

BRIEFING FOR THE MINISTERS OF POLICE AND JUSTICE			
<b>Priority</b>	<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> Time-Sensitive <input type="checkbox"/> Routine		
	Decisions requested by Friday 9 August to enable drafting instructions to be issued for inclusion in the Arms Amendment Bill		
<b>Title</b>	Follow up on Arms Act 1983 Offences and Penalties		
<b>Date</b>	Thursday 8 August 2019	<b>Ref</b>	BR/19/96

### Executive summary

- Following the first briefing on offences and penalties that Ministers received on Tuesday 23 July 2019, this second briefing seeks agreement:
  - for a new offence related to clubs and ranges, and for an amendment to an existing offence that was overlooked from the previous briefing (Part A)
  - to change the previously agreed approach to five offences (Part B)
  - to amend five offences and penalties that were previously identified as requiring further discussion between officials, while not amending a further five offences (Part C)
  - to not amending a number of other offences in the Act which were not explicitly discussed in the previous briefing (Part D).
- The Arms Amendment Bill contains the amendments Ministers previously agreed to (except for four of the offences discussed in Part B). Once we have your direction, Police will work with the Parliamentary Counsel Office (PCO) on drafting the remaining amendments.
- Parliamentary Counsel has requested all policy decisions and drafting instructions be received by midday on Friday 9 August. If decisions on this paper cannot be made within this timeframe, PCO recommend further changes are made by SOP shortly after the Bill is introduced. The Select Committee can then call for submissions on further amendments. The advantage of this approach is that PCO can concentrate on finalising and quality assuring the Bill. The disadvantage of this approach is that Crown Law will not see the remaining offence and penalty changes in order to inform the BORA vet.
- Justice considers that the offences and penalties proposed in this paper are irregular and sit outside best practice, particularly those containing reverse onus elements and strict liability offences attracting imprisonment. However, Justice recognises that the policy development process has been impacted by available timeframes and that the proposals are consistent with previous decisions made by Ministers on similar strict liability and reverse onus offences in the Arms Amendment Bill. Therefore, Justice does not oppose the offences proposed in

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this briefing but has signalled where it considers Ministers should carefully weigh competing concerns (such as operationality and limits on rights). Justice will seek to reiterate these views at the Cabinet stage so that Ministers are appropriately informed.

### Recommendations

Police and Justice recommend that the Minister of Police and the Minister of Justice:

- a) **note** that, as there are a number of recommendations, we have set these out for your consideration in the Appendix A attached to this paper
- b) **direct** Police to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in the table in Appendix A
- | Yes/No | Yes/No |
|--------|--------|
|--------|--------|
- c) **note** that as the Amendment Bill will shortly be considered by the Cabinet Legislation Committee on 20 August, there is a possibility that some amendments will need to be progressed through a Supplementary Order Paper rather than the Bill as introduced.

### Ministers' comments and signatures

..... / / 2019  
Hon Andrew Little  
Minister of Justice

..... / / 2019  
Hon Stuart Nash  
Minister of Police

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## Arms Act 1983 Offences and Penalties

### Background

1. Police and Justice provided a joint briefing to Ministers on Tuesday 23 July 2019 [BR/19/79]. That briefing had three purposes. First, Ministerial agreement was sought and received for a number of amendments that will be included in the Amendment Bill. Second, it identified a number of matters that officials required further discussion about. Third, it requested Ministerial agreement to the approach towards the section 66 reverse burden in relation to deemed possession.
2. Ministers agreed there be no changes to the offences that are subject to the section 66 reverse burden, with two exceptions. These related to the offences in sections 50D and 53A(2) where Ministers agreed to reduce the maximum penalties from 7 years imprisonment to 5 years imprisonment.
3. This briefing has four main parts. Part A seeks agreement to an offence and associated penalty related to the licensing of clubs and ranges, and to an amendment to an existing offence that was overlooked in the previous briefing.
4. Part B seeks agreement to change the previously agreed approach to five offences.
5. Part C addresses the offences that were identified in the previous briefing for further discussion between officials. Agreement is sought to amend five offences to address Justice concerns relating to burdens on defendants to disprove elements of the offence. Police also seek agreement not to amend a further five offences (where Justice would prefer to make amendments).
6. Part D seeks agreement not to amend a number of other offences in the Act which were not discussed in the previous briefing (half of which are offences that were added through the April Amendment Act). Some of these offences have elements that Justice consider should be addressed to accord with best practice, but Police preference is to leave them as they are.

### Justice approach and view

7. Justice considers that the offences and penalties proposed in this paper are irregular and sit outside best practice. Of particular concern are the provisions containing reverse onus elements and strict liability offences attracting imprisonment. Justice believes these formulations are problematic because they limit the right to be innocent until proven guilty per section 25(c) of the Bill of Rights Act (BORA). Additionally, they represent a departure from the Legislative Design Advisory Committee (LDAC) Guidelines for good legislative design.
8. However, Justice recognises that the policy development process has been impacted by timeframes available for making changes. Justice also notes that the proposals are consistent with previous decisions made by Ministers on similar strict liability and reverse onus offences in the Arms Amendment Act.

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9. Noting the above, Justice does not oppose the offences proposed in this briefing. Nonetheless, it has signalled where it considers Ministers should carefully weigh competing concerns (such as operationality and limits on rights) when making decisions. Justice will seek to reiterate these views at the Cabinet stage so that Ministers are appropriately informed.
10. As these offences are out of step with best practice, and to ensure the act is working as intended, it will be particularly beneficial to monitor how these offences are applied in practice, including prosecution and sentencing practices.

### **Part A: New offence and amendment to existing offence**

#### *New clubs and ranges offence*

11. A new offence and related penalty has been identified in relation to the new requirement for clubs and shooting ranges to be licensed. We propose it will be a strict liability offence<sup>1</sup> for a person, or persons, to conduct or operate a shooting range unless the Commissioner has approved the range (wording to be refined). The maximum penalty for this will be \$10,000. As is best practice for strict liability offences, a defence of “without reasonable excuse” will be provided.

#### *Existing offence*

12. Section 52(1) and (2) make it an offence to:
  - present firearms, airguns, pistols and restricted weapons (excluding prohibited weapons) at persons without a lawful and sufficient purpose, irrespective of whether the item is loaded
  - present an item at a person, without lawful or sufficient purpose, in circumstances in which it is likely to lead that person to believe that the item is a firearm (irrespective of whether the item is, actually, a firearm).
13. The provisions reflect that the unjustified presentation of a firearm is serious breach of firearms safety as well as being an act that is likely to cause distress in the person at which the item is presented. Both offences currently carry a maximum penalty of \$10,000 and/or 3 months imprisonment.
14. Neither offence has an express mental element that the prosecution must prove. Ministers previously agreed that the penalty for the offence in section 52(1) should be increased to a maximum term of imprisonment of 5 years, but that the offence should have a mens rea (mental) element added. PCO have been instructed accordingly.
15. It appears that section 52(2) was overlooked at that time. Police consider that there does not appear to be any reason why subsections (1) and (2) should not have matching penalty levels or mens rea elements. Therefore, Police propose to make similar amendments to section 52(2) as are being made to section 52(1).

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<sup>1</sup> where the prosecution is not required to prove a mens reas or ‘mental element’ related to the offence, such as intent or knowledge.

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### Part B: further advice on previous recommendations for five offences

#### *Four current strict liability offences – new approach*

16. Ministers agreed that six current strict liability offences should have a mens rea element introduced along with increases in penalties.
17. The inclusion of mens rea elements would address Justice concerns about strict liability offences attracting maximum penalties that included imprisonment, while also justifying the significant increases in penalties.
18. After further analysis, Police have concluded that for four of these offences (set out in table one below) it was difficult to add a meaningful mens rea element without fundamentally redesigning the provisions and moving them away from addressing the actual harm they were originally aimed at. On further consideration, Police consider these four offences are more clearly regulatory offences and should remain strict liability.
19. Strict liability offences are more appropriate:
  - a. in a regulatory context if the offence involves the protection of the public from those who voluntarily undertake risk-creating activities
  - b. when there is a need to provide an incentive for people who undertake those activities to adopt appropriate precautions to prevent breaches
  - c. where the defendant is best placed to establish absence of fault because of matters primarily within their knowledge.
20. Police therefore recommend that the four offences remain strict liability offences and that the penalties be adjusted down to \$10,000 or 6 months imprisonment. These penalties align with the other strict liability offences and penalties that Ministers agreed to in the previous briefing. Police will work with PCO to clarify that the prosecution is not required to prove mens rea for these offences, as, at present, a court could read this into the provision to be consistent with the New Zealand Bill of Rights Act 1990 (BORA). Additionally, Police will instruct PCO to include the defence of “without reasonable excuse”.
21. As in the previous briefing, Justice considers it would be best practice if these offences did not carry an imprisonment term. Police and Justice previously agreed on this point. Additionally, the proposed changes are significant increases from the current maximums provided. Maximum penalties should be adjusted down to reflect the fact that strict liability offences relieve the prosecution of the burden of proving the mental element of the offence, thereby engaging the right to be presumed innocent (section 25(c) of BORA). Risks associated with limiting section 25(c) are exacerbated by an imprisonment term.
22. Mitigation is provided by the inclusion of a defence to enable deserving defendants to exonerate themselves. Additionally, imprisonment is already provided for in one of these offences. Justice does not oppose the offences but notes the justifiability of any limit on rights may be finely balanced when the Bill undergoes a BORA vet, and could lead to a negative vet.



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23. Police consider the strict liability offences that attract a proposed maximum penalty of six months are appropriate in the circumstances, including the mitigations discussed in the paragraph above. Furthermore, while not determinative, Police also note that there are a number of strict liability offences in the Arms Act that attract longer imprisonment penalties. This recognises that firearms are inherently dangerous instruments and there are high standards around possession and use.

24. **Table One: new approach to four offences**

Section	Offence	Current max penalty	Comment
5(4)	dealing without a dealer's licence	\$1,000	Police propose: strict liability offence - \$10K/6 months  [NB previously proposed: 5 years with a mens rea element]
10(3)	a dealer taking possession for sale of a pistol, restricted weapon, prohibited items unless in certain circumstances	\$2,000	Police propose: strict liability offence - \$10K/6 months  [NB previously proposed: 5 years with a mens rea element]
43A(1)	sells by mail order a firearm or any ammunition for firearm or restricted weapon without order signed by purchaser and bearing an endorsement by Police	\$1000	Police propose: strict liability offence - \$10K/6 months  [NB previously proposed: \$20,000 or 2 years with a mens rea element]
48	without reasonable cause discharges a firearm, airgun, pistol or restricted weapon in or near a dwelling house or public place (so as to endanger, annoy or frighten any person)	\$3000 and/or 3 months	Police propose: strict liability offence - \$10K/6 months  [NB previously proposed: \$20,000 or 2 years with a mens rea element]

*Possession of a firearm without a licence – proposal to increase penalty*

25. Ministers previously decided to not amend section 66 (which deems possession in certain circumstances) or any of the provisions that may be subject to section 66, with the exception of two offences where Ministers lowered the maximum penalty from 7 years to 5 years. Section 66 provides that the defendant must prove that a firearm found on land or buildings occupied by them or in the vehicle they are driving is not their property and was in the possession of some other person, otherwise they are deemed to be in possession of it.
26. One of the offences that section 66 may apply to in some circumstances is possession of a firearm without a licence (section 20). This may occur if the person is not found in direct possession of the firearm, but it is on their occupied land or building (for example in an attic space) or in the vehicle they are driving (for example under a seat). While Ministers previously decided to not amend the offences that section 66 may apply to, Police consider that the maximum penalty for possessing a firearm without a licence should be increased from the current \$1,000 and/or 3 months to a maximum penalty of \$15,000 or 1 year.

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27. As set out in the previous briefing, Justice has serious concerns with the reverse onus created by section 66, which it considers unjustifiably limits the right to be innocent until proven guilty. Any increase in the penalties attaching to the reverse onus exacerbate this limit.
28. However, Police consider this offence goes to the heart of the regulatory regime. The Amendment Bill makes it explicit that possessing a firearm is privilege and not a right. Licensing is one of the most important entry points to the regime and the current penalty does not sufficiently reflect the seriousness of this offence, nor provide a sufficient deterrent.
29. For comparison, the penalty for the strict liability offences of possession of a prohibited magazine without authorisation is 2 years; possession of a pistol or restricted weapon without the appropriate authorisation is \$4,000 and/or 3 years; and possession of a prohibited firearm without authorisation is 5 years.

### **Part C: Offences that required further discussion between officials**

30. As noted in the previous briefing, there were a number of offences that required further discussion between Police and Justice. This required appropriately balancing the practical workability of some offences with BORA implications and LDAC guidance. This includes where some firearms offences do not have a mens rea (mental) element, and where there are some burdens on the defendant to disprove certain elements of the offence.

#### *Removal of reverse onus provisions relating to permits, licences and endorsements*

31. Five of the offence provisions in the Act contain reverse onus provisions that require a defendant to prove the existence of a permit, licence or endorsement (sections 16, 36, 43, 43B, and 44). These offences relate to conduct where a permit, licence or endorsement is required (either by the person committing the offence or another party).
32. Research suggests that these provisions were carried over from the Arms Act 1958 when it would not be possible for Police to immediately search and retrieve information from a centralised database, which may now be done with relative ease. From a prosecution perspective it would now be relatively simple to have this introduced in evidence. Justice strongly supports removal of these reverse onus provisions.
33. Police and Justice therefore recommend removing the reverse onus provisions related to these five offences.

#### *Increasing penalties for offences relating to permits, licences and endorsements*

34. Police also propose increasing the penalties for the above offences where the reverse onus provisions are to be removed. These offences are strict liability offences attracting imprisonment, and the comments at paragraphs 17 to 19 above therefore apply. As set out at 17 – 19, Justice does not consider provision of imprisonment for strict liability offences to be best practice. Police consider:

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- the maximum monetary penalty for, without reasonable excuse, bringing a firearm, pistol, restricted weapon and a number of other specified items into New Zealand without a permit to import should increase from \$2,000 to \$15,000, with no change to the existing 1 year imprisonment penalty (section 16(3))
- the maximum penalty for carrying a pistol or restricted weapon outside conditions on the endorsement without reasonable excuse should increase from \$1,000 and/or 3 months to \$10,000 or 6 months (section 36)
- the maximum penalty for selling or supplying a firearm without reasonable excuse to a person who does not have a firearms licence should increase from \$1,000 and/or 3 months to \$20,000 or 2 years (section 43)
- the maximum penalty for selling or supplying ammunition for a firearm or restricted weapon without reasonable excuse to anyone who is not a licence holder or a dealer should increase from \$1,000 to \$10,000 (section 43B)
- the maximum monetary penalty for selling or supplying a pistol or restricted weapon to anyone who does not have an import permit or permit to possess without reasonable excuse should increase from \$4,000 to \$30,000, with no change to the existing 3 year imprisonment penalty (section 44).

### *Other offences that required further discussion with no proposed changes*

35. There were five other offences that officials needed to discuss. Justice would like these offences and/or penalties to be amended, but Police preference is to leave them unchanged.
36. Section 58 provides that it is an offence for any person who fails to report causing death or injury by use of firearm, airgun, pistol or restricted weapon, with maximum penalty of \$1,000 and/or 3 months imprisonment. It should be noted that the actual act of causing death or injury is covered by other provisions in the Arms Act and also under the Crimes Act 1961.
37. Justice considers that there is a risk that by requiring someone to report an injury or death the offence may engage the right to freedom of expression and the right to be free from self-incrimination. Justice is additionally unsure whether a criminal offence of non-reporting is the most effective way to elicit information from the public. Police note that as no changes are being proposed to this offence BORA considerations will not arise. However, Police consider this could be a situation where in any event a prima facie breach may be a justified limitation.
38. Section 47 provides it is an offence to be incapable of proper control of any firearm, airgun, pistol or restricted weapon due to alcohol and/or drugs, with a maximum penalty of \$3,000 and/or 3 months. As discussed above, Justice's preference is for imprisonable offences to include mens rea; however, Police consider this is an appropriate offence with an appropriate penalty.
39. Section 21 provides that it is an offence to possess an airgun unless you are over 18 or between 16-18 with a firearms licence, with a maximum penalty of \$1,000 and/or 3 months. As this is an offence that only youths can commit, Justice does not consider that a penalty of imprisonment is appropriate.



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40. Police consider it is important to keep the penalty of imprisonment as otherwise Police would not have the power to arrest without warrant (where appropriate). Police are able to arrest without warrant if the offence Police believe has been committed is punishable by a sentence of imprisonment (section 315 of the Crimes Act 1961). When a youth is involved, there are further protections provided by section 214 of the Oranga Tamariki Act 1989. Furthermore, Police would have warrantless search powers in circumstances where they could not apply for a warranted search (if the imprisonment penalty was removed). Unlawfully possessing an airgun has the potential for risk to public safety, and Police require tools to act.
41. Justice does not consider this is sufficient justification to provide for a penalty of imprisonment. Justice believes it is more problematic to provide for imprisonment for youths in order to ensure a warranted search power to attach than to rely on the existing warrantless power where no warrant could be sought.
42. Section 49 raises an issue with a reverse onus being put on the defendant to disprove an element of the offences, namely that they had a lawful, proper, and sufficient purpose for using, discharging or carrying a bolt gun, stud gun, humane killer, a tranquiliser gun, a stock marking pistol, an underwater spear gun, a flare pistol, a deer net gun, a pistol that is part of rocket or line throwing equipment, or a miniature cannon (maximum penalty \$1,000 and/or 3 months). A similar issue arises under section 46 where a defendant must prove they have a lawful, proper, and sufficient purpose for carrying an imitation firearm (maximum penalty \$4,000 and/or 2 years).
43. As set out in the previous briefing, Justice proposes that the reverse burdens contained in the Arms Act should be removed or replaced with an evidential burden. Justice considers that there is no compelling reason why the objectives of sections 46 and 49 could not be served by a lesser impairment on the right to be presumed innocent.
44. Police considers that firearms and related items are inherently dangerous, are a privilege to possess, and any use or carriage needs to be justified, with the onus appropriately being placed in the defendant. Police consider that amending the burden may inappropriately liberalise the carriage, possession and use of firearms if in practice it becomes much more difficult for Police to disprove beyond reasonable doubt that a person did not have a lawful, sufficient, and proper purpose.

### **Part D: confirming other no change offences (not specifically addressed in previous briefing)**

45. There are 12 other offences in the Act that were not explicitly discussed in the previous briefing (half of which are offences that were added through the April Amendment Act).
46. In the previous briefing Justice raised some issues with some of the April offences, in particular, the reverse onus that attaches to the possession offences. Justice has noted these points above and in the previous briefing. Police noted that it did not propose to make changes to any of the April offences (with the

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exception of one offence). However, explicit Ministerial confirmation on this point was not sought.

47. Police still consider that there is no reason to amend the April offences. The offences collectively relate to newly prohibited firearms or parts and are necessary to both deter and punish the misuse of these items.
48. Police does not propose to make any amendments to the existing offences listed below either.

### 49. Table two: other offences not being amended

Section	Offence	Current max penalty
56	Obstructing a police officer	\$1 000 3 months
53(1)	careless use causing injury or death using a firearm, airgun, pistol or restricted weapon	\$4,000 and/or 3 years
53(2)	being in control of firearm, pistol, airgun or restricted weapon, loaded, as to endanger life of any person without taking precautions to avoid such danger	\$4,000 and/or 3 years
53(3)	without reasonable cause discharges or otherwise deals with a firearm, airgun, pistol or restricted weapon in a manner likely to injure or endanger the safety of any person or with reckless disregard	\$4,000 and/or 3 years
55	has with them any restricted weapon, imitation firearm, ammunition or explosive with intent to commit a criminal offence punishable by 3 years imprisonment or to resist arrest or prevent arrest of another	5 years
16(4) April Act	brings into NZ a prohibited item without permit	5 years
16A April Act	without reasonable excuse, brings or causes to be brought or sent into New Zealand any prohibited ammunition	5 years
44A April Act	without reasonable excuse, sells or supplies a prohibited firearm or prohibited magazine to a person other than a person who holds— (a) a permit issued for the purposes of section 16(1) to bring or cause to be brought or sent into New Zealand that prohibited firearm or prohibited magazine; or (b) a permit issued under section 35A to possess that prohibited firearm or prohibited magazine	5 years
51A April Act	except for lawful purpose presents a prohibited firearm at any other person	7 years
54A April Act	carries any prohibited firearm with intent to commit an offence.	7 years
54(1)	makes or attempts to make any of a restricted weapon, imitation firearm, ammunition or explosive with intent to resist or prevent lawful arrest or detention of themselves or another person [note using firearm to prevent arrest in Crimes Act 198A -max penalty 10 years]	7 years
53A(1) April Act	makes or attempts to make any use of a prohibited firearm with intent to resist or prevent lawful arrest or detention of themselves or another person	10 years

### Next steps

50. Police will issue drafting instructions to PCO to give effect to decisions set out in Appendix A.

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51. However, there is a risk that the outstanding amendments may not be able to progressed through the Amendment Bill as introduced and may need to be progressed through Supplementary Order Papers.
52. There may also be logistical issues with Crown Law's ability to undertake a Bill of Rights vet on any amendments prior to Cabinet Legislation Committee (LEG) consideration. The Bill is being lodged on Thursday 15 August for the following week's LEG meeting. It is intended that the LEG paper seek agreement to continue drafting after the Bill is lodged, and possibly right up to the Cabinet confirmation of the LEG decisions.
53. Justice will seek to reiterate its views at the Cabinet stage that the proposals in this paper sit outside best practice so that Ministers are appropriately informed of competing concerns (such as operationality and limits on rights) when making decisions.

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s 9(2)(a)

.....  
Andrew Coster  
Acting Deputy Commissioner: Strategy  
& Partnerships  
New Zealand Police

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## Appendix A: Table of further decisions

Part A: New offence and amendment to existing offence					
#	Section	Offence	Current max penalty	Comment	Agree or not
1	n/a	conducting or operating a shooting range unless the Commissioner has approved the range	n/a	<b>Proposal: \$10,000</b>	Yes / No
2	52(2)	Presenting an item at a person, without lawful or sufficient purpose, in circumstances in which it is likely to lead that person to believe that the item is a firearm	\$1,000 and/or 3 months	<b>Proposal: 5 years and add mens rea</b> (comparable to previous decisions e s52(1))	Yes / No
Part B: further advice on previous recommendations for five offences					
#	Section	Offence	Current max penalty	Comment	Agree or not
3	43A(1)	sells by mail order a firearm or any ammunition for firearm or restricted weapon without order signed by purchaser and bearing an endorsement by Police	\$1000	<b>Proposal: strict liability offence - \$10K/6 months</b>  MOJ: does not oppose but notes best practice not to have imprisonment with strict liability offences  [NB previously proposed: \$20,000 or 2 years with a mens rea element]	Yes / No
4	48	without reasonable cause discharges a firearm, airgun, pistol or restricted weapon in or near a dwelling house or public place (so as to endanger, annoy or frighten any person)	\$3000 and/or to 3 months	<b>Proposal: strict liability offence - \$10K/6 months</b>  MOJ: as above at item 3  [NB previously proposed: \$20,000 or 2 years with a mens rea element]	Yes / No
5	5(4)	dealing without a dealer's licence	\$1,000	<b>Proposal: strict liability offence - \$10K/6 months</b>  MOJ: as above at item 3  [NB previously proposed: \$20,000 or 2 years with a mens rea element]	Yes / No

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6	10(3)	a dealer taking possession for sale of a pistol, restricted weapon, prohibited items unless in certain circumstances	\$2,000	<b>Proposal: strict liability offence - \$10K/6 months</b>  <u>MOJ:</u> as above at item 3  [NB previously proposed: \$20,000 or 2 years with a mens rea element]	Yes / No
7	20	in possession of firearm and not the holder of a firearms licence	\$1,000 and/or 3 months	<b>Proposal: \$15,000 or 1 year</b>  <u>MOJ:</u> As above at item 3	Yes / No
<b>Part C: Offences that required further discussion between officials</b>					
Where changes are proposed:					
	Section	Offence	Current max penalty	Comment	Agree or not
8	43B(1)	Sells/supplies ammunition for firearm or restricted weapon to anyone who is not a licence holder or dealer	\$1,000	<b>Proposal: Replace legal burden with evidential burden only, max penalty \$10,000</b>	Yes / No
9	36	carries a pistol or restricted weapon beyond curtilage of dwelling outside conditions endorsed on firearm licence	\$1000 and/or 3 months	<b>Proposal: Replace legal burden with evidential burden only, max penalty \$10,000 or 6 months</b>  <u>MOJ:</u> as above at item 3	Yes / No
10	43	selling or supplying a firearm (airgun under 18) to a person not having a firearm licence	\$1,000 and/or 3 months	<b>Proposal: Replace legal burden with evidential burden only, max penalty \$20,000 or 2 years</b>  <u>MOJ:</u> as above at item 3	Yes / No
11	16(3)	brings into NZ a firearm (other than PF) pistol, starting pistol, restricted airgun, or restricted weapon, or parts of firearm, pistol, starting pistol, or restricted weapon, plus new 'blank firing gun' and ammunition	\$2,000 and/or 1 year	<b>Proposal: Replace legal burden with evidential burden only, max monetary penalty increased to \$15,000 (or 1 year)</b>  <u>MOJ:</u> as above at item 3	Yes / No
12	44	selling or supplying pistol, or restricted weapon to anyone who does not have an import permit or permit to possess	\$4,000 and/or 3 years	<b>Proposal: Replace legal burden with evidential burden only, max monetary penalty increased to \$30,000 (or 3 years)</b>	Yes / No



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				MOJ: as above at item 3	
Where changes are not proposed:					
#	Section	Offence	Current max penalty	Comment	Agree or not
13	58	any person who fails to report causing death or injury by use of firearm, airgun, pistol or restricted weapon (note the actual act of causing death or injury is covered by s53 and also offences under the Crimes Act 1961)	\$1,000 and/or 3 months	<b>Proposal: no change</b>  MOJ: consider this provision may raise BORA issues with self-incrimination and freedom of expression  Police: consider not engaged as not changing, but in any event justifiable in the circumstances	Yes / No
14	47	incapable of proper control of any firearm, airgun, pistol or restricted weapon due to alcohol and/or drugs	\$3,000 and/or 3 months	<b>Proposal: no change</b>  MOJ: as above at item 3	Yes / No
15	21	possessing an airgun unless you are over 18 or between 16-18 with a firearms licence	\$1,000 and/or 3 months	<b>Proposal: no change</b>  MOJ: does not consider that a penalty of imprisonment is appropriate for youths  Police: consider important to keep imprisonment to enable warrantless arrests (where required and in accordance with Oranga Tamariki Act) and warranted searches	Yes / No
16	49	using, discharging or carrying bolt gun, stud gun, humane killer, a tranquiliser gun, a stock marking pistol, an underwater spear gun, a flare pistol, a deer net gun, a pistol that is part of rocket or line throwing equipment, or a miniature cannon without a lawful, proper, and sufficient purpose	\$1,000 and/or 3 months	<b>Proposal: no change</b>  MOJ: has concerns about reverse onus being put on the defendant to disprove an element of the offence (that use lawful, proper, and sufficient)  Police: consider appropriate in firearms context – onus should be on users of dangerous items to only use, and be able to justify, lawful,	Yes / No

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				sufficient and proper purposes.	
17	46	carrying an imitation firearm without a lawful, proper, and sufficient purpose	\$4,000 and/or 2 years	<b><u>Proposal:</u> no change</b>  <u>MOJ:</u> as above at item 16  <u>Police:</u> as above at item 16	Yes / No
<b>Part D: other offences not being amended</b>					
#	Section	Offence	Current max penalty	Comment	Agree or not
18	56	obstructing a police officer	\$1,000 3 months	<b><u>Proposal:</u> no change</b>	Yes / No
19	53(1)	careless use causing injury or death using a firearm, airgun, pistol or restricted weapon	\$4,000 and/or 3 years	<b><u>Proposal:</u> no change</b>	Yes / No
20	53(2)	being in control of firearm, pistol, airgun or restricted weapon, loaded, as to endanger life of any person without taking precautions to avoid such danger	\$4,000 and/or 3 years	<b><u>Proposal:</u> no change</b>	Yes / No
21	53(3)	without reasonable cause discharges or otherwise deals with a firearm, airgun, pistol or restricted weapon in a manner likely to injure or endanger the safety of any person or with reckless disregard	\$4,000 and/or 3 years	<b><u>Proposal:</u> no change</b>	Yes / No
22	55	has with them any restricted weapon, imitation firearm, ammunition or explosive with intent to commit a criminal offence punishable by 3 years imprisonment or to resist arrest or prevent arrest of another	5 years	<b><u>Proposal:</u> no change</b>	Yes / No
23	16(4) April Act	brings into NZ a prohibited item without permit	5 years	<b><u>Proposal:</u> no change</b>	Yes / No
24	16A April Act	without reasonable excuse, brings or causes to be brought or sent into New Zealand any prohibited ammunition.	5 years	<b><u>Proposal:</u> no change</b>	Yes / No
25	44A April Act	without reasonable excuse sells or supplies a prohibited firearm or prohibited magazine to a person other than a person who holds— (a) a permit issued for the purposes of section 16(1) to bring or cause to be brought or sent into New Zealand that prohibited firearm or prohibited magazine; or (b) a permit issued under section 35A to possess that prohibited firearm or prohibited magazine	5 years	<b><u>Proposal:</u> no change</b>	Yes / No

## BRIEFING FOR THE MINISTERS OF POLICE AND JUSTICE

26	51A April Act	except for lawful purpose presents a prohibited firearm at any other person	7 years	<b><u>Proposal:</u> no change</b>	Yes / No
27	54A April Act	carries any prohibited firearm with intent to commit an offence.	7 years	<b><u>Proposal:</u> no change</b>	Yes / No
28	54(1)	makes or attempts to make any of a restricted weapon, imitation firearm, ammunition or explosive with intent to resist or prevent lawful arrest or detention of themselves or another person [note using firearm to prevent arrest in Crimes Act 198A - max penalty 10 years]	7 years	<b><u>Proposal:</u> no change</b>	Yes / No
29	53A(1) April Act	makes or attempts to make any use of a prohibited firearm with intent to resist or prevent lawful arrest or detention of themselves or another person	10 years	<b><u>Proposal:</u> no change</b>	Yes / No

PROACTIVE RELEASE