

Rt Hon Jacinda Ardern, Prime Minister  
Rt Hon Winston Peters, Deputy Prime Minister  
Hon Grant Robertson, Minister of Finance  
Hon Andrew Little, Minister of Justice  
Hon Stuart Nash, Minister of Police  
Hon Ron Mark, Minister of Defence

BRIEFING FOR MINISTERS WITH POWER TO ACT			
<b>Priority</b>	<input type="checkbox"/> Urgent <input checked="" type="checkbox"/> Time-Sensitive <input type="checkbox"/> Routine Decisions required for the second firearms Bill		
<b>Title</b>	Strengthening the framework for information sharing and introducing direct data access provisions		
<b>Date</b>	6 August 2019	<b>Ref</b>	BR/19/86

### Executive summary

1. This paper seeks decisions from the Prime Minister, the Deputy Prime Minister, Minister of Finance, Minister of Justice, Minister of Police and Minister of Defence, as Ministers with Power to Act on policy decisions to progress the Arms Amendment Bill (the Bill).
2. The paper recommends mechanisms for technology-enabled information sharing in relation to the firearms registry [SWC-19-MIN-0063]. It considers the detailed drafting for information sharing mechanisms, including for the Direct Data Access (DDA)-type provisions for the firearms Bill. DDA mechanisms enable information flows to be automated between agencies. DDA mechanisms should only be used if the privacy implications have been carefully considered.
3. As directed by Cabinet, Police discussed the information sharing proposals with several agencies and the Office of the Privacy Commissioner (OPC). Other agencies support provision for a DDA mechanism that provides access to the firearms registry in certain situations. During this process, the OPC also acknowledged that a DDA mechanism could be useful in some situations. OPC also provided advice on appropriate mechanisms that either fully comply with the Privacy Act, or if not being fully compliant, minimise the impacts on privacy.
4. Police also proposes a DDA mechanism to allow it (for a period of ten years) to have access to specified agencies' data repositories, in specific circumstances and with specific controls, to assist it to determine the fit and proper status of existing firearms licence owners.

5. The OPC has more recently raised serious concerns about the lack of specificity proposed in the draft legislation and a consequent concern about the level of analysis undertaken to date on this issue.
6. Police's response to this is that we are initially only seeking enabling provisions in the Bill. Should Ministers agree to the establishment of these enabling provisions, Police proposes to undertake a more fulsome process following the Bill's enactment to develop the proposed DDAs. This process will be specified in the legislation and to provide visibility to Ministers, drafting instructions for this element of the Bill are included as an Annexe to this briefing.
7. Police will follow the specified process and, in addition, will undertake public consultation and engagement with the statutory advisory body to be established in the Bill. For transparency, Police proposes that the Bill include a Schedule which lists the databases accessible to the Police, the holder agencies and the purpose of the access. This Schedule will be populated by Order in Council following the process proposed above.
8. This approach recognises the rapid pace in which the Bill is being progressed and the time required to effectively manage this complex analysis and engagement process. Police considers the process that will be drafted in the Bill provides for the necessary engagement with OPC, the public and agencies to provide sufficient transparency and oversight.
9. Following enactment of the Bill, Ministers will be asked to agree to the proposed DDAs and Cabinet to approve the Order in Council that populates the Schedule outlined above.
10. This paper sets out the range of information sharing mechanisms that Police proposes to include as part of the firearms regime and the process to be followed to put these in place. Bullets (a) and (e) below can be implemented operationally, while bullets (b), (c) and (d) below require legislative drafting. The regime would include:
  - a. operational mechanisms that are permitted under the Privacy Act, such as Memoranda of Understanding (MoUs) that allow technological access if firearms licence applicants consent to the collection of that information;
  - b. legislative provisions in the proposed firearms Bill (the Bill) for a DDA mechanism to enable other agencies to access specified information in the firearms registry for specified purposes;
  - c. legislative provisions in the Bill for a DDA mechanism to enable Police to access specified information from other agencies for national security, organised crime and border security;
  - d. a regulation-making power in the Bill to specify the classes of health practitioners that would be enabled to access some information in the firearms registry and the conditions under which access is permitted;
  - e. operational case-by-case processes that are permitted under the Privacy Act under exceptions to the Privacy Principles for the smaller numbers of queries for which significant personal and public safety risks exist.
11. With your approval, Police will provide PCO with the attached drafting instructions to establish the enabling provisions outlined above. Putting in place the DDAs

will require considerable further work and engagement. Note that that the OPC are expected to retain a strong and vigilant interest in the privacy implications of this work, may submit on the Bill during the Select Committee process and may express concerns about a DDA mechanism that enables Police to access other departments' data repositories. Police proposes to work closely with OPC to ensure adequate safeguards are put in place.

## Recommendations

Police recommends that Ministers with Power to Act:

- a) **Note** Cabinet has agreed the Bill will contain technology-enabled information sharing mechanisms, and delegated authority to Ministers with Power to Act to consider these mechanisms, including consideration of Direct Data Access (DDA)-type provisions
- b) **Agree** the Bill will include provisions authorising DDA agreements to be entered into to enable other agencies to access specified information in the firearms registry for defined purposes Yes/No
- c) **Agree** the Bill include a regulation-making power to specify classes of health practitioners that may directly access the firearms registry for defined purposes Yes/No
- d) **Note** that the drafting for the DDA provisions in the Bill will require that any agreements or regulations set limitations on the situations in which the firearms registry can be queried, the people who can make queries, and the types and amounts of information that may be accessed
- e) **Note** that it is anticipated that in most situations a DDA agreement would enable other agencies to only query peoples' names and addresses on the firearms registry in order to confirm whether the individual holds a firearms licence
- f) **Agree** that the Bill will provide for a DDA mechanism enabling Police to access the data repositories of other agencies for specified purposes for a period of ten years Yes/No
- g) **Note** that, following enactment, considerable further analysis, cross agency engagement and consultation with the OPC, the public and the statutory advisory body (to be established in the Bill) will be undertaken before seeking Ministerial approval of the proposed DDAs.
- h) **Note** that for transparency, following the processes outlined in recommendation g), Police proposes to seek Cabinet approval of an Order in Council to populate a Schedule in the Act specifying

the databases accessible to the Police and the holder agencies of those databases

- i) **Note** that the processes for approving a DDA agreement will involve Ministerial approval, and consultation with the Privacy Commissioner
- j) **Note** that the Cabinet Legislation Committee paper for the Bill will include recommendations for information sharing for the firearms regime. Yes/No



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Andrew Coster  
Deputy Commissioner: Strategy and Partnerships

<b>First contact</b>	s 9(2)(a) [REDACTED]	[REDACTED]
<b>Second contact</b>	Andrew Coster, Deputy Commissioner, Strategy and Partnerships	s 9(2)(a) [REDACTED]

## **Strengthening the framework for the safe use and control of firearms: Information sharing arrangements**

### **Purpose**

1. This briefing seeks approval from Ministers with Power to Act to the information sharing mechanisms for the firearms regime. In particular, officials have further explored options for mechanisms for technology-enabled Direct Data Access (DDA)-type provisions to be drafted in the upcoming firearms Bill.

### **Background**

2. On 12 June 2019 Cabinet Social Wellbeing Committee (SWC) approved the drafting of an Arms Amendment Bill (the Bill). The Bill is scheduled to be approved by Cabinet for introduction to Parliament on 26 August. Cabinet authorised the Prime Minister, the Deputy Prime Minister, Minister of Finance, Minister of Justice, Minister of Police and Minister of Defence to make policy decisions. Cabinet agreed that, to support the functioning of a technology-enabled registry, information sharing options for the Bill should be further considered, including mechanisms DDA-type provisions similar to those in the Intelligence and security Act 2017 [SWC-19-MIN-0063; recommendation 83].
3. A key reason for seeking authority in primary firearms legislation to share information is to ensure that any information sharing has legal authorisation, while ensuring that there are adequate safeguards to protect the privacy of individuals. This paper seeks approval for drafting proposals for technology-enabled information sharing for the Bill.

### **Information in the firearms regime is important for fit and proper assessments and evaluation of ongoing risk**

#### *Fit and proper assessments*

4. Police needs to satisfy itself that all people who hold firearms licences will possess, use and store them responsibly and safely. It does this through a fit and proper person test, where currently, applicants are assessed against criteria set out in the Arms Manual 2002. To date, for fit and proper testing, Police has relied on its own internal information as well as that provided by firearms applicants and their referees. This approach is not sufficiently robust to ensure that Police can ensure that all New Zealand firearms licence holders are 'fit and proper'.
5. The Bill proposes a more robust fit and proper assessment by broadening the criteria that a person can be assessed against. The criteria include patterns of behaviour that raise concerns about national security, organised crime, online extremism, and violence. The criteria will also be in the Act rather than in operational policy, increasing the transparency of information that applicants will be assessed against.
6. This move increases the amount of information that feeds into a fit and proper assessment. It also elevates the expectation that Police's information collection system will ensure that information is robust and verifiable in order to make the right decision. If decisions about fit and proper assessments are based on

incomplete or incorrect information, the impacts can include loss of life and/or firearms being in the possession of organised criminal groups or others not suitable to possess them. Police is concerned to ensure that the existing cohort of licence holders are fit and proper persons according to current law, as well as ensuring that new applicants meet the new requirements in the Bill.

*Re-evaluation of information if concerning behaviours arise*

7. Once people have received a firearms licence, Police continues to assess ongoing firearms risks to personal and public safety. Police does this by acting on information it holds (e.g. a pattern of concerning behaviour) or that it may receive from concerned members of the public or family members.
8. Currently, other agencies and/or health practitioners are not expected to alert Police to potential risks involving firearms. As a consequence, this rarely happens, even if they hold information that could help Police to prevent harm. The Bill changes this. Police will likely receive more assistance from other agencies to identify risks. Similarly, information from both inside and outside Police may be needed if Police is required to re-evaluate the information it holds on firearms risks.

*Other agencies and people with public facing roles may need information on firearms*

9. An agency other than Police may need to manage firearms risks for their own purposes. Public-facing agencies sometimes observe concerning behaviour or are threatened by a client. Knowing whether the client has access to firearms is an important piece of information for assessing their risk status.<sup>1</sup> Agencies such as MFAT and Customs are also involved in managing importation of firearms and needs access to licensing information to deliver this function.

**The barriers to effective information sharing are costs and individual decision-making processes**


10. At present, information sharing between agencies relies on person-to-person, manual disclosures. The weaknesses of this approach are:
  - There can be a single point of failure in an information sharing chain (e.g. one person does not pass important information on, or doesn't realise the significance of a particular piece of information). In post-event hindsight, it is common to find that important information had not been shared.
  - There is a high resource cost in person-to-person information sharing between agencies and this drives behaviours that reduce information sharing. That is, a person or agency takes decisions to minimise the number of requests made to other agencies so as not to impose costs on others, and/or information requests are strictly prioritised and limited by one agency.
  - The scale of the information exchange needs to be high. The Bill reduces the duration of firearms licences from 10 years to 5 years. The change will mean that Police will need to assess upwards of 45,000 applications a year as well as

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<sup>1</sup> s 6(c)



monitor risks for a cohort of 250,000 firearms licence holders. s 9(2)(g)(i)



11. Officials from a range of agencies with important data holdings have discussed proposals to reduce the barriers in ways that work within the bounds of privacy law, and:
  - ensure that information on the location of firearms is not inappropriately revealed;
  - create mechanisms that provide legal authority for information sharing; and
  - ensure that there are adequate safeguards to protect the privacy of individuals' information.

**Four types of information sharing mechanisms would work in different parts of the firearms regime**

*Memoranda of Understanding (MoU)*

12. MoU are agreements between agencies formalising information sharing practices. Police does not currently have formal MoUs specific to the firearms regime. An MoU must operate within the bounds of the Privacy Act. MoUs *do not require legislative enabling provisions*.
13. Under an MoU, Police can seek information from another agency, and the agency receiving the request would make an active decision about whether to disclose the information to Police or not.<sup>2</sup> While this type of MoU does not guarantee that information sharing will occur in every instance, it sets a formal expectation that information should be shared. Police will formalise MoUs for case-by-case situations in which there is a licence holder for whom additional information from other agencies will help to assess risks.
14. An MoU can also be used for technology-enabled data sharing if there is prior consent from licence holders and applicants. Police intends to use a consent-based MoU to access other agencies' information for the purpose of making fit and proper assessments at the point of licence application. For example, Police would be able to seek an automated travel history if applicants consent to this as part of the application process. If an applicant does not consent to providing or allowing Police to access all the information for a fit and proper assessment, their application for a licence cannot proceed. Consent provisions of this nature are common in several other Government assessments, including Police checks for

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<sup>2</sup> The active Privacy Act principle is Principle 11 which provides for disclosures for case-by-case situations in which an agency believes on reasonable grounds that disclosure is necessary to avoid prejudice to the maintenance of the law.

employment purposes. A consent-based application process will work for new licence applicants, going forward, once the Bill is enacted.

*Direct Data Access (DDA) enabling other agencies to access the firearms registry*

15. DDA enabling provisions provide the framework for mechanisms that lawfully permit agencies or persons to directly access certain information held by another agency for specific purposes without the consent of the licence holder. *A DDA mechanism of this nature requires legislative authority.*
16. This approach is similar to the data access agreement already in place for Trademe. This allows Trademe to confirm that a prospective seller or purchaser of a firearm is a legitimate licence holder and, if required, holds an appropriate endorsement. No other information is made available to Trademe but this key access to data ensures that private sales through Trademe are only between appropriate licence holders.
17. It is not always appropriate for agencies to seek firearms information directly from clients, especially when safety concerns are heightened. In these situations a DDA would allow some agencies to query name and address information on the firearms registry as an initial screening tool. Note that if the agency deems the risks to be elevated on the basis of a limited set of information, then a follow-up case-by-case information query would be put to Police. No legislative change is required for this latter aspect of the process.
18. The Ministry of Foreign Affairs and Trade (MFAT) and the New Zealand Customs Service work together with Police to monitor imports and exports of firearms. These agencies will need access to the register on a regular basis.

*DDA to enable Police to access other agencies' data repositories*

19. A DDA mechanism that enables Police to access specified information directly from other agencies for specified purposes is proposed. s 9(2)(g)(i)  
[REDACTED]
20. The DDA mechanism in the Intelligence and Security Act 2017 sets out an empowering mechanism to create agreements allowing the intelligence agencies to directly access the data repositories of other departments. Under this type of DDA arrangement for the firearms regime, Police would use the data repositories for initial screening and would then follow up with the relevant agency under a MoU for further information. *A DDA mechanism of this nature requires legislative change.* Note that Police would not be able to directly access health information or intelligence and security data repositories.
21. The primary concern related to enabling Police access to other agencies' data repositories – other than by consent at the firearms licensing state – is that such direct access would be without licence holders' consent. However, Police considers that the potential for there to be existing risks to public safety inherent in the cohort of existing licence holders outweighs the privacy considerations. A



tightened fit and proper assessment will reduce the likelihood of such public safety risk in future.

22. This risk should be managed and reduced as much as possible in the short term. A DDA of this kind will be sought for a ten year period given that some existing licence holders will not apply for a new licence for 9-10 years after the Bill is enacted. This delay is because the Bill will grandfather the new 5 year licence duration over the period of the existing licence holder's licence duration. Following this period all licence holders will have reapplied for a licence and their consent can be sought to access such information.
23. The privacy impacts can be mitigated through limiting the types of information able to be accessed and the purposes for which access is sought. For transparency, the sources of data and agencies holding the data will be included in a Schedule in the Act.
24. The proposed DDAs will be established following an extensive process that will follow the Bill's enactment. The process is outlined below and will be specified in the Bill. The Schedule will be populated by Order in Council following this same process. Drafting instructions for this element of the Bill are included as an Annexe to this briefing to provide visibility for Ministers

#### *Health information flows*

25. Cabinet agreed special provisions in the Bill that encourage health practitioners to report to Police should they have concerns about a firearms licence holder, for example due to the risk of self-harm. Police would not normally seek information from health practitioners without the consent of firearms licence holders. Instead, Police rely on health practitioners to bring to its attention any personal and public safety risks arising from their patients.
26. To enable health practitioners to fulfil their role, Police proposes certain classes of health practitioners be given DDA access to name and address information in the firearms registry. Classes might include, for example, doctors and mental health professionals. The classes of health practitioners would be specified in regulations, as they are individuals and cannot enter into an agency agreement.
27. This DDA would enable health practitioners to confirm, prior to raising any concern, that the person concerned holds a firearms licence. Without this knowledge health practitioners would have insufficient information to determine whether to report any concern to Police.
28. The regulations would specify the circumstances and conditions under which information may be accessed and used. *The special information flows for health practitioners are being drafted into the Bill as is a regulation-making power for specifying which classes of health practitioners would have direct access, and the safeguards and conditions that would apply.*

## Key features of the DDA enabling provisions

29. Recent examples of DDA provisions in legislation indicate that the privacy impacts in technology-enabled information sharing must be strictly managed. The proposals below are similar to the DDA provisions in the Customs and Excise Act and the Intelligence and Security Act.

### *Limiting the purposes for information sharing*

30. The purposes for which information may be accessed under DDA arrangements in the firearms regime are:
- identifying people and places that present risks to personal and public safety or to national security;
  - to aid in a decision whether to make appropriate referrals to Police if there are risks to personal and public safety or to national security;
  - assisting with the performance or exercise of a function, duty or power under the Customs and Excise Act 2018; and
  - assisting with the maintenance of the law including the prevention, detection, investigation, prosecution, and punishment of offences.

### *Limiting the amounts and types of information for sharing*

31. As discussed, other agencies need to access firearms information for functions relating to their own risk management, and to also help Police manage the personal and public safety risks. In these situations very little information needs to be accessed to determine next steps and whether to alert Police or not. For most queries, another agency simply needs to know whether a person has a firearms licence and/or whether a person has firearms present at a particular address.

### *The controls for protecting and sharing information*

32. Licence holders may have a concern about the sharing of personal information with respect to their own safety and the theft of their firearms. Note that any regulations or agreements are likely to include requirements that agency enquiries into the firearms registry are made by approved persons and that any delegations to authorise access have appropriate seniority in their agencies.

### *The processes for approving DDA agreements*

33. The DDA provisions would require that Ministers responsible for each agency approve a direct access agreement. Regulations allowing health practitioners access would be made on the recommendation of the Minister of Police, who would be required to consult the Minister of Health. The Bill is proposed to specify that the relevant Minister must:

- (a) be satisfied that
  - (i) direct access to the information is reasonable and practical having regard to the amount of information to be accessed; and

- (ii) there are adequate safeguards to protect the privacy of individuals, including that the proposed compliance and audit requirements for the direct access to and use, disclosure, and retention of the information are sufficient; and
    - (iii) the agreement will include appropriate procedures for direct access to and use, disclosure, and retention of the information; and
  - (b) consult the Privacy Commissioner and have regard to any comments received from the Privacy Commissioner on the proposed agreement.
34. In addition, to ensure a full and transparent process is put in place, Police proposes to undertake public consultation and engagement with the statutory advisory body to be established in the Bill prior to seeking Ministerial approval of a DDA or regulations.
35. Police expects this work to take place during 2020, after enactment but prior to the firearms register being live.

*Data repositories and agencies to be listed in a Schedule*

36. For the DDA mechanism that enables Police to access the data repositories of other agencies, it is proposed that the data repositories to be accessed, holding agencies, and purposes for access are set out in a Schedule to the Arms Act. The Schedule would be amendable by Order in Council following the process outlined above.

**Consultation**

37. The Ministry of Health, Oranga Tamariki, Customs New Zealand, the Ministry of Foreign Affairs and Trade were consulted on the proposals. The Office of the Privacy Commissioner (OPC) was consulted on the paper. Police has also discussed these proposals with the OPC. The OPC will continue to be consulted on detailed drafting of the information sharing provisions in the Bill.
38. OPC has earlier signalled its in principle support for a DDA mechanism that enables limited agencies having limited access to the registry – in particular for staff safety purposes. However, OPC is concerned about enabling Police to have DDA for the data repositories of other agencies. OPC considers that a consent-based mechanism is sufficient for the needs of the firearms regime. As discussed above, Police considers the risks inherent in the existing cohort of licence holders warrant a DDA mechanism.
39. More recently, OPC has raised serious concerns about the lack of specificity proposed in the draft legislation and a consequent concern about the level of analysis undertaken to date on this issue.
40. Police's considers that the level of detail on data to be sourced and agencies involved does not need to be set out in the enabling legislation. The fulsome process described above, to specify the DDA, consult widely on it, including with the OPC, and seek Ministerial or Cabinet decision will be when the full detail OPC seeks will be established. OPC, as well as the public and agencies will have

visibility and influence over this process and Ministers will have decision-making authority over any proposed DDA.

### **Next steps**

41. If Ministers agree, Police will issue the attached drafting instructions to Parliamentary Counsel.
42. Police will share these drafting instructions and a draft of the Bill with the Office of the Privacy Commissioner. We expect OPC to retain a strong focus on the privacy implications of the proposed DDAs and intend to work closely with them to ensure adequate safeguards are put in place. OPC is expected to provide a submission to the Select Committee examining the Bill.
43. The Cabinet paper to the Cabinet Legislation Committee will outline the proposed information sharing mechanisms in the Bill.
44. Prior to any information being able to be shared through these enabling provisions, a comprehensive process will be followed as outlined in the Bill and this briefing and Ministers would need to consider and approve the scope of specific information agreements.

**Ministers' comments and signature**

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Rt Hon Jacinda Ardern

Prime Minister

**Ministers' comments and signature**

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Rt Hon Winston Peters

Deputy Prime Minister

**Ministers' comments and signature**

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Hon Grant Robertson

Minister of Finance

**Ministers' comments and signature**

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Hon Andrew Little

Minister of Justice

**Ministers' comments and signature**

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Hon Stuart Nash

Minister of Police

Annexe

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Hon Ron Mark

Minister of Defence

PROACTIVE RELEASE











