

BRIEFING FOR THE MINISTERS OF FOREIGN AFFAIRS AND POLICE			
Priority	<input type="checkbox"/> Urgent <input checked="" type="checkbox"/> Time-Sensitive <input type="checkbox"/> Routine		
Title	<i>Acceding to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition</i>		
Date	12 July 2019	Ref	BR/19/69

### Executive summary

- As part of work to strengthen the firearms regulatory framework, making additional changes would enable New Zealand to accede to the United Nations *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition* (the Firearms Protocol).
- The Firearms Protocol is the only United Nations instrument relating to transnational organised crime and disarmament that New Zealand has not joined. Becoming party to the Firearms Protocol supports New Zealand's efforts to combat transnational organised crime, and provides strong enforcement options to penalise those involved in the illegal manufacture and trafficking of firearms. It also signals New Zealand's commitment to addressing the impact that illegal arms transfers can have on regional and international security.
- On 12 June 2019, Cabinet Social Wellbeing Committee authorised the Ministers of Foreign Affairs and Police to consider advice on acceding to the Firearms Protocol, and should you wish to proceed, to issue drafting instructions to Parliamentary Counsel Office. Cabinet confirmation would be sought when seeking approval to introduce the second Arms Amendment Bill [SWC-19-MIN-0063 refers].
- Acceding to the Firearms Protocol requires States to have:
  - criminal offences related to the illegal manufacturing of, and trafficking in firearms
  - a system of government authorisations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms
  - measures relating to the marking, tracing, confiscation, reactivation and security of firearms
  - an effective system of control over the import and export of firearms, and measures relating to arms brokering.
- Most of the Firearms Protocol's obligations can be met through the existing legal framework, or through changes to the Arms regime already agreed by Cabinet.

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This means only a few additional changes are required to enable New Zealand to accede to the Firearms Protocol:

- introducing new offences, which can be applied extraterritorially, in the Arms Act 1983: the illegal manufacture of firearms and parts; the illegal trafficking of firearms, parts and ammunition; and the falsifying or removal/altering of firearms markings
  - requiring all firearms manufactured or imported to have an identifying mark (such as a unique number). This could be done through changing current marking requirements in the Arms Act 1983 and Arms Regulations 1992
  - requiring records of firearms manufactured in New Zealand to be kept for at least 10 years. This could be done through changing current record keeping requirements for dealers/manufacturers in the Arms Regulations 1992 from at least 5 years to at least 10 years
  - two technical changes to the definition section of the Arms Act 1983 for the avoidance of doubt – adding silencers to the definition of ‘parts’ for all firearms, and clarifying that antique firearms do not include firearms manufactured after 1899
  - consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999 to reference the Firearms Protocol and new offences to enable us to provide international co-operation to other State Parties under the Firearms Protocol, and the parent Convention, the United Nations Convention against Transnational Organised Crime
  - tightening some procedural (non-legislative) requirements for the export of firearms, such as seeking the approval from importing and transit states.
6. While very small quantities of illegally trafficked firearms and parts are seized at the border each year, this may increase given the growth in organised crime groups, both internationally and in New Zealand, and the ease with which technology enables firearms and parts can be manufactured. Introducing greater controls within New Zealand, including a firearms registry, may also increase the demand for illegally imported firearms and parts.
  7. Under current legislative settings, some firearms are already required to be marked on manufacture or import. Extending these marking requirements would also be required to support the implementation of the firearms registry.
  8. Making the changes would 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 leak into the hands of criminals and organised crime groups – both here and overseas.
  9. In accordance with Standing Orders, all multilateral treaties must be presented to the House for Parliamentary Treaty Examination. New Zealand completed this process for the Firearms Protocol in 2004, when the treaty was presented to the House for Parliamentary Treaty Examination. The Government at the time

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proceeded to introduce the necessary legislation, but it did not pass and New Zealand could not proceed with accession to the Protocol at that time.

10. As the Parliamentary Treaty Examination process has already occurred for the Firearms Protocol in 2004, it does not need to be repeated. However, if the Government agrees to accede to the Firearms Protocol, given the time since accession was last considered, it would be appropriate to advise the Select Committee considering the second Arms Amendment Bill that the Government intends to accede to the Firearms Protocol following passage of the Bill. The Select Committee could be invited to draw any matters regarding accession to the Firearms Protocol to the attention of the House when they report back.
11. Should Government choose not to accede to the Firearms Protocol at this time, the proposed changes would help strengthen the firearms regulatory regime. Police recommends these changes still be considered for inclusion in the second Arms Amendment Bill to strengthen our response in combatting organised crime.
12. To enable the proposed policy changes to be included in the second Arms Amendment Bill at introduction, we need your decisions by 30 July 2019.

### Recommendations

It is recommended that the Ministers of Foreign Affairs and Police:

- 1) **note** that New Zealand has not acceded to the UN *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition* (the Firearms Protocol)
- 2) **note** that acceding to the Firearms Protocol would enhance New Zealand's ability to combat organised crime, especially at a transnational level; complement and enhance the aim of the firearms registry to track firearms entering and exiting the country; and signal New Zealand's commitment to addressing the impact of illegal manufacturing and trafficking of firearms
- 3) **note** that, on 12 June 2019, Cabinet Social Wellbeing Committee authorised the Ministers of Foreign Affairs and Police to make policy decisions, and issue any drafting instructions required, to enable New Zealand to accede to the Firearms Protocol
- 4) **note** that many of the Firearms Protocol's obligations can be implemented under the current framework, or through changes already proposed to the Arms Act 1983

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- 5) **agree** that the following further changes be made to enable New Zealand to accede to the Firearms Protocol, and that the changes specified in paragraphs (a) to (f) be incorporated in the second Arms Amendment Bill:

- a) new offences which can be applied extraterritorially: the illegal manufacture of firearms and parts, and the illegal trafficking of firearms, parts and ammunition and falsifying or removal/altering of firearms markings

Yes/No

Yes/No

- b) that the above new offences have penalties within the 7-10 years range for illegal manufacture or trafficking offences, and lower penalties for falsifying or removing markings offences

Yes/No

Yes/No

- c) amending the Arms Act 1983 and Arms Regulations 1992 to require all firearms manufactured in or imported into New Zealand to have an identifying mark

Yes/No

Yes/No

- d) amending the Arms Regulations 1992 to require records of firearms manufactured in New Zealand to be kept for at least 10 years

Yes/No

Yes/No

- e) two technical changes to the definitions section of the Arms Act 1983 for the avoidance of doubt – adding silencers to the definition of ‘parts’ for all firearms, and clarifying that antique firearms do not include firearms manufactured after 1899

Yes/No

Yes/No

- f) consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999 to include references to the Firearms Protocol and or new offences

Yes/No

Yes/No

- g) tightening of some procedural requirements for the export of firearms, such as seeking the approval from importing and transit states

Yes/No

Yes/No

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- 6) **note** that these changes are unlikely to have a significant impact on law-abiding firearm owners, manufacturers or importers
- 7) **agree** that Police, in conjunction with the Ministry of Foreign Affairs and Trade (MFAT), develop drafting instructions to give effect to the decisions above

Yes/No

Yes/No

- 8) **note** that, if recommendation 5 is agreed to, Cabinet confirmation will be sought as part of the LEG Cabinet paper process
- 9) **agree** to recommend that the Select Committee takes into consideration that the Firearms Protocol is one of the reasons for some of the provisions in the second Arms Amendment Bill

Yes/No

Yes/No

- 10) **direct** MFAT, in conjunction with Police, to develop any other material required to support the accession to the Firearms Protocol

Yes/No

Yes/No

- 11) **forward** this paper for information to Ministers with Power to Act (the Prime Minister, the Deputy Prime Minister, Minister of Finance, Minister of Justice and Minister of Defence)

Yes/No

Yes/No

### Ministers' comments and signature

.....  
Rt Hon Winston Peters  
Minister of Foreign Affairs

.....  
Hon Stuart Nash  
Minister of Police

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### **Acceding to the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition***

#### **Purpose**

1. This paper seeks your approval to issue drafting instructions to enable New Zealand to accede to the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition* (the Firearms Protocol), which was concluded in 2001.

#### **Background**

2. New Zealand is a party to the United Nations (UN) 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.
3. There are three protocols under the Convention: the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, and the Firearms Protocol. New Zealand has not signed or ratified the Firearms Protocol (attached as Appendix 1).
4. Along with the UN Arms Trade Treaty (2013) and the UN Programme of Action on Small Arms, the Firearms Protocol is one of the principal international mechanisms aimed at combatting the illegal manufacturing of and international trafficking in firearms. The Firearms Protocol forms a core part of the UN's transnational organised crime framework by setting the basis to prevent and criminalise the illegal manufacturing or trafficking in firearms.
5. The Firearms Protocol is the only international instrument relating to transnational organised crime and disarmament which New Zealand has not joined.
6. On 12 June 2019, Cabinet Social Wellbeing Committee (SWC) considered the *Strengthening the Framework for the Safe Use and Control of Firearms* Cabinet paper. SWC authorised the Ministers of Foreign Affairs and Police to consider advice on acceding to the Firearms Protocol [SWC-19-MIN-0063 refers].
7. Should you wish to proceed, SWC authorised you to issue drafting instructions to Parliamentary Counsel Office, with Cabinet confirmation to be sought as part of the process for seeking approval to introduce the second Arms Amendment Bill [SWC-19-MIN-0063 refers].



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### What acceding to the Firearms Protocol requires

8. Acceding to the Firearms Protocol requires States to make a range of commitments:

Commitment	Assessment of New Zealand's current framework
Criminal offences related to the illegal manufacturing of, and trafficking in, firearms	This requirement is not met. The current offence framework does not go far enough to meet this requirement (which would also require consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999).
A system of government authorisations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms	This requirement is met with the exception of three minor or technical changes: <ul style="list-style-type: none"> <li>changes are needed to two definitions ('antique firearm' and 'parts') to fully meet the Firearms Protocol requirements.</li> <li>manufacture records also need to be maintained for at least 10 years.</li> </ul>
Measures relating to the marking, tracing, confiscation, reactivation and security of firearms	This requirement is partially met New Zealand fully complies with the reactivation and security commitments. The proposal for a firearms registry would enable New Zealand to systematically track firearms and parts from manufacturer/importer to purchaser. Changes are needed to fully meet the marking requirements in relation to manufacture and importing of firearms. The changes would also be required to implement the firearms registry. A new offence for falsifying or interfering with existing firearm markings.
An effective system of control over the import and export of firearms, and measures relating to arms brokering	This requirement is partially met. Current legislation meets requirements for importing firearms and parts, while permits to import ammunition are proposed as part of the second Arms Amendment Bill. Existing administrative and legislative processes meet most export requirements. Processes can be modified to meet approval requirements from importing and transit states re export of firearms, without the need for legislative change. Brokering requirements are fully met.

9. To enable accession to the Firearms Protocol, the following legislative or regulatory changes are required:


- introducing new offences, which can be applied extraterritorially, in the Arms Act 1983 relating to the illegal manufacture of firearms and parts; the illegal trafficking of firearms, parts and ammunition; and the falsifying or removal/altering of firearms markings. Police, MFAT and Ministry of Justice are working through the appropriate penalties for these offences, with illegal manufacturing and trafficking offences likely to be within the 7-10 year range, and a lower penalty range for offences around falsifying or removal/altering of markings. In accordance with general practice, the Attorney-General's consent would be required to bring proceedings in cases involving extraterritorial jurisdiction.

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- requiring firearms manufactured in, or imported into New Zealand to have an identifying mark (such as a unique number) through changing marking requirements in the Arms Act 1983 and Arms Regulations 1992. This is unlikely to have a significant impact on manufacturers or importers as most firearms manufactured in or imported into New Zealand already include the required information. It may have an impact on firearm owners who manufacture their own firearms. These changes are also required to support the introduction of the firearms registry (as firearms will require a unique identifier in order to be registered).
  - requiring records of firearms manufactured in New Zealand to be kept for at least 10 years. This could be done through changing current record keeping requirements for dealers/manufacturers in the Arms Regulations 1992 from 5 years to 10 years. This will have some impact on dealers and manufacturers.
  - two technical changes to the definition section of the Arms Act 1983 for the avoidance of doubt – adding silencers to the definition of ‘parts’ for all firearms, and clarifying that antique firearms do not include firearms manufactured after 1899 (the date defined in the Firearms Protocol).
  - consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999 to reference the Firearms Protocol and new offences. This will enable New Zealand to provide international co-operation to other State Parties under the Firearms Protocol, and the parent Convention, the United Nations Convention against Transnational Organised Crime.
10. These changes support activity to strengthen the firearms regulatory framework. More information on these changes is set out in Appendix 2.

### Benefits of acceding to the Firearms Protocol

*Accession would support New Zealand's activity to combat organised crime*

11. Organised crime is a worldwide corrupting influence, and New Zealand is not immune:
- s 6(c)  

  - While very small quantities of firearms and parts are seized at the border, this may increase given the growth in organised crime groups, both internationally and in New Zealand, and the ease with which technology enables firearms and parts can be manufactured
  - The number of firearms seized by Police is increasing although the number of firearms reported stolen is trending downwards. While most firearms in criminal hands have been stolen, a small number have come in illegally through international diversion.



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- Organised crime groups in New Zealand are involved in the manufacture or distribution of methamphetamine, and the percentage of firearms found during drug search and seizures is increasing.
  - The Pacific is an established transshipment point for drugs entering New Zealand and Australia, and it also a route by which illegal firearms can be brought into New Zealand.
12. Government has invested in increased Police staffing to combat organised crime, and there is a well-known link between organised crime groups, violence, drugs and illegal firearms. While Police prioritise incentives to intercept drug distribution activities and seize unlawful firearms, organised crime groups are expert at adapting. Better technology, increased people and commodity flows are key enablers. Police continue to look for new ways to disrupt the activities of organised crime groups, and, in particular, the methamphetamine distribution network.
  13. Acceding to the Firearms Protocol would help restrict opportunities for organised crime groups to illegally trade or manufacture firearms and provide means by which New Zealand can work with other State parties to confirm the source or legitimacy of firearms. The provision of new offences, which can be applied extraterritorially, would also enable New Zealand to take strong enforcement action against those involved in the illegal manufacture or trafficking of firearms.
  14. While the Firearms Protocol is largely focused on cross-border movement of firearms, it would work in conjunction with the proposed firearms registry to enable Police to track firearms across their life cycle from manufacture / import to exit / destruction. This would enable Police to trace seized firearms back to their last known owner / importer, and in doing so, make it more difficult for firearms to 'leak' into the black market, and to take decisive action when they do.

*Accession would enhance New Zealand's reputation as a leading voice on transnational organised crime and arms control*

15. The misuse and irresponsible transfer of firearms can lead directly to human rights abuses, death and suffering. Small arms in particular, kill close to half a million people every year globally. In the wrong hands, small arms and light weapons support criminal activities and fuel conflicts in every part of the world.
16. By becoming a party to the Firearms Protocol, New Zealand would confirm its commitment to multilateral efforts against transnational organised crime, and to addressing the impact that illegal manufacturing and trafficking of firearms can have on regional and international security.
17. Accession would enhance our reputation as a leading voice in both the transnational organised crime and disarmament / arms control field, and build on our quick legislative response to the 15<sup>th</sup> March terror attack.

### **The costs of acceding to the Firearms Protocol are minimal**

18. The main cost to firearms owners, manufacturers and dealers will be the requirement that each firearm manufactured or imported has a unique identifier.

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However, these costs will be minimal as most firearms manufactured in New Zealand already include the required markings, and only a small number of imported firearms do not have the required markings. In addition, these changes would be required for the firearms registry as each firearm would need to have a unique identifier. Aligning these requirements will mean no marginal costs to firearms owners, manufacturers and dealers.

19. There are no cost implications for MFAT as the changes to export controls are essentially procedural. MFAT advises the reporting requirements for the Firearms Protocol are still being developed. However, they do not appear as onerous as for other international instruments (for instance, New Zealand reports all arms exports annually for the UN Arms Trade Treaty).
20. While not determined yet, it is likely that Police would administer the Firearms Protocol. Police will work with MFAT and the Ministry of Justice on any reporting requirements. Given other changes underway, it is difficult for Police to identify the costs and resources implications of the changes or reporting requirements.
21. There are also reporting mechanisms generally under the Convention. As part of the reporting regime, State parties undergo an implementation review, which will also cover the Convention's Protocols. The exact process for this review is not yet finalised. The Ministry of Justice is discussing with agencies who will lead the review for New Zealand.
22. Given that New Zealand is already a party to the Convention and the first two Protocols, there is likely to be only marginal increased costs and work should New Zealand also accede to the Firearms Protocol. Moreover, given the growth in organised crime group membership, and of international organised crime groups in New Zealand, our non-accession to the Firearms Protocol may result in negative comment when New Zealand's implementation of the Convention is reviewed.
23. MFAT, Police and the Ministry of Justice (and any other relevant department) would also work together to identify how New Zealand would be represented at relevant international forums, and how costs would be met.

### **Opposition to the previous attempt to accede to the Firearms Protocol**

24. In 2004, the Government started the parliamentary process to accede to the Firearms Protocol. The Parliamentary Treaty Examination was completed and a Bill (the Arms Amendment Bill (No 3) 2005) was introduced in 2005 to implement the legislative changes required. In 2010, the Government formally withdrew the Bill.
25. The Law and Order Committee considering accession was split on the merits of doing so. The members opposed to accession gave the following reasons:
  - New Zealand's law was already sufficient to deter, detect and prosecute offenders
  - increased compliance costs to taxpayers, firearm dealers and owners

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- the lack of evidence of illegal supply of firearms and other weapons through New Zealand or the Pacific
  - other countries – such as Australia, Canada, the United Kingdom and the USA – not ratifying the Firearms Protocol
  - difficulties in marking ammunition [*note, this is not required under the Firearms Protocol although some manufacturers have processes for marking their ammunition*].
26. We consider these arguments have largely been overtaken by events, including New Zealand's ratification of the Arms Trade Treaty, the growing international sentiment against the illicit trade in firearms, and the increased use of the Pacific as a transshipment point for drugs entering New Zealand and Australia
27. As noted, given the wider changes to the Arms Act 1983 currently underway, acceding to the Firearms Protocol will place minimal additional burden on firearms owners, manufacturers, importers, or the general public. That burden can be justified in the context of the increased international organised crime group presence in New Zealand and the potential harm caused by transnational organised crime, of which illegal firearms manufacturing and trafficking is a part.
28. The Firearms Protocol now has 118 parties including the EU, the Nordic countries, France (February 2019), and Palau (May 2019). While Australia, the United Kingdom and Canada have signed the Firearms Protocol, they have not ratified it, and for each country, it is still a matter under consideration. The United Kingdom is subject to many of the obligations through the EU's ratification,<sup>s</sup>

6(b)

### Advice on Parliamentary Treaty Process

29. In New Zealand, the power to conclude treaties rests with the Executive. Before ratification of a treaty, Standing Orders (397-400) and the Cabinet Manual require any treaty subject to ratification, accession or approval by New Zealand to be presented to the House for Parliamentary Treaty Examination. For the Firearms Protocol, this occurred in 2004.

30. s 9(2)(h)

If the Government agrees to accede to the Firearms Protocol, it would be appropriate to advise the Select Committee considering the second Arms Amendment Bill given the time that has elapsed.

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32. The Select Committee could be invited to draw any matters regarding accession to the Firearms Protocol to the attention of the House when they report back on the Bill. If agreed, MFAT would draft a letter for the Minister of Police to the Select Committee chair to this effect.

### Consultation

33. This paper has been consulted with the Ministry of Justice, the New Zealand Customs Service, and the New Zealand Defence Force.

### Next steps

34. Should Ministers agree that New Zealand should accede the Firearms Protocol:
- Police would develop drafting instructions so the proposals can be included in the second Arms Amendment Bill, due to be considered by Cabinet LEG Committee on 20 August 2019.
  - MFAT would draft a letter for the Minister of Police to send to the Chair of the relevant Select Committee, asking it to consider the Firearms Protocol at the same time as considering the Bill.
  - MFAT and Police would work through any other activity required for accession.
35. Should Ministers consider that accession should not progress at this time, Police consider the Arms regime would be strengthened by including these changes in the second Arms Amendment Bill and seeks your agreement to progress them regardless of any decision on accession. This would future proof the Arms Act 1983 enabling New Zealand to accede to the Firearms Protocol at a later date if it so chose.

.....  
Bede Corry  
Deputy Chief Executive  
Ministry of Foreign Affairs and Trade

.....  
Mike Clement  
Deputy Commissioner, National  
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s 9(2)(a)		