

In Confidence

Office of the Minister of Police

Chair, Cabinet

ARMS ACT 1983 REFORMS – PAPER 1

Proposal

1. The mass shooting in Christchurch has exposed a range of weaknesses in our current firearms regime that we need to address to improve public safety. This paper:
 - 1.1. Seeks remaining policy decisions for the prohibition on semi-automatic firearms that need to be included in the Arms Amendment Bill (No.1) 2019. Ministers with the Powers to Act have agreed to this Bill being considered under urgency in the next Parliamentary session.
 - 1.2. Seeks additional amendments to the Arms Act 1983 to strengthen the firearms regulatory regime (Paper 1). Subject to Cabinet agreement, these amendments will be included in the Arms Amendment Bill (No.2) 2019 that will be introduced in June for enactment by the end of 2019.
 - 1.3. Signals further work on amendments to the firearms regulatory regime for consideration at a Cabinet Committee in April 2019 (Paper 2). Subject to Cabinet agreement, these amendments will also be included in the Arms Amendment Bill (No.2) 2019.

Executive Summary

2. In this paper I propose a series of reforms to the Arms Act 1983 and its associated regulations with the dual purpose of catering for the safe and responsible use of firearms, and significantly mitigating the risks of harm in the misuse of firearms.
3. The proposals build on our decision to ban assault rifles and Military Style Semi-Automatic (MSSA) firearms, large capacity magazines, and selected firearms parts. The paper falls into three parts. Part A of the paper recommends further policy decisions required to effectively put the ban in place under urgency.

Part A – Further decisions to support the (banned semi-automatics) firearms Bill

4. Part A sets out a small number of decisions remain to be made in order to amend the Act and support the decisions the Prime Minister announced on 21 March 2019. I propose to establish:
 - 4.1. **a small number of exemptions:** for professional culling, largely of wild animals on Crown Land; and for collectors and museums. I am not proposing to establish a sporting exemption at this stage. I am not yet clear on how to effectively define such an exemption or whether sporting competitions using assault rifles should be exempted. My current view is that if we do not want

these weapons in New Zealand, we should not allow such competitions in New Zealand, nor training for such competitions overseas.

- 4.2. **an amnesty regime** to ensure those who previously held weapons lawfully and will now find themselves in possession of unlawful weapons have a reasonable period of time to take action to hand over that weapon to the Police.
- 4.3. **the establishment of appropriate offences and penalties** to prevent people from retaining, using or selling the newly prohibited firearms, parts, magazines and ammunition.
- 4.4. **a ban on military-style (e.g. armour piercing) ammunition** to accompany the banning of assault rifles. I also propose we establish a requirement to hold an appropriate firearms licence and endorsement in order to purchase and possess ammunition.

Part B – Strengthening the Arms Act’s regulatory regime

5. Part B outlines a range of further policy proposals to improve risk management at key points in the firearms regulatory system. The Act came into force 35 years ago, at a time when New Zealand was more isolated from the rest of the world, there were strong import controls and no internet market place or social media. Since this time, firearms technology has shifted, the market has become global and there is a significant online community and trading environment. To bring the firearms legislation more up to date and substantially reduce loopholes and risks in our firearms environment, reform is necessary in the licensing of firearms licence-holders, the firearms market and Police’s ability to effectively enforce the regulatory regime.

6.

s(9)(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s(9)(2)(f)(iv)

7.

s(9)(2)(f)(iv)

Previous Decisions

8. Cabinet gave the Prime Minister, the Deputy Prime Minister, the Ministers of Finance, Police, Justice and Defence the Power to Act to make decisions on the development of a buy-back initiative. Police and Treasury are developing a separate paper on this for Ministers to consider at Cabinet in April.

9.

s(9)(2)(f)(iv)

10.

s(9)(2)(f)(iv)

PART A – Further decisions to support the (banned semi-automatics) firearms Bill

Proposals for Bill 1: Exemption from prohibition for a legitimate purpose

11. Cabinet approved the development of exemptions from the general prohibition of most semi-automatics [CAB-19-MIN-0105]. Officials have developed the exemptions further and this paper seeks your agreement to the proposals, as the majority of the exemptions should to be in place at the same time as the general prohibition comes into force. This is to avoid criminalising those who have a legitimate use for a prohibited firearm.¹
12. Ministers with the Power to Act asked that the exemptions be narrow in scope to avoid creating loop holes for people to retain prohibited firearms. Ministers consider

¹ Current exemptions would continue to apply under section 3(2) of the Arms Act 1983. This section provides for the lawful possession of firearms and other weapons, by the New Zealand Police, the New Zealand Defence Force, and other people or groups (for example, people employed to train in firearms use, people employed in forensics).

that the Select Committee process can be used to check whether we have got the balance right between enabling legitimate use and avoiding inappropriate use.

13. I propose that there be four exemptions for a legitimate purpose:
 - 13.1. wild animal control activities;
 - 13.2. dealers, museums and collectors.
14. As well as fitting within a category of legitimate use, the exemption regime will also require the person or organisation that seeks an exemption to demonstrate that no other type of lawful firearm will be as effective for the particular purpose it is being sought.
15. Exemptions will include large capacity magazine use, where necessary and appropriate. Exemptions will take the form of an endorsement on a firearms licence. Those exempted will be subject to annual security checks ^{s(9)(2)(f)(iv)}
[REDACTED]

Exemption for wild animal control activities

16. I propose an exemption for wild animal control activities undertaken by Department of Conservation (DOC) officers, or those specifically contracted or authorised by DOC,² or other legitimate commercial wild animal control businesses.
17. Activities that require semi-automatic firearms are likely be limited to a small number of people or agencies. For DOC for example, semi-automatic firearms are used to carry out specific aerial control operations targeted at larger wild animals (goats, deer and tahr) across open and inaccessible land. Under this exemption, prohibited firearms could be used on private land as well as DOC land, authorised under the Wild Animal Control Act 1977.


Exemption for dealers, museums, and collectors

18. I propose an amendment that will enable a dealer to act as an agent for a person who has the prohibited firearm endorsement on their licence. This would allow the dealer to import and handle the prohibited firearm. This action must be taken on behalf of a specific licence holder. Dealers will not be allowed to import prohibited items and store them for stock.
19. I also propose an exemption for museums who hold prohibited firearms. Museums will be required to disable the firearm so that it cannot be used, similar to what is required now. The disabled part can be retained and must be secured in a separate location. There are currently 64 museums with a C endorsed (collectors) licence.
20. I also consider that an exemption should apply to all collectors. There are currently 4,165 collectors (C endorsed licence holders), many of whom also trade in, or hire out, firearms (often for film or theatrical purposes). Police tells me that there were 561 MSSAs held by collectors, prior to the reclassification. The exemption would

² Wild animal as defined in the Wild Animal Control Act, Biosecurity Act and Wildlife Act.

mirror that for currently restricted weapons and collectors would therefore have to disable the firearm (and securely store the key part that disables the firearm separate from the firearm itself), not use the firearm with live ammunition and follow any other requirements for existing restricted weapons.

21. s(9)(2)(f)(iv), s(9)(2)(g)(i)

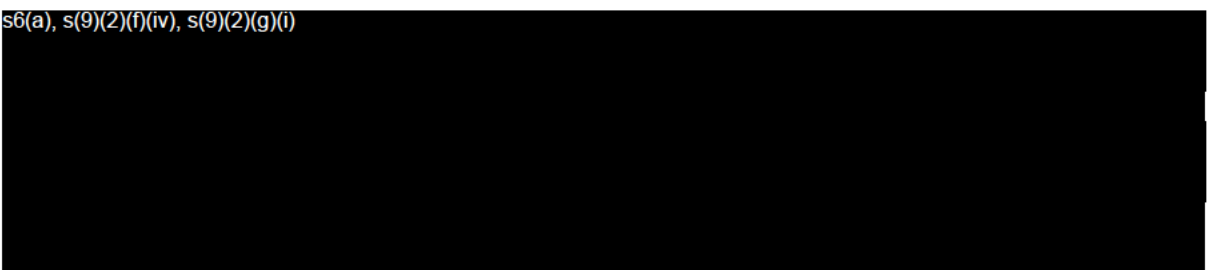


Further work required for international sporting competitions

22. I have also considered whether mainstream international sporting competitions should be exempt. I note that there are no Olympic or Commonwealth Games events that require the type of firearms that we are proposing to ban.


23. However, we are aware there may be one competition that does require the use of these soon to be banned firearms. At this stage it is unclear how this type of exemption could be effectively managed, how many competitors will be affected and whether it can be justified. I am concerned that such an exemption will be exploited.

24. s6(a), s(9)(2)(f)(iv), s(9)(2)(g)(i)



My current view is that if we don't want these weapons in New Zealand, we should not allow such competitions in New Zealand, nor training in New Zealand for such competitions overseas.

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



Proposals for Bill 1: Amnesty regimes

26. Cabinet agreed in principle to clarify, expand and promote the amnesty provisions in the Arms Act 1983 to include all firearms [CAB-19-MIN-0105]. Currently the Arms Act provides a narrow amnesty for a licensed dealer to receive pistols and restricted weapons from individuals who are not licence holders, as long as they pass them on immediately to Police for inspection and inquiries.

27. I propose three amnesties that will assist in the removal of these prohibited weapons from circulation.
28. At present, Police has the discretion whether to investigate and prosecute when members of the public hand firearms to Police or licensed dealers. There may be a range of circumstances why guns are handed in, including belonging to a deceased relative, or being held by a person whose licence has expired, or when a firearm is found. This discretion provides an amnesty of sorts for those who hold firearms that they should not, with no criminal intent.

Limited amnesty for newly classified MSSAs

29. The Arms (Military Style Semi-automatic Firearms) Order 2019 declared certain semi-automatic firearms to be MSSAs. The accompanying Arms Amendment Regulations 2019 provided an exclusion for these reclassified MSSAs from the unlawful possession offence. This removes the Police discretion to prosecute for the unlawful possession of these weapons (but does not affect its discretion to investigate and prosecute for the other offences, such as if the weapon was used in carrying out another crime). To incentivise the surrender of firearms, the Regulations enable an amnesty for people to dispose of these weapons that they no longer have lawful possession of.
30. I seek to incentivise these newly defined prohibited firearms being handed into the Police or licensed dealers. I therefore propose that a full amnesty be in place from the enactment date of the first Bill (being passed under urgency) to 31 December 2019, or the enactment date of the second Bill, whichever of these two dates comes first.

31. s6(c)

Amnesty for dealers in receipt of a newly defined prohibited weapons

32. In addition to the current amnesty for a licensed dealer to receive pistols and restricted weapons from individuals who are not licence holders, dealers may currently be receiving and passing on to Police MSSAs in the absence of a legislative amnesty. I propose extending the licensed dealer amnesty currently in section 10 of the Arms Act to the receipt of prohibited firearms. This will encourage their surrender by persons who for any reason may not wish to surrender the firearms to Police, but prefer to provide these prohibited weapons to a dealer.

Ongoing amnesty

33. I propose in addition to this, a general and ongoing amnesty for all other firearms and ammunition should also be provided for in legislation. s6(c)

Police will be able to exercise its general discretion regarding prosecution, based on the specific circumstances in each case. The reason for different treatment for these firearms is that at present these firearms are likely to be held unlawfully (although not necessarily for criminal intent), whereas in general, the newly

prohibited firearms will have been held lawfully prior to the legislation being amended.

Proposals for Bill 1: Offences for prohibited firearms, parts, ammunition and magazines

34. Cabinet agreed to establish offences and penalties connected to the newly prohibited firearms, parts, ammunition and magazines [CAB-19-MIN-0105]. I propose new offences in relation to these items that would cover the:
 - 34.1. Possession, use and attempted use
 - 34.2. Carrying with criminal intent, or use or attempted use to commit an offence
 - 34.3. Selling, supplying, transferring, distributing or importing
35. I also propose that there are offences for manufacturing a prohibited part or magazine, or intentionally using any prohibited part or magazine to convert a non-prohibited firearm into one that would meet the definition of prohibited firearm. This would bolster sanctioning not only the holding of the prohibited items, but any attempts to create a semi-automatic weapon.
36. Police will consult with the Ministry of Justice in determining the appropriate burden of proof, knowledge and penalty levels for the new offences in the Bill. It is likely that some of the new offences could justifiably have a maximum period of imprisonment of seven years, commensurate with the other most serious offences in the Act. However, because section 66 of the Arms Act³ places a burden of proof on the defendant in respect of possession that offence will likely either require a lower penalty, or the altering of the application of section 66 to this offence, in order to be consistent with human rights standards.

Proposal for Bill 1: Banning military-style ammunition

37. Currently, it is lawful to import and buy ammunition that are designed for military use in New Zealand. This includes armour piercing, incendiary, tracer and similar types of military ammunition. This ammunition is designed primarily for military combat use and I see no justifiable reason for its civilian use in New Zealand.
38. Given the wider policy to prohibit weapons that can cause mass casualties and harm, I propose to prohibit these forms of ammunition that can contribute to this harm. Current exemptions for authority military-use applies. These forms of ammunition will be included in the amnesty to enable people to hand over to Police. However, I do not propose to include ammunition in the buy-back scheme.

PART B – Strengthening the Arms Act's regulatory regime

39. Part B of this paper seeks additional amendments to the Arms Act 1983 to strengthen the firearms regulatory regime.

³ Section 66 of the Arms Act provides that every person occupying any land or building or driving any vehicle in which any firearm is found, is deemed to be in possession of that firearm, unless they prove it was not their property and was in the possession of another person.

40. Cabinet noted my report back on further proposals to improve issues in relation to:
- 40.1. the licensing of firearms licence-holders;
 - 40.2. the relative ease of the purchase and sales of firearms; and
 - 40.3. Police's ability to effectively monitor and enforce the regulatory regimes.
41. I also include proposals for a firearms register, as Ministers with Powers to Act directed officials to provide additional advice on this.

Issues with the current Act

42. The Act seeks to promote the safe use and control of firearms. It does this by providing a framework to mitigate the risks to public safety posed by the use of firearms. It enables interventions at key points in the system, such as the licensing of individuals to safely use firearms, and controlling access to firearms with permit regimes for some clubs and for dealers, and controlling the manufacture, importation, sale and supply of firearms and ammunition. The Act provides for monitoring by Police and sanctions for non-compliance with the law.
43. The attack in Christchurch on 15 March 2019, highlighted the fact that the firearms regulatory regime is not sufficiently robust to prevent high impact criminal misuse of firearms. The Act came into force 35 years ago and has only had one significant amendment, in 1992. The Act was developed at a time when New Zealand was more isolated from the rest of the world and there were greater import controls on what came into New Zealand. When the Act was developed public use of the internet to source information, connect people, and purchase goods did not exist.
44. Since that time there has been significant changes to the market for use, manufacture, purchase and supply of firearms. In the ensuing years the regulatory framework's inflexibility to adapt to new and emerging risks has been challenged by:
- 44.1. rapid development of firearms and ammunition technology, all of which have increased the lethality of firearms available to civilians;
 - 44.2. globalisation of firearms markets, and the increased flow of commodities, like firearms which has fostered easier access and at lower costs;
 - 44.3. online trading which has reduced the ability to oversee both legitimate sales and illegal sales, such as on dark web firearms trading platforms; and
 - 44.4. global anonymous online information groups which have exacerbated the risk of the misuse of firearms. New Zealanders have exposure to the transnational networks of radical influencers that seek to incite harm.

s(9)(2)(f)(iv)

45.

Financial Implications

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

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Legislative Implications

111. Cabinet approved the banning of semi-automatic firearms (with some exemptions), and some types of parts, ammunition and magazines in New Zealand. A Bill is currently being drafted and Cabinet approval will be sought on 1 April 2019 for the Bill's introduction. The Bill will be considered under urgency and it is the intention that the amendments will come into force no later than 11 April 2019.

112. The proposals in this paper require further amendments to the Arms Act 1983, and including enabling powers to make further Regulations. Following decisions on the proposals in this and subsequent Cabinet papers, a further Bill will be drafted and introduced in June 2019, for a four month Select Committee process, with the amendments coming into force by the end of this year.

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

Impact Analysis

114. The paper signals an increase in compliance costs for persons who operate under the firearms regime. Further analysis of the regulatory impacts will be submitted to Cabinet as a Supplementary Analysis Report when approval is sought for the First and Second Amendment Bills to be introduced.

Human Rights

115. The human rights and natural justice implications of redesigning the offences and penalties for the Arms Act will be developed in consultation with the Minister of Justice. s(9)(2)(f)(iv)

Gender Implications

116. There are no gender implications with this paper.

Disability Perspective

117. There are no disability implications with this paper.

Publicity

118. Police will develop communications for these proposals.

Proactive Release

119. I will discuss any proposals for proactive release in Paper 2.

Recommendations

1. **Authorise** the Ministers with delegated Powers to Act, to make consequential policy decisions which are consistent with the overall approach of the overall recommendations, including how any buyback arrangements may work for amendments that need to be included in the first Arms Amendment Bill 2019.

Exemptions

2. **note** that Cabinet approved the development of exemptions from the general prohibition of most semi-automatics [CAB-19-MIN 0105]
3. **agree** an exemption for wild animal control activities undertaken by Department of Conservation (DOC) officers, or those specifically contracted or authorised by DOC, or other legitimate commercial wild animal control businesses
4. **agree** that the exemption regime include a requirement that every person or organisation on behalf of employees seeking an exemption will be required to demonstrate that no other type of lawful firearm will be as effective for the particular purpose it is being sought
5. **agree** an exemption for dealers, museums and collectors
6. **agree** to provide advice on options for further controls and oversight of collectors
7. **agree** to no exemption for international sporting competitions to be included in the first Arms Amendment 2019 Bill.
8. **agree** to the consideration of whether an exemption for international sporting competitions be included as part of the second Arms Amendment 2019 Bill.

Amnesty

9. **note** that Cabinet agreed in principle to clarify, expand and promote the amnesty provisions in the Arms Act 1983 to include all firearms [CAB-19-MIN-0105]
10. **agree** that from the enactment of the first Bill prohibiting most semi-automatics, until the enactment of the second Bill, there will be a full amnesty for the possession of the newly defined prohibited weapons and ammunition to enable and incentivise these

newly prohibited firearms and ammunition to be handed in to Police or licensed dealers.

11. **agree** to extend the licensed dealer amnesty in section 10 to the receipt of newly prohibited firearms.
12. **agree** to establish a general and ongoing amnesty for all other firearms in legislation, with the Police able to exercise its general discretion regarding prosecution, based on the specific circumstances in each case

Offences and penalties for prohibited firearms, parts, ammunition and magazines

13. **note** that Cabinet agreed to establish offences and penalties connected to the newly prohibited firearms, parts, ammunition and magazines [CAB-19-MIN-0105]
14. **agree** to establish offences in relation to firearms, parts, ammunition and magazines for:
 - 14.1. Possession, use and attempted use.
 - 14.2. Carrying with criminal intent, or use or attempted use to commit an offence.
 - 14.3. Selling, supplying, transferring, distributing or importing.
 - 14.4. 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.
15. **note** that Police will work with the Ministry of Justice to provide advice on the appropriate burden of proof, knowledge and penalty levels for the new offences.

Banning military-style ammunition

16. **agree** to prohibit in Regulations to the Arms Act 1983 armour piercing, incendiary, tracer, and similar types of military ammunition for non-military use.

Arms Amendment Bill

17. **agree** that the urgent Bill amending the Arms Act 1983 will bind the Crown, subject to the existing exceptions in the Act that apply to the Crown (for example for purposes of Police and the New Zealand Defence Force operations).
18. **authorise** the Minister of Police to issue drafting instructions to the Parliamentary Counsel Office to amend the Arms Act 1983 under urgency to give effect to the recommendations agreed in Part A above.

PART B – Strengthening the Arms Act’s regulatory regime

19. **note** that the Minister of Police signalled a report back to Cabinet with further proposals to improve the regulatory framework for the safe use and control of firearms

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Drafting instructions

43. **authorise** the Minister of Police to issue drafting instructions to the Parliamentary Counsel Office to amend the Arms Act 1983 to give effect to the work agreed in Part B above.

142. s(9)(2)(f)(v) [REDACTED]

[REDACTED]

143. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

144. [REDACTED]

Authorised by:

Hon Stuart Nash
Minister of Police