

Arms Legislation Bill

Commentary on the Bill

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Minister of Police

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Arms Legislation Bill; Commentary on the Bill.



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Overview of the Bill

OVERVIEW

The Arms Legislation Bill (the Bill) is intended to update the Arms Act 1983 (the Act) in order to better reflect New Zealand's arms environment today. The majority of firearm users are legitimate and law-abiding. However, firearms are inherently dangerous because they can be misused for unlawful purposes and cause significant harm. Our current regulatory regime does not manage risks of misuse as well as it could. The Bill seeks to improve the Act to mitigate these risks.

To do this, there is a need to better balance the obligations on legitimate firearm owners against the need to ensure firearms are appropriately secured and managed, and to detect, deter and punish individuals who contravene the law. The amendments in the Bill will establish a regulatory regime that gets the balance right – making it harder for firearms to be in the wrong hands, while making sure that the burden we place on lawful and legitimate owners of firearms is reasonable. This will result in a reduced risk of firearm misuse and improve the safety of New Zealanders.

Purpose statement

The Bill includes a clear purpose statement, which states that possessing and using arms is a privilege and people authorised to import, manufacture, supply, possess or use them have a responsibility to act in the interests of personal and public safety. A purpose statement provides a clear set of expectations for those affected by the Act and is a tool for the Courts when interpreting the Act.

Registration of firearms and dealings

The creation of a registry to store information on all firearms and other arms items and link them to licence holders will ensure that, over time, there will be greater oversight of the number and location of firearms and other arms items in New Zealand. Licence holders will be required to update and maintain information at various points in the system (e.g. when applying for a licence or endorsement, or selling or purchasing a firearm). This will minimise the risk of lawfully possessed firearms being transferred to unlicensed users. A registry will provide an ongoing source of data to inform future government consideration of arms control, helps licence holders ensure they buy and sell firearms from and to licence holders, and enable greater visibility of the firearms environment so that Police can better deliver its regulatory and enforcement role, in the interests of public safety. The Bill enables some direct access by specified agencies to the registry to improve decision-making.

Strengthening the licensing system

Strengthening licensing requirements will make it harder for firearms to get into the wrong hands. The suite of changes to licensing individuals, dealers, and clubs and ranges will better identify those who are fit and proper to possess firearms and better promote safe use. They also extend the obligations of licence holders under the Act so as to minimise the risk of harm through illegal access to firearms.

Enhanced regulatory tools

Enhanced regulatory tools available will increase the effectiveness of the firearms regulatory regime overall. These tools include: the provision of a graduated and proportionate set of interventions to monitor and support regulatory compliance, some new offences and some increased penalties, new notice-making powers to provide details on requirements for compliance with the Act, and establishing requirements for importing and selling ammunition. There are also amendments enabling New Zealand to accede to the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime*.

Other amendments to strengthen regime

The Bill also makes other amendments to improve the overall functioning of the Act. This includes strengthening current fee setting provisions, providing for regulations to be made regulating the advertising of firearms, clarifying the exemptions on manufacturing prohibited items, requiring a firearms licence to purchase magazines, enhancing controls on blank-firing guns, and introducing a Commissioner's Firearms Advisory Group. To ensure these tools are working effectively, the Bill provides for a five-year review of the legislative changes.

Purpose Statement

PURPOSE OF THE ARMS ACT 1983

clause 5, new section 1A

Summary of proposed amendments

The Bill proposes to introduce a purpose statement for the Act.

Application date

This item is intended to come into force on the day after enactment date.

Key features

The proposed purpose of the Act, reflected in the new purpose statement, is to promote the safe possession and use of firearms and other weapons by imposing controls on them in a regulatory regime. The purpose of the Act reflects the principles that:

- the possession and use of arms is a privilege; and
- people authorised to import, manufacture, supply, sell, possess or use arms, have a responsibility to act in the interests of personal and public safety.

Background

A purpose statement is a key aid to interpreting the Act and anchors all actors in the firearms regulatory regime to a set of clear and transparent expectations and principles. It helps users of the legislation to understand decisions and actions should be underpinned by behaviours and practices that are consistent with personal and public safety. It helps the Courts to interpret the Act.

Registration of Firearms and Dealings

REGISTRATION OF INFORMATION THROUGH AN ONLINE REGISTRATION PLATFORM

clause 6, section 2 amended
clause 7, section 3 amended
clause 47, section 34 amended
clause 71, new section 58A
clause 79, new section 66A
clause 81, section 72A amended
clause 82, new section 74(1)(pa) – (pc)
clause 83, new sections 92-94
clause 84, clause 16 of New Part 2 of Schedule 1

Summary of proposed amendment

The Bill proposes to introduce the registration of personal and arms information. In practice, registration of the majority of information will be through an online platform with the capability to help licence holders:

- easily update their personal information and information about their firearms and other items;
- satisfy themselves that the information in the registry is correct;
- meet their requirements to only buy from and sell to valid licence holders.

Through recording the lifecycles of firearms and other arms items, gaps and weaknesses in the regulatory regime may be identified.

Application date

The amendments relating to the registry are intended to come into force two years after enactment date, or earlier by Order in Council.

Key features

The Bill proposes that the Commissioner must keep and operate a registry to record information on all firearms and link them to firearm licence holders.

Licence holders will be required to provide and update information in the registry when specified circumstances occur, such as at the time of obtaining a licence, and at the time of manufacturing, importing, and selling a firearm, in a manner and time to be set out in regulations. After 5 years of the registry going live, licence holders must provide information on any remaining firearms not in the registry, if they have not been subject to any of the specified circumstances, in accordance with regulations to be made.

The registry will include information already held, such as:

- every licence holder's full name, date of birth, address, licence number, and the licence expiry date; and
- every endorsement and condition on a licence or an endorsement.

The registry will also include new information, linked to licence holders information, such as:

- the make, model and identifying markings of every firearm, and prohibited magazines possessed by a licence holder, and their location; and
- anything else that may be required under regulations to deliver on the objectives of keeping track of firearms so as to keep licence holders and the public safe.

Background

New Zealand already has a firearms registry which holds information about all licence holders and certain firearms (prohibited firearms, pistols and restricted weapons). The Act also requires permits to import any firearms, and permits to possess prohibited firearms, pistols and restricted weapons. Import permits enable the recording of the importation of pre-approved firearms against the licence holder who imports them. Permits to possess enable the recording of the details of transfers of prohibited firearms, pistols and restricted weapons. However, once standard firearms are on sold after import there is no way of knowing who has them, who is selling them and to whom, and how secure they are held. This situation makes it too easy for some firearms users and those with criminal intentions to circumvent the regulatory regime, via sale or theft.

To help remedy this, the registry will store information on all firearms held by all licence holders, and on other items controlled by the Act, and other information determined via regulations. It will do this by requiring and enabling licence holders to provide information at various points, additional to that which they already provide through licence and endorsement applications. For example, when selling or purchasing a standard firearm, or if a firearm is stolen or goes missing. This will build up a comprehensive registry over time and enable licence holders to satisfy themselves that there is accurate information about themselves and their firearms. It will also enable Police to better deliver its regulatory and enforcement role, in the interests of public safety.

Detailed analysis

Creation of a registry

Clause 83 (proposed new section 92) requires the Commissioner of Police to keep and operate a registry.

Under proposed new section 93 the following must be recorded in the registry:

- every licence holder's full name, date of birth, address, licence number, and the licence expiry date;
- every endorsement and condition on a licence or an endorsement that are in addition to those imposed by the Act and regulations;
- the make, model and identifying markings of every firearm, restricted weapon, and prohibited magazine possessed by a licence holder and their location, if these particulars are held by Police; and
- anything else that may be required under regulations.

The registry may include photographs or any other information the Commissioner considers necessary, such as email addresses, to enable easier communication.

Who must provide information to Police for the purposes of the registry

Clause 83 (proposed new section 94) creates an obligation for the following individuals to provide information for the registry:

- every firearms or dealer licence holder; and
- every person who is or intends to be in possession of a firearm or other item controlled by or under the Act.

Information required

The information that must be provided, in relation to any firearm or other item controlled by or under the Act, applies to the following events:

- its sale or supply, including a temporary transfer;
- its purchase or receipt (including a temporary receipt);
- its importation or exportation;
- its manufacture;
- its theft, loss or destruction; and
- any other event specified in regulations.

The relevant details relating to these events are to be provided in accordance with the time and other requirements prescribed by regulations.

Clause 71 (proposed new section 58A) establishes offences of not providing information in accordance with section 94, or providing false information.

Clause 84 (clause 16 of new Part 2 of Schedule 1) provides that existing licence and permit holders, at the time the registry comes into force, or others prescribed by regulations, must provide the Police managed registry with relevant information on arms items they possess if:

- applying for a licence or endorsement;
- notifying a change in circumstances (such as a change of address); or
- they are responsible for any of the events outlined above or are subject to compliance or enforcement action under the Act.

If none of the above circumstances have occurred after five years of the registry being in operation, licence holders must record information about the arms items they possess in accordance with regulations or notify the Police they do not possess any such items.

Regulation-making powers relating to the registry

Clause 82 (new subsections 74(1)(pa), (pb) and (pc)) allows for regulations to provide:

- for any matters necessary for the efficient operation of the registry including
 - the provision of specified information
 - the form in which information is required to be provided
 - the conditions or endorsements required for different kinds of licences, and any additional requirements for persons who apply: for a permit to import, sell, supply, possess or use prohibited items: to hold a gun show; or for a permit to import firearms;
- requirements to provide information regarding firearms, parts and magazines that are not required to be marked; and

- other specified particulars to be recorded in the registry.

Other matters related to the registry

Notification of change of address

Clause 47 (proposed amendment to section 34) amends the Act to allow for those situations where firearms may be stored at a different address from that of the licence holder and provides for when that address is changed. Regulations will specify the time and manner by which such changes of address must be provided. The provision will take effect through regulations which coincide with the registry taking effect.

Crown exempt from registry requirements

Clause 7 (proposed amendment to section 3) exempts the Crown from the requirements to provide information for inclusion in the registry except to the extent provided for in regulations. This focuses the registry on the civilian armoury rather than on firearms owned and under the responsibility of government, such as the military and Police.

DIRECT ACCESS BY CERTAIN GOVERNMENT AGENCIES TO THE REGISTRY

clause 53, new sections 38W - 38ZF
clause 86 in Part 2

Summary of proposed amendments

The Bill proposes to allow specific agencies to access the firearms registry through direct data access agreements to assist them to perform their statutory duties in relation to firearms.

Application date

These amendments are intended to come into force 24 months after enactment date or earlier by Order in Council (to coincide with amendments regarding the registry coming into force).

Key features

Clause 53 introduces new Part 7 (proposed sections 38W to 38ZF) which provides for the Department of Conservation to have direct access to a licence holder's licence information recorded in the registry, and the Ministry of Foreign Affairs and Trade (MFAT) and the New Zealand Customs Service (NZ Customs) to have direct access to a licence holder's import and export information recorded in the registry (in accordance with a written direct access agreement).

Background

Currently, information sharing between Police and other government agencies generally relies on person-to-person manual requests and disclosures. However, there is a high resource cost to establishing and maintaining data sharing solely through person-to-person interactions. Increasingly, agencies require more timely, cost effective and more efficient ways of sharing information.

Detailed analysis

The proposed new section 38W gives guidance on the interpretation on terms used in Part 7.

Agencies that may access the registry

The Department of Conservation may have direct access to a licence holder's licence information in the registry for the purposes of deciding whether or not to grant a hunting permit.

MFAT and NZ Customs Service may access a licence holder's import and export information in the registry to enable them to exercise their functions and powers more effectively.

Requirements to access the registry

A written direct access agreement between the Minister responsible for the accessing agency and the Minister of Police must be in place before an agency can access information in the firearms registry.

Before entering into a written agreement Ministers must be satisfied:

- that direct access to information is necessary –
 - to more effectively or efficiently issue hunting permits (in regards to the Department of Conservation); or
 - for the accessing agency to perform its function, duties and powers more effectively or efficiently (in regards to the Ministry of Foreign Affairs and Trade or New Zealand Customs); and
- there are adequate safeguards to protect the privacy of individuals;
- there are appropriate procedures for direct access, use, disclosure, and retention of the information; and
- the Privacy Commissioner and the Commissioner's Firearms Advisory Group have been consulted and their comments sought on the proposed agreement.

These processes must also apply if the direct access agreement is varied.

The proposed new section 38ZF requires that a direct access agreement and any variations must be published on the website of the accessing agency and the Police. This section does not apply if the agreement may be withheld on a request made under the Official Information Act 1982, but a summary must be published to the website.

Access by the New Zealand Security Intelligence Service

Clause 86 amends Schedule 2 of the Intelligence and Security Act 2017 to provide the New Zealand Security Intelligence Service access to information about people and firearms held by Police in connection with Arms Act for use in determining whether a person is a fit and proper person to possess firearms and airguns.

Contents of direct access agreements

A direct access agreement must include:

- the information about licence holders that may be accessed;
- the purpose/s for which information may be accessed;
- the function, duty, or power being exercised by the accessing agency that requires the information;
- the mechanism used to access the information;
- the position/designation of the individual/s who may access the information;
- records to be kept each time the registry is accessed;
- safeguards to be used to protect information;
- requirements for storage, retention, and disposal of information;
- if there are any circumstances where information may be disclosed to another agency and how; and
- requirements for reviewing the agreement.

How this affects other information collection and disclosure

The proposed new section 38X describes the interaction Part 7 has with other legislation. Specifically, Part 7 does not prevent or limit other legislative provisions that authorise, require, or permit information to be collected, used or disclosed.

MARKING OF FIREARMS

clause 55, new section 41A

clause 82(8), replace section 74(1)(l), new s74(1)(pb)

[see also clause 70 new sections 55F, 55G, 55I which are covered in section below relating to UN Protocol]

Summary of proposed amendments

The proposed amendments require firearms (other than antique firearms), magazines and parts to be marked in accordance with regulations.

Application date

These amendments are intended to come into force on the day after enactment date.

Key features

The Bill requires (through regulations) all firearms (other than antique firearms), parts, or magazines possessed by firearm licence holders, including those that are manufactured in or imported into New Zealand, to be marked with an identification number.

There are new offences relating to falsifying, removing or altering firearm markings. These are discussed further in the following section of the commentary titled *Accession to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*.

Background

Older firearms often do not have serial numbers, and even modern firearms can have the same serial number (e.g. if two different manufacturers use similar numbering systems there can be overlap). At present, regulations can be made for marking firearms, magazines and parts with identifying marks *before* the issue of a licence or permit (under section 74(1)(l)). To fulfil the purpose of the registry, the regulation making power is being extended so it applies at any time (i.e. not limited to only at the issuance of a licence or permit).

Detailed analysis

Marking of firearms

Clause 55 (proposed new section 41A) requires firearms (other than antique firearms), parts, and magazines possessed by a firearms licence holder, including those manufactured in or imported into New Zealand, to be marked in accordance with regulations.

The Crown is not liable to pay either compensation for any loss of value resulting from the marking or the cost of the marking.

Regulation-making power

Clause 82(8) (replaced section 74(1)(l)) allows regulations to be made about any marking required for any firearms, magazines and parts.

Offences related to falsifying, removing or altering firearm marking

Clause 70 introduces offences relating to falsifying, removing, or altering firearm markings. This is discussed further in the following section of the Commentary that is on the *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition*.

Strengthening the licensing system

FIT AND PROPER PERSON

clause 33, new section 22G
clause 34, section 23 amended
clause 36, new section 24A
clause 38, section 27A replaced
clause 38, new section 27A
clause 39, new section 27B
clause 82(2), new section 74(1)(bb)
clauses 10 and 11 of New Part 2 of Schedule 1

Summary of proposed amendments

The proposed amendments are intended to create discretionary criteria that enable the evaluation of an individual to determine whether or not they are fit and proper to be in possession of a firearm or airgun. The amendments also propose to establish criteria that automatically disqualify someone from holding a firearms licence.

Application date

It is intended these amendments will come into force six months after enactment date.

Key features

The Bill introduces proposed criteria which:

- disqualify a person from holding a firearms licence;
- may be used (discretionary criteria) to determine whether a person applying for a firearms licence is fit and proper to be in possession of a firearm or airgun and may be issued with a licence.

Background

The Act requires that a firearms licence is issued to an individual if a member of Police is satisfied that the applicant is a fit and proper person to be in possession of a firearm or airgun. However, it does not provide any guidance as to how this is determined. Currently, Police rely on the Arms Manual 2002 and case law to provide a set of factors that can indicate whether an applicant is a fit and proper person.

Without trying to exhaustively define what makes a person fit and proper to possess firearms or airguns, these proposed sections seek to provide licence applicants and Police with some behaviours, in law, which can be taken into account when making a determination on whether an applicant is a fit and proper person. The sections seek to achieve this by creating a set of behaviours that will automatically disqualify an applicant, and a set of behaviours that Police can consider on a discretionary basis when assessing an applicant.

The set of disqualifying behaviours have been determined as being contrary to the proposed personal and public safety purpose and principles of the Act. Therefore, individuals who display these behaviours should be disqualified from obtaining a firearms licence for a specified period of time.

The discretionary behaviours include some characteristics that positively align with the proposed purpose statement of the Act, and characteristics that may indicate that a person is not fit and proper.

Detailed analysis

Disqualifying Criteria

Clause 33 (proposed new section 22G) provides specific criteria that would disqualify a person from holding a firearms licence. The criteria are if the person has within the past 10 years been convicted, or released from custody after being convicted, of any of the following offences.

Section	Offence	Max penalty
Offences under the Arms Act 1983		
16(4)	Import firearms, etc. without a permit	5 years
16A	Import prohibited ammunition	5 years
44A	Sell or supply prohibited firearm or prohibited magazine	5 years
50A	Unlawful possession of a prohibited firearm	5 years
50D	Unlawfully carrying or possessing prohibited firearm in a public place	7 years
51A	Presenting prohibited firearm at another person	7 years
53A	Use or attempted use of a prohibited firearm, etc., to resist or prevent arrest or commit offence	10 years
54	Use or attempted use of a firearm, etc., to resist or prevent arrest or commit offence	7 years
54A	Carrying a prohibited firearm with criminal intent	7 years
55	Carrying a firearm, etc. with criminal intent	5 years
55A	Assemble prohibited firearm	5 years
55D	Illegal manufacturing of firearms or parts	10 years
55E	Illegal trafficking of firearms, parts, or ammunition	10 years
55F	Falsifying firearm markings	10 years
Offences under the Crimes Act 1961		
92	Piracy	14 years
98	Dealing in slaves	14 years
128B	Sexual violation	20 years
129	Attempted sexual violation and assault with intent to commit sexual violation	10 years
129A(1)	Sexual connection with consent induced by threat	14 years
131(1)	Attempted sexual connection with dependent family member under 18 years	7 years
132(1)	Sexual connection with a child	14 years
132(2)	Attempted sexual connection with a child	10 years
132(3)	Indecent act on a child	10 years
134(1)	Sexual connection with a young person	10 years
134(2)	Attempted sexual connection with a young person	10 years
134(3)	Indecent act on young person	7 years
135	Indecent assault	7 years
138(1)	Exploitative sexual connection with a person with a significant impairment	10 years

Section	Offence	Max penalty
138(2)	Attempted exploitative sexual connection with a person with a significant impairment	10 years
142A	Compelling an indecent act with an animal	14 years
144A	Sexual conduct with children and young people outside New Zealand – based on specified NZ offences	7, 10 or 14 years
172	Murder	Life
173	Attempted murder	14 years
174	Counselling or attempting to procure murder	10 years
175	Conspiracy to murder	10 years
177	Manslaughter	Life
188(1)	Wounding with intent to cause grievous bodily harm	14 years
188(2)	Wounding with intent to injure	7 years
189(1)	Injuring with intent to cause grievous bodily harm	10 years
189A	Strangulation or suffocation	7 years
191(1)	Aggravated wounding	14 years
191(2)	Aggravated injury	7 years
198(1)	Discharging firearm or doing dangerous act with intent to do grievous bodily harm	14 years
198(2)	Discharging firearm or doing dangerous act with intent to injure	7 years
198A(1)	Using firearm against law enforcement officer, etc.	14 years
198A(2)	Using firearm with intent to resist arrest or detention	10 years
198B	Commission of crime with firearm	10 years
199	Acid throwing	14 years
200(1)	Poisoning with intent to cause grievous bodily harm	14 years
201	Infecting with disease	14 years
202C	Assault with weapon	5 years
208	Abduction for purposes of marriage or sexual connection	14 years
209	Kidnapping	14 years
232(1)	Aggravated burglary	14 years
234	Robbery	10 years
235	Aggravated robbery	14 years
236(1)	Causing grievous bodily harm with intent to rob or assault with intent to rob in specific circumstances	14 years
236(2)	Assault with intent to rob	7 years
238	Blackmail	14 years
267(1)	Arson	14 years
269(1) and (3)	Intentional or reckless damage to property that is reckless or known to endanger life as a result	10 years (1) and 7 years (3)
306	Threatening to kill or do grievous bodily harm	7 years
Offences under the Misuse of Drugs Act 1975		
6	Dealing with controlled drugs	Life
9	Cultivation of prohibited plants	7 years
10	Aiding offences against corresponding law of another country	14 years
11	Theft, etc., of controlled drugs	7 years
12	Use of premises or vehicle, etc. in the commission of an offence against this Act	10 years

Section	Offence	Max penalty
12A	Equipment, material, and substances used in production or cultivation of controlled drugs	7 years
12AB	Knowingly import or export precursor substances for unlawful use	7 years
12F	Drugs smuggling outside New Zealand, etc. prohibited equipment or material	7 years
Participation in an organised crime group (Crimes Act 1961)		
98A	Participation in an organised crime group	10 years

A person is also disqualified if they have had, within the previous 10 years, a protection order (other than a temporary order) in force against them under:

- section 79 of the Family Violence Act 2018; or
- section 14 of the Domestic Violence Act 1995.

Clause 10 of new part 2 of Schedule 1, proposes that the holder of a licence is not disqualified under section 22G, if they held the licence immediately prior to the section's commencement date.

Consequences of disqualification

Clause 34 (amended section 23) provides that a person cannot apply for a firearms licence if they are disqualified under section 22G.

Clause 39 (proposed new section 27B) provides that if a holder of a firearms licence becomes disqualified under section 22G, then their licence is immediately revoked and they must dispose of their firearms or deliver them to Police (in accordance with section 28).

Fit and Proper Person – discretionary criteria

Clause 36 (proposed new section 24A(1)) provides that a member of Police may, in determining whether a person is a fit and proper person to possess a firearm or airgun, take into account whether the applicant:

- has been charged with or convicted (either in New Zealand or overseas) of an offence punishable by imprisonment (including an offence involving violence, drugs, or alcohol);
- has been charged with or convicted of an offence under the Arms Act;
- has been charged with or convicted of an offence against section 231A of the Crimes Act 1961 (entry onto agricultural land with intent to commit imprisonable offence), the Wildlife Act 1953, or the Wild Animal Control Act 1977;
- has at any time had a temporary protection order made against them;
- has not complied with the Act, any regulations made under the Act, or any conditions on a permit, licence or endorsement;
- has exhibited significant mental health issues (e.g. attempted suicide or self-harm) that might affect their ability to safely possess firearms;
- uses drugs (legal or illegal) or alcohol in a way that detrimentally affects their judgment or behaviour;
- is a member of, or has close affiliations with a gang or an organised criminal group;

- has shown patterns of behaviour that exhibit, encourage, or promote violence, hatred, or extremism; or
- has been assessed as a risk to a State's national security.

For the above section:

- **gang** has the meaning given in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013 (this section lists the known names of organisations, associations, or groups constituting gangs and provides for other groupings to be identified in regulations)
- **organised criminal group** has the meaning given in section 98A of the Crimes Act 1961, i.e. a group of 3 or more people who have as an objective: obtaining material benefits from offending punishable by imprisonment for a term of 4 years or more; or obtaining material benefits from conduct outside New Zealand that, if it occurred in New Zealand, would constitute offending punishable by imprisonment for a term of 4 years or more; or the commission of serious violent offences; or conduct outside New Zealand that, if it occurred in New Zealand, would constitute serious violent offending.

The proposed new section 24A(2) enables a member of Police, in determining whether a person is fit and proper, to take into account:

- positive behaviours, namely whether the applicant:
 - has a sound knowledge of the safe possession and use of firearms;
 - has an understanding of the legal obligations of holding a firearms licence and endorsements; and
- any other matter considered appropriate.

Clause 38 recognises that, as protection orders which are in force are incorporated in the disqualification criteria, and temporary protection orders into section 24A(1), section 27A is amended by deleting the reference to protection orders that are in force. This removes duplication. Section 27A will continue to enable Police to decide that an applicant for a licence is not fit and proper if satisfied there are grounds for making an application for a protection order against the applicant.

The proposed new section 24A(3) provides that a member of Police can seek and receive any information they think is appropriate, and consider information obtained from any source when determining whether an applicant is fit and proper.

Prejudicial information must be disclosed to the applicant

The proposed new sections 24A(4) and (5) require a member of Police to disclose to the applicant any prejudicial information they are planning to take into account and give the applicant an opportunity to refute or comment on it. However, disclosure need not occur where it is likely to endanger the safety of any person, prejudice the security or defence of New Zealand or international relations, or prejudice the entrusting of information to the Police or certain other agencies.

Regulation-making powers

Clause 82 (proposed section 74(1)(bb) allows regulations to be made providing criteria for finding whether an applicant for a firearms licence is a fit and proper person.

MEDICAL ASSESSMENTS

clause 6, section 2 amended

clause 34, section 23 amended

clause 82, new section 74(1)(jc)

clause 83, new sections 87 and 91

clause 75, new section 60A(1)(a)(iv)

Summary of proposed amendments

The Bill proposes that health practitioners must consider notifying Police if they have a patient who has a firearms licence and they consider that the patient's mental or physical condition is such that they should not be permitted to use or possess firearms or only to do so subject to limitations.

Application date

It is intended these amendments will come into force six months from enactment date.

Key features

The Bill proposes that:

- health practitioners must consider notifying Police if, in their opinion, a patient with a firearms licence has a mental or physical condition of a severity that, in the interests of public safety or individual safety, means the licence holder should not be permitted to use or possess firearms or should only be permitted to do so subject to limitations;
- the Commissioner may require the licence holder to undergo a further medical assessment by a health practitioner, in which case the person must either undergo the assessment or surrender their licence;
- a firearms licence applicant must provide their health practitioner's contact information to Police;
- further requirements in relation to notices by health practitioners may be prescribed by regulation;
- the Commissioner may issue guidance on matters that health practitioners may consider when determining whether to notify Police.

Background

At present, health practitioners are under no responsibility to inform Police if, in their professional opinion, an individual should not be permitted to use a firearm, or should only be permitted to use a firearm subject to certain conditions. This means that Police do not have all relevant information when assessing whether a person is fit and proper to hold a firearm's licence, and therefore there is a risk that a firearm's licence is granted to someone who is at risk of harming themselves or others. This risk could also arise during the duration of a person's licence and Police would not be aware of this.

Detailed analysis

Medical assessments by health practitioners

Clause 83 (proposed new section 91) applies to a health practitioner who has attended or been consulted on a person who they know or have reason to believe is a firearms licence holder.

If the health practitioner considers that the person has a mental or physical condition of a nature that, in the interests of individual or public safety, the person should not be permitted to possess a firearm, or should only be permitted to do so subject to limitations, then the health practitioner must consider notifying Police of their opinion. The health practitioner is not liable to criminal, civil or disciplinary proceedings for disclosing patient information in good faith.

The Commissioner may require a licence holder to undergo further medical assessment by a health practitioner. The person must either undergo the further assessment or surrender their licence.

Example

If a general practitioner has a consultation with a patient that they know holds a firearms licence and they are concerned that the patient may be suicidal, they can notify Police. It is likely the general practitioner would inform the patient they were going to notify Police.

Police can then determine the best course of action. This is likely to include a conversation with the licence holder and/or their family. It could include requesting a further medical assessment or, where the situation is considered high risk, immediate suspension of the licence, firearms and ammunition.

New section 60A(1)(a)(iv) enables police to temporarily suspend a firearms licence if satisfied the holder is not fit and proper to possess a firearm on the basis of a notice by a health practitioner under section 91.

Obligation to provide contact details of health practitioner to Police

Clause 34 (proposed new section 23(2A)) requires a firearms licence applicant to provide the name and contact details of their health practitioner to Police.

Requirements and information that may be prescribed by regulations or notices

Clause 82 (proposed new subsection 74(1)(jc)) allows the Governor-General to make regulations providing for any of the following in relation to notices given by health practitioners:

- the information Police must provide to a licence holder when they are notified that a report has been received from a health practitioner;
- the period of time within which a licence holder must undergo further assessment, or surrender their licence;

- the kinds or classes of health practitioner who may make a further assessment and any other requirements that apply to the assessment; and
- the responsibilities of a health practitioner who makes a further assessment.

Clause 83 (proposed new subsection 87(1)(g)) allows the Commissioner to issue notices providing guidance on matters that health practitioners may consider when determining whether to notify Police under section 91.

DURATION OF LICENCE

clause 37, section 25 amended

clause 84 - clause 9 of New Part 2 of Schedule 1

Summary of proposed amendments

The Bill proposes to reduce the duration of a firearms licence from 10 years to 5 years with some grandparenting and retrospective effects.

Application date

It is intended this amendment will come into force the day after enactment date.

Background

Currently, there is a risk that the 10 year licence duration provides too few touchpoints with licence holders to have confidence that a firearms licence holder continues to act responsibly, store their firearms securely and use their firearms in a manner consistent with public safety.

Detailed analysis

Clause 38 (proposed amendment to section 25) decreases the duration of a firearms licence to 5 years.

The proposed new clause 9 under new Part 2 of Schedule 1 provides that:

- existing licences that were issued on or before 22 July 2019 (when the content of the Bill was announced) continue in force for 10 years;
- those who applied for a firearms licence before 22 July 2019 will receive a 10 year licence;
- those whose existing licence expires between 22 July 2019 and enactment date, and who apply to renew their licence during this period, will receive a 10 year licence; and
- those who have never had a firearms licence and apply after 22 July 2019, and existing licence holders whose licence does not expire before enactment date but who elect to apply for a new licence before enactment, will initially receive a 10 year licence which after the enactment date will become a 5 year licence.

DURATION OF ENDORSEMENTS

clause 46, new section 33C

Summary of proposed amendments

The Bill clarifies that an endorsement on a licence will last the length of time left on the licence, subject to some exceptions for employees of dealers and persons involved in pest control and wild animal recovery.

Application date

This amendment is intended to come into force on the day after enactment date.

Background

The Act provides for endorsements on firearms licences that enable, in appropriate circumstances, licence holders to possess pistols, restricted weapons and prohibited items. The Act is silent about the duration of the endorsements, but in practice they last as long as the licence they endorse. Clarifying this avoids doubt.

A particular issue relates to the duration of an endorsement that someone undertaking pest control or wild animal recovery may have to use prohibited firearms. The endorsement may be on a licence that has a number of years to run which will be unrelated to these operations which are seasonal in nature and based on employment or occupations for which they need to use prohibited firearms. A separate duration period is set for these endorsements which acknowledges the additional risk associated with the possession and use of prohibited firearms.

Detailed analysis

Endorsements held by employees of licensed dealers

The proposed new section 33C(1) clarifies that an endorsement on a firearms licence held by an employee of a licensed dealer continues for one year after the date the endorsement was made, unless the employee's firearms licence or licensed dealer's licence expires, is surrendered or revoked, or the employee ceases to be employed by the licensed dealer.

Endorsements held by persons involved in pest control and wild animal recovery

The proposed new section 33C(2) provides that an endorsement granted any time after 12 April 2019 in respect of prohibited firearms and/or magazines for a person undertaking pest control or wild animal recovery shall last for two years after the date it was made, or the length of the firearm licence (whichever is shortest).

Endorsements held by all other licence holders

The proposed new section 33C(3) provides for endorsements on any other firearms licence or on a dealer's licence to last for as long as the licence continues in force.

RIGHT OF REVIEW OF OFFICIAL DECISIONS AND APPEALS

clause 76, section 62 replaced and new sections 62, 62A, 62B and 62C
clause 82, new section 74(1)(rc)

Summary of proposed amendments

The amendments propose that a person who is refused a firearms licence or who has had their licence revoked may apply to the Commissioner of Police for a review of the decision.

Application date

It is intended these amendments will come into force six months from enactment date.

Background

Currently a person may make an appeal to the District Court in relation to certain decisions. This is costly to the individual and creates a burden on the Courts. Introducing an intermediary step, for some decisions, provides an opportunity to ensure those decisions are robust and in some cases will avoid the need to appeal to the Courts.

Detailed analysis

Review by the Commissioner of Police

Clause 76 (proposed new section 62) allows individuals who have had their application for a firearms licence declined, or had their licence revoked, to apply to the Commissioner for a review of the decision. The application must be made within 28 days after the individual has been notified of the decision, unless the Commissioner agrees that there are extenuating circumstances.

Clause 76 (proposed new section 62A) provides that the review must be conducted by a person or persons who were not involved in the original decision, within 28 days of the review application being lodged. The original decision remains in force until the applicant is notified of the reviewer's decision.

Appeal to the District Court

The existing section 62 of the Arms Act 1983 provides a right of appeal to the District Court for certain decisions regarding applications, conditions (on licences, permits and endorsements), revocations and notices. These provisions have been moved to proposed new sections 62B and 62C and continue to apply to decisions to refuse an application for or revoke a firearms licence.

Matters relating to the review may be prescribed by regulations

Clause 82 (proposed new subsection 74(1)(rc)) allows for regulations to be made for matters relating to the operation of the review process, including prescribing the form by which applications for review must be made.

DEALER LICENSING

clause 10 sections 5 and 6 replaced new section 5A and 5B

clause 11 new section 6B

clause 12 section 7A amended

clause 13 section 9 amended

clause 14 section 10 amended

clause 15 section 11 replaced

clause 16 section 12 amended

clause 17 section 13 amended

clause 18 section 14 amended

clause 19 section 15 replaced

clause 42 section 29 amended

clause 43 section 30 amended

clause 44 section 30A replaced

clause 45 section 30B amended

clause 49 section 35 amended

clause 50 section 35A amended

clause 74 section 59A amended

clause 82 section 74(1(h)) amended

clause 84 - clause 12 of New Part 2 of Schedule 1

Summary of proposed amendments

The Bill proposes to improve the regime governing dealers' licences, including broadening the commercial activities that require a dealer's licence and specifying the criteria to obtain one.

Application date

It is intended that most of these items will come into force 12 months after enactment date, with others of a technical or clarifying nature coming into force the day after enactment (e.g. amended sections 30A, 30B, 59A).

Key features

The proposed amendments include

- broadening firearms related activities that will require a dealer's licence;
- specifying requirements for better identifying those who are fit and proper to obtain a dealer's licence;
- clarifying the interaction between dealer's licences and endorsements for pistols, restricted weapons, and prohibited firearms they possess as a dealer;
- requiring dealers to obtain the Commissioner's written approval before manufacturing certain firearms and parts;
- clarifying the requirements and responsibilities of employees of licensed dealers;
- extended record keeping requirements for licensed dealers; and
- creating offences and penalties to encourage licensed dealers to comply with their obligations under the Act.

Background

Dealers' licences

A dealer's licence is currently only required for selling, or manufacturing for sale, arms items. There are other firearms related commercial operations that do not require a dealer's licence. These include, for example, the hiring out of firearms or the operations of gunsmiths who may be holding numerous firearms but for whom there are no specific obligations, such as having secure storage appropriate for the number of firearms stored. These activities carry risks and therefore should only be carried out by people who have met the requirements of a dealer's licence.

Criteria to obtain a dealer's licence

The Arms Act currently requires that an applicant for a dealer's licence must first obtain a firearms licence. This requires being a fit and proper person to be in possession of a firearm or airgun. The Act also requires that Police must be satisfied that the person is a fit and proper person to carry on the business of a dealer before they issue that person with a dealer's licence. However, there is no guidance in the Act on what may or may not constitute grounds for making that decision. The 2002 Arms Manual provides that a dealer licence applicant should be of "excellent character". This reinforces the benchmark for becoming a licenced dealer being higher than that required to become a firearms licence holder.

The Bill proposes to introduce a set of criteria for determining whether a person is fit and proper and of the requisite character to hold a dealer's licence.

Employees of dealers

Employees of dealers currently operate under the Act with little guidance on what the employee's obligations and responsibilities are while they act in their capacity as an employee. The proposed changes seek to ensure that the ability for employees to handle arms items is limited to employment in the dealer's place of business.

Detailed analysis

Broader range of activities to require a dealer's licence

Clause 10 (proposed replaced section 5) provides that a broader range of commercial activities will now require a dealer's licence in order for them to be performed lawfully. These are, in relation to arms items:

- selling, hiring, lending or otherwise supplying;
- possessing for the purpose of auctioning;
- repairing or modifying in the course of business;
- displaying as the director or curator of a bona fide museum;
- manufacturing for sale, hire, lending or other supply; and
- manufacturing for permitted supply prohibited parts and using prohibited items to test and demonstrate prohibited parts.

A company may carry out any of the above activities provided a senior manager holds a dealer's licence.

Clause 10 also proposes to increase the penalty for non-compliance with section 5 from a fine not exceeding \$1,000 to imprisonment up to 6 months or a fine not exceeding \$10,000.

A dealer's licence may not be issued for activities relating to anti-personnel mines, or cluster munitions.

Application for a dealer's licence

Clause 10 (proposed new section 5A) sets out the process for applying for a dealer's licence. The application must:

- be made on a form approved by Police; and
- specify the activities for which the licence is sought, and the classes of arms items that will be involved in these activities.

Applications for a dealer's licence to manufacture prohibited parts for permitted supply may only be made by someone who was in the business of such manufacturing prior to 12 April 2019 and has continued to do so.

Conditions for the issue of a dealer's licence

Clause 10 (proposed new section 5B) provides that Police may only issue a dealer's licence if:

- the applicant holds a firearms licence; and
- Police is satisfied that the applicant:
 - is a fit and proper person to carry out specified dealer activities; and
 - has the appropriate storage facilities.

New section 5B also clarifies that if the dealer's activities involve pistols, restricted weapons or prohibited items, the licence must bear an appropriate endorsement under section 30 or 30B. The dealer's licence is personal to the licence holder, states the activities the holder may carry out, and the classes of arms items the activities require.

Criteria to determine if an applicant is a fit and proper to hold a dealer's licence

Clause 10 (proposed replaced section 6) requires Police, in determining whether an applicant is a fit and proper person to hold a dealer's licence, to consider the character and reputation of the applicant, and whether the applicant:

- has the competencies and resources to carry out the dealer activity for which the licence is sought;
- has ever been adjudicated bankrupt or been a director or a company that has been put into receivership or liquidation;
- has any convictions;
- has a sound knowledge of firearms; and
- understands the legal obligations of holding a dealer and a firearms licence (including any endorsements) and is able to provide advice on those obligations.

In the case of applications made by a senior manager of a company, Police must take into account whether the company has:

- suitable staff;
- appropriate record-keeping and any other systems to comply with the Act and regulations; and
- appropriate oversight and control of the proposed dealer activity.

Police may also take into account any other matters considered relevant.

The proposed new clause 12 of New Part 2 of Schedule 1 applies to existing dealer's licence holders prior to the commencement of provisions for a fit and proper dealer. Any of the circumstances outlined in section 6 (fit and proper criteria) may be taken into account any of the circumstances outlined in section 6 (fit and proper criteria) or any other circumstances, and find a person is no longer fit and proper to hold a licence and deal with them accordingly.

Conditions on a dealer's licence for manufacturing firearms

Clause 11 (proposed new section 6B) requires those who have a dealer's licence for manufacturing to obtain the Commissioner's written approval before manufacturing any of the following:

- non-prohibited firearms;
- non-prohibited magazines;
- non-prohibited parts;
- airguns;
- pistols; or
- restricted weapons.

The approval may specify the number (or maximum number) of arms items the dealer may manufacture. The Commissioner must take into account whether there are special reasons for the items to be manufactured in New Zealand [intended to apply to pistols or restricted weapons].

Dealers and employees may only possess restricted weapons with the required endorsement

Clause 14 amends section 10 of the Act to clarify that a licensed dealer may not possess pistols, restricted weapons, prohibited firearms or prohibited magazines unless their dealer's licence specifies they may carry on that activity and they have the appropriate endorsement. This is consistent with how Police currently treat dealers' licences. The clause retains the current requirement that these items must be obtained:

- from another licensed dealer with the appropriate endorsement; or
- from someone who holds a firearms licence with the appropriate endorsement;
- or
- under a permit to import.

Clause 14 also proposes to increase the penalty for non-compliance with section 10 from a fine not exceeding \$2,000 to a term of imprisonment up to 6 months, or a fine up to \$10,000.

Clause 45 (proposed amendment to section 30B) clarifies that an endorsement in respect of prohibited firearms or prohibited magazines can be on a firearms licence or a dealer's licence.

Clause 15 (amendment to section 11) requires employees of a licenced dealer to also have the correct endorsement on their firearms licence if their activities involve a pistol, restricted weapon, prohibited firearm, or prohibited magazine. This is in addition to the requirement already in the Act that the employee must have a firearms licence. The penalty for non-compliance with this section has been increased from a fine not exceeding \$500 to a fine not exceeding \$10,000.

Clause 44 (proposed replaced section 30A) allows an employee of a licensed dealer to apply for an endorsement on their firearms licence permitting them to possess a prohibited firearm or prohibited magazine in their capacity as an employee.

The proposed amendments to sections 35 and 35A clarify that a dealer may be issued with a permit to possess a pistol, restricted weapon, prohibited firearm or prohibited magazine if they have the appropriate endorsement on their dealer's licence.

Revocation of dealer's licence

Clause 13 (amendment to section 9) provides that when a dealer's licence is revoked, the dealer must immediately surrender their licence to Police and the dealer's employees may not carry on any dealer activity.

Clause 19 (amendment to section 15) increases the penalties that a dealer is liable for if they continue business after their licence has been revoked, from up to 3 months imprisonment and/or a fine up to \$1,000, to up to 1 year imprisonment and a fine up to \$15,000.

The proposed amendment to section 13 adds the ability for magazines and parts to be seized from licensed dealers.

The proposed amendment to section 14 adds the ability for magazines to be disposed of after a dealer's licence is revoked.

Dealer's record keeping requirements extended

Section 12 of the Act requires dealers to keep records (physical or electronic) at their place of business, with the particulars to be prescribed by regulation.

Clause 16 amends section 12 to broaden the existing record keeping requirements that apply to dealers to cover the broader range of activities which are proposed, per clause 5, to require a dealer's licence.

The clause proposes that the records must be kept for 10 years.

There is no requirement to record particulars that are exempt under regulations or that have been provided to Police for inclusion in the registry.

Clause 16 also proposes to increase the penalty for non-compliance with section 12 from a fine not exceeding \$500 to imprisonment up to 6 months or a fine not exceeding \$10,000.

Gun shows

Clause 12 (proposed amendment to section 7A) removes the automatic requirement for a dealer to close their place of business during a gun show at which they are also conducting business.

Enhanced regulatory tools

SHOOTING CLUBS AND SHOOTING RANGES

clause 53, new sections 38A-38V

clause 82, section 74 amended, sections 74(1)(b) and 74(1)(e), and new section 74(1)(gb)

clauses 14 and 15 of New Part 2 of Schedule 1)

Summary of proposed amendments

The Bill proposes the establishment of a regulatory regime for shooting clubs and shooting ranges that sits within the Act.

Application date

It is intended these items will come into effect two years after enactment date.

Key features

These amendments define a shooting club and establish requirements for shooting clubs that use shooting ranges, including the need to have a certificate of approval from the Commissioner of Police in order to operate, and to provide the Commissioner with an annual report.

Shooting ranges (including ranges used by approved clubs) are required to be certified by the Commissioner of Police and a condition of certification is that when the range is in use there must be a manager on duty who is appropriately trained in shooting range management and holds a firearms licence.

Background

At present, pistol shooting clubs are required to be recognised by the Commissioner of Police and their pistol ranges are required to be approved by the Commissioner. A number of rifle and other shooting clubs provide venues for activities with similar risk, but do not have to meet any minimum requirements or have any form of Police oversight.

Club operators (other than pistol shooting clubs) are not currently required to be firearms licence holders or have any specific knowledge or expertise about firearms. As clubs serve as gathering points for many individuals who hold firearms, without adequate oversight there is a risk that a club may foster behaviours that are contrary to the purpose of the Act and public safety.

Detailed analysis

Clause 53 introduces a new Part 6 in the Act, with proposed new sections 38A to 38V.

Shooting clubs

Shooting clubs must have a certificate of approval

The proposed new section 38B requires that a shooting club that uses a shooting range for activities must have a certificate of approval issued by the Commissioner of Police for that club. This is supported by an offence for establishing or continuing to operate a shooting club without approval which carries a penalty of a fine of up to \$10,000.

Application for certificate of approval

The proposed new section 38C requires that an application for approval for a shooting club must be made in a form approved by the Commissioner of Police, supported by any information as prescribed, and with a prescribed application fee (if any).

The proposed new section 38D allows the Commissioner to make further inquiries into a shooting club's application and to request further information if necessary.

The proposed new section 38E gives the Commissioner the ability to approve an application if the Commissioner is satisfied that the shooting club:

- will use a certified shooting range;
- has rules relating to the safe operation of firearms and promotes the safe possession and use of firearms;
- is appropriately administered; and
- is able to safely manage its shooting activities.

If the Commissioner agrees, he will then issue a certificate of approval (subject to any appropriate conditions) under proposed new section 38F.

The proposed new section 38G states that the certificate of approval continues until surrendered by the shooting clubs or cancelled by the Commissioner.

Cancellation and renewal of certificate of approval

The proposed new section 38H places an obligation on the Commissioner of Police to cancel a shooting club's certificate of approval if the Commissioner is satisfied the club

- is not using a certified shooting range for its shooting activities; or
- is no longer carrying on its operations; or
- no longer meets the requirements under section 38E.

The Commissioner may cancel a shooting club's certificate of approval if satisfied the club has failed to comply with any conditions, has failed to report any serious firearms-related safety incident, or any activity of the club has raised any reasonable concern about the safety of its members or the public.

The proposed new section 38I provides that the renewal of a certificate of approval is treated the same as an application for a new certificate.

Annual reports

The proposed new section 38J provides that a shooting club must provide an annual report on its operations to the Commissioner no later than three months after the end of the financial year. The content of the annual report will be prescribed by regulations.

Shooting ranges

Shooting range must be certified

The proposed new section 38K states that a shooting range must be certified. Operating an uncertified shooting range is an offence which carries a fine of up to \$10,000.

Application for certification

The proposed new section 38L states the requirements for an application to have a shooting range certified. The application must be in a form approved by the Commissioner of Police, supported by any information prescribed, and a prescribed application fee (if any).

The proposed new section 38M allows the Commissioner to make further inquiries into an application for certification of a shooting range and request further information if necessary.

The proposed new section 38N states that the Commissioner may grant an application if they are satisfied that:

- the shooting range meets all required safety standards published by the Commissioner;
- all necessary local and regional council consents are obtained; and
- the owner has appropriate public liability insurance.

Shooting range certification – conditions and duration

If the Commissioner grants an application for certification for a shooting range he must issue a certificate under proposed new section 38O.

The proposed new section 38P provides that a certificate is granted subject to the condition that at all times, while the certified shooting range is in use, there is a manager on duty who:

- holds a firearms licence; and
- is appropriately trained in shooting range management.

Approval can be subject to any conditions the Commissioner considers appropriate including ones relating to:

- maintenance of the shooting range;
- public access to the shooting range;
- restrictions on the type of firearms and ammunition that may be used on the shooting range; and
- competitions that may be conducted at the shooting range.

The proposed new section 38Q states the duration of certification for a shooting range is five years unless sooner surrendered or cancelled.

Shooting range certification – cancellation and renewal

The proposed new section 38R provides that the Commissioner may cancel a shooting range's certification if they are satisfied that:

- the shooting range is no longer operating as a shooting range;
- the shooting range is not being operated with regard to individual or public safety;
- the operator or owner is not complying with any conditions imposed; or
- it is no longer appropriate that the shooting range be certified in regards to matters under section 38N.

The proposed new section 38S provides that the renewal of certification is treated the same as an application for certification.

Compliance for shooting clubs and ranges

Inspections

The proposed new section 38T provides a member of Police, if authorised by the Commissioner, the ability to enter and inspect a shooting club or range and inspect, print, copy or remove any documents if they reasonably believe the document is from the shooting club or range. The provisions of Part 4 (apart from subpart 3, search warrants) of the Search and Surveillance Act 2012 apply (general provisions in relation to search, surveillance, and inspection powers).

Improvement notices

The proposed new section 38U allows an improvement notice to be issued if the person carrying out an inspection reasonably believes the club or range is contravening or likely to contravene the Act or regulations. The improvement notice requires the club or range to, within a reasonable timeframe, remedy the contravention or prevent a likely contravention from occurring.

The proposed new section 38V states that if the shooting club or range fails to comply with the improvement notice it must suspend its operations on the date specified in the notice.

Grandparenting of existing shooting clubs and ranges

The proposed new clause 14 in the new part 2 of schedule 1 allows incorporated pistol shooting clubs that were in existence immediately before the commencement of Part 6 (shooting clubs and shooting ranges) and recognised by the Commissioner of Police for the purposes of section 29 of the Act to continue operating as if they had a certificate of approval. Other shooting clubs that existed prior to commencement will have 12 months after the commencement of Part 6 to become certified.

The proposed new clause 15 in the new part 2 of schedule 1 allows pistol shooting ranges that are approved by the Commissioner under regulation 22 on the commencement of Part 6 (shooting clubs and shooting ranges) to be treated as if they are certified, which ends after five years from the commencement date unless cancelled

by the Commissioner. Other shooting ranges that existed prior to the commencement of Part 6 have 12 months from commencement to become certified.

Regulation-making powers

The proposed amendment to section 74(1)(b) provides for regulations to be made about the content of applications for certificates of approval and certifications.

The proposed amendment to section 74(1)(e) provides for regulations to be made prescribing the conditions to which certificates of approval and certifications will be subject.

The proposed new section 74(1)(gb) provides for regulations to be made prescribing the particulars of annual reports of shooting clubs.

GENERAL CONDITIONS ON A LICENCE

clause 35, section 24 amended

clause 36, new section 24B

Summary of proposed amendments

The Bill proposes to establish general conditions that apply to all firearms licence holders.

Application date

It is intended these amendments will come into force six months from enactment date.

Key features

The Bill proposes to require all licence holders to:

- take reasonable steps to act in the interests of personal and public safety when using a firearm; and
- allow Police to inspect all firearms and their security arrangements, including in vehicles.

Background

At present, the Act places conditions on the holders of licence endorsements for pistols, restricted weapons, prohibited firearms, and prohibited magazines and provides for further conditions to be imposed. Under regulations the Commissioner of Police can also prescribe conditions on a dealer's licence or a firearms licence.

However, there are no standard conditions for firearms licences in the Act. There are a number of circumstances where licence holders have not taken the appropriate care in relation to the use and storage of their firearms (for example, where firearms have been stolen or accessed after being left inadequately secured).

Detailed analysis

Secure storage facilities

Clause 35 (proposed amendment to section 24) provides that a firearms licence may be issued if the applicant's secure storage facilities for firearms and ammunition have been inspected by Police and they are compliant with the required standards.

General licence conditions

Clause 36 (proposed new section 24B) creates general conditions applicable to all firearms licence holders, which include to:

- act in a way that does not pose a risk to personal or public safety when using a firearm;
- produce any firearm in the licence holder's possession to a member of Police on demand;

- allow the inspection of all firearms and their storage and security arrangements (at reasonable times) including in premises and vehicles; and
- inform Police of any significant change in circumstances set out under section 24A(1) (fit and proper person test) that arise.

When undertaking an inspection, Police must:

- give reasonable notice;
- identify themselves to the licence holder;
- inform the licence holder of the section of the Act under which the inspection is being performed; and
- if asked, provide evidence that they are a member of Police.

The proposed new section 24B(3) notes that licence holders with an endorsement are subject to requirements under section 31A (conditions of endorsements, which do not require police to provide notice of proposed inspections).

GENERAL RESTRICTIONS ON POSSESSION OF FIREARMS, AIRGUNS, MAGAZINES, PARTS, AND AMMUNITION

clause 27, new sections 19A and 19B

clause 29, section 20 amended

clause 30, section 21 amended

clause 31, new sections 22A and 22B

Summary of proposed amendments

The proposed amendments confirm the current restrictions on the possession of prohibited firearms, prohibited magazines, and prohibited parts, and add restrictions on the possession of non-prohibited magazines, non-prohibited parts, and ammunition.

Application date

These amendments are intended to come into force on the day after enactment date.

Key features

The proposed amendments:

- clarify that individuals need to have the requisite licences and endorsements to possess prohibited firearms, prohibited magazines and prohibited parts;
- provide that a firearms licence is needed to possess non-prohibited magazines, non-prohibited parts, and ammunition;
- introduce new offences and penalties.

Background

Prohibited firearms, magazines, and parts

The Act requires a licence holder, who is an exempted person, to have the correct endorsement on their licence to possess prohibited firearms or prohibited magazines. A person with such an endorsement can then take possession of a particular prohibited firearm, magazine, and part, provided, if it is a prohibited firearm or prohibited magazine, they also obtain a permit to possess that item, or an import permit.

The Bill amends the Act to provide clarity on this and symmetry across all the sections that are relevant to these requirements.

Non-prohibited parts and magazines

Currently, a firearms licence is not required to acquire or possess non-prohibited magazines and non-prohibited parts of firearms. This creates a risk that they could be purchased by non-licence holders for illegitimate reasons and move into the illicit market. Although a person must have a licence to be supplied ammunition there is no requirement to have a firearms licence when in possession of ammunition.

In order to improve public safety and reduce the risk of harm, the Bill aligns the possession of non-prohibited magazines, non-prohibited parts, and ammunition with the requirements for firearms purchases (i.e. a licence is required).

Detailed analysis

Restrictions on possession of prohibited firearms, magazines and parts

Clause 27 (new section 19A) clarifies the current situation that a person may not possess a prohibited firearm or prohibited magazine unless the person is either:

- a licensed dealer and has obtained the item from another dealer with the correct endorsement or a firearms licence holder with the correct endorsement; or
- a firearms licence holder with the correct endorsement and permit.

Clause 27 (new section 19B) clarifies the restrictions on possessing prohibited parts. They must be an exempt person aged 18 or over and be either:

- a dealer who has the correct endorsement and who obtains the part pursuant to an import permit or from a holder firearms licence that bears an endorsement under s30B (for a prohibited firearm or prohibited magazine), or from another licensed dealer; or
- a person who holds a firearms licence with an endorsement for a prohibited firearm.

These restrictions do not apply to employees of licensed dealers acting in that capacity and carrying out a dealer activity.

There are already specific offences for persons possessing prohibited magazines and parts (see sections 50B and 50C).

[Section 20 is amended to cover only non-prohibited firearms.]

Restrictions on possession of non-prohibited parts and magazines and ammunition

Clause 31 (proposed new section 22A) requires a person to hold a firearms licence to possess non-prohibited magazines and non-prohibited parts. It is an offence punishable by a fine not exceeding \$10,000 to contravene this.

Clause 31 (proposed new section 22B) provides that in order to lawfully possess ammunition a person must:

- hold a firearms licence; or
- be under the immediate supervision of a firearms licence holder; or
- be an employee of an ammunition seller and performing their duties at work under the immediate supervision of a firearms licence holder.

It is an offence punishable by a fine not exceeding \$10,000 to contravene this.

AMMUNITION IMPORT PERMIT AND SALES REQUIREMENTS

clause 21, section 16 replaced
clause 24, section 18 amended
clause 25, section 18B replaced and new section 18C
clause 26, section 19 amended
clause 31, new sections 22C and 22D
clause 36, new section 24C
clause 82, new subsection 74(1)(ga)

Summary of proposed amendments

The Bill proposes to create import and sale requirements for ammunition.

Application date

These amendments are intended to come into force on the day after enactment date.

Key features

These amendments relate to the import and sale of ammunition (possession is covered in the previous section) and cover:

- introducing a requirement to have an import permit to import any quantity of ammunition; and
- requiring a seller of ammunition to hold a current firearms licence, and establishing conditions on the licence regarding record-keeping.

Background

The Act currently includes minimal controls in relation to ammunition. Sales of ammunition must always be to a firearms licence holder, and any person purchasing ammunition through mail order or online sales must be pre-approved by Police. A permit is not required to import ammunition and there are no controls over possession of ammunition. The lack of controls on ammunition means that there are a number of risks to public safety.

Detailed analysis

Import permits

Clause 21 (amended section 16) adds non-prohibited ammunition to the list of items that require a permit to be brought into New Zealand. It will be an offence to import non-prohibited ammunition without a permit, punishable by a fine of up to \$15,000 or a term of imprisonment up to one year.

Sample testing

Clause 24 (proposed amendment to section 18) enables Police to request an applicant for a permit to import non-prohibited ammunition to produce a sample of that ammunition for examining and testing.

Clause 25 (proposed replaced section 18B) requires an applicant to provide a sample of the non-prohibited ammunition as soon as practicable and ensure it has not been modified. If the sample is not approved the applicant must export it from New Zealand within 12 months of being informed of the decision. If the sample is not exported it shall be disposed of. The Crown is not liable to pay compensation for any damage to a sample caused by examination or testing.

Clause 25 (proposed new section 18C) relates to specified items (which includes non-prohibited ammunition) brought into New Zealand under an import permit which do not correspond to the sample provided or are not otherwise approved. These must be exported within 12 months or disposed of or dealt with in the manner that the Commissioner of Police directs.

Clause 26 (proposed amendment to section 19) allows Police or Customs to seize and detain any non-prohibited ammunition if it has been, or is intended to be, brought into New Zealand without a permit. Sections 65 (restoration of seized articles) and 70 (disposal of firearms, etc., detained by Police) apply.

Additional requirements for sellers of ammunition

Licence requirement

Clause 31 (proposed new section 22C) requires a person who sells or supplies ammunition (other than for the types of firearms that are exempted under section 22, e.g. bolt or stud guns, antique firearms) to hold a firearms licence and only sell or supply to someone who holds a firearms licence. It is an offence to contravene this without reasonable excuse, punishable with a fine up to \$10,000.

Record keeping

Clause 31 (proposed new section 22D) requires ammunition sellers to keep a record of ammunition sales (including the purchaser's name, licence number and quantity and type), and to permit Police to inspect and take copies of the records. Physical and electronic record books must be retained for at least 10 years from their last entry. If an ammunition seller's licence is revoked or cancelled, they must immediately surrender their records to Police. It is an offence to contravene these provisions without reasonable excuse, punishable with a fine of up to \$10,000.

Storage requirements

Clause 36 (proposed new section 24C) creates a special condition on firearms licences issued to ammunition sellers that they must have appropriate facilities to securely store all ammunition that they possess.

Regulation-making power

Clause 82 (proposed new subsection 74(1)(ga)) enables regulations to be made that prescribe the details required to be entered into the registry in relation to selling or supplying ammunition.

VISITOR PURCHASING

clause 31, new section 22E

Summary of proposed amendments

The Bill proposes to disallow visitors to New Zealand from acquiring ownership of any firearm or restricted weapon for possession in New Zealand.

Application date

This item is intended to come into force on the day after enactment date.

Key features

Prevents visitors from taking ownership of firearms for possession in New Zealand.

Background

Visitors to New Zealand are currently able to obtain a firearms licence and purchase firearms. This poses a risk of firearms being bought legitimately by a visitor, but being sold illegally before they leave the country. There is currently little oversight of firearms purchased by visitors and Police may only become aware, if at all, of an illegal sale after the visitor has left New Zealand. Because the majority of visitors will either bring their own firearms, hire firearms, or operate firearms under the supervision of a licence holder, there is little need for visitors to be able to take ownership of a firearm they intend to possess in New Zealand.

Detailed analysis

Clause 31 (proposed new section 22E) will prevent a visitor to New Zealand who holds a firearms licence from acquiring ownership of any firearm or restricted weapon for possession in New Zealand. If a person contravenes this section, their firearms licence is automatically revoked.

COMPLIANCE AND ENFORCEMENT

clause 34, section 23 amended

clause 39, new section 27C

clause 75, new sections 60, 60A, and 60B

Summary of proposed amendments

The Bill's proposed amendments enable the issue of improvement notices, when licence holders, ammunition sellers or shooting range operators are failing or about to fail, to meet their regulatory obligations under the Act or Regulations.

The Bill also includes a power to temporarily suspend a licence in certain circumstances.

Application date

These amendments are intended to come into force 6 months after enactment date.

Key features

The Bill enables the issue of improvement notices to encourage and promote compliance with the Act where licence holders, ammunition sellers or shooting range operators are failing to meet their regulatory obligations. An improvement notice could be used if this failure is not serious enough to warrant revocation of their licence in the first instance, or a criminal charge being laid. These notices will identify the requirements not being met and remedial steps to be completed by a specified date. Suspension and revocation of a licence may follow non-compliance with an improvement notice.

The Bill also introduces provision for temporary suspension of a licence pending possible revocation and the potential for immediate seizure or surrender of a licence, firearms or other items to prevent firearms being disposed of by the licence holder prior to revocation.

Background

Limited regulatory tools to respond to minor non-compliance

There are limited regulatory tools available under the Act to respond to minor infringements. The only tools available are prosecution or revocation of licences and endorsements, which are significant actions to take and are only appropriate in serious circumstances. A range of responses commensurate with lower levels of non-compliance is needed. The proposed amendments intend to enhance and strengthen the tools available to Police as a regulator, when licence holders, ammunition sellers or shooting range operators are failing or about to fail to meet their regulatory obligations under the Act or Regulations.

The licence revocation process does not allow for immediate suspension of a licence and seizure of firearms

Where there is significant or continual non-compliance with the Act, or a licence holder has displayed conduct to indicate that they are no longer a ‘fit and proper’ person, licence revocation is an appropriate response. The current revocation process does not provide for the immediate suspension of a licence, or the immediate seizure or surrender of licences, firearms, or other items the licence holder possesses. During the time between issuing a notice of revocation and the revocation itself, there is potential for firearms and other items under the individual’s possession to continue to be used or find their way into the wrong hands (particularly those firearms possessed by the licence holder that Police do not have a record of). Being able to immediately suspend a licence and providing for immediate seizure or surrender of licences, firearms and other items would prevent an individual from using or disposing of them in the interim.

Detailed analysis

Improvement notices

Clause 75 (proposed new section 60) will allow the issue an improvement notice if Police reasonably believe that a firearms or dealer licence holder, an ammunition seller or shooting range operator is failing, has failed, or is likely to fail to comply with one or more provisions of the Act, regulations, or any conditions on a licence, endorsement or permit. The improvement notice:

- states the provision/s or condition/s the person is believed to be failing, has failed, or is likely to fail to comply with;
- requires the person to remedy the failure, or prevent a failure from occurring;
- states the date by which action must be taken; and
- must be in writing and sent to the individual.

Temporary licence suspension pending revocation

Clause 75 (proposed new section 60A) enables a member of Police suspend a licence pending possible revocation, if they are satisfied that:

- the holder is not a fit and proper person to possess a firearm or airgun, including where:
 - the licence holder has failed or refused to secure arms items in accordance with regulations, or has failed to comply with any conditions imposed on their licence or an improvement notice; or
 - they are satisfied on the basis of a report from a health practitioner;
- the holder of a dealer’s licence is not a fit and proper person to hold it;
- the licence has been seized under section 18 of the Search and Surveillance Act 2012 (warrantless searches associated with arms); or
- access to a firearm in their possession is reasonably likely to be obtained by certain types of people who should not be able to access it (i.e. persons who have been considered not fit and proper).

A notice of temporary suspension of a licence must state:

- the ground on which the notice is given;

- that the suspension is to enable Police to consider revoking the licence on that ground;
- that the holder may make oral or written submissions on whether the licence should be revoke on that ground (before a day stated in the notice, but is reasonable to enable the holder to make a submission);
- that the suspension lasts until notice of the decision as to whether the licence has been revoked has been given to the holder;
- that the effect of the notice is that the licence holder is treated as not holding the licence, until a final determination has been made on revocation;
- that the holder may commit an offence if they carry on any activities that require a licence; and
- that the holder may be required to immediately surrender their licence, firearms, parts, magazines, ammunition, airguns, and restricted weapons.

Effect of temporary suspension of licence

Clause 75 (proposed new section 60B) establishes that the effect of a temporary suspension on a licence holder is that they:

- are no longer licensed to possess firearms, airguns, restricted weapons, parts, magazines or ammunition; and
- may be required to surrender their licence and any arms item they possess (and Police may seize and take possession of these items if they are not surrendered on demand).

In regards to temporary suspension of dealer's licence, the dealer licence holder or their employees are not authorised to carry on any dealer activity. A dealer's licence is automatically suspended while their firearms licence is suspended.

Revocation of suspended licence

Clause 39 (proposed new section 27C) allows for the revocation of a licence that has been temporarily suspended if, after considering submissions, Police is satisfied the licence should be revoked on the grounds outlined in the suspension notice. The holder then ceases to be licensed to possess firearms, airguns, restricted weapons, magazines, parts, or ammunition (including any endorsement). A dealer's licence is automatically revoked if their firearms licence is revoked.

Stand-down period following revocation

Clause 34 (proposed amendment to section 23) introduces a stand-down period for people applying for a firearms licence. It proposes that if the applicant has had a firearms licence revoked within the last five years, they shall be unable to apply for another.

OFFENCES AND PENALTIES

clause 10, section 5

clauses 14-16, sections 10, 11, 12

clause 19, section 15

clause 21, section 16

clauses 29-30, sections 20, 21

clause 40, section 28

clause 47, section 34

clauses 51 to 52, sections 36, 38

clause 57, section 42

clause 59 section 43A

clauses 62 to 72, sections 44, 46, 48, 50D, 52, 53A, 54, 55B, 55C, 58A, 59

clause 79, sections 66A, 66B, 66C

clause 82, section 74

Summary of proposed amendments

The Bill proposes to increase the penalties for some existing offences, and introduce new offences and associated penalties.

Application date

These items are intended to come into force on the day after enactment date.

Background

Some of the current offences and penalties contained within the Act are no longer fit for purpose and require updating. Some have not been changed since the Act was passed in 1983.

Proposed changes to the Act create the need for new offences and penalties.

Detailed analysis

Changes to existing offences

The following table sets out the existing offences that have had their penalties amended. Text in bold in the offence column indicates a proposed amendment to the offence.

Existing offences that have had their penalties amended			
Clause (Section)	Offence	Current max penalty	New Max penalty
10 (5)	Dealing without a dealer's licence	\$1,000	\$10,000 or 6 months
14 (10)	Dealer taking possession for sale of a pistol, restricted weapon, prohibited items without meeting certain conditions	\$2,000	\$10,000 or 6 months
15 (11)	Dealers or their employees or agents not having a firearms licence and selling	\$500	\$10,000

Existing offences that have had their penalties amended			
Clause (Section)	Offence	Current max penalty	New Max penalty
16 (12)	Dealer not maintaining records relating to the receipt, sale, or manufacture of firearms as required by regulations, and not producing firearms or allowing security inspections	\$500	\$10,000 or 6 months
19 (15)	Dealing after dealers licence has been revoked	1,000 and/or 3 months	\$15,000 or 1 year
21 (16)	Importing firearms or other arms items (<i>including blank-firing guns and non-prohibited ammunition</i>) without a permit	\$2,000 and/or 1 year	\$15,000 or 1 year
29 (20)	Possessing a firearm without a licence	\$1,000 and/or 3 months	\$15,000 or 1 year
30 (21)	Possessing an airgun under 18 or between 16-18 without a firearms licence	\$1,000 and/or 3 months	\$1,000
40 (28)	Following licence revocation or suspension, failing to deliver firearm, pistol or restricted weapon to Police when requested	\$1,000 and/or 3 months	\$10,000 or 6 months
47 (34)	Firearms licence holder not informing Police in writing within 30 days of any change of address	\$500	\$2,000
51 (36)	Carrying a pistol or restricted weapon without authority	\$1000 and/or 3 months	\$10,000 or 6 months
52 (38)	Failing to give four days' notice to Police of intended removal of pistol, prohibited firearm, prohibited magazine or restricted weapon out of New Zealand	\$500	\$2,000
57 (42)	With intent to deceive adds to firearms licence, alters licence in any way, lends to another person, uses the licence of another person, supplies information knowing it to be incorrect	\$1,000 and/or 3 months	\$20,000 or 2 years
58 (43)	Selling or supplying firearm or airgun to unlicensed person	\$1,000 and/or 3 months	\$20,000 or 2 years
59 (43A)	Sells by mail order <i>or internet</i> a firearm or any ammunition for firearm or restricted weapon without order signed by purchaser and bearing an endorsement by Police	\$1000	\$10,000 or 6 months
62 (44)	Selling or supplying a pistol or restricted weapon to anyone who does not have an import permit or permit to possess	\$4,000 and/or 3 years	\$30,000 or 3 years
63 (46)	Carrying an imitation firearm without a lawful, proper, and sufficient purpose	\$4,000 and/or 2 years	\$4,000 or 1 year
64 (48)	Without reasonable cause discharges a firearm, airgun, pistol or restricted weapon in or near a house or public place (so as to endanger property or person)	\$3000 and/or 3 months	\$10,000 or 6 months

Existing offences that have had their penalties amended			
Clause (Section)	Offence	Current max penalty	New Max penalty
65 (50D)	Unlawfully carrying or possessing prohibited firearm in public place	7 years	5 years
66 (52)	Except for lawful purpose presents a firearm, pistol, airgun or restricted weapon at any other person (or an item they are likely to believe is a firearm)	\$1,000 and/or 3 months	\$10,000 or 6 months
67 (53A(2))	Possesses a prohibited firearm at the time of committing an offence punishable by imprisonment for a term of 3 years or more	7 years	5 years
69 (55B)	A dealer or an endorsed licence holder fails <i>without reasonable excuse</i> to produce for Police, or does not permit inspection of, any pistol, restricted weapon, prohibited firearm or magazine	\$1,000 and/or 3 months	\$10,000 and/or 6 months
72 (59)	Failure to comply with a notice to surrender a firearm that has not been brought up to a safe standard after a notice from police to bring it up to safe standard	\$500	\$10,000 or 6 months
79 (66A)	Owners of firearms not reporting the loss, theft or destruction of any of their firearms <i>without reasonable excuse</i>	\$500	\$10,000
79 (66B)	Person in possession of firearm or arms items (<i>expanded to include all magazines and parts not just prohibited ones</i>) refusing to give identifying information to Police or giving false information	\$1,000 and/or 3 months	\$10,000 or 6 months
79 (66C)	Failure to surrender airgun or antique firearm to Police following a judgement of not being fit or proper	\$1,000 and/or 3 months	\$10,000 or 6 months
82 74(1)(r)	Non-compliance with regulations	\$400	\$2,000

New offences		
Clause (section)	Offence	Max penalty
31 (22A & 22B)	Without reasonable excuse possessing parts, magazines or ammunition without a licence	\$10,000
31(22D)	Ammunition seller failing to keep sufficient records of ammunition sales without reasonable excuse	\$10,000
53 (38B 38K)	Without reasonable excuse operating an unapproved shooting club or range	\$10,000
70 (55C)	Failing to allow Police to inspect firearm and where it is stored, without reasonable excuse	\$10,000
70 (55D)	Illegal intentional manufacturing of firearms or parts	10 years
70 (55E)	Illegal trafficking of firearms, parts, or ammunition	10 years
70 (55F)	Falsifying a firearms marking	10 years
70 (55G)	Removing or altering firearm markings	3 years
71 (58A(1))	Failing to provide information without reasonable excuse to the registry	\$10,000
71 (58A(5))	Providing false or misleading information to registry	\$20,000 or 2 years

GUIDANCE NOTICES

clause 83, proposed new section 87

Summary of proposed amendments

The Bill proposes that the Commissioner of Police may issue guidance of an administrative nature regarding any aspect of the Act or regulations.

Application date

This amendment is intended to come into force on the day after enactment date.

Key features

The amendment enables the Commissioner to issue administrative guidance notices on any aspect of the Act or regulations where the Commissioner thinks guidance would be useful.

Background

The firearms regime has not adapted to emerging risk and technology change over time. The Arms Manual is currently used for setting out some extra detail of the firearms regime. It can be changed quickly but has no legal status. Notices are tertiary instruments that can be updated relatively easily and also have legal effect.

Detailed analysis

Clause 83 (proposed new section 87) provides for the Commissioner to issue notices that provide guidance or details of an administrative nature in relation to:

- requirements under regulations for the security of licensed dealer premises and the premises where firearms are kept;
- issuing identification numbers for firearms and magazines manufactured in or imported to New Zealand;
- the approval of any shooting club or certification of any shooting range;
- how to demonstrate the positive behaviours, skills, and knowledge that are expected of a fit and proper person;
- how to manage specific situations where non-licensed persons come into possession of a firearm;
- matters that health practitioners consider when determining whether to notify the Police under section 91; and
- generally about any aspect of the Act or regulations made under the Act where the Commissioner thinks further guidance is useful.

The Commissioner must consult the Firearms Advisory Group, and may consult others, before issuing a notice. Notices must be either published in the *Gazette* in full or information provided in the *Gazette* on where a notice can be accessed in electronic form. Guidance notices issued are neither disallowable nor legislative instruments for the purposes of the Legislation Act 2012.

ACCESSION TO THE PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION

clause 6, section 2 amended

clause 70, new sections 55D to 55I

clause 85, amendments to the Extradition Act 1999

clause 87, amendments to the Mutual Assistance in Criminal Matters Act 1992
Schedule 2 Part 2 amendment to regulations 7 and 12

Summary of proposed amendments

The Bill's proposed amendments strengthen New Zealand's firearms regime, enabling New Zealand to accede to the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime* (the Firearms Protocol).

Application date

These amendments are intended to come into force on the day after enactment date, except for the consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999 that reference the Protocol. These amendments will need to come into force by Order in Council at a later date because they are dependent on New Zealand becoming a party to the Protocol. Article 18(2) of the Firearms Protocol states that the Firearms Protocol shall come into force on the 30th day after the date of deposit of the relevant instrument by the State. The Ministry of Foreign Affairs and Trade will advise when that Order in Council is needed.

Key features

The key features of the amendments are:

- new offences regarding the illegal manufacturing, and illegal trafficking of arms items, and the falsifying, removing and altering of firearm markings, which can be applied extraterritorially;
- a requirement that all firearms manufactured in, or imported into, New Zealand, have an identifying mark;
- a requirement that records of firearms manufactured in New Zealand are kept for at least 10 years (a requirement of the Protocol); and
- consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999.

Background

New Zealand is a party to the *United Nations Convention against Transnational Organised Crime* (the Convention). The Convention promotes cooperation to prevent and combat transnational organised crime. This includes establishing the legal frameworks and obligations that support international cooperation, including extradition, mutual legal assistance, cooperation for the purpose of confiscation and international law enforcement cooperation.

New Zealand has not signed or ratified the Firearms Protocol supplementing the *Convention*. Accessing to the Firearms Protocol requires States to have:

- a system of government authorisations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms;
- an effective system of control over the import and export of firearms, and measures relating to arms brokering;
- measures relating to the marking, tracing, confiscation, reactivation and security of firearms; and
- criminal offences for illegal manufacturing of, and trafficking in firearms.

New Zealand already largely complies with the requirements relating to licensing and controls for the manufacturing, import, export and brokering of sales of firearms. Only small quantities of illegally trafficked firearms and parts are seized at the border each year. However, this may increase given the growth in organised crime groups and in online dark net purchasing, internationally and in New Zealand. Technology (such as 3D printing) also makes it easier for firearms and parts to be illegally manufactured. Introducing greater controls within New Zealand, including a firearms registry, may also increase the demand for illegally imported or manufactured firearms and parts.

The proposed changes needed for compliance (mainly relating to the marking of firearms and new offences and penalties) will improve New Zealand's ability to track firearms lawfully entering and exiting the country, and work with other State parties to confirm the legitimacy of firearms. These changes, especially when combined with the proposed firearms registry (which will track movement of firearms in New Zealand), are intended to make it more difficult for firearms to end up in the hands of criminals and organised crime groups – both here and overseas.

Detailed analysis

New criminal offences

Clause 70 (proposed new sections 55D to 55G creates new offences relating to:

- the illegal intentional manufacturing of arms items, with a penalty of up to 10 years imprisonment (new section 55D);
- the illegal trafficking of firearms, parts or ammunition, with a penalty of up to 10 years imprisonment (new section 55E);
- falsifying firearm markings, with a penalty of up to 10 years imprisonment (new section 55F); and
- removing or alternating firearm markings, with a penalty of up to three years imprisonment (new section 55G).

Illegal manufacturing is defined in the Firearms Protocol as the manufacturing or assembly of firearms, their parts or ammunition:

- from parts illegally trafficked; or
- without a licence or authorisation; or
- without marking the firearms at the time of manufacture.

Illegal trafficking is defined in the Firearms Protocol as the import, export, acquisition, sale, delivery, movement or transfer of firearms, parts and ammunition from or across the territory of one State Party to that of another State Party without:

- the appropriate authorisations, or
- the firearms having the appropriate markings.

The falsifying of firearms markings generally reflects an attempt to make the firearm look legitimate, to provide deceptive or misleading information as to the origins of the firearm with the aim that the markings be acted upon as if they were genuine. The illegal obliterating, removing or altering of firearms markings, heightens the risk that the firearms will be used for criminal offending. Both impact on the ability to track firearms as they move between (or enter and exit) nations.

Offences to have extraterritorial jurisdiction

New section 55H proposes that the above offences have extraterritorial jurisdiction to reflect the cross-border nature of such offences, and the need to ensure that New Zealand citizens and residents can be held accountable even when no element of the offence would have enough connection to New Zealand to provide a basis for criminal jurisdiction.

Attorney-General's consent required to prosecute

New section 55I requires the Attorney-General's consent prior to any prosecution for the new offences in sections 55D to 55E.

Marking of firearms

The Bill (Part 2 of Schedule 2) proposes to amend regulation 12 of the Arms Regulations 1992 to require identification numbers to be on all firearms imported into New Zealand (currently this applies only to pistols, prohibited firearms, prohibited magazines, restricted airguns and restricted weapons), and on all firearms manufactured or assembled in New Zealand.

Other amendments

The Bill amends regulation 7 of the Arms Regulations 1992 to require the records held by licensed dealers (which includes arms items manufactured by the dealer) to be kept for at least 10 years (currently 5 years).

The proposed amendment to section 2 makes two technical changes to the interpretation section of the Act for the avoidance of doubt:

- adding silencer to the definition of 'part' for any firearm; and
- adding a limb to the definition of antique firearms to clarify that they do not include firearms manufactured after 1899 (reflecting the definition found in the Firearms Protocol).

Consequential amendments

Clauses 85 and 87 propose to make consequential amendments to the Extradition Act 1999 and the Mutual Assistance in Criminal Matters Act 1992 to include references to the Firearms Protocol and the relevant new offences to:

- provide for mutual assistance by signatories to the Firearms Protocol in respect of the specific offences required by the Firearms Protocol; and
- ensure the new offences are deemed to be offences described in extradition treaties concluded between New Zealand and any country party to the Firearms Protocol.

Other amendments to strengthen the regime

COST RECOVERY

clause 82(4)

clause 83, new sections 79 - 86

Summary of proposed amendments

The Bill proposes to enable the recovery of costs for certain activities under the Act.

Application date

These amendments are intended to come into force on the day after enactment date.

Key features

The Bill establishes a regime within the Act to allow fees to be charged to recover the actual and reasonable costs for activities provided to the firearms community, from the beneficiaries of those activities.

Background

Section 74(1)(f) of the Act includes a power to set fees in regulations in respect of any licence, application, or other matter under the Act. However, fees have been adjusted infrequently and do not reflect the full costs of the regulatory functions and services provided for under the Act. Some functions, such as the issue of permits to import firearms, or to possess a prohibited firearm, pistol or restricted weapon do not currently incur any fee. For the functions that do incur a fee, the fee does not reflect the full cost.

The benefits of holding and using firearms largely accrue to individuals and private businesses. However, most of the costs of managing the public safety risks that arise from the use of firearms are being met by the taxpayer.

The Act does not contain a framework or principles for determining what activities should be subject to a fee, and what level the fee should be set at. New provisions are proposed which set out a framework for cost recovery, with the intention of enabling the recovery of the cost of regulatory services and activities under the Act.

Detailed analysis

Activities that may be subject to cost recovery

Clause 83 (proposed new section 80) provides that fees or charges may be set by regulations for any matter in the administration of the Act, including:

- training materials, and testing of applicants, for any licence, endorsement, certificate, or approval;
- the assessment of applications;
- the issue, administration, and recording, of licences, endorsements, permits, certificates, approvals, transactions, or notices; and
- monitoring compliance with the requirements and conditions of licences, endorsements, etc.

Criteria for cost recovery

Clause 83 (proposed new section 81) provides that the Minister of Police may recommend that regulations are made prescribing the fee for an activity, but only if satisfied that:

- the fee covers no more than the actual and reasonable costs of the activity being charged for;
- the fee is obtained from the users of the services at a level commensurate with their use of the service;
- the costs of the activity to which the fee relates have been efficiently incurred; and
- the relationship between the cost of the activity and the nature and duration of the activity is clear.

Consultation

Under the proposed new section 82 the Minister of Police must be satisfied the Commissioner of Police has done everything reasonable to consult with the persons or organisations that will be affected by the proposed fee or charge. Failure to comply with this section will not affect the validity of any regulations made.

Methods of cost recovery

The proposed new section 83 states that regulations may provide for the following methods of cost recovery:

- fixed fees or charges;
- fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis;
- fee or charge of estimated actual and reasonable costs expended in or associated with the performance of an activity;
- fees or charges based on costs incurred from charges by third parties; and
- any combination of the above.

A fee or charge may be set at a level or in a way that involves an averaging of costs, indirect costs arising from the undertaking of an activity, and indirect or potential costs relating to the support, maintenance and development of an activity.

Payment of fees

The proposed new section 84 notes that payment is due as prescribed by regulations and into a departmental bank account. The proposed new section 85 provides for that payment to be exempted, waived, or refunded in whole or part.

Regulation-making power

Clause 82(4) repeals current section 74(1)(f) and 74(2) which are the current regulation-making powers for fixing fees for matters under the Act.

Clause 83 (proposed new section 86) enables regulations to be made prescribing fees and charges for specified activities, the time when fees/charges become payable, and providing for exemptions, waivers, or refunds.

COMMISSIONER'S FIREARMS ADVISORY GROUP

clause 82, new section 74(1)(rb)

clause 83, new sections 88, 89, and 90

Summary of proposed amendments

The Bill proposes that the Commissioner of Police must establish a Commissioner's Firearms Advisory Group (the Advisory Group) to advise on any matter relating to firearms in New Zealand.

Application date

This item is intended to come into force on the day after enactment date.

Key features

The amendments require the Commissioner to establish a Firearms Advisory Group made up of members of the firearms and non-firearms communities with a chairperson appointed by the Minister of Police. The Group must possess knowledge and experience in certain areas related to firearms. Members may be appointed for a term up to three years, and may be reappointed. The Group will be required to provide an annual report.

Background

At present, there is a stakeholder reference group, the Firearms Community Advisory Forum. The Forum provides input into policy relating to the arms regime, and makes recommendations on firearms-related matters. Its membership does not include non-firearms community members.

The Commissioner would benefit from a broader group that includes members from both the firearms and non-firearms community. This would provide a balance in the views and perspectives of different stakeholders in a transparent way.

Detailed analysis

Firearms Advisory Group

Clause 83 (proposed new section 88) provides that the Commissioner of Police must create an Advisory Group. It would be made up of a chairperson appointed by the Minister of Police and up to eight other members appointed by the Commissioner. The Advisory Group is to advise the Commissioner on matters that contribute to achieving the objectives of the Act, in particular the safe use and control of firearms. The Group may also advise on any matter relating to firearms in New Zealand.

Operations of the Advisory Group

Clause 83 (proposed new section 89) outlines the operations of the Advisory Group which include:

- appointing a deputy chairperson from amongst themselves at the first meeting;

- determining its procedure and reporting obligations subject to compliance with the Act and regulations; and
- providing an annual report on its proceedings and operations.

The Commissioner must provide resources and administrative support to enable the Advisory Group to perform its functions. Members are immune from liability in civil proceedings provided their actions and omissions were made in good-faith whilst performing their duties.

Appointment of members

Clause 83 (proposed new section 90) outlines provisions relating to the appointment of Advisory Group members. Membership must comprise a balance of people from both the firearms and non-firearms community. The Minister of Police or Commissioner must have regard to the need for the Advisory Group to possess knowledge and experience in some or all of the following areas:

- New Zealand and international firearm regulatory systems;
- public health and safety, particularly as it relates to firearms;
- firearms research;
- firearms safety and the use of firearms;
- membership of any community organisation or group involved in firearms awareness, safety, or law reform; and
- any other matters the Minister or Commissioner considers relevant.

Members may be appointed for a period of up to three years, and their appointment must be notified in the *Gazette*. A member is entitled to be paid remuneration and be reimbursed for actual and reasonable expenses.

Regulation-making power

The proposed new section 74(1)(rb) provides for regulations to be developed relating to the operation of the Advisory Group including its quorum, disclosure of interest, prohibiting disclosure of information, subcommittees and immunity.

ADVERTISING

clause 82, proposed new subsections 74(1)(ja) and (jb)

Summary of proposed amendments

The proposed amendments add regulation-making powers in relation to advertising, promoting or displaying firearms, parts, magazines and ammunition.

Application date

These amendments are intended to come into force on the day after the enactment date.

Background

Currently, there is no obligation on sellers of arms items to advise potential buyers of the requirements and obligations to be met by the purchaser (e.g. legal age of purchase, licence or endorsement requirements and safe storage requirements). Many advertisers do note these obligations, but not all. It is particularly important that reminders are placed on publically available advertisements/inserts/brochures/billboards for people who may be unfamiliar with the Act's requirements. Placing obligations on sellers to provide critical information on the arms items they sell will enhance compliance with the Act.

Detailed analysis

The proposed amendments to section 74 provides the ability for regulations to be made for:

- regulating the advertising, promotion or display of any firearm, firearm part, magazine or ammunition by sellers or hirers; and
- requiring sellers and hirers to provide information to customers on the legal conditions and requirements for purchasing, possessing and using firearms, parts, magazines, and ammunitions such as legal age of purchase, licence or endorsement requirements and safe storage requirements.

BLANK-FIRING GUNS

clause 6, section 2 amended

clause 21, section 16 amended

clause 24, section 18 amended

clause 25, section 18B replaced and new section 18C

clause 26, section 19 amended

Summary of proposed amendments

The Bill proposes to place import restrictions on blank-firing guns.

Application date

These amendments are intended to come into force on the day after enactment date.

Key features

The amendments require a permit to be held in order to import blank-firing guns and the import permitting provisions for firearms and the offences of contravening these will also apply to blank-firing guns.

Background

There are currently no import controls on blank-firing guns. This is a concern as some are easily converted to a firearm (able to discharge live ammunition). Whilst a firearms licence is not required to possess a blank-firing gun, a licence is required to hold a firearm that discharges live ammunition. The lack of import controls mean that these guns are entering New Zealand without any oversight, and can be sold to people who may not have a firearms licence and who may be able to readily convert them to fire live ammunition.

There are increasing numbers of blank-firing guns in the marketplace and whilst many of these are used in theatrical performances, a growing number are being used in support of criminal offending. The Police Armoury advises that approximately 20 percent of firearms referred to them as a result of offending in the six months to the end of May 2019 were blank-firing guns that had been converted to live fire.

There is no easy way for Police to know whether a blank-firing gun can be converted until it has been tested by the Police Armourer.

Detailed analysis

Clause 6 defines a blank-firing gun as anything that:

- has the shape of a firearm or restricted weapon, or otherwise resembles a firearm or restricted weapon;
- is capable of firing blank cartridges, but incapable of discharging any shot, bullet, missile, or other projectile; and
- includes a starting pistol that fires a blank cartridge or a cap.

Permit required to import blank-firing guns

Clause 21 (amendment to section 16) adds blank-firing guns and parts of blank-firing guns to the list of items which require a permit to import. It will be an offence to import these items without an import permit, with a fine of up to \$15,000 a term of imprisonment of up to one year.

Sample testing may be required on import

The proposed amendment to section 18 enables Police to request an applicant to produce a sample of a blank-firing gun for examining and testing when an import permit application has been received, to inform a decision to grant the permit.

Clause 25 (replaced section 18B) enables Police to require an applicant to provide a sample of the blank-firing gun as soon as practicable and to ensure it has not been modified. If the sample is not approved the applicant must export it from New Zealand within 12 months of being informed of the decision. If the sample is not exported it shall be disposed of. The Crown is not liable to pay compensation for any damage to a sample.

Clause 25 (proposed new section 18C) relates to specified items (which include blank-firing guns) brought into New Zealand under an import permit which do not correspond to the sample provided or are not otherwise approved. These must be exported, disposed of, or otherwise dealt with in a manner directed by the Commissioner of Police, within 12 months.

Clause 25 (section 19) allows Police or Customs to seize and detain any blank-firing gun if it has been, or is intended to be, brought into New Zealand without a permit. Sections 65 (restoration of seized articles) and 70 (disposal of firearms, etc., detained by Police) apply.

EXEMPTION FOR MANUFACTURING

clause 8, section 4A amended

clause 31, new section 22F

schedule 2, Part 2

Summary of proposed amendments

The Bill prohibits the manufacture of prohibited items and creates a permanent exemption from the prohibition on possessing or manufacturing prohibited items for certain existing manufacturers and suppliers of prohibited parts who were operating before 12 April 2019.

Application date

This amendment is intended to come into force on the day after enactment date.

Background

The Arms Act contains a prohibition, with exceptions, on the supplying, possession or use of prohibited items.

The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 provides a transitional exemption (under regulation 28F) for New Zealand businesses operating prior to 12 April 2019 involved in permitted supply, which were:

- manufacturing prohibited magazines and/or prohibited parts; and/or
- using prohibited items to test and demonstrate prohibited magazines and/or prohibited parts.

The transitional exemption expires in December 2020. The exemption for existing manufacturers and suppliers of prohibited parts is being made permanent while the exemption in relation to prohibited magazines is not.

Detailed analysis

Prohibition on the manufacture of prohibited items

Clause 31 (proposed new section 22F) provides that no person may manufacture a prohibited item (a prohibited firearm, magazine or part).

Exemption from the prohibition on manufacture, use and supply of prohibited items

Clause 8 (sections 4A(1A) and 4A(1B)) provides for:

- businesses manufacturing prohibited parts for permitted supply that existed before 12 April 2019 to continue to manufacture those parts; and
- businesses involved in the permitted supply of prohibited parts before 12 April 2019 to continue using prohibited firearms to test those parts.

The proposed new section 4A(1C) notes employees engaged by these businesses are also exempt people.

The proposed new section 4A(3) defines permitted supply as the supply of prohibited parts to the Crown, the export of prohibited parts (provided they are permitted under the Customs and Excise Act 2018), and the supply of prohibited parts to other persons expressly permitted under the Act to possess prohibited parts.

Schedule 2, Part 2 revokes regulation 28F so that the exemption for the manufacturing of prohibited magazines ceases upon the Bill's enactment.

HOW THIS ACT BINDS THE CROWN

clause 7, section 3 amended

clause 82, new section 74(1)(rd)

Summary of proposed amendments

The Bill proposes to expand the classes of people who are exempt from the Act's restrictions on the possession, carriage, importation and manufacture of firearms and other items.

Application date

This item is intended to come into force on the day after enactment date.

Background

The Act does not completely bind the Crown, as it exempts the Crown, or personnel from specific departments, from parts of the Act. The exemptions are currently too narrow to allow specified people to perform their roles effectively.

Detailed analysis

Exemptions for specified people

Clause 7 (proposed amendment to section 3) expands the classes of persons who are exempt from the Act's restrictions on the possession, carriage, importation, and manufacture of firearms and other items. These would now include:

Exemption	Person
Carry/possess	<ul style="list-style-type: none">• Persons authorised by the Commissioner of Police or the Chief of Defence Force to provide training in the use of firearms, etc. to members of their organisations• A civilian employee of the Ministry of Defence, under the direct supervision of a member of the New Zealand Defence Force• A customs officer
Import or possess	<ul style="list-style-type: none">• An agent of the Crown acting within their written authority• Visiting law enforcement officer from another country who is authorised by the Commissioner
Manufacture	<ul style="list-style-type: none">• The Crown or an agent of the Crown

Exemptions from other requirements

Clause 7 also clarifies that certain requirements in the Act (e.g. in relation to the registry and marking firearms or other items) do not apply to the Crown unless regulations provide that they do.

Regulation-making power

Clause 82 (proposed new section 74(1)(rd)) allows regulations to be made authorising other persons to carry or possess firearms and other items belonging to the Crown.

FIVE YEAR REVIEW OF ARMS ACT

clause 83, new section 95

Summary of proposed amendments

The Bill proposes that the Minister of Police is required to review the operation of the Act, and the impact of the Arms Legislation Act 2019 (the Amendment Act), after the Amendment Act has been fully in force for five years.

Application date

This amendment is intended to come into force on the day after enactment date.

Background

The proposed amendments to the Act, and the new prohibition regime introduced in the Arms (Prohibited Firearms, Magazines and Parts) Amendment Act of April 2019, result in significant changes to the rules regulating firearms. A review of the Act is important to determine the impact of the changes.

Detailed analysis

Clause 83 (proposed new section 95) makes it a requirement for the Minister of Police to carry out a review of the Act five years after the Amendment Act has been in fully in force (i.e. all provisions have been in force for at least 5 years). The review must be completed within 18 months. A report on the review, including any recommendations for amendments to the Act, must be provided to the House of Representatives as soon as practicable after its completion.

MINOR CHANGES

A number of other minor and technical changes have been included to improve the operation of the Act. These are outlined below. It is intended the Bill will be subject to continued drafting throughout the Select Committee process, to improve the quality and modernise the language.

Throughout the Bill the terms ‘Arms Office’, which is an outdated term, is replaced with ‘Police Station’ or ‘Police’.

Clause 22 (proposed replaced section 16A) sets out the offence to import prohibited ammunition into New Zealand, which does not include the harbours and other territorial waters of New Zealand. This is to be consistent with the offence in section 16 of importing firearms, pistols, restricted weapons, parts of firearms into New Zealand without a permit.

The proposed amendment to section 18 includes that an import permit can be revoked at any time and is revoked automatically if the applicant’s licence is revoked. It also clarifies that a permit may be issued in relation to items that are to be brought into New Zealand in a single consignment or at the same time. These permits will only apply once and not to any outstanding items from the consignment.

The new section 66D places obligations on crafts from foreign countries who have an arms item on board, but do not intend to bring the arms item into New Zealand, to give notice to New Zealand Customs and comply with any directions.

The proposed replaced section 69 provides that a convicting court must (currently this is worded as “may”), as part of its sentencing, specify that an individual must forfeit to the Crown their firearm, airgun, pistol, restricted weapon, imitation firearm, prohibited item, ammunition or explosive, if they are convicted of an offence involving one (or more) of these items. However, the convicting court need not make an order if it considers it unjust to do so.

Clause 13 of new part 2 of Schedule 1 requires registered owners of kea guns to either obtain an endorsement for possession of the kea gun as a bona fide collector, director/curator of a museum, or memento or surrender it to Police.

Clause 17 of new part 2 of Schedule 1 provides for regulations for transitional matters.

Schedule 2 provides for consequential amendments and amendments to the Arms Regulations 1992.