set out in Part 4 are capable of being met by the applicant, and

(d) the Commissioner is satisfied that the person to whom the licence is to be issued is a resident of this State or is about to become a resident of this State.

(3A) Despite subsection (3) (b), the Commissioner may require an applicant for a licence to complete such firearms training and safety courses as are approved by the Commissioner in relation to the category of licence concerned.

(4) Without limiting the generality of subsection (3) (a), a licence must not be issued if the Commissioner has reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of—

(a) the applicant's way of living or domestic circumstances, or

(b) any previous attempt by the applicant to commit suicide or cause a self-inflicted injury, or

(c) the applicant's intemperate habits or being of unsound mind.

(5) A licence must not be issued to a person who—

(a) is under the age of 18, or

(b) has, within the period of 10 years before the application for the licence was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or

(c) is subject to an apprehended violence order or interim apprehended violence order or who has, at any time within 10 years before the application for the licence was made, been subject to an apprehended violence order (other than an order that has been revoked), or

(c1) is subject to a serious domestic abuse prevention order or who has, at any time within 10 years before the application for the licence was made, been subject to a serious domestic abuse prevention order, other than an order that has been revoked, or

(d) is subject to one of the following in relation to an offence prescribed by the regulations—

(i) a good behaviour bond, whether entered into in New South Wales or elsewhere,

(ii) a community correction order imposed in New South Wales,

(iii) a conditional release order imposed in New South Wales,
or

(e) is subject to a firearms prohibition order, or

(f) is a registrable person or corresponding registrable person under the *Child Protection (Offenders Registration) Act 2000*.

(5A) A licence must not be issued to a person 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.

(5B) The Commissioner is not, under this or any other Act or law, required to give any reasons for not issuing a licence on the grounds referred to in subsection (5A).

(6) Except in the case of a firearms dealer licence or where the applicant's genuine reason is business or employment, a licence must not be issued to a person who is not a natural person.

(7) Despite any other provision of this section, the Commissioner may refuse to issue a licence if the Commissioner considers that issue of the licence would be contrary to the public interest.

(8) The regulations may provide other mandatory or discretionary grounds for refusing the issue of a licence.

29 The Respondent places particular reliance on s 11(3)(a) and (7) in support of the Licence Refusal Decision.

Section 11(3)(a)—Fit and proper person test

30 Section 11(3)(a) of the Firearms Act imposes a duty on the Respondent (as indicated by the phrase “must not” in the introductory words) by reference to a fit and proper person test. Section 11(3)(a) provides that a firearms licence must not be issued unless the Respondent 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.

31 Guided only by the language actually employed by Parliament rather than the language imputed to it by precedent, the use of the conjunction “and” between “fit and proper person” and “can be trusted to have possession without danger to public safety or to the peace” might suggest the Respondent needs to be satisfied that an applicant has both characteristics. Understood in this way, it would be clear that there is a duty to refuse an application for a licence even if

the Respondent is satisfied that an applicant has only one, but not both, characteristics.

32 However, in *Kocic v Commissioner of Police, NSW Police Force* (2014) 88 NSWLR 159; [2014] NSWCA 368 (*Kocic*) at [35], Basten JA (with whom Leeming JA agreed) considered that the conjunction “and” should be read as “who” so as to yield the composite characteristic of “a fit and proper person who can be trusted to have possession without danger to public safety or to the peace”. Basten JA said (at [35]) that this construction treats the concept of fitness as limited by the relevant purpose of the Respondent’s assessment. As a consequence, Parliament should be understood as allowing “possession and use of a firearm only by a person who is ‘fit’ in the sense of one who can be trusted to have a firearm ‘without danger to the public safety or to the peace’”: *Kocic* at [36]. I approach the application of the fit and proper person test with this in mind.

33 Some of the relevant principles for deciding whether the fit and proper person test is satisfied were usefully summarised by Principal Member Ransome recently in *Slager v Commissioner of Police, NSW Police Force* [2025] NSWCATAD 20 at [15]–[17]:

“15 It is generally accepted that what is fit and proper needs to be determined by reference to the activities in issue and is to be gauged in light of the nature and purpose of the activities that the person will undertake: *AJO v Director-General of Transport* [2012] NSWADT 101 at [26]; *Austin v Commissioner for Fair Trading & Commissioner of Police* [2016] NSWCATAP 179 at [82].

16 The determination of whether an applicant is a fit and proper person is not merely an assessment of an applicant’s character but also an assessment of their conduct, likely future conduct, community confidence that improper conduct will not occur, and knowledge of the duties and responsibilities of the licence holder: *Metleg v Commissioner of Police, NSW Police Force* [2023] NSWCATAD 17 at [25]. Fitness and propriety is a question of fact to be determined objectively, taking into account all the evidence: *Smith v Commissioner of Police, NSW Police Force* [2014] NSWCATAD 184 at [40].

17 Furthermore, in the context of firearms licensing, the Tribunal is required to form a positive state of satisfaction that an 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’: *Commissioner of Police v EMB* [2021] NSWCATAP 63 at [45].”

34 In *Ward v Commissioner of Police* [2000] NSWADT 28 (*Ward*), Deputy President Hennessy said at [27]–[28]:

“27 One of the objects of the [Firearms] Act, as set out in s 3, is ‘to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety.’ In determining whether Mr Ward is a fit and proper person to hold a licence consideration must be given to the circumstances surrounding his conviction for assault. The question for the Tribunal is whether, based on all the evidence, it would have confidence that Mr Ward would not pose a risk to public safety if he had access to firearms.

28 The Tribunal could never be totally satisfied that a person would not pose any risk to public safety if they were given access to a firearm. However, in the context of the Act, the Tribunal must be satisfied that there is virtually no risk.”

35 Although *Ward* was a decision of the Administrative Decisions Tribunal (the ADT) at first instance, the requirement for the Tribunal to be satisfied that there is “virtually no risk” to public safety has been applied countless times in this Tribunal in connection with the fit and proper person test. However, it has been said that the risk to public safety must be a real and appreciable risk rather than simply a minimal, fanciful or theoretical risk: *Webb v Commissioner of Police, New South Wales Police Service* [2004] NSWADT 110 at [32]; *GGW v Commissioner of Police, NSW Police Force* [2024] NSWCATAP 88 at [45]–[46].

36 It is important to remember that this requirement should not be applied with unthinking rigidity. As the Tribunal noted in *Martin v Commissioner of Police, New South Wales Police Force* [2017] NSWCATAD 97 (*Martin*) at [66]:

“The question of risk [to public safety] is therefore not viewed as requiring an applicant to discharge the almost impossible burden of proving a near absolute negative, but, in a nuanced way, taking account of all the circumstances, including attitudes, character and prior conduct, but with an overriding focus on public safety.”

37 Similarly, the Appeal Panel in *Rial v Commissioner of Police, NSW Police Force* [2023] NSWCATAP 162 (*Rial*) said at [32]:

“The question of risk is not, however, to be approached in an absolute or mechanistic way, but in a nuanced way, taking account of all the circumstances, including attitudes, character and prior conduct, with an overriding focus on public safety: *Martin v Commissioner of Police, New South Wales Police Force* [2017] NSWCATAD 97 at [64]–[66]; *Laing v Commissioner of Police, NSW Police Force* [2017] NSWCATAD 315 at [62]–[64]. The question is whether there is in all the circumstances a real and appreciable risk to the public: *Kavalieratos v Commissioner of Police, New South Wales Police Force* [2014] NSWCATAD 117 at [74]; *Kopco v Commissioner of Police, New South Wales Police Force* [2018] NSWCATAD 124 at [58].”

38 Both *Martin* and *Rial* recognise that the “attitudes” of an applicant, along with the applicant’s character and prior conduct, can be a relevant when taking this nuanced approach to assessing the degree of risk.

39 Among the attitudes that can be relevant is where an applicant has an attitude towards police that could adversely impact the applicant’s ability to cooperate with police: *Camilleri v Commissioner of Police, NSW Police Force* [2024] NSWCATAD 62 at [67]. In this regard, the observations of Judicial Member Montgomery (as he then was) in *Plunkett v Commissioner of Police, NSW Police Force* [2009] NSWADT 104 at [43] are particularly relevant for this case:

“The Applicant gave oral evidence and was cross-examined. There is clearly considerable animosity between the Applicant and some members of the Police force. It is equally clear that the Applicant has adopted an attitude of non-cooperation with the Police. In my opinion, this attitude is not compatible with responsible firearms ownership.”

Section 11(7)—Public interest test

40 Unlike s 11(3)(a) of the Firearms Act, s 11(7) confers a discretion (as indicated by the verb “may”) on the Respondent by reference to a public interest test: *Kocic* at [84]; *O’Neill v Commissioner of Police, NSW Police Force* [2025] NSWCATAP 175 (*O’Neill*) at [23]. Section 11(7) enables the Respondent to refuse to issue a firearms licence “despite any other provision of [s 11]” if the Respondent considers that the issue of the licence “would be contrary to the public interest”.

41 In an often-cited passage from *Commissioner of Police v Toleafoa* [1999] NSWADTAP 9 (*Toleafoa*), the Appeal Panel of the ADT said at [25]:

“The ‘public interest’ is an inherently broad concept giving the appellant the ability to have regard to a wide range of factors in choosing whether to exercise a discretion adversely to an individual. As the possibility of refusing an application on the ground of character is dealt with elsewhere in the same section, it is reasonable to infer that the Parliament intended that the public interest discretion operate in areas to which the character ground was not relevant or, possibly, in circumstances where an objection on character grounds would not be sufficient in its own right to warrant refusal.”

42 The decision in *Toleafoa* concerned the use of the term “public interest” in the *Security Industry Act 1997* (NSW). Nevertheless, the quoted passage is also applicable to discerning the public interest for the purposes of the Firearms Act:

see, for example, *O'Neill* at [137] and *Balle v Commissioner of Police* [2021] NSWCATAP 389 at [49].

43 Leeming JA in *Kocic* (with whom White JA agreed) said at [84]:

“... [Section] 11(3) and s 11(7) of the Firearms Act are both substantive. Each is a qualification upon the general power to issue a licence conferred by subsection 11(1). Subsection (3) imposes a further precondition to the exercise of the power to issue a licence; it amounts to a mandatory ground for refusal. Subsection (7) creates an additional discretionary ground for refusal, and it follows from its opening words that even if none of the grounds for mandatory refusal in the section apply, the discretionary power to do so remains available, if the Commissioner considers that the issue of the licence would be contrary to the public interest.”

44 Leeming JA also said at [52] that “the matters that can be taken into account in making an assessment of the public interest pursuant to s 11(7) are not limited to matters not otherwise dealt with by s 11(3)”.

45 On the interrelation between the fit and proper person and public interest tests, the Appeal Panel in *Stiles v Commissioner for Fair Trading & Anor* [2017] NSWCATAP 44 at [34]–[36] (*Stiles*) said:

“34. We agree with the submission for the Commissioner that a finding that a person is not of fit and proper character to hold the type of licence under notice would necessarily also mean that it would be contrary to the public interest to allow the person to hold the licence.

35. Equally there can be cases, and this is an example of that kind, where the material might be problematic in relation to the question of fitness but strong in relation to the public interest. A person may not be so lacking in fitness as to warrant the conclusion that he or she is not a fit and proper person to hold the relevant licence. But nonetheless there may be matters in the material considered in that regard that properly found a case for denial of the licence in the public interest. There is no problem, as we see it, in an administrator (or the review tribunal) differentiating in that way.

36. It does not follow that because a person is ‘fit’ to hold a licence, that therefore it must also be in public interest for the person to hold the licence. The ‘public interest’ enables a range of factors some of which may be specific to the person (personal associations, health considerations, and so on) and others of which may be external to the person (need for more licences in a particular geographical area, number of licences already held, risks of penetration by criminal elements, and so on) that might militate against grant of a licence.”

46 Although *Stiles* concerned the tattoo parlours licensing scheme, the passage above is a statement of general principle that is also relevant to the firearms legislative scheme. It has, for example, been cited in *Hovey v Commissioner of Police, NSW Police Force* [2023] NSWCATAD 245 at [53] and *Cseszko v*

Commissioner of Police, NSW Police Force (No 2) [2017] NSWCATAD 88 at [18].

- 47 The public interest test permits the Respondent (and the Tribunal on an administrative review) to take into account concerns going beyond the applicant's character and can include concerns about public protection, public safety and public confidence in the administration of the firearms licensing system: *Constantin v Commissioner of Police, NSW Police Force* [2013] NSWADTAP 16 at [33]. I note that it has been held that the requirement stated in *Ward* that the Tribunal must be satisfied there is virtually no risk to public safety also applies to the public interest test: *Masterson v Commissioner of Police, New South Wales* [2017] NSWCATAP 206 at [130].

Jurisdiction and role of Tribunal

- 48 The Tribunal has such jurisdiction and functions as may be conferred or imposed on it by or under the NCAT Act or any other legislation: NCAT Act, s 28(1). Its jurisdiction includes administrative review jurisdiction: NCAT Act, s 28(2). The Tribunal has administrative review jurisdiction if enabling legislation provides that a person may make an application to the Tribunal for an administrative review under the ADR Act of a decision of an administrator: ADR Act, s 9: NCAT Act, s 30(1).
- 49 Relevantly, s 75(1) of the Firearms Act provides:

75 Administrative reviews by Civil and Administrative Tribunal of certain decisions

(1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions—

(a) the refusal of or failure by the Commissioner to issue a licence or permit (other than a permit in respect of a prohibited firearm) to the person ...

- 50 Section 55(3) of the ADR Act generally requires an application for an internal review of decision to be duly made, and for the internal review to be finalised, before an application for an administrative review of the decision can be made to the Tribunal.
- 51 It is the duty of the Tribunal to be independently satisfied that it has jurisdiction to deal with a matter before it can determine the matter: *Grabovsky v*

Department of Communities and Justice [2025] NSWCATAP 192 at [100] and [105(1)]. I am satisfied that the Tribunal has jurisdiction to deal with the Review Application because: (1) the Licence Refusal Decision is a decision caught by the terms of s 75(1)(a) of the Firearms Act; and (2) an internal review was finalised before the Application was made to the Tribunal.

52 When determining an administrative review application, the role of the Tribunal is to decide what the correct and preferable decision is having regard to the material then before it, including any relevant factual material and any applicable written or unwritten law: ADR Act, s 63(1). For this purpose, the Tribunal may exercise all the functions that are conferred or imposed by any relevant legislation on the decision-maker: ADR Act, s 63(2). In making the determination, the Tribunal effectively stands in the shoes of the decision-maker who made the decision under review: *NSW Self Insurance Corporation v EEH* [2023] NSWCATAP 181 at [86].

53 Section 63(3) of the ADR Act provides that the Tribunal may determine an administrative review application by:

- (1) affirming or varying the decision under review; or
- (2) setting the decision aside and making a decision in substitution; or
- (3) setting the decision aside and remitting the matter to the administrator for reconsideration.

54 The Tribunal is not bound by the rules of evidence when it conducts an administrative review: NCAT Act, s 38(2). However, as the Appeal Panel noted in *Meacham v Commissioner of Police* [2020] NSWCATAP 107 at [54] and [81]–[83]:

“54 Despite not being bound by the rules of evidence, the Tribunal is required to base its findings of fact on ‘logically probative material’, and not on ‘mere suspicion or speculation’, as a corollary of its obligation to act reasonably: *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 44 FLR 41 (‘*Pochi*’) at 62, 68 (Deane J); [1980] FCA 85; *Sullivan v Civil Aviation Authority* (2014) 22 FCR 555; [2014] FCAFC 93 (‘*Sullivan*’) at [5]–[8], [15]–[17] (Logan J). It is an error of law for the Tribunal to make a finding of fact with no evidence, or no probative evidence, to support it.

.....

81 Section 140 of the Evidence Act [1995 (NSW)], which sets out the standard of proof in civil cases to which that Act applies, is for Tribunal guidance only, and ordinarily a party seeking administrative review of government action is

not required to establish its case on the balance of probabilities: *Bronze Wing Ammunition v SafeWork NSW (No 2)* [2016] NSWSC 988 at [76]–[77]; *Bronze Wing International Pty Ltd v SafeWork NSW* [2017] NSWCA 41 at [127].

82 Rather, in an administrative review case, the parties put on such evidence as they wish and, in a matter of this kind involving the exercise of a discretion, it is a matter for the Tribunal to properly consider all relevant materials and ignore all irrelevant matters in exercising the power of the relevant administrator in review proceedings. This is especially the case where a decision has been taken on a discretionary basis in light of the public interest.

83 Proof of matters which are asserted is required in a practical sense, and a party asserting a fact is generally required to provide evidence to substantiate it. As noted above, the Tribunal is required to base its findings of fact on ‘logically probative material’: *Pochi* at 62, 68; *Sullivan* at [5]–[8], [15]–[17].”

- 55 When dealing with an administrative review application, the Tribunal is required to consider the matter afresh, with neither party bearing an onus of proof except for a practical onus on the party who asserts a fact to prove its existence: *Collins v Department of Fair Trading* [2019] NSWCATAP 199 at [47]. The requirement for the Tribunal to make its own decision having regard to the material then before it means that the evidence to which the Tribunal may have regard is not limited to the evidence before the decision-maker: *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286; [2008] HCA 31 at [37]–[38], [45]–[46] (Kirby J), [99] (Hayne and Heydon JJ), [143] (Kiefel J).

Material before Tribunal

Confidential Material

- 56 Section 49(2) of the NCAT Act enables the Tribunal, either of its own motion or on the application of a party, to order that a hearing be conducted wholly or partly in private if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason.
- 57 Section 64(1) of the NCAT Act enables the Tribunal to make orders (confidentiality orders) prohibiting or restricting any of the following if the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason:
- (1) the disclosure of the name of any person (whether or not a party to proceedings in the Tribunal or a witness summoned by, or appearing before, the Tribunal);
 - (2) the publication or broadcast of any report, including a sound recording or transcript, of proceedings in the Tribunal;

- (3) the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal;
- (4) the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.

58 The Respondent applied for confidentiality orders to prevent the publication of certain confidential material it lodged with the Tribunal (the Respondent's Confidentiality Application).

59 Some of the material is subject to confidentiality orders made in *Davies No 1*. There is, however, additional material for which the Respondent also seeks a confidentiality order in the the Respondent's Confidentiality Application. I will refer to this material collectively as "the Confidential Material".

60 The Applicant opposed the continuation of the existing, or the making of further, confidentiality orders. He also applied to have the existing orders set aside (the Applicant's Confidentiality Application).

61 Both Applications came before me for determination at the hearing.

62 I heard the Respondent's submissions concerning the Confidential Material in a closed session at the beginning of the hearing. The Applicant, his legal representatives and the public were excluded pursuant to an order I made under s 49 of the NCAT Act.

63 When the hearing resumed following the closed session, the Respondent also sought a confidentiality order concerning the address and mobile phone number of a police officer mentioned in the Affidavit of Jarrod Mark Davies dated 29 July 2025 lodged with the Tribunal (the First Davies Affidavit). The Applicant consented to the making of the order. I agreed that it was appropriate to make such an order in order to prevent the disclosure of personal information about a police officer.

64 I also considered that it was appropriate to make new orders to protect the Confidential Material. Although it was strictly unnecessary for me to make orders that are still subject to previous confidentiality orders, I thought that it would be appropriate to make fresh orders because the Confidential Material

now includes additional material. A perusal of all the material satisfies me that confidentiality orders are necessary because the information concerned is subject to the duty imposed on the Tribunal by s 75(5) of the Firearms Act and may also reveal information concerning confidential sources. I have some sympathy with the Applicant's submission that to deny him access to the Confidential Information would involve procedural unfairness because he is unable to defend himself against it. However, s 64 of the NCAT Act clearly contemplates that the right to procedural fairness must give way in appropriate cases to the need to keep information confidential.

65 For completeness, I set out the orders I made on 15 August 2025:

- (1) Pursuant to s 49 of the Civil and Administrative Tribunal Act 2013 (NSW) (NCAT Act), the hearing insofar as it relates to the confidential material lodged by the Respondent (the Confidential Material) be conducted in the absence of the Applicant, his representatives and the public (the closed session of the hearing).
- (2) Pursuant to s 64(1)(c) of the NCAT Act, until further order of the Tribunal:
 - (a) the publication of the Confidential Material, or matters contained in the Confidential Material, is prohibited; and
 - (b) the publication of the following information (the Personal Information) set out in the Affidavit of Jarrod Mark Davies dated 29 July 2025 is, with the consent of both parties, also prohibited:
 - (i) the address mentioned in paragraph [17] of the Affidavit;
 - (ii) the mobile phone number mentioned in paragraphs [44] and [46] and the same mobile phone number to the extent it is mentioned in Exhibit JMD2 annexed to the Affidavit at pp 111–119.
- (3) Pursuant to s 64(1)(d) of the NCAT Act, the disclosure of the Confidential Material is restricted to the Respondent, the Respondent's legal representatives and the Tribunal.
- (4) Pursuant to s 64(1)(d) of the NCAT Act, the disclosure of the Personal Information is restricted to the parties, their legal representatives and the Tribunal for the purposes of these proceedings only.
- (5) Pursuant to s 64(1)(b) and (c) of the NCAT Act, until further order of the Tribunal, the publication or reporting of the closed session of the hearing is prohibited.

66 Also, as I noted in the Overview, I will make an additional order under s 64(1)(c) and (d) of the NCAT Act to prevent the disclosure or publication to the

Applicant or the public of the contents of any paragraphs of these reasons marked “NOT FOR PUBLICATION” because they set out material contained in the Confidential Material.

Other documentary material

67 At the beginning of the hearing, I asked counsel for each of the parties to identify the documents on which they rely.

68 The Applicant relies on the following material lodged with the Tribunal:

- (1) The Applicant’s written submissions.
- (2) The Applicant’s statement dated 17 June 2025.
- (3) The First Davies Affidavit.
- (4) The Affidavit of Jarrod Mark Davis dated 4 August 2025 (the Second Davies Affidavit).
- (5) The Affidavit of Matthew Michael Wilson dated 4 August 2025 (the Wilson Affidavit).
- (6) The oral submissions made for the Applicant at the hearing on 15 August 2025.

69 I have already mentioned that the Respondent objected to certain paragraphs in the First Davies Affidavit to the extent that they revealed personal information about a police officer. In addition, the Respondent objected to various paragraphs either because of their form or because they contained hearsay statements. I noted during the hearing that because the Tribunal is not bound by the rules of evidence, these objections were relevant to the weight (if any) that I should give to the evidence concerned rather than to its admissibility: NCAT Act, s 38(2); *Englebrecht v Pryor* [2023] NSWCATAP 278 at [12]; *Allen v TriCare (Hastings) Ltd* [2016] NSWCATAP 216 at [191]. I have approached the impugned paragraphs with this in mind.

70 In addition to the Confidential Material, the Respondent relies on the following material lodged with the Tribunal:

- (1) The Affidavit of Mandy Chow dated 17 July 2025, which includes as Exhibit MC—1 a recording of a radio interview on 24 April 2025 between Mr Chris Smith and a person calling himself “Mark” (the April 2025 Interview).
- (2) A transcript of the April 2025 Interview handed up at the hearing without objection from the Applicant, along with a recording of the Interview.

- (3) The initial bundle of bundle of documents lodged under s 58 of the ADR Act entitled "Brief of Documents" received by the Tribunal on 28 May 2025 (the Initial s 58 Bundle).
- (4) A supplementary bundle of documents lodged under s 58 of the ADR Act entitled "Supplementary Brief of Documents" received by the Tribunal on 28 July 2025 (the Supplementary s 58 Bundle).
- (5) The Respondent's written submissions.
- (6) The oral submissions made for the Respondent at the hearing on 15 August 2025.

71 For completeness, I note that counsel for the Respondent indicated at the hearing that the Respondent did not seek to rely on the Affidavit of Rodney Smith dated 15 July 2025.

Oral evidence of Applicant

72 At the hearing, the Respondent sought to call the Applicant for cross-examination. The Respondent also sought to call Mr Matthew Wilson for cross-examination on the Wilson Affidavit.

73 As the Applicant was present at the hearing, I allowed his cross-examination. However, Mr Wilson was not present at the hearing because it appeared that the Respondent did not ask for him to attend for cross-examination. There was ample time before the hearing for the Respondent to ask for Mr Wilson to attend. Given these circumstances, I decided that it was inappropriate to adjourn the hearing to allow for Mr Wilson to be called for cross-examination.

74 The evidence given by the Applicant on cross-examination by the Respondent's counsel includes the following:

- (1) The Applicant said he felt that he and his wife were unfairly targeted and harassed by the NSWPF. He said his fears about this were ongoing.
- (2) The Applicant said he was falsely accused of making violent threats towards police, including in records from the Computerised Operational Policing System (COPS) used by the NSWPF. However, he conceded that there was nothing in the documents (including a letter in the Initial s 58 Bundle at p 245) presented to him that expressly said so.
- (3) The Applicant agreed that he was the "Mark" referred to in the April 2025 Interview.
- (4) The Applicant said he thought that he was the victim of police corruption, although he conceded that there was no conspiracy. He said that people were often unjustly convicted because of police corruption.

- (5) The Applicant admitted that he had engaged an international security firm to help him monitor police officers in relation to the Shared Property who he said were stalking him and his wife. He said he had evidence of this stalking.
- (6) The Applicant claimed that police officers froze the Applicant and his wife's bank accounts. As a result, his wife lost business.
- (7) The Applicant conceded that his wife had made complaints about police conduct. However, he said he had not read all her complaints. The Applicant was given a copy of an email by his wife dated 27 May 2025 that was cc'd to all members of the NSW Parliament (see Supplementary s 58 Bundle at p 13). The email appends various allegations of police misconduct. The Applicant said he did not know about the email, but he agreed with what his wife had written.
- (8) The Applicant said that he was not resentful of police conduct. Rather, he was simply trying to defend himself. He said he was fearful rather than resentful.
- (9) The Applicant conceded that he had not attempted to reinstate the implied consent for police officers to enter the Shared Property that was withdrawn by the Implied Licence Withdrawal Letter.
- (10) The Applicant said the No Trespassing Sign was erected on legal advice. He said the Sign was made by a signage company and was lit at night-time.
- (11) The Applicant said that the No Trespassing Sign was taken down on the day *Davies No 1* was published. He said that he did not take down the sign simply to get back his firearms licence. However, he conceded that the Sign had not been destroyed and was still in the possession of the Applicant and his wife.
- (12) The Applicant conceded that he had surveillance devices in his home. He also conceded that a "surveillance sweep" was done of his vehicle, but it had not revealed that any surveillance device had been placed in the vehicle.
- (13) The Applicant rejected the allegation put to him that he had told a police officer "to fuck off" when he received a phone call from the officer while he was on the M7 freeway (the Police Phone Call).
- (14) The Applicant rejected the allegation put to him that he was paranoid about the police. He said that he had never been diagnosed with a mental illness.

75 The Applicant gave the following evidence on re-examination by his counsel:

- (1) The Applicant identified the nature of the harm he faced as the fear of the unknown.
- (2) The Applicant again rejected the allegation that he had told a police officer to "fuck off" during the Police Phone Call. He said he remembered the phone call because it was on the day of his 50th

birthday. He said that Mr Wilson was in the car with him and Mr Wilson answered the call and put it on loudspeaker. I note Mr Wilson states that this was the case in the Wilson Affidavit. He also states in the Affidavit that he did not hear the Applicant say what the Respondent alleges. However, I must also note that, for the reasons given earlier, I denied the Respondent's request to cross-examine Mr Wilson.

- (3) The Applicant said he needed a firearm for feral pest animal control. He said that it was not for personal protection. Nevertheless, he reiterated that he lived in fear of the police.

April 2025 Radio interview

76 In addition to the transcript being handed up at the hearing, a recording of the April 2025 Interview was played for me during the hearing. The transcript, which I followed while the recording was played, accurately transcribes the contents of the recording.

77 The April 2025 Interview was a phone interview with the Applicant (who, as I mentioned, adopted the pseudonym "Mark" for the interview). It was conducted by Mr Chris Smith for his talkback radio programme. The Applicant said the following during the Interview:

- (1) The Applicant claimed his was a story that "ends with the absolute corruption within the NSW Police force".
- (2) The Applicant noted that his former stepmother had been kept away from his father and that an apprehended domestic violence order had been made against her.
- (3) The Applicant said that "[u]nbeknownst to me", his former stepmother had a relative who was a senior police officer. Given the confidentially orders I have made, I will not identify this officer or state his precise relationship with the Applicant's former stepmother. I will, instead, refer to him as the "Named Police Officer".
- (4) The Applicant accused the Named Police Officer of having engineered false criminal charges against him, but that the charges were quashed because of his "brilliant criminal lawyer". The Applicant said that neither he nor his wife had ever committed a crime.
- (5) The Applicant said that the Named Officer had been caught on cameras he installed both on the Shared Property and coming down the Applicant's street. He alleged the Named Police Officer used a Wi-Fi jammer while driving down the Applicant's street to harass him. He also said he had footage of a "Rapter car" that pulled up in his driveway to take photographs of the Shared Property.
- (6) The Applicant claimed that court documents revealed that the NSWPF had recorded in their systems that he was a violent threat to them (which was never proven). He said this information would be displayed

to Highway Patrol police officers accessing the system whenever he was pulled over.

- (7) The Applicant also claimed that the NSWPF froze the bank accounts of both the Applicant and his wife.
- (8) The Applicant alleged that the Named Police Officer's superior called his solicitor and threatened him if he did not tell the Applicant and his wife to stop complaining.
- (9) The Applicant claimed to have complained about the police conduct to the Law Enforcement Conduct Commission, the Independent Commission against Corruption, the NSWPF and his local members of Parliament (both State and Federal). However, he said nobody has helped them.
- (10) The Applicant also said that he and his wife had to employ the services of an international security consultant because nobody in Australia would help them. He said that the Named Police Officer was still harassing them and that the Applicant had "the number plates of both of his private cars".

78 The Interview concluded with Mr Smith offering to meet up with Applicant because "I have a feeling we're on to something here" so that "we'll work out where we go from there".

Submissions

79 In addition to the written submissions of each party that I have read, I was also greatly assisted by the comprehensive oral submissions made at the hearing by counsel for each of the parties. These oral submissions make it possible to summarise respective submissions of the parties as follows.

Applicant's submissions

80 The Applicant submits the following:

- (1) The Applicant satisfied the fit and proper person test. It is also not against the public interest to issue him with a firearms licence.
- (2) The Applicant provides six major reasons for this:
 - (a) The Applicant has a longstanding history of responsible firearm ownership. He held licences for a firearm for some 27 years without incident.
 - (b) The Applicant does not have a criminal history. There is evidence of his good character. He is honest, reliable and responsible.

- (c) The Applicant took voluntary corrective action to take down the No Trespassing Sign. It was not in response to the Tribunal's decision in *Davies No 1*.
 - (d) Although there was evidence of conflict with the Applicant's former stepmother, the Applicant no longer has a relationship with her. The interim ADVO was withdrawn. It would not have been withdrawn if there was any basis for an order.
 - (e) Looking at the whole of the evidence, there is no evidence of safety issues, unlawful firearms use or apprehended violence orders obtained by the police or any other party (apart from the withdrawn interim ADVO).
 - (f) The Applicant's fears about the police do not of themselves satisfy the statutory tests under the Firearms Act. The Applicant was just trying to defend himself, largely through his wife. There is nothing unlawful in doing so. There is no evidence of bad faith or an unlawful purpose on the part of the Applicant.
 - (g) It would be wrong to treat the Applicant's conduct as evidence of paranoia. There is no expert evidence to that effect. The Tribunal should not draw that inference based on lay evidence.
- (3) In reply to the Respondent's written submissions, the Applicant submits:
- (a) The Respondent's reliance on criticisms of the police made by the Applicant is not evidence of hostility to police. The Applicant is entitled to voice his criticisms and disagree with the police. There is no evidence that the Applicant has threatened physical violence to the police.
 - (b) The Applicant's media and public comments are a lawful exercise of his freedom of expression. It is not evidence of his inability to comply with the firearms legislation.
 - (c) The Respondent's claims that the Applicant would not comply with police concerning his firearms is merely speculative. The Tribunal should take account that the Applicant undertook the Completed Firearms Course.
 - (d) The withdrawal of the interim ADVO means that the fact that it was issued is of diminished probative value. There is no evidence of other apprehended violence orders being made against the Applicant or of criminal convictions being recorded against him.
 - (e) Raising allegations of police misconduct, even if unsubstantiated, does not of itself establish paranoia or indicate that the Applicant cannot safely hold a firearm. The Respondent has not established that these allegations are incompatible with public safety.

Respondent's submissions

81 The Respondent submits the following:

- (1) Section 19(2) of the Firearms Act makes it a condition of a firearms licence for the licensee to permit inspection by a police officer of the licensee's facilities in respect of the storage and safe keeping of the firearms in the licensee's possession. The evidence suggests that the Applicant would not cooperate.
- (2) The Tribunal must be satisfied an applicant for a firearms licence is a fit and proper person and can be trusted to have possession of firearms without danger to public safety or to the peace. The caselaw requires the Tribunal to be satisfied that there would be "virtually no risk" to public safety if an applicant is issued with a firearms licence. The Tribunal could not be satisfied of these matters because of the Applicant's prior conduct and his attitudes and beliefs.
- (3) In relation to the Applicant's prior conduct and his attitudes and beliefs, the Respondent submits:
 - (a) The erection of the No Trespassing Sign (and its dismantling but not destruction) demonstrates that the Applicant would be uncooperative with police. The Tribunal should take account of the fact that the Sign was taken down on the day that *Davies No 1* was published. The fact that it was taken down is not evidence of a reformed attitude.
 - (b) The Applicant conceded in cross-examination that he had not revoked the withdrawal of implied consent for police officers to enter the Shared Property as stated in the Implied Licence Withdrawal Letter. This, together with the continued storage of the No Trespassing Sign, enables the Tribunal to infer that the Applicant continues to have an attitude towards police that is inconsistent with the ongoing licensing obligations that the Applicant would have if he were issued with a firearms licence.
 - (c) The Tribunal should also take into account the Applicant's public campaign against the police as evidence that he would not be cooperative.
 - (d) There is no positive evidence from the Affidavits lodged by the Applicant about whether the Applicant would allow the police to carry out safety inspections if he were issued with a firearms licence.
- (4) The Tribunal could not be satisfied that there was virtually no risk to public safety if the Applicant were issued with a firearms licence because of the Applicant's heightened fear concerning the police and his troubling obsession with the Named Police Officer (which includes knowing the officer's address, mobile phone number and personal number plates).

- (5) The Respondent is not asking the Tribunal to attach a label to the Applicant concerning his mental health. That would be beyond the Tribunal's jurisdiction. Nevertheless, there is troubling and concerning evidence that suggests that the Applicant might resort to violence in retaliation for what he considers to be persecution and harassment by police. In this regard, the Tribunal should take into account that the Applicant has installed surveillance equipment on the Shared Property to protect against unwanted intrusions by the police.
- (6) The Tribunal should note that the Applicant conceded in cross-examination that police documents did not say he had made violent threats to police. Rather, it was the opposite.
- (7) Employing an international security firm to protect against police intrusion was inconsistent with the Applicant being a fit and proper person who could be trusted with a firearm.
- (8) Issuing a firearms licence to the Applicant would increase the risk to public safety if the Applicant perceived its issue as justifying his beliefs about police misconduct.
- (9) Finally, the Respondent seeks costs for the Administrative Review Application if the Application is unsuccessful. The Respondent submits the Applicant's case was a hopeless rerun of his earlier case and was misconceived. The Respondent also submits the Applicant has not dealt with the concerns expressed by the Tribunal in *Davies No 1* and was bound to fail.

82 In reply to the oral submissions made by counsel for the Respondent, counsel for the Applicant submitted the following:

- (1) The erection of the No Trespassing Sign was consistent with legal advice. The Applicant was not acting on his own volition. He was acting in a responsible manner to protect his legal rights.
- (2) There is no positive evidence to support the Respondent's case of unfitness. The Respondent neglects to mention that the Applicant held a firearms licence for almost three decades without incident.
- (3) It was wrong to say that the Applicant was fixated or obsessed with the Named Police Officer. The Officer was known to the Applicant because the Officer was related to his former stepmother. The Applicant says he got the Officer's address from his father.
- (4) It would be improper for the Tribunal to find that the Applicant did not satisfy the fit and proper person test because of evidence that he had lawfully exercised his legal rights.
- (5) The Applicant points to evidence (see First Davies Affidavit at [34]) about a COPs event dated 23 February 2023 where it states that police did not believe it was necessary to seize the Applicant's firearm "as Police do not have reasonable grounds to believe a domestic violence incident has occurred".

- (6) In relation to the Respondent's application for costs, it cannot be said that the Applicant's case was a hopeless rerun of his earlier case. The Applicant undertook the Completed Firearms Course to overcome the concerns expressed by the Tribunal in *Davies No 1*. It was reasonable for him to assume that undertaking the Course would make a difference. Also, the "goalposts have moved" since *Davies No 1*. The Respondent now relies on different reasons and additional evidence to justify the Licence Refusal Decision.

Issues for determination and impact of previous Tribunal decisions

83 Having regard to these submissions, the two substantive issues for the Tribunal to determine are:

- (1) **Issue 1:** Is the Applicant a fit and proper person who can be trusted to have possession of firearms without danger to public safety or to the peace?
- (2) **Issue 2:** Alternatively, should the Applicant be refused the firearms licence he seeks because it would be contrary to the public interest to issue it?

84 Before I turn to a consideration of these two issues, it is necessary to say something about the impact (if any) of the decisions of the Tribunal in *Davies No 1* and the Appeal Panel in *Davies No 2* (the Previous Tribunal Decisions) on my ability to make findings for the purposes of the Review Application.

85 At the hearing, I raised with counsel for each of the parties whether I would be bound by any of the findings already made in the Previous Tribunal Decisions on the basis of *res judicata* or issue estoppel or, alternatively, on the grounds that it would be an abuse of process to allow the same findings to be re-litigated. Counsel both submitted that there was no obstacle to me making my own findings. They both pointed particularly to the new evidence before me that was not before the Tribunal or Appeal Panel when they decided the Previous Tribunal Decisions.

86 I agree with the parties that the Previous Tribunal Decisions do not prevent me from making my own findings.

87 It is important to note that the Tribunal is not exercising judicial power when conducting an administrative review under the ADR Act of a decision of the Respondent under the Firearms Act. The Tribunal must decide for itself what the correct and preferable decision is and, for that purpose, may exercise all the functions of the Respondent. As a result, the Tribunal stands in the shoes

of the Respondent. Recently, the High Court in *New South Wales v Wojciechowska* [2025] HCA 27 recognised that the Tribunal is not exercising judicial power when it conducts an administrative review even if it is empowered by legislation to award the additional remedy of damages (which is not a power available to me here).

88 The principles of *res judicata* and issue estoppel are applicable to decisions made by the Tribunal involving the exercise of judicial power: *Dubroja v Kabir* [2025] NSWCATAP 162 at [59]. The Appeal Panel in *Gleeson v The Owners – Strata Plan No 48226* [2018] NSWCATAP 204 at [18]–[20] conveniently summarised those principles:

“18 The relevant principles appear in Halsburys (online version) at [190–45] and following. We summarise and paraphrase those principles as follows:

(1) *res judicata* is the principle of law which prohibits a party from bringing a further action in respect of a subject matter raised and determined in a prior final judgment before a competent tribunal between the same parties or their privies litigating in the same capacity; if made out, *res judicata* is a complete bar to the claim;

(2) *res judicata* is founded on the necessity of avoiding re-agitation of issues and of preventing the raising of issues which could have been and should have been decided in earlier litigation;

(3) *res judicata* is not restricted to courts of record. It applies to judicial decisions of a final nature of any court or tribunal upon any matter over which it has jurisdiction to give a final judicial decision, including arbitral tribunals and a consumer claims tribunal: *Maganja v Arthur* [1984] 3 NSWLR 561 at 563;

(4) in order to establish a plea of *res judicata*, it must be shown that the cause of action in the later proceedings is the same as that which was litigated in the former proceedings. “Cause of action” means (i) the series of facts which the plaintiff must allege and prove to substantiate a right to judgment, (ii) the legal right which has been infringed, and (iii) the substance of the action as distinct from its form: *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589 at 610;

(5) *res judicata* applies where there is an identity of parties. This occurs where the parties are literally the same or there is privity of interest or capacity. The determination of identity between litigants for the purpose of establishing privity is a question of fact. There are three classes of privies, blood, title and interest.

19 As to issue estoppel, the principle is that a final judgment by a competent tribunal creates an issue estoppel in that it forever binds the parties and all those who claim through them in respect of any issue of fact or law which was legally indispensable to that decision. For the doctrine of issue estoppel to apply in a second set of proceedings:

(1) the same question must have been decided;

(2) the judicial decision which is said to create the estoppel was final; and

(3) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

20 The parties are bound in the sense that they are precluded in subsequent proceedings from asserting, as against other parties to the judgment, to the contrary of any issue fundamental to the judgment. The issue in the subsequent proceedings must be precisely the same as that decided in the earlier proceedings. However, unlike *res judicata*, the plea of issue estoppel may succeed although the causes of action in the two cases are entirely different (see Halsburys at [190–100]).”

- 89 There is, however, doubt about whether the principles of *res judicata* and issue estoppel can apply to decisions of a tribunal exercising administrative power: Council of Australasian Tribunals, *Guide to Tribunal Practice* (6th ed, 2025) (COAT Practice Guide) at [6.6.2.2]. In my view, this doubt is well founded: cf *Spuds Surf Chatswood Pty Ltd v PT Ltd (No 4)* [2015] NSWCATAP 11 at [64]; *Special Protection Services (NSW) Pty Ltd v Commissioner of Police, NSW Police Force*; *Constantin v Commissioner of Police, NSW Police Force* [2015] NSWCATOD 112 at [58]; *Sikka v Roads and Maritime Services (No 2)* [2016] NSWCATOD 98 at [39]–[43].
- 90 Even so, an attempt to re-litigate the same issue before a tribunal exercising administrative power that the tribunal has already finally decided may constitute an abuse of process: COAT Practice Guide at [6.6.2.4]. The Tribunal has power to dismiss proceedings for an abuse of process: NCAT Act, s 55(1)(b).
- 91 In essence, the focus of the principles of *res judicata* and issue estoppel, as well as the prevention of abuses of process involving attempts to re-litigate issues that have already been finally decided, is whether the tribunal or court concerned is being asked to decide the same thing as an earlier court or tribunal based on essentially the same evidence.
- 92 In the Previous Tribunal Decisions, the Tribunal and the Appeal Panel were asked to decide whether the Commissioner’s decision to revoke the Applicant’s Category ABH firearms licence and large calibre pistol permit was the correct and preferable decision. However, I am being asked to decide whether the Respondent’s decision to refuse the Applicant’s application for a firearms

licence for a different category of licence was the correct and preferable decision.

- 93 Moreover, the Tribunal and Appeal Panel were asked to make the Previous Tribunal Decisions without the benefit of oral testimony from the Applicant. However, I had the benefit of such oral testimony, which was given under affirmation and subject to both cross-examination and re-examination. I have also had the benefit of observing the Applicant's demeanour while he gave his testimony. In addition, the Tribunal and Appeal Panel did not have before them the additional affidavits lodged by the parties and the April 2025 Interview.
- 94 Given these differences, I am satisfied that I am not being asked to decide the same issues as in the Previous Tribunal Decisions based on essentially the same evidence.
- 95 Accordingly, I can approach the issues I have identified for the Tribunal's determination based on my own assessment of the evidence currently before me.

Consideration

Issue 1: Is the Applicant a fit and proper person who can be trusted to have possession of firearms without danger to public safety or to the peace?

- 96 Having regard to what was said in *Kocic*, I must be satisfied that the Applicant is a fit and proper person *who* can be trusted to have possession of firearms without danger to public safety or to the peace. Moreover, in reaching that state of satisfaction, I must be satisfied that there is "virtually no risk" to public safety. Also, if there is a risk, it must be a real and appreciable risk rather than simply a minimal, fanciful or theoretical risk. I now turn to the evidence with these principles in mind.

Strongly held beliefs about persecution and harassment

- 97 It was quite clear from the Applicant's oral testimony that he feels very strongly that he and his wife are being subjected to police persecution and harassment which they attribute to corruption. The Applicant said on several occasions during his testimony that he was trying to "defend" himself and his wife from police misconduct and that they lived in "fear". Further evidence of these very strong feelings is provided by the April 2025 Interview.

Lack appreciation of the need to cooperative with the police

98 I am not satisfied that the Applicant truly appreciates the need to cooperate with the police in accordance with the obligations imposed on licensees by the Firearms Act. This is despite him undertaking the Completed Firearms Course. In this regard, I note the Applicant's concession during his testimony that he had not revoked the withdrawal of the implied consent for police to enter the Shared Property. In addition, he also conceded that the No Trespassing Sign remained in his and his wife's possession. The fact that the Sign remains in their possession suggests that the Applicant is willing to use it again if necessary. It also suggests that the decision to take in down the Sign (which only occurred on the day *Davies No 1* was published) should not be regarded as probative of a change of attitude.

99 The Applicant submits that he was acting on legal advice in seeking to prevent police officers from entering the Share Property without lawful authority and that he was legally entitled to do so. I agree that the Applicant had a lawful entitlement to withdraw the implied licence police officers would otherwise have had to enter the Shared Property. However, the Implied Licence Withdrawal Letter does more than withdraw the licence to enter. It also requires "all communication" from the NSWPF with the Applicant and his wife to be through the intermediary of their solicitor. The tenor of both the Sign and Letter, which also include threats of lawsuits and warning that "Penalties Apply" for trespass, suggests a fundamental unwillingness to cooperate with police officers. This is inconsistent with responsible firearms ownership.

Heightened security measures

100 The heightened security measures adopted by the Applicant and his wife involving an international security firm suggest a deep distrust of police which compels them to constantly monitor and record police activities.

Complaints about police misconduct

101 The Respondent seeks to rely on the complaints of police misconduct made by the Applicant and his wife, both to relevant government agencies and publicly (which includes the April 2025 Interview). I accept, as the Applicant submits, that he and his wife have a perfect right to make complaints concerning police

misconduct. I agree that this an exercise of their right to freedom of expression, which is central to any democratic system of government. Nevertheless, the making of these complaints about police misconduct also provides evidence of the deep distrust that the Applicant has concerning the NSWPF.

Relevance of allegations of police misconduct for Applicant's attitude

- 102 The Applicant has sought to justify his attitude towards the NSWPF on the basis that he and his wife are being unfairly persecuted and harassed by police.
- 103 The Respondent denies this and, as I have mentioned, put to the Applicant during his cross-examination that he was "paranoid". The Respondent points to the following evidence in the Confidential Material to show why the conduct of the NSWPW was justifiable.
- 104 **[NOT FOR PUBLICATION]**
- 105 **[NOT FOR PUBLICATION]**
- 106 **[NOT FOR PUBLICATION]**
- 107 **[NOT FOR PUBLICATION]**
- 108 **[NOT FOR PUBLICATION]**
- 109 **[NOT FOR PUBLICATION]**
- 110 Despite this evidence, I consider it both inappropriate and unnecessary for me to decide whether the conduct of the NSWPF was justifiable or constituted misconduct.
- 111 It is inappropriate for me to decide whether there has been police misconduct because the Tribunal is not an anti-corruption body. Questions about police misconduct are for agencies such as the Law Enforcement Conduct Commission to examine using the panoply of coercive powers that they have to get at the truth. The Tribunal's role when conducting an administrative review of a firearms decision of the Respondent is strictly limited to deciding what is the correct and preferable decision.
- 112 It is also unnecessary for me to decide whether there has been police misconduct because the central question for me to decide is whether the

Applicant's attitude towards the NSWPF poses a real and appreciable risk to public safety if he were to be given access to a firearm. In my view, the answer to this question does not depend on whether the Applicant has, or does not have, legitimate grounds to justify his attitude. The question must be answered by focusing on the Applicant's actual attitude and the risks (if any) posed by it regardless of whether this attitude is soundly based.

113 The evidence before me demonstrates that the Applicant has a deeply held animosity and distrust directed at the police because of their conduct towards him and his wife. The forthright and uncompromising way in which the Applicant gave his oral testimony concerning his perception of this conduct does not assuage my concerns; it heightens them. The Applicant has such a fundamental distrust of the police that he feels a need to "defend" both himself and his wife from further persecution and harassment. I cannot be satisfied that this need does not pose a real and appreciable risk to public safety or the peace. In particular, I cannot be satisfied that there is virtually no risk of an encounter with police at the Shared Property escalating into a violent confrontation if the Applicant feels that he or his wife are being wrongfully targeted or threatened. Even if the Applicant's animosity towards police were only to manifest itself as a continued unwillingness to cooperate with police, such an unwillingness would still be incompatible with responsible firearm ownership.

114 The Applicant's submits that I should take into account that he held a firearms licence for almost three decades without incident. The difficulty with this submission is it that relies on conduct that occurred almost exclusively before the time when the Applicant developed his animosity and distrust about the police following the incidents concerning his father. I must look to the Applicant's current attitude. It is this attitude and the risk it poses that cause my concerns.

Finding concerning fitness and propriety

115 For all these reasons, I cannot be satisfied that the Applicant is a fit and proper person who can be trusted to have possession of firearms without danger to public safety or to the peace.

Issue 2: Alternatively, should the Applicant be refused the firearms licence he seeks because it would be contrary to the public interest to issue it?

116 As mentioned above, a failure to satisfy the fit and proper person test necessarily means it would not be in the public interest to give the Applicant a firearms licence: *Stiles* at [34]. Consequently, it is not necessary for me to consider whether the Applicant should be refused a firearms licence because it would be contrary to the public interest to issue it.

Conclusions

117 For all the reasons given above, I have decided that the correct and preferable decision is to refuse the Applicant's application for a Category AB firearms licence. As the Licence Refusal Decision was correct, it must be affirmed.

Costs

118 As I have already mentioned, the Respondent applied during the hearing for an order for costs in relation to the Review Application if the application was unsuccessful. Initially, the Respondent also applied for an order for costs in relation to the Applicant's Confidentiality Application on the ground that the Respondent had not been notified that the Applicant intended to press the Application. However, this was abandoned before the end of the hearing when it became clear that the Respondent had in fact been notified.

119 There is no dispute that s 60 of the NCAT Act governs the question of whether costs should be awarded. The section provides as follows:

60 Costs

- (1) Each party to proceedings in the Tribunal is to pay the party's own costs.
- (2) The Tribunal may award costs in relation to proceedings before it only if it is satisfied that there are special circumstances warranting an award of costs.
- (3) In determining whether there are special circumstances warranting an award of costs, the Tribunal may have regard to the following—
 - (a) whether a party has conducted the proceedings in a way that unnecessarily disadvantaged another party to the proceedings,
 - (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceedings,
 - (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law,
 - (d) the nature and complexity of the proceedings,

(e) whether the proceedings were frivolous or vexatious or otherwise misconceived or lacking in substance,

(f) whether a party has refused or failed to comply with the duty imposed by section 36(3),

(g) any other matter that the Tribunal considers relevant.

(4) If costs are to be awarded by the Tribunal, the Tribunal may—

(a) determine by whom and to what extent costs are to be paid, and

(b) order costs to be assessed on the basis set out in the legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*) or on any other basis.

(5) In this section—

costs includes—

(a) the costs of, or incidental to, proceedings in the Tribunal, and

(b) the costs of, or incidental to, the proceedings giving rise to the application or appeal, as well as the costs of or incidental to the application or appeal.

120 Section 60(1) and (2) make it very clear that parties are expected to bear their own costs with the only exception being if the Tribunal is satisfied that there are special circumstances warranting an award of costs.

121 Section 60 departs from the usual rule applicable in courts hearing civil proceedings that costs follow the event. The rationale for this departure may be found in s 3 of the NCAT Act, which states that one of the objects of the Act is to ensure the Tribunal is accessible and responsive to the needs of all of its users. A rule requiring parties to bear their own costs absent special circumstances undoubtedly promotes accessibility to the Tribunal.

122 The general principles applicable to determining whether to award costs under s 60 were recently summarised by the Appeal Panel in *Ungaro v Matijevic* [2025] NSWCATAP 163 (*Ungaro*) at [91]:

“The following general principles apply to the determining whether to award costs under s 60:

(1) Circumstances are special circumstances if they are out of the ordinary, but they do not need to be extraordinary or exceptional: *Edwards v Commissioner for Fair Trading, Department of Customer Service (Costs)* [2019] NSWCATAP 249 at [9]; *Megerditchian v Kurmond Homes Pty Ltd* [2014] NSWCATAP 120 at [11]; *Cripps v G & M Dawson Pty Ltd* [2006] NSWCA 81 at [60].

(2) Whether there are special circumstances involves a value judgment requiring a comparison between what is not “special” and what is “special”:

Alexander James Pty Ltd v Pozetu Pty Ltd (No 2) [2016] NSWCATAP 75 at [14].

(3) The party asserting that there are special circumstances must prove that special circumstances exist: *The Owners – Strata Plan No 63731 v B & G Trading Pty Ltd (No 2)* [2020] NSWCATAP 273 (*B & G Trading*) at [14].

(4) Even if the Tribunal is satisfied that there are special circumstances, the presence of these circumstances merely enlivens the discretion to award costs but does not mandate an award of costs: *Al-Aaraj v Commissioner of Police, NSW Police Force (No 2)* [2025] NSWCATAP 166 at [40]. The Tribunal must still be satisfied they are circumstances “warranting an award of costs”: *B & G Trading* at [12].

(5) If the discretion is enlivened, it must be exercised judicially and not capriciously: *eMove Pty Ltd v Naomi Dickinson* [2015] NSWCATAP 94 at [37]; *Oshlack v Richmond River City Council* (1998) 193 CLR 72 at 81.

(6) An award of costs is intended to be compensatory and not punitive: *Grasso v The Owners-Strata Plan No 52399* [2022] NSWCATAP 91 at [12](6).”

123 These general principles contemplate a two-step process.

124 The first step is to decide whether there are special circumstances to enliven the discretion to award costs against one of the parties. If such circumstances are present, the second step is to decide whether the circumstances are sufficient to warrant exercising the enlivened discretion to award costs against that party.

125 In relation to the first step, s 60(3) sets out a non-exhaustive list of relevant considerations. As noted in *Ungaro* at [96], the focus of these considerations is the nature and impact of the conduct of the party against whom costs are sought. Despite not being exhaustive, these considerations nevertheless provide guidance about when circumstances are relevantly “special”.

126 I have already summarised the submissions made by both parties: see [81(9)] and [82(6)] above. In essence, the Respondent’s principal submission is that the Applicant’s case was a hopeless rerun of his case in *Davies No 1* and, for that reason, raises the consideration mentioned in s 60(3)(e) of the NCAT Act. That is, the Review Application was frivolous or vexatious or otherwise misconceived or lacking in substance. The Applicant submits that no special circumstances have been proven by the Respondent and that the Applicant’s case was not a hopeless rerun of his case in *Davies No 1*.

127 I agree with the Applicant.

- 128 It was not unreasonable for the Applicant to assume that if he completed the course recommended by the Tribunal in *Davies No 1*, this would be sufficient to dispel the concerns about him expressed by the Tribunal. It is true the Appeal Panel in *Davies No 2* overturned the decision of the Tribunal. However, the basis for overturning the decision was that the Tribunal could not remit once it was not satisfied that the Applicant was a fit and proper person because there was no residual function left for the Respondent to perform on the remittal. The Appeal Panel did not say (and it was unnecessary for it say) whether the Applicant completing the recommended course would make a difference for any future application he made for a firearms licence.
- 129 Also, as the Applicant submits, the reasons and evidence that are now relied on by the Respondent to deny the Applicant a firearms licence are different to those relied on in *Davies No 1*. Given these different reasons and evidence, it was not unreasonable for the Applicant to seek to challenge both by testing them in further proceedings.
- 130 In these circumstances, I am not satisfied that the Review Application was such a hopeless rerun of the Applicant's case in *Davies No 1* as to be frivolous or vexatious or otherwise misconceived or lacking in substance. The Respondent has not pointed me to any other special considerations.
- 131 In the absence of special circumstances, it follows that the discretion to award costs has not been enlivened. Accordingly, the Respondent's application for costs must be refused.

Orders

- 132 The Tribunal makes the following orders:
- (1) The decision of the Respondent to refuse the Applicant's application for a Category AB firearms licence is affirmed.
 - (2) The Respondent's application for costs is refused.
 - (3) Pursuant to ss 64(1)(c) and (d) of the Civil and Administrative Tribunal Act 2013 (NSW), the contents of all paragraphs in these reasons marked "NOT FOR PUBLICATION" are not to be published or disclosed to the Applicant or the public.

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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