

In Confidence

Office of the Minister of Police

Chair, Cabinet

Addendum

Cabinet Legislation paper on Arms (Prohibited Firearms, Parts and Magazines) Amendment Bill: Approval for Introduction

Proposal

1. This paper is an addendum to the Cabinet LEG paper seeking approval to introduce the Arms (Prohibited Firearms, Parts, Magazines) Amendment Bill (the Bill).

Power to Act

2. Cabinet authorised a group of Ministers: the Prime Minister, Deputy Prime Minister, Ministers of Finance, Police, Justice and Defence to have the Power to Act to take decisions on the final details of the proposals to reform the Arms Act 1983 [CAB-19-MIN-0105 refers]
3. I seek approval to extend the authority for these Ministers for policy decisions that may arise out of the Parliamentary stages of the Bill.

Policy matters to be agreed for the Bill

4. Agreement is sought for the following range of policy matters.

Exemption for pest control beyond DoC

5. Cabinet agreed to an exemption for people employed by, working for, or working with the Department of Conservation [CAB-19-MIN-0124 refers].
6. During consultation, it was identified that a “management agency” specified in pest management plans under of the Biosecurity Act 1993 is not limited to the Department of Conservation. Under section 100 of the Biosecurity Act, a ‘management agency’ may be a department, a council, territorial authority, or a body corporate. These agencies pest management plans to control wild animals (for example wild deer and pigs are carriers of tuberculosis). It is important that these agencies can continue to implement their operational plans.
7. I seek approval to include these management agencies in the definition of “exempt persons” who may apply for lawful authority to possess prohibited firearms and items.

Dealer manufacture

8. Currently section 5 of the Act provides that a dealer licence is required to:
 - 8.1. Sell any firearm, airgun, pistol or restricted weapon; or
 - 8.2. manufacture for sale any firearm, airgun, pistol or restricted weapon.
9. In the absence of clear direction about whether manufacture of prohibited items by dealers should be permitted, I propose that no dealer's licence may be issued for the manufacture for the sale of prohibited items.

Amnesties

Permanent/ongoing

10. The permanent and ongoing amnesty type provisions (that have been expanded in accordance with Cabinet agreement) have also now been collated in one place in the Act through clause 58 of the Bill (proposed sections 59A and 59B).
11. Proposed section 59A facilitates anonymous surrender of firearms, prohibited items, pistols and restricted weapons through a dealer. Previously only pistols and restricted weapons were covered.
12. Proposed section 59B provides an option for delivery of any of those items direct to Police. If the person delivering those items to Police is not authorised to be in possession of them, I propose that Police have the discretion not to prosecute where the offence is possession only and there is no public interest in prosecution. This wording is modelled on that used in section 59 of the Crimes Act 1961 in relation to prosecution for use of force by a parent against their child.

Transitional provision and scope of the amnesty to lawfully or unlawfully possessed items

13. Schedule 1 of the Bill sets out transitional provisions. Clause 3 of that Schedule applies to persons who (prior to the new Act) lawfully possessed a prohibited item. I propose that a prosecution may not be brought for the various prohibited item possession offences (set out in clause 49 of the Bill) if, the person on or before 30 September 2019:
 - 13.1. surrenders or voluntarily delivers the prohibited item to Police; or
 - 13.2. obtains the necessary endorsement and permit to possess.
14. I also propose that if the 30 September 2019 compliance date needs to be extended out beyond 30 September 2019, there is provision for that to occur by Order in Council.

15. Clause 3 of the Schedule applies to persons who (prior to the new Act) 'lawfully' possessed a prohibited item. The amnesty would not therefore apply to unlawfully possessed items, which could reduce its purpose in helping to ensure all of the prohibited items are removed from the community.

16. s(9)(2)(f)(iv)

Change in terminology from “permit to procure” to “permit to possess”

17. To manage carefully the acquisition and transfer of prohibited firearms and prohibited magazines, an endorsement and permit regime has been provided for in parallel to the existing one for pistols and restricted weapons.
18. Case law confirms that lawful possession of an endorsed item requires an endorsement that is specific to each item and that the permit process is the means by which the endorsement is made specific to each item acquired.
19. In order to provide clarity of this point for endorsements for prohibited firearms and prohibited magazines, I propose that before a person may lawfully possess a prohibited firearm or a prohibited magazine, their endorsement needs to be made specific to each particular prohibited firearm or prohibited magazine by first obtaining a permit (to import or possess).
20. I also seek that this clarification be also applied to endorsements for pistols and restricted weapons.
21. In addition, I seek approval to rename “permit to procure” to “permit to possess”. This title more aptly reflects what the permit is for.
22. It will also facilitate some transfers of prohibited items between endorsements following commencement. For example, an existing bona fide collector who may hold a MSSA on their E endorsement (rather than in their capacity as a collector) may wish to apply for a permit to possess in order to transfer that firearm to their collection if it fits in with and enhances their collection. Once held in their capacity as a collector, that firearm would need to be rendered inoperable and could not be used with live ammunition.

Inspection of prohibited items (and also pistols and restricted weapons)

23. Currently regulation 29 of the Arms Regulations provides for a licence condition that persons in possession of pistols and restricted weapons (and also the soon to be obsolete MSSAs) must:
- 23.1. produce those items to Police on demand; and
- 23.2. permit Police to inspect them and the place where they are kept and, for that purpose, permit Police to enter at all reasonable times the premises where they are kept.

24. I propose that this provision be elevated from the Regulations into the Bill.
25. I also seek approval for a corresponding offence of failing to comply with this proposed provision.

Parts

26. The definition of “part” in section 2 of the Act has long differentiated between:
 - 26.1. Parts of pistols and restricted weapons (and also the soon to be obsolete MSSAs), which is very broad; and
 - 26.2. Other firearms, which is limited to “the action”.
27. I propose the Bill adopts the same approach for describing parts of prohibited firearms.
28. There is also some interchangeability of components. Currently that creates issues around importation where the importer wants to import parts designed for use on MSSA firearms (MSSA parts) but capable of being used on A category firearms, with the intention of using them on an A category firearm. Recognising that this could continue to be an issue for parts designed for use on a prohibited firearm but capable of being used on a firearm that is not a prohibited firearm, I propose a new section that enables the Commissioner to consider there to be special reasons for the part to enter New Zealand where that part is going to be used on a firearm that is not a prohibited firearm in conjunction with conditions to enable verification of that end use.
29. For A category firearm parts, being “the action”, where the firearm concerned has an AR style two-piece upper and lower receiver, the current wording does not expressly state that this includes both the upper and lower receiver, or either one on its own. I seek approval for this to be clarified so that for an A category firearms with upper and lower receivers, an importer will need a permit to import for the upper and lower receiver, whether imported together or separately.
30. Some lower calibre semi-automatic firearms will remain A category firearms, and this change will ensure that the import of those upper and lower receivers must still be by permit.

Penalty levels for offences

31. I also additional offences be included in the Bill, namely a:
 - 31.1. maximum penalty of 5 years imprisonment for:
 - importing a prohibited item (firearm, magazine or part)
 - importing prohibited ammunition
 - possessing or supplying prohibited ammunition
 - 31.2. maximum penalty of 2 years:

- for supplying a prohibited part.
32. The Bill amends the existing offences in the Arms Act to remove any references to MSSAs and instead include newly prohibited items, with the existing penalties.
33. Any existing reverse burden of proof in these offences will apply. This aspect of the existing offences will be reviewed in the next phase of work to update the offences and penalties regime in the Act (CAB-19-MIN-0124 refers).

Offence of using a prohibited part or manufacturing a prohibited part to convert a non-prohibited firearm into a prohibited firearm

34. Cabinet agreed to establish offences including intentionally using any prohibited part or manufacturing any prohibited part to convert a non-prohibited firearm into one that would meet the definition of prohibited firearm.
35. While prohibited parts would need to be used for any such conversion or manufacture, I propose a new offence that focuses on the two activities that the underlying policy is aimed at preventing. Those are the assembly of a prohibited firearm; and converting a firearm into a prohibited firearm.

Recommendations

36. The Minister of Police recommends that Cabinet:
1. **Note** Cabinet authorised a group of Ministers: the Prime Minister, Deputy Prime Minister, Ministers of Finance, Police, Justice and Defence to have the Power to Act to take decisions on the final details of the proposals to reform the Arms Act 1983 [CAB 19-MIN-0105 refers];
 2. **agree** to extend the authority for these Ministers for policy decisions that may arise out of the Parliamentary stages of the Bill;
 3. **agree** that the category of exempt persons who may apply for lawful authority to possess prohibited items includes a person who is employed or engaged by a management agency (as defined in section 100 of the Biosecurity Act 1993) and involved in the killing or hunting of wild animals or pests in accordance with that Act;
 4. **agree** that no dealer's licence may be issued for the manufacture for sale of prohibited items;
 5. **agree** that the Bill explicitly confirms that Police have the discretion not to prosecute where the offence is possession only and there is no public interest in prosecution;
 6. **agree** that amnesty from prosecution for the possession offences in the Bill (that will apply until 30 September 2019, but that be extended by Order in Council) applies to either:
 - 6.1. prohibited items possessed lawfully prior to the ban; OR

- 6.2. prohibited items possessed both lawfully and unlawfully prior to the ban;
7. **agree** that it be clarified that before a person may lawfully possess a prohibited firearm or a prohibited magazine, their endorsement needs to be made specific to each particular prohibited firearm or prohibited magazine by first obtaining a permit,
 8. **agree** that “permit to procure” is renamed “permit to possess” to be more accurate and facilitate some transfers of prohibited items between endorsements following commencement;
 9. **agree** to the produce and inspection powers of Police currently in the Arms Regulations to be included in the Bill, to make these powers clearer and allow for a corresponding offence to be included in the Bill;
 10. **agree** to the Commissioner of Police having the discretion to consider there to be special reasons for a part to enter New Zealand where that part is going to be used on a firearm that is not a prohibited firearm in conjunction with conditions to enable verification of that end use.
 11. **agree** that there is clarity for the requirements for permits of prohibited parts, that it be made clear that for A category firearms with upper and lower receivers, an importer will need a permit to import for the upper and lower receiver, whether imported together or separately;
 12. **agree** to the additional offences and penalties in the Bill, including that offence for the manufacture or conversion of a prohibited part into prohibited firearm be framed to focus on the assembly or conversion of the firearm, rather than the use of the prohibited part per se.

Authorised for lodgement

Hon Stuart Nash
Minister of Police