

In Confidence

Office of the Minister of Police

Chair, Cabinet

Arms (Prohibited Firearms, Parts and Magazines) Amendment Bill: Approval for Introduction

Proposal

1. This paper seeks approval to introduce the Arms (Prohibited Firearms, Parts, Magazines) Amendment Bill (the Bill).

Policy

Background

2. The Bill significantly restricts access to semi-automatic firearms and related parts to improve public safety.
3. On 18 March 2019, Cabinet agreed in principle to take a number of steps to significantly reduce access to semi-automatic firearms, parts, magazines and ammunition [CAB-19-MIN-0105]. Cabinet also agreed that a group of Ministers comprising the Prime Minister, Deputy Prime Minister, Minister of Finance, Minister of Justice, Minister of Police and Minister of Defence would be given Power to Act to take decisions on the details of the proposals. These decisions were taken on 20 March 2019. On 25 March 2019, Cabinet made some further policy decisions [CAB-19-MIN-0124].

Prohibited items

4. The Bill amends the Arms Act 1983 (the Arms Act) with provisions that cover all prohibited firearms, parts and magazines; who will be exempted and how they will be controlled; and the offences applicable to prohibited items.
5. The Bill bans a number of items, with a small number of specific exemptions for wild animal control activities and for dealers, collectors, museums and theatrical armourers. The prohibited items are listed below.
 - 5.1. Prohibited firearms: includes semi-automatic firearms, including those currently classified as military style semi-automatics (MSSAs); pump action shotguns capable of being used in combination with a detachable magazine or one with a non-detachable, tubular magazine that holds 6 rounds or more; but excludes semi-automatic rimfire .22 calibre or less rifles with a maximum 10-round magazine, and semi-automatic and pump-action shotguns with a non-detachable, tubular magazine with a maximum of 5 rounds.

- 5.2. Prohibited parts: any parts with the ability to convert semi-automatic firearms or any other type of firearm to MSSAs, or to manufacture MSSAs, or to cause a firearm to generate semi-automatic, or close to semi-automatic or full automatic gunfire.
- 5.3. Prohibited magazines: all magazines capable of holding more than 10 rounds; magazines for shotguns capable of holding more than 5 rounds; and any detachable magazines for a 0.22 calibre firearm or any semi-automatic or fully automatic firearm capable of holding more than 10 rounds.

An amnesty

6. The Bill establishes an amnesty regime to enable a reasonable period of time for newly prohibited items to be handed in to Police or licensed dealers. The existing amnesty for licensed dealers to receive certain firearms will be extended to prohibited firearms. The Bill also affirms that in all other cases where firearms are handed in, Police have the discretion not to prosecute where the offence is considered to be one of possession only and there is no public interest in doing so.

Matters likely to be contentious

7. Cabinet agreed that there be no exemption for international sporting competitions [CAB-19-MIN-0124] and so this has not been included in the Bill. s(9)(2)(f)(iv)

Outstanding policy issues

8. There are a range of weaknesses in the Arms Act that will be addressed through the development of a second Arms Amendment Bill later this year.

Agreement is sought for the following two matters

Process to prohibit certain ammunition:

9. Cabinet agreed to prohibit armour piercing, incendiary, tracer, and similar types of military ammunition for non-military use. This was to be given effect through Regulations to the Arms Act. I propose a better process to give effect to this ban is by defining 'prohibited ammunition' in the Act to be any ammunition declared by the Governor-General by Order in Council to be prohibited ammunition. The Bill provides for this preferred process.

Penalty levels for offences:

10. Cabinet agreed to establish a number offences in relation to firearms, parts, ammunition and magazines. Cabinet noted that Police would work with the Ministry of Justice to provide advice on the appropriate burden of proof, knowledge and penalty levels for the new offences. This has now occurred and I propose Cabinet agree to the offences and penalties in the Bill.

11. Two approaches have been taken in relation to providing offences and penalties for newly prohibited items.
12. In the first case, separate offences that are modelled on existing offences have been developed, though with higher penalties. I believe the higher penalties are justified as they relate to more dangerous items and therefore there is a greater risk to people's safety associated with the prohibited conduct. As required with penalties of this severe nature the intent is that the burden of proof for these offences in all cases but one falls on the Crown.
13. The exception relates to unlawful possession where a prohibited firearm is on someone's property or in their vehicle. In these cases I believe it is justified to place a legal burden on the defendant to prove that the item is not theirs and belongs to someone else because they are in the best position to show proof as to possession.
14. The new offences have differing maximum penalties related to the seriousness of the offence. These include:
 - 14.1. maximum penalty of 10 years imprisonment:
 - using a prohibited firearm to resist arrest
 - 14.2. maximum penalty of 7 years imprisonment:
 - having possession of a prohibited firearm while committing any offence that has a maximum penalty of 3 years or more
 - unlawful possession of a prohibited firearm in a public place
 - presenting a prohibited firearm at another person
 - carrying a prohibited firearm with criminal intent
 - 14.3. maximum penalty of 5 years imprisonment:
 - unlawful possession
 - supplying a prohibited firearm
 - intentionally using a part to assemble a prohibited firearm
 - 14.4. maximum penalty of 2 years:
 - possessing a prohibited part or magazine
 - failing to comply with a police inspection.
15. In the second case, the proposal is to amend the existing offences in the Arms Act to include newly prohibited items, with the existing penalties. However, for these existing offences, in relation to the newly prohibited items there will be no reverse onus of proof on the defendant (noting any existing reversal of onus provisions will continue to apply in relation to other items).

16. The existing offences to be expanded include: supplying to an unlicensed person; mail order sales; supplying to someone without a permit to import or possess; possession of prohibited magazines without lawful purpose; unlawful possession following licence revocation; discharging a firearm near a house or a public place, being in charge of a firearm while under the influence of drink or drug, careless use of a firearm, failing to report injuries caused by a firearm, having an unsafe firearm; not giving notice of loss, theft or destruction.
17. The Ministry of Justice supports the intent of the proposals in the paper and the efforts made to minimise the impact on defendant's rights in respect of new offences. The Ministry of Justice does have residual human rights concerns about the reversed onus of proof for the amended offence of unlawful possession, and will seek to work with Police further to address these.

Impact analysis

18. A regulatory impact assessment was not submitted at the time that Cabinet approval of the policy relating to the Bill was sought [CAB-10-MIN-0105, CAB-19-MIN-0124].
19. A Quality Assurance (QA) Panel with representatives from the Treasury, the Ministry of Business, Innovation and Employment, and the Ministry for Primary Industries has reviewed the Supplementary Analysis Report: Arms Amendment Bill (No.1): Implementation of Proposals and Buy-Back Scheme and provided the following statement.
20. Due to time constraints, Regulatory Impact Analysis was not completed on the proposals contained in the Cabinet paper Operation Dean – Amendments to the Arms Act 1983. The New Zealand Police and the Treasury therefore agreed that the Police would provide a Supplementary Analysis Report (SAR) to accompany the Cabinet paper approving introduction of the Bill.
21. Police and the Treasury agreed that the purpose of the SAR would be to focus on implementation risks and mitigation measures for the proposals to prohibit certain firearms and parts, limited exemptions, and amnesty provisions, including the proposed gun buy-back scheme.
22. The QA panel has not seen the final version of the SAR submitted to Cabinet. This QA statement relates therefore to the draft seen on 27 March 2019, which will not be the same as the final SAR submitted.
23. The QA Panel notes that the SAR has been prepared under significant time constraints. There are also some major information gaps, including the number of firearms affected by the ban. In view of those constraints, the Police has done a commendable job in addressing the purpose of the SAR identified above. In so far as they are known, the impacts on affected parties are set out, and implementation risks and mitigation measures identified.
24. The QA panel notes that details of the proposals for the buy-back scheme were not available at the time of writing. The buy-back scheme is essential in supporting the

operational policy for the Bill to encourage the surrender of prohibited firearms during the amnesty period. The Police will update the SAR to identify implementation risks and mitigation measures once Cabinet makes decisions on the form of the buy-back scheme.

25. The QA Panel also notes that the Select Committee process may well identify further implementation risks, and ways of mitigating those risks. The Police will update the SAR to reflect any issues that arise from the Select Committee process.
26. In light of this additional work, the QA panel will review the final version of the SAR following Select Committee consideration and provide further comments to Police.

Compliance

27. The Bill:

- 27.1. complies with the principles of the Treaty of Waitangi

- 27.2. complies with the rights and freedoms contained in the Human Rights Act 1993

- 27.3. likely complies with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990

However, due to the urgency under which the Bill has been developed, Crown Law have not been able to give an opinion about compliance with the New Zealand Bill of Rights Act 1990 at the time this paper is being lodged.

- 27.4. complies with the disclosure statement requirements

A disclosure statement has been prepared and is attached to the paper. Ministers may be interested in the discussion on offences (at section 3.4), the discussion on compulsory acquisition of private property (at section 4.1), the discussion on immunity (at section 4.5), and the power given to the Governor-General to amend the definitions of prohibited firearms and prohibited magazines in the Arms Act by Order in Council (at section 4.7).

- 27.5. complies with the principles and guidelines set out in the Privacy Act 1993

- 27.6. complies with relevant international standards and obligations

Police are working with the Ministry of Foreign Affairs and Trade on the implications of the prohibitions for exports, to ensure that New Zealand protects its international reputation as a responsible arms exporter. MFAT is preparing a separate policy paper.

New Zealand is obligated to notify technical regulations that may have a significant effect on trade to the WTO committee on Technical Barriers to Trade (TBT). MFAT have prepared a draft notification and will notify the legislation to the TBT Committee when it is passed.

- 27.7. complies with the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee

There are two aspects of the legislation that depart from the default approach in the Guidelines. The first relates to the reverse burden of proof for some of the offences (justifications discussed at paragraphs 10-16 above). The second relates to the power to make delegated legislation, where the Governor-General can amend the definitions of prohibited firearms and prohibited magazines by Order in Council. This power is necessary to ensure that changes can easily be made to restrict newly designed or manufactured firearms that may have the same capacity or risk for harm, but do not strictly meet the existing definition. This is crucial to preventing dangerous high-risk weapons circumventing the prohibitions.

Consultation

Government departments

28. This paper has been consulted with the Ministry of Justice, the Treasury, the Ministry of Foreign Affairs and Trade, the Ministry of Defence, the Department of Conservation, the New Zealand Customs Service, and the Department of Prime Minister and Cabinet.

Private sector organisations and public consultation processes

29. My officials discussed some proposals that had been made public with some members of the Firearms Community Advisory Forum (FCAF). In particular there was discussion over how to define prohibited items and how to address the issue of allowing those with legitimate professional needs to possess prohibited firearms.

Government caucus and other parties represented in Parliament.

30. There is cross-party support for the proposals in the Bill.

Binding on the Crown

31. The Amendment Act will be binding on the Crown, subject to the existing exceptions in the Arms Act that apply to the Crown (for example for purposes of Police and the New Zealand Defence Force operations) [CAB-19-MIN-0124].

Allocation of decision making powers

32. There is no allocation of decision making powers between the executive, the courts, and tribunals.

Associated regulations

33. No regulations are needed to bring the Bill into operation.

Other instruments

34. The Bill empowers the Governor-General, on the recommendation of the Minister of Police, to make an Order in Council that defines prohibited firearms and prohibited ammunition. This Order in Council will be a legislative instrument.
35. This is appropriate for secondary legislation as the definition of prohibited firearms and ammunition is technically complex; requires flexibility in light of technological developments; and requires input from experts and key stakeholders. Appropriate safeguards are provided by consulting interested parties; Cabinet scrutiny; and the Parliamentary Counsel Office drafting and certifying the Order in Council. The explanatory note to the Bill discusses this further.

Definition of Minister/department

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

Commencement of legislation

37. The Bill will come into force the day after Royal Assent. This is likely to be on 12 April 2019.

Parliamentary stages

38. The Bill should be introduced on 1 April 2019, and should be passed by 11 April 2019.
39. It is proposed that the bill be referred to the Finance and Expenditure committee for consideration.

Proactive Release

40. I propose to proactively release this paper subject to any redactions that may be warranted under Official Information Act 1982.

Recommendations

The Minister of Police recommends that Cabinet:

1. **note** that the Arms (Prohibited Firearms, Parts and Magazines) Amendment Bill (the Bill) significantly restricts access to semi-automatic firearms and relate parts to improve public safety;
2. **note** the Bill prohibits a number of firearms, parts and ammunition; sets out who will be exempted and how they will be controlled; provides for an amnesty regime to incentivise the handing in of prohibited items, and provides related offences;
3. **agree** that instead of using Regulations to prohibit armour piercing, incendiary, tracer, and similar types of military ammunition for non-military use, a better process to give effect to this ban is by defining 'prohibited ammunition' in the Act to be any

ammunition declared by the Governor-General by Order in Council to be prohibited ammunition;

4. **agree** to the offences and penalties in the Bill;
5. **approve** the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
6. **agree** that the Parliamentary Council Office may make minor technical amendments to the Bill prior to introduction (if required);
7. **agree** that the Bill be introduced on 1 April 2019;
8. **agree** that the government propose that the Bill be:
 - 8.1. referred to the Finance and Expenditure committee for consideration;
 - 8.2. enacted by 12 April 2019.

Authorised for lodgement

Hon Stuart Nash
Minister of Police