

Legal experts weigh in on unpopular laws

By **PERRI POLSON**

TWO Acts impacting the regions have been weighed in on by legal experts, at a Pastoralists and Graziers Association of WA (PGA) meeting held in York last week.

The new Firearms Act and Regulations has been a focus of PGA's advocacy for more than a year, with PGA president, Tony Seabrook, saying the organisation was blindsided when the regulations were released, and since then, the implementation of the new laws were shambolic.

In 2023, PGA, along with several other farming industry advocacy bodies, successfully called for the repeal of the Aboriginal Cultural Heritage Act 2021, and the previous Act, the Aboriginal Heritage Act 1972 was reverted to.

Toodyay farmer, Tony Maddox, is currently before the courts in relation to the 1972 Act for undertaking works on a creek crossing on his property.

HHG Legal managing director, Murray Thornhill, said Mr Maddox's court case was putting a 53-year-old piece of legislation to the test against private property rights in a way that hadn't been seen before.

"You can count on one hand the number of prosecutions under this legislation in that time," Mr Thornhill said.

"You would be hard pressed to find any piece of legislation that is that old, that has been used so little."

In 2017, Andrew Forrest submitted an application to develop weirs along the Ashburton River, which flows through his 230,000 hectare



□ HHG Legal managing director, Murray Thornhill.

cattle station, Minderoo station.

This plan was originally rejected by Aboriginal Affairs Minister at the time, Ben Wyatt, on the basis that the Ashburton River was a sacred Aboriginal site, and the matter was taken to the courts.

The matter was only resolved, to Mr Forrest's gain, in August 2024.

Mr Thornhill said that while this case was the most similar to Mr Maddox's in nature, the outcome of the Minderoo station case did not provide much in the way of interpreting the Act.

Mr Maddox's case is under an appeal process to interpret the meaning of the word 'alter' in the Act, referring to the detail that Aboriginal sites must not be altered.

"That word has never really been defined by a court apart from the State Administrative Tribunal, which had a go at it with the Minderoo station case, but it is still up in the air," Mr Thornhill said.

Mr Thornhill said there were a number of laws which intersected with property rights, but he said there was a great lack of awareness around

the Aboriginal Heritage Act.

"The attempts to change this legislation a few years ago unearthed a whole lot of issues," he said.

"The new approach that (the State government) was trying to bring in assumed that everyone already knew and were happy with what was in place already, which wasn't the case at all.

"If landowners are expected to understand the implications of this inquiry system, take information away from it, and make decisions from it, then the government should fund it properly, and it should be accurate.

"That has been the key issue that has been unearthed, is that it's not funded properly, there are accuracy problems with the whole inquiry system.

"Any land tenure issues, you should be able to go online, look it up and draw your conclusions and act accordingly, whereas we do have uncertainty."

HHG Legal senior lawyer, Richard Dewar, gave an overview of the firearms legislation, providing more context and detail behind the situation at hand.

The Firearms Regulations, which coincide with the Firearms Act, can be changed or amended by the Police Minister of the day without the need for parliamentary approval.

"If you have a look at the new Act, it sets up the ability for there to be new and different licences, new storage requirements, but it doesn't actually go into the specifics about what you have to comply with – that's what

the regulations do," Mr Dewar said.

He went into specific details of the legislation which were likely to cause problems, for example, licensed gun owners can only use their own firearms, and not share with another person.

Growing up in York, Mr Dewar said his grandfather taught him how to shoot, and today, this would no longer be possible.

"What they are essentially trying to do is restrict the amount of people that can use or be trained in how to use a firearm," he said.

Another key change in the administration of the laws was that the Police Commissioner has been given decision-making ability and altered discretion to assess firearms licensing issues on a case-by-case basis.

As gun owners try to navigate the new legislation, Mr Dewar said to be aware of misinformation.

He said he has been given advice which he can't find written in the regulations.

"If you get told something by WA Police, if you get sent something, please keep a record of that information," Mr Dewar said.

"When I've been speaking to WAPOL, I've been taking down the badge number of the person I'm speaking with."

From a legal perspective, Mr Dewar said the legislation was difficult to work with and provide advice on.

"The reality is, the people who came up with it didn't know how it would apply practically, and how it would affect people."



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