

IN CONFIDENCE

Office of the Minister of Police  
Chair, Cabinet

## Arms Legislation Bill: Approval for Introduction

### Proposal

1. This paper seeks approval to introduce the Arms Legislation Bill (the Bill). The Bill will amend the Arms Act 1983 (the Arms Act) to:
  - introduce a new purpose statement
  - establish a registry to store information on firearms, and other items controlled by the Arms Act, and link them to licence holders
  - strengthen the licensing regimes to have more focus on filtering out high risk people and behaviour
  - strengthen the regulatory oversight of shooting clubs and ranges
  - strengthen the tools available to Police in order to better function as a regulator, including a more graduated suite of interventions aimed at increasing compliance
  - introduce a stakeholder advisory group with membership from the firearms and non-firearms communities
  - enable more robust and transparent information sharing and cost recovery regimes
  - enable the issue of further guidance on aspects of the Arms Act and Regulations through a notice-making provision
  - strengthen regulatory oversight of the importation and sale of ammunition and blank firing guns, advertising, and the manufacturing of parts
  - provide for a review of the Arms Act to commence five years after the Bill is passed
  - introduce new offences and penalties and update existing offences and penalties
  - 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)
  - include other minor and technical changes.

### Policy

2. Following the 15 March 2019 terror attack, the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 prohibited most semi-automatic and large capacity firearms to remove them from circulation and use by the general population. On 25 March 2019, Cabinet invited the Minister of Police to report back on proposals to further strengthen the Arms Act [CAB-19-MIN-0124]. On 14 June 2019, Cabinet agreed to a number of proposals to be included in a Bill to be introduced this year [CAB-19-MIN-0288].
3. The Bill amends the Arms Act to strengthen the framework for the safe use and control of firearms. The Arms Act is 36 years old and has not been substantially amended since it was introduced. Since then, weaknesses in the Act have been identified by the courts, a parliamentary select committee, and successive governments.

4. The key purpose of the Bill is to implement proposals that establish a more appropriate balance between legitimate use and the management of misuse of firearms, parts, magazines and ammunition. The primary purpose of the Bill is to reduce the likelihood of firearms getting into the wrong hands and being misused and to improve the personal and public safety of New Zealanders.

#### **Policy items requiring Cabinet approval**

5. I seek approval for the following policy changes that have arisen during the drafting of the Bill. Further information regarding these policy changes are set out in a table at Appendix 1, and include amendments to:
- 5.1. provide for items imported temporarily by visitors to New Zealand (e.g. on a boat), to be declared to the New Zealand Customs Service (Customs) and secured by Customs or Police, to reflect current practice
  - 5.2. expand the Crown's exemptions from the Act to cover carriage and possession by:
    - 5.2.1. visiting police undertaking training or carrying out official duties under the authorisation of the Commissioner
    - 5.2.2. persons approved by either the Commissioner or the Chief of Defence Force who are giving training to Police or NZDF personnel
    - 5.2.3. Customs officers (who interact with imported firearms as part of border security activity)
    - 5.2.4. Ministry of Defence staff who are undergoing weapons familiarisation, or testing and evaluation processes, under NZDF supervision
    - 5.2.5. additional classes of persons (such as armoury contractors working on behalf of the NZDF) who could carry and possess firearms, parts and ammunition belonging to the Crown and with authorisation.<sup>1</sup>
  - 5.3. extend the Crown's ability to lawfully import, possess or supply firearms, ammunition and parts to agents acting on the Crown's behalf
  - 5.4. require individuals who cease to be licensed dealers (i.e. because their licence expires or is surrendered and they close down their business) to provide dealer records to Police
  - 5.5. introduce an explicit stand down period of five years following a licence being revoked
  - 5.6. include reference to airguns in offence of use or attempted use of a firearm to resist or prevent arrest or commit offence
  - 5.7. expand offence provision for licensed dealers carrying on dealer activities without a dealer's licence, to explicitly apply after suspension of a licence
  - 5.8. remove the requirement that dealers attending authorised gun shows for the purpose of carrying out business must close their physical store (or stores) while they attend the show
  - 5.9. provide that, following conviction for unlawful possession, the Court must order (rather than may order) forfeiture unless there are good reasons for restoring the firearm to the owner
  - 5.10. introduce new regulation-making powers to enable regulations to be made relating to amendments made by the Bill, including, but not limited to, requiring marking of firearms at any time.<sup>2</sup>

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<sup>1</sup> The Bill enables this to be done through Regulations.

<sup>2</sup> The Bill enables requirements for marking firearms to be set out in regulations. Antique firearms (manufactured pre-1899) are excluded and further exceptions could be made by regulations if considered necessary.

### *Amendments to previous decisions made by Cabinet*

6. I also seek your approval to amend the following policy decisions made by Cabinet on 14 June 2019 [CAB-19-MIN-0288]:

- 6.1 Cabinet agreed to introduce a new Purpose Statement with three limbs that reflect that: the possession and use of arms is a privilege; persons authorised to import, supply, sell, possess or use arms have a responsibility to act in the interests of personal and public safety; and everybody works together to promote and protect personal and public safety. The first two limbs have been drafted, with the second being expanded to include manufacturing. The third limb has not been drafted. In discussions with PCO, a concern has arisen that the statement is aspirational and does not connect explicitly to any of the existing or proposed new provisions in the Act potentially creating a legal risk. A key reason for a Purpose Statement is to help the Courts interpret the law. In this case, including this limb could result in the Courts interpreting provisions of the Act in ways that were not intended. I have considered this feedback and agree that this limb should not be drafted.
- 6.2 Cabinet agreed that fees and expenses for the stakeholder advisory group would be paid in accordance with the Fees and Travelling Allowances Act 1951. It will instead be paid in accordance with the Cabinet fees framework.

### **Policy items with prior Cabinet approval**

#### *Purpose of the Arms Act*

- 7. The Bill introduces a new Purpose Statement which will reflect that possession of a firearm is a privilege in New Zealand (and not a right), and that everybody authorised to import, manufacture, supply, sell, possess or use firearms has a responsibility to act in the interests of personal and public safety. Setting out a Purpose Statement anchors all actors in the firearms regime to a set of clear and transparent expectations.

#### *Establishing a firearms registry*

- 8. The Bill will enable the development of a registry to store information on all firearms, and other items controlled by the Arms Act, held or traded by licence holders, including:
  - 8.1. every licence holder's details, including full name, date of birth, address
  - 8.2. the licence holder's licence number, term of licence (date of expiry), other licences or endorsements linked to the person, and any conditions on any licence or endorsements
  - 8.3. the make, model and identifying markings (and any other information) for each firearm or other item controlled by the Arms Act and possessed by each licence holder
  - 8.4. the address or location of the firearms and other items
  - 8.5. any other relevant information that is prescribed by regulations.
- 9. The Bill empowers regulations to set out what information about firearms and other items controlled by the Arms Act is required for the registry.<sup>3</sup>
- 10. There are obligations on persons undertaking activities within the firearms regime to enter information into the registry within five years of it going live, or supply Police with the information for inclusion in the registry, at points when they interact with the system, in accordance with regulations. These points include applying for a licence or an endorsement, selling, purchasing or

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<sup>3</sup> While the Bill enables the registration of parts, magazines and ammunition, it is not intended that these items be registered at this time. If at a later date these items are to be included in the registry following policy approval, regulations will need to be made.

otherwise transferring ownership or disposing of a firearm, and if a firearm or weapon is stolen or goes missing.

11. To support compliance, the Bill makes it an offence to not provide the required information, and a separate, more serious offence for deliberately providing false or misleading information.
12. The Bill provides for the registry to come into effect two years from the date of enactment, or earlier by Order in Council. Police are working towards the registry being ready to go live within 12 months of enactment.

#### *Strengthening the individual licensing system*

13. The Bill strengthens licensing assessment processes to ensure only those who are fit and proper can obtain and hold a firearms licence. It does this by:
  - 13.1. filtering out the highest risk licence applicants by disqualifying them from getting a licence if in the 10 years prior they have been convicted, or released from prison after being convicted, of a specified offence, including serious violence offences and serious drug offences (with no review or appeal rights). Relevant convictions are set out in a table in Appendix 2
  - 13.2. automatically cancelling a licence if, following enactment, a person is convicted of a specified offence (with no review or appeal rights)
  - 13.3. providing a series of indicators which may indicate that a person is not a fit and proper person to be in possession of a firearm (such as having a connection to gangs or organised crime, having committed crimes involving violence, drugs or alcohol, having breached any provisions in the Arms Act, or having encouraged or promoted violence, hatred or extremism, and
  - 13.4. recognising that Police may consider matters that demonstrate positive behaviours, skills and knowledge to show a person is fit and proper to possess firearms.
14. Cabinet agreed to include, as a criteria for automatic disqualification for getting a licence if in the 10 years prior, an applicant had been convicted of a serious violence offence, a serious drug offence or offences under the Arms Act. Also included in that criteria was the applicant having a final protection order made against them. As these criteria are automatic disqualifications, they are not reviewable and also cannot be appealed.
15. There may be a rare situation where a person has a final protection order made against them where it is subsequently proved that the issue of the protection order was based on false information. In such situations, the protection order would be discharged but the respondent would continue to be ineligible to apply for a firearms licence. As a result, I proposed to the Cabinet Business Committee, the making of a protection order should be a matter that the Police could consider when assessing whether an applicant for a firearms licence is a fit and proper person, rather than it being a mandatory disqualification.
16. However, following discussion at Cabinet Business Committee, I've reconsidered the matter and now propose that people subject to a final protection order (issued after an interim temporary protection order) within the 10 years prior, will be disqualified from obtaining a firearms licence.
17. While there might be a perceived unfairness in the rare situations where people are the subject of a final protection order when they should not be, I am also mindful of the seriousness of family violence, and the dangers to the applicant of getting it wrong. Police conduct more than 100,000 investigations related to family violence per year (only a small proportion of which result in protection orders), while nearly half of all homicides and reported violent crime is family violence related.

18. Moreover, a person has three months from the making of a temporary protection order, before it becomes a final protection order, to challenge it. In that context – and recognising that obtaining a firearms licence is a privilege and not a right – I consider that the impact on the respondent in these very rare cases is far outweighed by the broader public interest in ensuring that people who have, or have had final protection orders made against them in the last 10 years, do not have access to firearms. I propose retaining the position as originally agreed by Cabinet and invite consideration of this issue by submitters to the Select Committee process.
19. Specified disqualifying convictions that occurred prior to the Bill being enacted will be relevant to a new application for a licence, and a person will have to wait for the stand down period to pass before being able to apply for a licence.
20. However, such a specified conviction gained prior to enactment will not result in an automatic cancellation of a current licence holder's firearms licence, on enactment. This position is being taken because otherwise a person may not be aware that their licence has been cancelled (based on a conviction that may have occurred a number of years previously). They may therefore unknowingly and immediately commit an offence against the Act when it comes into force, such as possessing firearms without a licence.
21. While a previous conviction will not result in the immediate cancellation of a licence, it may more generally still be relevant to any revocation action taken by Police (or already underway). This decision will be based on the general grounds going to a person's fit and proper status (in the same way convictions may currently be considered, and will continue to be relevant under discretionary grounds in new section 24A). The normal revocation process, including the new right to review licensing decisions and existing appeal right to the courts will apply.
22. The Bill requires licence holders to disclose a change in circumstance, at any time over the duration of their licence, such as when they have significant or mental health issues arise that may impact on their ability to use firearms safely, or if any of the indicators demonstrating they may no longer be a fit and proper person apply.
23. The Bill provides for the commencement of the licensing system six months after enactment to provide Police sufficient time to develop the systems and processes, including training of frontline officers, required to implement the changes.

#### *Duration of a licence*

24. The Bill reduces the duration of a firearms licence from 10 years to five years to enable the more regular reassessment of people against the fit and proper test.<sup>4</sup> Ten year licences that were issued or applied for before 23 July 2019 will be grandfathered.
25. At the Cabinet Business Committee, I indicated that to avoid an influx of applications for 10 year licences prior to the Act coming into force, and to disincentivise this behaviour, the Bill contains a transitional provision. It specifies that
- 25.1. existing licence holders whose licences expire after policy announcements were made on 22 July 2019 and before the Bill comes into force, will be able to obtain a 10 year licence. These applicants genuinely need to replace their licence in this period and thus the issue of a 10 year licence is justified;
  - 25.2. anyone else who applies or reapplies for a licence after 22 July 2019 will be issued with a 10 year licence as is required by the law, but the 10 year licence will automatically revert to a five year licence when the licensing provisions come into force.

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<sup>4</sup> The duration of a Dealer's licence is one year, and Bill does not change this.



26. s 9(2)(h)

because the transitional provisions in the Bill only apply to people who genuinely do not need their firearms licence renewed (but want to secure a 10 year licence before the law change), and to new licence applicants, I seek your approval to retain the transitional provisions as drafted. If it is clearly signalled that this will be the case I expect few people will actually apply before the new law takes effect.

#### *Duration of endorsements*

28. The Bill clarifies in law, and codifies current practice, that endorsements on licences that enable an individual to possess prohibited firearms, restricted weapons and pistols last for the length of time left on the licence.
29. The Bill provides for an exception to this general rule. Endorsements issued for pest-control purposes will only last for two years, or the length of time remaining on the licence, whichever is shorter. This Bill applies this provision retrospectively to pest control endorsements issued on or after 12 April 2019, when the prohibition amendments came into force.

#### *Visitor licences*

30. The Bill will continue to allow a person who is a visitor to New Zealand and intends to stay here less than one year to obtain a firearms licence, which will be valid for up to one year or the duration of their stay (whichever is shorter). The Bill does not provide for a separate visitors licence. Visitors will be required to reach the same, more rigorous standard to obtain a licence as New Zealanders. To meet the more rigorous standard, and the time it may take to access and collate relevant background checks, visitors are likely going to need to apply for a firearms licence before they arrive in New Zealand.
31. The Bill will prohibit visitors from purchasing for their own possession firearms and restricted weapons while in New Zealand.

#### *Strengthening oversight of dealers, clubs and ranges*

32. The Bill introduces a definition of “dealer activity” to ensure that a broader set of people who are in the business of selling, possessing, supplying, manufacturing, assembling (for sale or permitted supply) repairing, or otherwise carrying out commercial transactions involving firearms are required to hold a dealer’s licence. This expanded definition codifies operational practice and enables consistency in applying the regulatory regime.
33. The Bill makes it explicit that those applying for a dealer licence will first have to have successfully obtained a firearms licence and, in addition, be assessed against further criteria to establish that

they are fit and proper to be the holder of a dealer licence. These additional criteria include having sound knowledge of firearms, understanding of legal obligations, appropriate record-keeping systems, whether they have been judged bankrupt or been prohibited from being a director and have sound technical capability.

34. The Bill requires shooting clubs and ranges to have a certificate of approval and range certification and enables a monitoring, inspection and oversight regime. Clubs must have rules for the safe operation of firearms and foster healthy attitudes towards firearms, be well administered and safely manage shooting activities. Shooting ranges must meet safety standards in regulations, have local council consent and appropriate public liability insurance. The duty manager of a certified shooting range must have a firearms licence and an approved qualification in shooting range management, similar to what currently exists for pistol ranges.

#### *Review rights*

35. The Bill establishes a right to review decisions to refuse or revoke a firearms licence as a pre-requisite to appealing to the District Court. The review would be undertaken by a person delegated by the Commissioner who was not involved in the original decision. This provides an opportunity to ensure that decisions are robust and better understood by the applicant and if necessary to amend decisions without recourse to the District Court.

#### *Clarifying and strengthening enforcement powers*

36. The Bill provides Police with a wider range of graduated compliance and enforcement tools including:
- 36.1. Improvement Notices that can be issued to licence and dealer licence holders, and to shooting clubs and ranges following an inspection, if they fail to meet, or are likely to fail to meet, requirements and obligations as a licence, endorsement or certificate holder,
  - 36.2. immediate temporary suspension of a licence and seizure of firearms prior to, and in anticipation of, the commencement of a revocation process.
37. The Bill also enables the Commissioner of Police to issue guidance notices to provide further detail about requirements in the Act or regulations. Cabinet agreement based on a recommendation in the paper was for the Minister of Police to hold the notice-making power. However, the body of the Cabinet paper proposed that the Commissioner would hold the notice-making power. The recommendation was a drafting error. I seek agreement to rescind this recommendation, and replace it with a new recommendation, in line with the policy intent – that the Commissioner approve notices.
38. The types of requirements for which notices could be issued include outlining security requirements for licensed dealers or premises where firearms are kept, serial numbers for firearms manufactured or imported, and the positive behaviours and knowledge that could demonstrate a person is fit and proper.

#### *Ensuring the Act remains fit for purpose*

39. The Arms Act will be reviewed after five years of the Bill coming into force. This will ensure the Act keeps up to date with emerging risk and technology, and to evaluate the substantive changes made through the two 2019 Bills.
40. The Bill establishes an advisory group, with invited members from the firearms and wider non-firearms community. It will undertake an advisory role to the Commissioner of Police, including undertaking research, making recommendations relating to regulating New Zealand's firearms regime, and promoting firearms safety.

41. The Bill widens the enabling provisions in the Act for the types of regulatory services for which a fee can be set, and establishes the principles that will guide the setting of fees. These provisions will enable the Crown to recover from licensees, the costs of the regulatory activities provided for in the Act. Some of this activity currently attracts no charge whereas the benefit is a private one that falls to the licensee (e.g. the issue of permits to dealers to enable them to import firearms). Further detail regarding the types of activities that will be charged for, and the level of the fee, will be set out in regulations. The public will be consulted on the policy settings for the regulations, and potential fee levels, in 2020.

*Other matters to improve public safety*

42. The Bill provides a regulation making power to be able to prescribe requirements for advertisers to set out information about legal purchase and security obligations.

43. The transitional exemption established in the April amendments for the manufacturing of parts that can be used on prohibited firearms, and allowing the use of prohibited firearms for the testing of those parts, will be made a permanent exemption for existing businesses.

44. The transitional exemption for the manufacturing of prohibited magazines will not be made permanent in the Act and will expire in December 2020. It is likely the regulations will need to make provision for compensation for those affected by this exemption not being made permanent (currently one known manufacturer). I expect this will be raised during the Select Committee consultation process.

45. The Bill recognises the risk to public harm that results from access to ammunition and strengthens the regime by: introducing a requirement for a licence holder to have a permit to import ammunition, introduces record-keeping requirements for those businesses who are not dealers who sell ammunition as part of their business; and creates an offence for possessing ammunition without a firearms licence.

46. The Bill also requires the issue of a permit to import blank firing guns. This enables Police to require a sample of the blank firing gun to be imported, prior to issuing a permit to import more. This is so it can be tested to determine whether it can be converted to fire live ammunition (and therefore is a firearm).

**Items approved by Ministers and requiring Cabinet confirmation**

47. Cabinet authorised:

- 47.1. the Prime Minister, the Deputy Prime Minister, the Ministers of Justice, Defence, Finance and Police, being Ministers with Power to Act, to approve further policy changes and issue drafting instructions,
- 47.2. the Ministers of Foreign Affairs and Police to issue drafting instructions to enable New Zealand to become a signatory to the Firearms Protocol,
- 47.3. the Ministers of Justice and Police to make decisions on updating existing and introducing new offences and penalties.

48. This paper seeks confirmation of decisions made by the above Ministers during the drafting of the Bill.

*Enabling information sharing through direct access to the registry for certain government agencies*

49. Cabinet agreed that information sharing options be considered by Ministers with Power to Act, including direct data access provisions [CAB-19-MIN-0288]. Cabinet also agreed to a consequential amendment to the Intelligence and Security Act to enable NZSIS to negotiate a



direct access agreement with Police [CAB-19-MIN-0288]. Ministers with Power to Act have agreed that the Ministry of Foreign Affairs and Trade, New Zealand Customs Service (Customs), and the Department of Conservation (DoC) would be able to access specific information on the registry through direct data access provisions, to enable them to fulfil their respective export and import powers, duties and functions under the Customs and Excise Act, under the Arms Trade Treaty, and for DoC's administration of firearms hunting permits on public conservation land.

50. Further detail setting out the manner of gaining access, the level of authority to gain access, and conditions on the use and disclosure of information would be set out in direct access agreements. These agreements are subject to consultation with the advisory group and the Privacy Commissioner, and are approved by relevant agency Ministers.
51. Cabinet agreed that health practitioners will have a responsibility to consider notifying Police if they have concerns that the person they are attending poses a risk of harm to themselves or others [CAB-19-MIN-0288]. So that health practitioners have access to information to enable them to make an informed notification to Police, I seek your agreement to require licence applicant's to inform Police of their primary health provider at the time of application. In most cases this is likely to be a general practitioner. Police will send a notification to applicants' primary health care provider informing them that the person has a firearms licence when it is issued.

*Accession to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (the Firearms Protocol)*

52. The Minister of Foreign Affairs and the Minister of Police issued drafting instructions so that the Bill include the requirements that enable New Zealand to accede to the Firearms Protocol. The Firearms Protocol is the third Protocol under the United Nations (UN) Convention against Transnational Organised Crime (the Convention).<sup>5</sup> It aims to "promote, facilitate and strengthen cooperation to prevent, combat and eradicate the illegal manufacturing of and trafficking in firearms, their parts and components and ammunition."<sup>6</sup> As the domestic regime for firearms is strengthened, it is important to strengthen the protections against transnational crime associated with firearms.
53. 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. This means only a few additional changes to the Act are required to enable New Zealand to accede to the Firearms Protocol.
54. The Ministers of Foreign Affairs and Police seek confirmation of the amendments that have been drafted into the Bill as follows:
- 54.1. a requirement that all firearms manufactured in New Zealand, or imported, have an identifying mark (such as a unique number). Cabinet will note that this is also a requirement for the registry to function because for it to work effectively, each firearm will need to be uniquely identified
  - 54.2. new offences, which can be applied extraterritorially, relating to the illegal manufacture of firearms and parts; the illegal trafficking of firearms, parts and ammunition; and the falsifying, altering or removal of firearms markings
  - 54.3. a requirement that records of firearms manufactured in New Zealand be kept for at least 10 years

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<sup>5</sup> New Zealand is a party to the Convention and the first two Protocols, which concern the Trafficking of Persons, and the Smuggling of Migrants.

<sup>6</sup> The Firearms Protocol has been ratified by 118 Parties, including the EU, the Nordic countries, France (February 2019), and Palau (May 2019). Australia, the United Kingdom and Canada have all signed but not ratified the Firearms Protocol.

- 54.4. two technical changes to the definition section to add silencers to the definition of 'parts' for all firearms,<sup>7</sup> and to clarify that antique firearms do not include firearms manufactured after 1899
- 54.5. 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 New Zealand to co-operate with other State Parties under the Firearms Protocol, and the Convention.
55. I consider these changes would enhance the regime regardless of whether New Zealand accedes to the Protocol and should be pursued as a matter of government policy. Accordingly, the changes should commence before the Protocol enters into force for New Zealand (except for the changes in 54.5 which are dependent on accession to the Protocol).
56. The Minister of Foreign Affairs and I seek your agreement to New Zealand acceding to the Firearms Protocol, subject to the following conditions:
- 56.1. passage of this legislation, which will implement the minimum requirements of the Firearms Protocol as currently interpreted, and
- 56.2. non-legislative changes to procedural requirements for the export of firearms, such as in relation to approvals from importing states.

#### *Offences and penalties*

57. As directed by Cabinet, I have worked with the Minister of Justice on establishing a number of new offences and penalties and on amendments to some of the existing offences and penalties. These are set out at Appendix 3. These offences have been included in the draft Bill.
58. New offences and penalties have been drafted into the Bill to support compliance with new requirements related to, for example, the registry, clubs and ranges, and ammunition (items 1 to 5 in the Appendix). For example, it is an offence to provide information to the registry known to be false or misleading, with a maximum penalty of \$20,000 or 2 years imprisonment.
59. A number of existing offences have had their penalties increased to ensure the sanctions regime is commensurate with the seriousness of the offence and therefore effective. One section that has a number of offences related to misuse of licences has had the mens rea (mental) element clarified to be consistent with their increased penalty levels (item 6). Other penalty increases are for offences that are strict liability offences, where the prosecution is not required to prove a mens rea element related to the offence, such as intent or knowledge (items 7 to 21).
60. The Minister of Justice and I propose three amendments to the offences that were added to the Act through the April amendments (items 22 to 24). The first is section 55B, which relates to a dealer failing to produce or not allowing inspection of any pistol, restricted weapon, or prohibited firearm or magazine. The penalty is currently set at a \$1,000 fine or 3 months imprisonment. We seek your agreement to align the penalty to that proposed for the similar offence under section 12 related to inspections of firearms (maximum penalty \$10,000 or 6 months imprisonment).
61. The second and third are related to the offences in sections 50D (carrying or possessing of a prohibited firearm in public place without lawful purpose) and 53A(2) (possessing a prohibited firearm at the time of committing an offence that is punishable by imprisonment for a term up to 3 years). We propose reducing the respective maximum penalties from 7 years imprisonment to 5

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<sup>7</sup> Silencers have always been included in the non-exhaustive list of examples defining a part of a pistol, restricted weapon and a MSSA, and since 12 April 2019, are a part requiring an import permit. Adding silencers explicitly satisfies the requirements for the Protocol, but has no practical impact as it codifies current practice.

years imprisonment. This is because in some cases these offences may engage section 66 of the Act, which provides a rebuttable presumption around possession.

62. We propose one additional change that is engaged by section 66. We propose that, under section 20 (item 21), the maximum penalty for possessing a firearm without a licence should be increased from the current \$1,000 and/or 3 months imprisonment to a maximum penalty of \$15,000 or 1 year imprisonment. We consider this offence goes to the heart of the regulatory regime. The Bill makes it explicit that possessing a firearm is a 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.
63. 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, new 22C (old 43B), and 44 – items 25 to 29). These offences relate to conduct where a permit, licence or endorsement is required (either by the person committing the offence or another party).
64. These particular reverse onuses carry over from a time when it would not have been possible for Police to immediately search and retrieve information from a centralised database. This problem will no longer exist once the registry is live. We therefore propose removing the reverse onus provisions related to permits, licences and endorsements. We also propose to increase the penalties for these offences as set out in the Appendix, to better reflect the seriousness of the offending involved.
65. Finally, we propose to decrease the penalties for two offences (items 30 and 31). The first is section 21, which 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 imprisonment. This is an offence that only youths can commit, so we do not consider it is appropriate to carry a term of imprisonment. The second is section 46, which provides it is an offence to carry an imitation firearm without some lawful, proper, and sufficient purpose. The current maximum penalty is \$4,000 and/or 2 years imprisonment. We propose to decrease this penalty to \$4,000 or 1 year imprisonment, to better reflect the relative harm of carrying an imitation firearm.
66. As the Bill has been in the process of being finalised, two new matters have been brought to my attention that require policy approval (items 32 and 33). The first relates to offences under section 52 where firearms (or something resembling firearms) are presented at another person. These currently have a maximum penalty of \$1,000 and/or 3 months. The Minister of Justice and I agreed with advice to increase this penalty substantially along with the addition of a mens rea element. However, officials now advise that it was difficult to add a meaningful mens rea element without fundamentally redesigning the provision and moving away from addressing the actual harm. I therefore propose that this offence remain a strict liability offence, with the maximum penalty increased to \$10,000 or 6 months imprisonment, which aligns with similar strict liability offences.
67. The final matter relates to an offence that was inadvertently overlooked. This is section 15, which provides that it is an offence for a licensed dealer to carry on business following revocation of their licence. A related offence of dealing without a licence has had its penalty increased to 6 months or \$10,000 (section 5, item 19). Section 15 is in effect an aggravated form of this offence – as not only is the person dealing without a licence, they are doing so after having had their licence revoked. I therefore propose the penalty for this offence increase from the current \$1,000 and/or 3 months to \$15,000 or 1 year imprisonment.

#### **Minor and technical amendments**

68. I seek approval to a number of minor and technical amendments to the Act to improve the workability of the Act and to align with changes being made through this Bill. These amendments,

including minor amendments to the Act following the prohibition of most semi-automatic firearms, are set in more detail in Appendix 4.

69. There have been further minor and technical amendments to the Bill since consideration at the Cabinet Business Committee on 2 September 2019 to ensure the Bill is ready for introduction, including continuing to develop the provisions for clubs and ranges.

## Impact Analysis

70. A Regulatory Impact Analysis (RIA) and a Cost Recovery Impact Statement (CRIS) for the paper *Strengthening the framework for the safe use and control of firearms* were submitted to Cabinet in June 2019. Cross-agency Quality Assurance Panels reviewed the RIA and the CRIS and considered they met the quality assurance criteria.
71. MFAT considers that a separate National Interest Analysis is not required for accession to the Firearms Protocol as this was undertaken as part of the Parliament Treaty Examination process in 2004. However, given the time since accession was last considered, it would be appropriate to advise the Select Committee considering the 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 on the Bill. This is not another Treaty Examination Process.

## Compliance

72. The Bill complies with:

- 72.1. the principles of the Treaty of Waitangi;
- 72.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (BORA) or the Human Rights Act 1993;
  - 72.2.1. some of the strict liability offences have fine-only penalties, while others also have penalties that include imprisonment. A number of strict liability offences are having their penalties increased. Because strict liability offences relieve the prosecution of the burden of proving the mental element of the offence, they engage the right to be presumed innocent under section 25(c) of the New Zealand Bill of Rights Act 1990 (BORA), and any risks associated with limiting section 25(c) may be exacerbated by an imprisonment term. I consider that in the context of the firearms regulatory regime any limit is justifiable and the proposed penalties are appropriate. Firearms are inherently dangerous instruments, and penalties should reflect the seriousness of the offences and provide a sufficient deterrent;
  - 72.2.2. three offences (sections 50D, 53A(2) and 20) may in some cases engage section 66 of the Act. This means when a firearm is found on land or in a building that a person is occupying, or in a vehicle that a person is driving, it is deemed to be in their possession unless they can prove on the balance of probabilities that the firearm was not their property and it was in the possession of some other person. This places a reverse onus on the defendant in these circumstances to disprove possession, which engages the right to be presumed innocent under section 25(c) of BORA. We consider this to be a justifiable limit;
  - 72.2.3. Crown Law prepared Bill of Rights Act vetting advice on the Bill and don't anticipate there being any issues of inconsistency with the Bill of Rights Act;
- 72.3. the disclosure statement requirements (a disclosure statement has been prepared and is attached to this paper);

- 72.4. the principles and guidelines set out in the Privacy Act;
  - 72.4.1. the direct data access provisions represent a variation to the principles and guidelines set out in the Privacy Act;
  - 72.4.2. the Privacy Commissioner has been engaged in consultation with Police regarding the information sharing proposals, including the proposals to alert health practitioners of an individual's firearms licence status and notes the significant improvements in the proposal as it has developed to this point;
- 72.5. relevant international standards and obligations;
  - 72.5.1. and would enable New Zealand to accede to the Firearms Protocol;
- 72.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## Consultation

### *Government departments*

- 73. The Bill and paper have been consulted with the Department of Prime Minister and Cabinet, the Ministry of Justice, the Ministry of Health, MFAT, the Ministry of Defence, the New Zealand Defence Force (NZDF), the Department of Conservation, the New Zealand Security Intelligence Service, the Government Communications Security Bureau, the Ministry for Primary Industries, Customs, and the Office of the Privacy Commissioner. The Treasury has been informed.
- 74. Provisions in the Bill relating to the manufacturing sector have been consulted with New Zealand Trade and Enterprise (NZTE). NZTE has noted that the exemptions for manufacturing of prohibited parts would apply only to businesses in operation prior to 12 April 2019. This would mean that no new businesses could be established in New Zealand in the future to develop arms and components for legitimate military and Police use, domestically or for export.
- 75. The niche component manufacturers that NZTE is aware of in this space have emerged on the back of innovations in materials science and manufacturing. The business and export community may argue that this is a fertile ground for start-ups. In order to sustain domestic expertise and investment in this area, NZTE considers that the business community would expect that there should be a process that allows for new entrants to apply for permits to manufacture and supply for the two main defined legitimate markets: domestic Crown supply and exports under the MFAT administered Export Controls regime.
- 76. I consider that these points are worth further discussion. I will consider this further while the Bill is in Select Committee, and based on submissions received on this issue.

### *Ministry of Justice comment*

- 77. The Ministry of Justice (Justice) considers that the offences and penalties in this Bill are irregular and 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 s 25(c) of the Bill of Rights Act 1990. Additionally, they may represent a departure from the Legislative Design Advisory Committee (LDAC) Guidelines for good legislative design.
- 78. 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. Therefore, Justice does not oppose the offences proposed in this paper. 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. We note that the five-year review provided for in the Bill may offer a good opportunity to consider these points.

79. I agree that the five-year review provides an opportunity to reconsider these points. I also note that, in accordance with Legislative Design Advisory Committee (LDAC) guidance, strict liability offences are appropriate: in a regulatory context if the offence involves the protection of the public from those who voluntarily undertake risk-creating activities; when there is a need to provide an incentive for people who undertake those activities to adopt appropriate precautions to prevent breaches; and where the defendant is best placed to establish absence of fault because of matters primarily within their knowledge.
80. Court records from as far back as 1988 demonstrate that Parliament intended Section 66 to address the control of firearms in the interests of public safety and maintain this clause as the successor to similar provisions in section 23 of the Arms Act 1920 and in section 23 of the Arms Act 1958. This element has been part of the New Zealand arms legislation for around 100 years.
81. For possession, the prosecution normally have to prove that the person knew of the items and had custody of them or control. This may be difficult in the context of firearms, where they may be found, for example, buried, in a shed, in the ceiling, under a bed at a property with numerous occupants, or found during a search where the person was not present. Without section 66 a person may claim no knowledge of the firearms and it would be difficult to prove beyond reasonable doubt that they knew of the items and had custody or control of them. This makes maintaining public safety highly problematic. Under section 66, where the charge involves unlawful possession of a firearm, for the reverse onus to operate, Police have to prove beyond reasonable doubt that:
- the defendant was in occupation of the land or building or the driver of the vehicle; and
  - that the firearm was found in or on the land/building or vehicle.
82. That is sufficient for a conviction unless the defendant can prove on the balance of probabilities that the firearm was not his property and that it was in the possession of some other person. In my view this provides an appropriate mechanism to effectively reduce criminal behaviour and to ensure the safety of the public.
83. Firearms are inherently dangerous instruments, and penalties should reflect the seriousness of the offences and provide a sufficient deterrent.

#### *Private and public sector organisations*

84. My officials discussed the main proposals in the Bill with members of the Firearms Community Advisory Forum (FCAF) on 25 July 2019. FCAF is an advisory forum set up to provide a formal mechanism for representatives from the firearms community to input on policy relating to the Arms Act 1983 or the Arms Regulations 1992; and to review and make recommendations for consideration by Police on firearms-related matters.<sup>8</sup>
85. Early feedback from FCAF indicates the proposed amendments are heading in the right direction. The main areas of concern include whether the costs of the changes for licence holders will outweigh the benefits, and what action will be taken to address unlawful possession of firearms.

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<sup>8</sup> Members are representatives of Pistol New Zealand, National Rifle Association, Council of Licensed Firearms Owners, NZ Service Rifle Association, New Zealand Handloaders Association, New Zealand Deerstalkers' Association, New Zealand Antique and Historical Arms Association, Firearms Safety Specialists of New Zealand, New Zealand Mountain Safety Council, Firearms Safety Council of Aotearoa, Dealer Representative, Retail Representative, Federated Farmers of New Zealand, Rural Women of New Zealand. Government participation includes Customs and MFAT.

FCAF expressed a willingness to engage with Police in the development of more detailed regulations such as the registry and cost recovery. s 9(2)(ba)(i)

We will continue to engage with FCAF in the lead up to and throughout the Select Committee process.

86. Officials have also met with Gun Control NZ, a new group established this year to provide a voice for people seeking gun reform, in the interests of public safety. Gun Control has indicated support for policy decisions given effect to in this Bill, particularly the registration of all firearms and strengthening secure storage. It would like to see funds cost recovered and ring fenced for firearms administration to recognise the significant demand of the regulatory regime on Police. Gun Control NZ remains concerned about controls over what collectors are able to collect and how these items are stored, and controls over clubs and ranges to protect health and safety and the environment.

### **Binding on the Crown**

87. The Arms Act does not completely bind the Crown, as it exempts the Crown, or personnel from specific departments, from parts of the Act. The exemptions allow, for example, the carriage and possession of firearms by Police or New Zealand Defence Force personnel. The exemptions also allow the Crown as an entity to import or supply firearms and other items regulated under the Act.
88. The exemptions were noted to be deficient as early as the Thorp Report (1992), as there are other persons who must be exempted in certain situations. In addition, certain provisions relating to reporting and marking of firearms and parts do not need to apply to the Crown in the same manner as private individuals. There is also a need to modify how the Act's requirements apply to the NZDF when deployed overseas, as the provisions of the Armed Forces Discipline Act 1971 applies offences in the Arms Act extraterritorially to NZDF when deployed.
89. I am seeking your approval to change how the Act binds the Crown to:
- 89.1. allow additional classes of persons to have temporary carriage and possession of firearms, such as Customs officers examining firearms at the border, Ministry of Defence staff assisting NZDF with weapons testing or procurement, or civilian contractors providing training to Police or NZDF. A list is set out in Appendix 1. These cannot be dealt with by the existing regulation making power in the Act;
  - 89.2. modify how certain provisions apply to the Crown, such as those relating to the new registry, serialisation or notification. These provisions will not apply to the Crown unless regulations provide that they do;
  - 89.3. enable third parties who act as agents for the Crown to import and store firearms and parts on the Crown's behalf; and
  - 89.4. NZDF and Police have identified potential additional classes who could be exempted from some of the Act's provision such as: logistics or armoury contractors working on behalf of the NZDF. The Bill widens the regulation-making power to allow additional classes of persons (such as contractors) who could be allowed to carry and possess firearms, parts and ammunition belonging to the Crown if they have the authorisation to do so.

### **Allocation of decision making powers**

90. There is no new allocation of decision making powers between the executive, the courts, and tribunals. The Bill introduces a new review mechanism for decisions to refuse or revoke a firearms licence to a delegate of the Commissioner which is a pre-requisite for applying to the District Court.

## **Associated regulations**

91. The Bill will require the making of new regulations and amendments to existing regulations to ensure consistency. Police will work with PCO to plan out the sequencing of the regulations.
92. Some regulations necessary for implementation of the Bill such as provisions relating to current exemptions for manufacturing, and increasing the record-keeping requirements for manufacturers on a dealer's licence from five to ten years to accede to the Firearms Protocol, will be introduced as consequential amendments when the Bill comes into force. Officials will work with PCO once the Bill is introduced, to prioritise and draft regulations required for when the Bill comes into force, while the Bill is before Select Committee.
93. The Bill introduces a range of new regulation-making powers, including regulation of advertising, fee setting for cost recovery, the firearms registry, and setting up the Firearms Advisory Group. Due to the size of the drafting task and need for further consultation, these regulations will be phased through 2020 and 2021 tied to the commencement of these parts of the Act. The full range of regulation changes required is set out at Appendix 5.

## **Other instruments**

94. The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

## **Definition of Minister/department**

95. The Bill does not contain a definition of Minister, department (or equivalent), or chief executive of a department (or equivalent position).

## **Commencement of legislation**

96. I seek your agreement that commencement provisions be drafted into the Bill as set out below.
97. The majority of provisions in the Bill will come into force on the day after the date of enactment (proposed for March 2020); duration of licensing and permit changes, compliance and enforcement powers, information sharing, endorsements and other provisions relating to strengthening the Bill. These provisions include changes that are straight forward to implement and do not require significant operational change, or are enabling provisions that provide the ability to establish a system or process (e.g. the stakeholder advisory group).
98. A suite of changes relating to the framework for individual licensing will come into effect six months from the date of enactment. On current timeframes this is likely to be September 2020. The new fit and proper criteria, provisions for conditions of licences, and the licensing review system will also apply to existing licence holders from the date that these provisions come into force. Significant pre-work is required by Police to enable the effective roll-out of licensing changes, include regulations, changes to operational policy and systems, and the training of Arms officers and frontline staff. It will be a more efficient and effective change management process if licensing changes are packaged together. This includes the enhanced fit and proper person test and the new graduated suite of intervention tools. Those currently holding parts, magazines and ammunition for which a firearms licence will be required once the provisions come into effect, will have until this time to apply for a licence, hand in, dispose of, or sell these items.
99. The changes to the dealer licensing regime will come into effect 12 months from the date of enactment. On current timeframes this is likely to be March 2021. The amendments to the Act broaden the scope of businesses that will be captured by the legislation, and in addition, amendments apply more rigorous requirements to get the necessary individual and dealer

licences. I consider it reasonable to give these businesses more time to bring their systems up to speed and to upskill where necessary, in order to meet the new requirements. The new graduated suite of interventions that relate to dealers will come into effect at the same time. Existing dealer licence holders will be grandfathered for the remaining duration of their licence. As dealer licenses are issued on an annual basis, after a year of the dealer licence provisions coming into effect, all dealer's will have transitioned to the new licensing regime (or existed the industry).

100. The Bill provides for the licencing of shooting clubs and ranges to come into effect two years from the date of enactment. On current timeframes this is likely to be March 2022. The regulatory regime is expected to introduce a range of increased expectations and standards on these clubs and ranges, most of which are not currently regulated. This timeframe recognises that for some of these clubs and ranges, implementing these changes in preparation for the licencing regime will be demanding, primarily due to costs and the reliance on volunteers. Police intends to provide advice to clubs and ranges to help them prepare for these changes. Transitional provisions will be provided for existing recognised pistol clubs and ranges to continue to be recognised until the expiry of their current club certification. Pistol club certification lasts for five years.

101. The Bill provides for the registry to come into effect two years after the Bill comes into force. On current timeframes this is likely to be March or April 2022. Given I intend the registry to come into effect within the first 12 months of enactment, the Bill provides for the registry to be brought into effect sooner by Order in Council. However, I consider it prudent to provide for a buffer, to make sure the registry is fully functional before it goes live.

### **Parliamentary stages**

102. The Bill should be introduced following Cabinet consideration, on 13 September 2019, referred to the Finance and Expenditure Committee, and passed before 15 March 2020.

### **Proactive Release**

103. I propose to proactively release this paper, and the separate briefings provided to progress policy decisions, subject to any necessary redactions under the Official Information Act 1982 when the Bill is introduced.

### **Recommendations**

104. The Minister of Police recommends that Cabinet:

#### *Proposal*

1. **note** that the Arms Legislation Bill significantly strengthens the framework for safe use and control of firearms;

#### *Policy items requiring Cabinet approval*

2. **note** that the Bill reduces the duration of a firearms licence from 10 years to five years to enable the more regular reassessment of people against the fit and proper test, while grandfathering 10 year licences that were issued or applied for before 23 July 2019;
3. **agree** that the Bill specifies that existing licence holders whose licences do not expire before the Act comes into force (but who apply anyway), and new licence applicants, will obtain a 10 year licence that will revert to a five year licence when the licensing provisions comes into force;



4. **agree** that the limb on the Purpose Statement outlining that everybody works together to promote and protect personal and public safety not be drafted in the Bill, as it could create a risk of Courts interpreting provisions of the Act in ways not intended;
5. **agree** that the other policy amendments that have arisen as part of the drafting process, including those that impact on how the Act binds the Crown, set out in Appendix 1, be included in the Bill;

*Policy items with prior Cabinet approval*

6. **note** the Arms Legislation Bill will amend the Arms Act 1983 to introduce a number of changes, including:
  - 6.1. introducing a Purpose Statement for the Act;
  - 6.2. enabling the creation of an online registry to store information on firearms, other items controlled by the Arms Act, and licence holders, to keep better track of firearms;
  - 6.3. strengthening individual and dealer licensing regimes to have more focus on high risk behaviour, to ensure firearms remain accessible only to fit and proper people in the interests of personal and public safety;
  - 6.4. introducing a licensing regime for clubs and ranges;
  - 6.5. increasing the regulatory and enforcement tools available to Police;
  - 6.6. introducing a stakeholder advisory group with membership from the firearms and non-firearms communities;
  - 6.7. enabling more robust cost recovery regimes;
  - 6.8. enabling the issue of further guidance on aspects of the Arms Act and Regulations through a notice-making provision;
  - 6.9. strengthening regulatory oversight of the importation and sale of ammunition and imitation blank firing firearms, advertising, and the manufacturing of parts;
  - 6.10. providing for a review of the Arms Act to commence five years after the Bill is passed;
  - 6.11. addressing follow up matters from the April 2019 Amendment Act prohibiting some semi-automatic and other firearms;
  - 6.12. making minor and technical changes to improve workability;
7. **note** that Cabinet agreed to a two year duration for pest control endorsements;
8. **agree** that this provision apply retrospectively to pest control endorsements issued on or after 12 April 2019, when the prohibition amendments came into force;
9. **note** that Cabinet agreed to prohibit visitors to New Zealand from purchasing firearms;
10. **agree** to extend this prohibition to the purchase of restricted weapons;



*Items approved by Ministers requiring Cabinet confirmation*

*Information sharing and health practitioners*

11. **note** that Cabinet agreed that information sharing options, including direct data access, be considered by Ministers with Power to Act [CAB-19-MIN-0288];
12. **note** that Ministers with Power to Act:
  - 12.1. agreed to Direct Data Access provisions to enable the Ministry of Foreign Affairs and Trade, New Zealand Customs Service and the Department of Conservation access information in the registry for specified purposes related to the administration of the firearms regime, and their powers, duties and functions in relation to arms generally;
  - 12.2. noted that details about the conditions and circumstances of access to the registry would be agreed in Direct Data Access agreements between relevant Ministers, following consultation with stakeholders and with the Privacy Commissioner;
  - 12.3. agreed to require each licence applicant to inform Police who their primary health provider is and authorise Police to notify the licence holder's primary health provider that a licence is held by that person;
13. **agree** to the information sharing provisions agreed by Ministers with Power to Act;

*Accession to the Firearms Protocol*

14. **note** that Cabinet authorised the Minister of Police and Minister of Foreign Affairs to issue any drafting instructions required to enable New Zealand to accede to the Firearms Protocol [CAB-19-MIN-0288];
15. **authorise** 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), subject to:
  - 15.1. passage of the Bill which will implement the minimum requirements of the Firearms Protocol as currently interpreted;
  - 15.2. non-legislative changes to procedural requirements for the export of firearms, such as seeking the approval from importing states;
16. **note** that the Firearms Protocol will be brought into force for New Zealand by the deposit of an instrument of accession with the Secretary-General of the United Nations;
17. **agree** the policy changes required to become party to the Firearms Protocol would complement the other changes in the Bill and should progress regardless of whether New Zealand accedes to the Protocol (except for the technical amendments relating to mutual assistance and extradition which require accession before commencement);
18. **note** that Parliamentary Treaty Examination was completed for the Firearms Protocol in 2004;
19. **agree** that the Parliamentary Treaty examination does not need to be repeated;
20. **invite** the Minister of Police to write to the Chair of Select Committee considering the Bill to advise that:

- 20.1. the changes in the Bill will also enable New Zealand to accede to the Firearms Protocol;
- 20.2. the Government intends to accede to the Firearms Protocol following the passage of the legislation;

*Offences and penalties*

- 21. **note** that Cabinet authorised the Minister of Police and Minister of Justice to make decisions on new and existing offences and penalty levels [CAB-19-MIN-0288];
- 22. **agree** to the offences and penalty levels agreed by Ministers in the Bill as outlined at Appendix 3;

*Minor and technical amendments*

- 23. **note** that Cabinet authorised the Minister of Police to take decisions on any minor or technical matters
- 24. **agree** to the minor amendments set out at Appendix 4 for inclusion in the Bill;
- 25. **note** there have been ongoing minor and technical amendments to the Bill since consideration at the Cabinet Business Committee on 2 September 2019 to ensure the Bill is ready for introduction;

*Commencement*

- 26. **agree** the commencement provisions below will be drafted into the Bill:
  - 26.1. the day after the date of enactment (March 2020): key provisions and enabling provisions will come into force such as the purpose statement, duration of licencing, notice making powers, and regulation-making powers including fee setting/cost recovery, along with the substantive provisions aimed at enabling New Zealand to acceded to the Firearms Protocol;
  - 26.2. six months from the date of enactment (September 2020): key provisions around the individual licensing system and graduated responses for licence holders (such as improvement notices and the ability to suspend a licence) will come into force;
  - 26.3. twelve months from the date of enactment (March 2021): key provisions around the dealers licensing changes will come into force, along with graduated responses for dealers;
  - 26.4. two years from the date of enactment (March 2022): key provisions relating to the licensing of clubs and ranges and the registry will come into force, with a provision for the registry to be brought into force sooner by Order in Council;
  - 26.5. upon entry into force for New Zealand of the Firearms Protocol: consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999 by Order in Council;

*Parliamentary stages*

- 27. **approve** the Bill for introduction subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 28. **agree** that the Bill be subject to continued drafting of a minor and technical nature between consideration by Cabinet and introduction on 13 September 2019, and throughout the Select

Committee process, to modernise language, continue with quality assurance processes, and to ensure the overall workability of the Bill;

29. **agree** that the Bill be introduced on 13 September 2019;

30. **agree** that the Government propose that the Bill be:

30.1. referred to the Finance and Expenditure committee for consideration; and

30.2. enacted before 15 March 2020.

Authorised for lodgement

Hon Stuart Nash

Minister of Police

PROACTIVE RELEASE

## Appendix 1: Table of policy amendments

Reference	Proposed amendment
New section	Cabinet agreed to a recommendation for the Minister of Police to hold the notice-making power. However, the paper specified that the Commissioner would hold the notice-making power. This was an error in the drafting of the recommendations. I seek agreement to rescind the previous recommendation, and replace with new recommendation.
New section	Cabinet agreed that fees and expenses for the stakeholder advisory group would be paid in accordance with the Fees and Travelling Allowances Act 1951 I seek agreement they will instead be paid in accordance with the Cabinet fees framework.
New section	Introduce an explicit stand down period of five years following a licence being revoked
s 3	Expand the Crown's exemptions from the Act to cover carriage and possession by: <ul style="list-style-type: none"> <li>• Visiting police undertaking training or carrying out official duties under the authorisation of the Commissioner</li> <li>• Persons approved by either the Commissioner or the Chief of Defence Force who are giving training to Police or NZDF personnel</li> <li>• Customs officers (who interact with imported firearms as part of border security activity)</li> <li>• Ministry of Defence staff who are undergoing weapons familiarisation as part of an NZDF procurement process and are under NZDF supervision</li> <li>• Additional classes of persons carrying or possessing firearms, parts and ammunition belonging to the Crown and with authorisation, (to be given effect through Regulations).</li> </ul>
s.3 or s.74	Enable regulations to amend or exempt the Crown (or parts of it) from requirements relating to notification of firearms losses or destruction, marking of firearms, notification of injuries, or entry of information into the register.
s.3 or s.74	Expand the scope of the Crown's exemptions to enable the Crown or its agents to import, possess, manufacture or assemble any firearms or parts
7A	Remove the requirement that dealers attending authorized gun shows for the purpose of carrying out business must close their physical store (or stores) while they attend the show.
s 12	Require individuals who cease to be licensed dealers (i.e. because their licence expires and they close down their business) to provide dealer records to Police.
s 16 and new section 66D	For items imported temporarily by visitors to New Zealand (eg. on a boat), no offence is committed if the item is declared to the New Zealand Customs Service (Customs) and secured by Customs or Police. This amendment reflects current practice.

s 54	Include reference to airguns in offence of use or attempted use of a firearm to resist or prevent arrest or commit offence.
s 60B	Expand offence provision for licensed dealers carrying on dealer activities without a dealer's licence to also apply after suspension of licence
s 69	Provide that following conviction for unlawful possession the Court <b>must</b> order forfeiture unless there are good reasons for restoring the firearm to the owner.
s 74(1)	Expand regulation-making power to allow for regulations to set the time for which dealers must keep records (to enable a move from 5 year record keeping to 10 years) and allow for the marking of firearms at any time.

PROACTIVE RELEASE



## Appendix 2: Clause 33, new section 22J

### ***Persons disqualified from holding a firearms licence***

New section 22J provides that a person is disqualified from holding a firearms licence if they have had a protection order (other than a temporary protection order) in force against them in the previous 10 years or been convicted or released from custody within the previous 10 years for any of the following offences:

These are:

<b>Disqualifying offences</b>	<b>Breakdown</b>
An offence under section 16(4), 16A, 44A, 50A, 50D, 51A, 53A, 54, 54A, 55, 55A, 55D, 55E, or 55F	Section 16(4) – offence to import firearms, etc., without permit
	Section 16A – offence to import prohibited ammunition
	Section 44A – offence to sell or supply prohibited firearm or prohibited magazine
	Section 50A – unlawful possession of prohibited firearm
	Section 50D – unlawfully carrying or possessing prohibited firearm in public place
	Section 51A – presenting prohibited firearm at other person
	Section 53A – use or attempted use of prohibited firearm to resist or prevent arrest of commit offence
	Section 54 – use or attempted use of firearm, etc., to resist or prevent arrest of commit offence
	Section 54A – carrying prohibited firearm with criminal intent
	Section 55 – carrying firearm, etc., with criminal intent
	Section 55A – offence to assemble prohibited firearm
	Section 55D – offences relating to illegal manufacturing of firearms or parts
	Section 55E – offences relating to illegal trafficking of firearms, parts or ammunition
	Section 55F – offences relating to falsifying firearms markings
A serious violent offence as defined in section 86A of the Sentencing Act 2002 (Crimes Act 1961 offences)	Section 128B – sexual violation
	Section 129 – attempted sexual violation and assault with intent to commit sexual violation
	Section 129A(1) – sexual connection with consent induced by threat
	Section 131(1) – sexual connection with dependent family member under 18 years
	Section 131(2) – attempted sexual connection with dependent family member under 18 years
	Section 132(1) – sexual connection with a child
	Section 132(2) – attempted sexual connection with a child
	Section 132(3) – indecent act on child
	Section 134(1) – sexual connection with young person
	Section 134(2) – attempted sexual connection with young person
	Section 134(3) – indecent act on young person
	Section 135 – indecent assault
	Section 138(1) – exploitative sexual connection with person with significant impairment
	Section 138(2) – attempted exploitative sexual connection with person with significant impairment
	Section 142A – compelling indecent act with animal
	Section 144A – sexual conduct with children and young people outside New Zealand
	Section 172 – murder
	Section 173 – attempted murder
	Section 174 – counselling or attempting to procure murder
	Section 175 – conspiracy to murder
	Section 177 – manslaughter
	Section 188(1) – wounding with intent to cause grievous bodily harm
	Section 188(2) – wounding with intent to injure
	Section 189(1) – injuring with intent to cause grievous bodily harm
	Section 191(1) – aggravated wounding
	Section 191(2) – aggravated injury

Disqualifying offences	Breakdown
	Section 198(1) – discharging firearm or doing dangerous act with intent to do grievous bodily harm
	Section 198(2) – discharging firearm or doing dangerous act with intent to injure
	Section 198A(1) – using firearm against law enforcement officer, etc.
	Section 198A(2) – using firearm with intent to resist arrest or detention
	Section 198B – commission of crime with firearm
	Section 200(1) – poisoning with intent to cause grievous bodily harm
	Section 201 – infecting with disease
	Section 208 – abduction for purposes of marriage or sexual connection
	Section 209 – kidnapping
	Section 232(1) – aggravated burglary
	Section 234 – robbery
	Section 235 – aggravated robbery
	Section 236(1) – causing grievous bodily harm with intent to rob or assault with intent to rob in specified circumstances
	Section 236(2) – assault with intent to rob
An offence under section 92, 98, 98A, 189A, 199, 202C, 238, 267(1), 269(1) and (3) or 306 of the Crimes Act 1961	Section 92 - piracy
	Section 98 – dealing in slaves
	Section 98A – participation in an organised criminal group
	Section 189A – strangulation or suffocation
	Section 199 – acid throwing
	Section 202C – assault with weapon
	Section 238 – punishment of blackmail
	Section 267(1) - arson
	section 269(1) – intentional damage (intentionally or recklessly destroys or damages any property if s/he knows or ought to know that danger to life is likely to result)
	Section 269(3) – intentional damage (intentionally destroying or damaging any property with reckless disregard or the safety of any other property)
An offence under section 6, 9, 10, 11, 12, 12A, 12AB, or 12F of the Misuse of Drugs Act 1975	Section 306 – threatening to kill or do grievous bodily harm
	Section 6 – dealing with controlled drugs
	Section 9 – cultivation of prohibited plants
	Section 10 – aiding offences against corresponding law of another country
	Section 11 – theft, etc. of controlled drugs
	Section 12 – use of premises or vehicle, etc.
	Section 12A – equipment, material, and substances used in production or cultivation of controlled drugs
	Section 12AB – offence to knowingly import or export precursor substances for unlawful use
	Section 12F – drugs smuggling outside New Zealand, etc.: prohibited equipment or material

### Appendix 3: New offences and amendments to offences

#	Section	Offence	Current penalty	Agreed max penalty
<b>new offences</b>				
1	new 22A 22B	without reasonable excuse possessing parts, magazines or ammunition without a licence	n/a	\$10,000
2	new 55C	without reasonable excuse failure to permit the inspection of their firearms or where they are secured	n/a	\$10,000
3	new 38B/38J	without reasonable excuse conducting or operating an unapproved shooting range	n/a	\$10,000
4	new 58A(2)	failing to provide information without reasonable excuse to the registry	n/a	\$10,000
5	new 58A(5)	providing false or misleading information to registry	n/a	\$20,000 or 2 years
<b>mens rea (mental) elements clarified</b>				
6	42	with intent to deceive adds to firearms licence, alters licence in any way, lends to another person, uses the licence of another person, supplies information knowing it to be incorrect	\$1,000 and/or 3 months	\$20,000 or 2 years
<b>strict liability offences with increased penalties</b>				
7	74(1)(r)	non-compliance with any regulations, in the case where it has been identified to be an offence in the regulations to do so	\$400	\$2,000
8	34(3)	the holder of a firearms licence does not inform Police in writing within 30 days of any change of address	\$500	\$2,000
9	38(2)	not giving four days' notice to Police of intended removal of Pistol, MSSA or restricted weapon out of New Zealand	\$500	\$2,000
10	11(2)	dealers or their employees or agents not having a firearms licence and selling	\$500	\$10,000
11	66A (39(2))	owners of firearms not reporting the loss, theft or destruction of any of their firearms	\$500	\$10,000
12	12(3)	dealer not maintaining records relating to the receipt, sale, or manufacture of firearms as required by regulations, and not producing firearms or allowing security inspections	\$500	\$10,000 or 6 months
13	66B (40(3))	any person in possession of a firearm who refuses to give name, address or date of birth or gives false particulars to Police	\$1,000 and/or 3 months	\$10,000 or 6 months
14	66C (41(4))	failure to surrender airguns or antique firearms (no Dealers licence or Firearms Licence)	\$1,000 and/or 3 months	\$10,000 or 6 months
15	59(4)	failure to comply with a notice to surrender a firearm that has not been brought up to a safe standard after a notice from police to bring it up to safe standard	\$500	\$10,000 or 6 months
16	28(5)	when licence revoked, for not delivering firearm, pistol or restricted weapon to Police	\$1,000 and/or 3 months	\$10,000 or 6 months
17	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	\$10,000 or 6 months
18	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	\$10,000 or 6 months
19	5(3)	dealing without a dealer's licence	\$1,000	\$10,000 or 6 months

20	10(3)	a dealer taking possession for sale of a pistol, restricted weapon, prohibited items unless in certain circumstances	\$2,000	\$10,000 or 6 months
21	20	in possession of firearm and not the holder of a firearms licence	\$1,000 and/or 3 months	\$15,000 or 1 year
<b>amendments to April Amendment Act offences</b>				
22	55B (April Act)	having a dealer's licence or an endorsed licence holder fails to produce for Police, or does not permit inspection of, any pistol, restricted weapon, or prohibited firearm or magazine	\$1,000 and/or 3 months	\$10,000 or 6 months
23	50D (April Act)	carriage or possession in public place of prohibited firearm without lawful purpose	7 years	5 years
24	53A(2) (April Act)	possesses a prohibited firearm at the time of committing an offence punishable by imprisonment for a term up to 3 years	7 years	5 years
<b>reverse onuses re licences, permits, and conditions removed plus some penalty increases</b>				
25	22C (43B)	Sells/supplies ammunition for firearm or restricted weapon to anyone who is not a licence holder or dealer	\$1,000	\$10,000 remove reverse onus re licence
26	36	carries a pistol or restricted weapon beyond curtilage of dwelling outside conditions endorsed on firearm licence	\$1000 and/or 3 months	\$10,000 or 6 months remove reverse onus re licence
27	43	selling or supplying a firearm (airgun under 18) to a person not having a firearm licence	\$1,000 and/or 3 months	\$20,000 or 2 years Remove reverse onus re licence
28	16(3)	without a permit 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	\$15,000 or 1 year remove reverse onus re permit
29	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	\$30,000 or 3 years remove reverse onus re permit
<b>penalties being decreased</b>				
30	21	possessing an airgun unless you are over 18 or between 16-18 with a firearms licence	\$1,000 and/or 3 months	\$1,000
31	46	carrying an imitation firearm without a lawful, proper, and sufficient purpose	\$4,000 and/or 2 years	\$4,000 or 1 year
<b>two further matters requiring approval</b>				
32	52(1) and (2)	except for lawful purpose presents a firearm, pistol, airgun or restricted weapon at any other person (or an item they are likely to believe is a firearm etc.)	\$1,000 and/or 3 months	\$10,000 6 months
33	15	Dealing after dealers licence has been revoked	\$1,000 and/or 3 months	\$15,000 1 year

#### Appendix 4: Table of minor amendments

Reference	Proposed amendment
Various sections	Amending references to Arms Officer to Police, and Arms Office to Police station.
s 9	Provide for a dealer's licence which has been revoked to be immediately surrendered to Police.
s 12	Expand provisions for records to be kept by licensed dealers to include supply
s 18	Clarify that if permits to import are only partially used, the permit for the remaining items is automatically revoked.
s 18B	Provide for an import sample to be exported back to the supplier or surrendered to the Crown for destruction. The section currently only provides for a firearm which does not correspond with the sample to be disposed of.
s 29(1)(b)	Repeal provisions which allow people to possess kea guns and require them to apply for a collector endorsement. Kea are now a protected species so there is no need to allow possession of these firearms except as part of a collection.
s 39	Remove requirement for written notice of a stolen firearm to allow for more methods of communication with Police.
s 43A	Transitional provision to clarify that mail order (including online sales) of firearms or ammunition must record serial number until Registry provisions come into force.
s 60B	Clarify that a firearms licence is not in force when it is suspended.
s 66B	Clarify that only a constable, not other members of Police, can exercise powers of arrest under this section.
s 72A	Allow for notice under the Act to be served electronically.

#### Table of amendments relating to Arms Amendment Bill 1

Reference	Proposed amendment
s 10	Amend the wording for dealer importing restricted or prohibited items to ensure the meaning is consistent with the policy intent.
s 16A	Amend so that it aligns with s.16(3) in defining when prohibited ammunition is imported



## Appendix 5: Regulations

Topic	Summary	References	Timing
Advertising	<p>Bill adds a new regulation making power to the Act to regulate advertising</p> <ul style="list-style-type: none"> <li>- Regulating advertising of any firearm, part, magazine or ammunition</li> <li>- Setting out responsibilities of sellers and hirers to provide information on the legal conditions for purchasing, and legal requirements associated with the possession and use</li> </ul>	<p>CI 82 S 74(1)(ja-jb)</p>	
Exemption for manufacturing	Exemptions provided for in regulations 28F and 28G will be made permanent in the Act.	<p>r28E partly evoked r28F revoked r28G</p>	Consequential amendment
Cost recovery	Bill will specify in more detail that Police can set fees to recover direct and indirect costs from regulating the firearms regime. Police is developing a cost-recovery model for this, and a consultation document is planned (for late 2019 or early 2020). Requested new regulation making power to replace the current one.	<p>CI 83 s 86 s74(1)(f)</p>	Once cost-recovery work has progressed – consultation is planned for late 2019/early 2020
Commissioners advisory group	<p>Some matters relating to the Commissioners advisory group will be set out in regulations including:</p> <ul style="list-style-type: none"> <li>- A quorum for a meeting being a majority of members</li> <li>- Obligations for disclosing conflicts of interest</li> <li>- Members not to disclose information provided in confidence</li> <li>- Provision for sub-committees to be formed from time to time</li> <li>- Personal and civil liability</li> </ul>	<p>cl 82 s 74(1)(rb)</p>	Prior to the advisory group being established
Licencing review process	Bill is adding a process for reviewing licencing to the Act, including enabling regulations to be made setting out other matters regarding the review process	<p>cl 82 s 74(1)(rc)</p>	Prior to the review process coming into force
Ammunition: record keeping of sales	Bill is introducing a new regulation making power to provide for regulations prescribing the particulars of sales of ammunition to be recorded by firearm licence holders who sell ammunition by way of business	<p>CI 82 s74(1)(ga)</p>	Prior to the registry coming into effect

Further guidance for fit and proper test	Bill will insert a regulation making power to enable further criteria that indicates a person may not be fit and proper to be prescribed by regulation	cl 82, s 74(1)(bb)	Prior to commencement of the individual licensing provisions
Record keeping by dealers	Reducing the time for which dealers must keep records from 10 to 5 years, and amending the definition of items	Cl 82 s 74(1)(h) r 7	Consequential amendment
Reporting by health practitioners	In relation to notices given by health practitioners under s 91: information that Police must provide, period within which a licence holder must undergo a further assessment, classes of health practitioners who may make a further assessment, and further requirements or responsibilities	cl 82 s 74(1)(jc)	Prior to section 91 coming into effect if required
Registry	Bill will introduce the registry, and a power to set regulations to require licence holders to provide information. Regulations will set out what information licence holders must provide, how that information must be provided, when information must be provided, additional requirements on those who apply for a permit, conditions for different classes of licence or endorsement holders, and how this applies to the Crown.	cl 82 s 74(1)(pa), (pc) s 3(5)(c)	Not until Registry provisions come into force, and IT system is built – within 24 months of enactment
Information	Requiring specified persons to provide specified information to Police in accordance with regulations for firearms, parts, and magazines that are not required to be marked with a unique identifier (eg. antique firearms).	Cl 82 s 74(1)(pb)	Prior to registry provisions coming into force
Marking of firearms	Bill will expand the existing ability to require licence holders to mark their firearm with a unique identifier when required to do so by Police. Regulations cover how this would apply to the Crown. To meet the requirements for the protocol, will need to do in the first batch for imported firearms.	Cl 82 s74(1)(l) r12 r27	Upon entry into force for New Zealand of the Firearms Protocol, prior to the registry provisions coming into effect
Recognition of a shooting club	Clubs must have a constitution and rules, which must contain certain information (listed in the Act), and any other requirements provided for in Regulations (including any fee for club recognition)	Cl 53 s 38C(2)	Prior to regulatory changes for clubs/ranges coming into force
Certification of a shooting range	Prescribing information that must be provided with an application for certifying a range.	Cl 53 s 38L(2)	Prior to regulatory changes for clubs/ranges coming into force

Wording accuracy	The Act and Regulations have references to 'Arms offices', which are defined in s.2 of the Act as being any Police station or Police office 'appointed as such' by the Commissioner. This terminology is now outdated and can be replaced by 'Police'.	r 3(1A)(b), 6(1A)(b), 10(2)(b), 13(1A)(a), 16(2)(b)(i) – (iii), 29A(a)	Consequential amendment
Conditions on exemptions (s4A)	Police will assess whether any further conditions on exemptions are required as more applications are processed	s4A(1)(f)-(i) s74(1)(lb)-(lc) r2C	Following enactment if required
Security and storage (generally)	Need to update/modernise the requirements, including storage of vital parts, and storage in a vehicle, and link to new inspection condition on licences.	s33A(1)(c)(iii) s74(1)(i), (j), (ha) r28AAA	Following enactment
Transitional clauses	Providing for any matters necessary for facilitating the transition of the Amendment Act	CI 15(1) Part 2 sch 1	Following enactment if required
Exemption or alteration of provisions applying to the Crown	The Bill includes a regulation-making power to amend how the Act applies to the Crown and allow additional classes of persons who could be allowed to carry and possess firearms, parts and ammunition belonging to the Crown if they have authorisation to do so. This could cover, for example, contract armourers and logistics personnel providing services such as maintenance and transport to the NZDF.	s 3(5)(c) s 74	Prior to the registry coming into effect