

Restricted

Office of the Minister of Police

Chair, Cabinet Committee

Operation Dean – Amendments to the Arms Act 1983

Proposal

1. The mass shooting in Christchurch has exposed a range of weaknesses in our current firearms regime that we need to address to improve public safety. This paper seeks urgent approval to significantly strengthen the Arms Act 1983 by reducing the number of, and access to, semi-automatic firearms in New Zealand. It also identifies areas for further consideration and policy development.


Background

Access to firearms is regulated through the Arms Act and it is not illegal to possess and use semi-automatic firearms in New Zealand

s 6(c)



5. s 6(c)



6. s 6(c)

Australia, following the 1996 Port Arthur massacre, addressed the same set of concerns with regard to MSSAs, but took a different approach. In 1997, Australia ratified a nationwide agreement which saw all states introduce laws which included the prohibition of fully and semi-automatic firearms, with their use restricted primarily to military, police or government purposes; the mandatory registration of all firearms and the mandatory licensing of all firearm owners.

Legislative framework - Arms Act 1983

7. The purpose of the Act is to enable fit and proper people to possess firearms for legitimate purposes, while mitigating the risk of misuse by placing limitations at critical control points in the system. The main elements of the Act include:

7.1. A licencing regime to enable the possession and use of firearms, including a requirement that a person be a fit and proper person to be in the possession of a firearm;

7.2. An endorsement regime for the possession, use and storage of certain, more dangerous, firearms such as pistols and semi-automatic firearms;

7.3. A regime for the importation of firearms and specified parts.

Amendments to classification and licensing following fatal events

8. Amendments to the Act in 1992, following the 1990 Aramoana homicide of 13 people, sought to restrict access to semi-automatic firearms by creating a regime aimed at controlling the number and use of semi-automatic firearms. The amendments created a 'classification' regime that distinguished between the legal use of semi-automatic firearms configured for sporting purposes, and those semi-automatics designed for military use (known as military-style semi-automatics (MSSAs))

9. The Act defines a military-style semi-automatic firearm to include semi-automatic .22 calibre rifles with a magazine of more than 15 cartridges. It also includes any semi-automatic firearm (excluding .22 calibre rifles) with a magazine capable of holding more than 7 cartridges. The definition also extends to semi-automatic weapons with specific features such as a holding or telescopic butt, bayonet lugs, or a flash suppressor. The Act provides the power to add to the definition through Order in Council for example, to include specific make and model of firearms or define further features of a semi-automatic firearm. The definition does not include pistols.

¹The difference between the Australian and New Zealand system is often promoted by the Council of Licensed Firearm Owners (COLFO) as a positive. There are long established systems in place to enable Australian firearms licence holders to compete in events run by the NZ Service Rifle Association and I ke clubs to enter competitions and use firearms in New Zealand to which they have no access in Australia.

10. As a result of the classification of semi-automatic firearms into two categories, the Act sets out a two-tiered licencing approach where a person is required:

10.1. To have a firearms licence to acquire and possess an A Category firearm. A Category firearms include sporting type shotguns, including semi-automatic firearms configured for sporting purposes, and that are not MSSAs, pistols or other restricted weapons. A Category firearms can be used by non-licence holders as long as they are under the immediate supervision of a current licence holder.

10.2. To obtain a further 'endorsement' (E Category) as part of their firearms licence to possess and use firearms deemed highly dangerous, such as MSSAs, pistols, or restricted weapons. An endorsed licence puts stricter conditions on storage requirements and places limitations of the use of the firearm. An 'endorsement' is essentially a character reference provided by a third party.

Key issues with current legislation

Ineffective, unclear and overly complex classification of semi-automatic firearms

11. The current categorisation of semi-automatic firearms creates a legal definition that is easily circumvented and is difficult to apply. With a change in a single part, these firearms can be converted easily from an A Category semi-automatic firearm to a MSSA. For example, magazines that can hold and release a high volume of bullets quickly can be easily added to a legally obtained A Category semi-automatic firearm converting it to an MSSA – s 6(c). In addition some semi-automatic firearms use a range of physical contrivances to change the appearance of their MSSAs so the firearm is no longer covered by the legislative definition. For example in a recent case a second screw was added into a pistol grip in order to overcome one aspect of the formal definition of a freestanding grip.
12. In addition, the legislation did not foresee advances in technology (such as the widespread online availability of firearms and components) and manufacturing processes that have seen the development standard semi-automatics on virtually the same specification as MSSAs. In effect the current settings make it impossible to control the prevalence of assault rifles in circulation.

Issues identified by previous reviews and inquiries

13. In 1996, following two fatal shootings by Police, Justice Thorp undertook a review of firearms control in New Zealand. Justice Thorp noted that the distinction created in 1992 between firearms configured for sporting purposes and MSSAs was problematic at best, stating that the distinction as being neither sustainable nor enforceable.
14. Justice Thorp recommended MSSAs, including those configured for sporting purposes, be banned (with an exemption regime established for professionals engaged in activities, such as pest control). A total ban of all semi-automatic weapons was considered at the time and rejected primarily due to the cost to the

government of the buy-back of legally obtained firearms, as well as significant opposition from the gun owning community.

15. The Thorp Report observations are relevant in terms of understanding the challenges that remain today in seeking to control access to, and manage the risk of, the proliferation and use of high powered firearms developed, essentially, for military use. s 6(c) [REDACTED]
16. Since this time, weaknesses in the Act have been identified by the courts, a parliamentary select committee, and successive governments. An attempt to strengthen the Act in 2005 did not progress. A comprehensive Bill was introduced and submissions received and considered, but the Bill did not report back until after a change in government. The new government did not proceed with this Bill. A 2012 amendment enabled regulations to be made to specify what constituted the type of pistol grip that is a feature of a MSSA and set import controls over airguns that looked like pistols, MSSAs or restricted weapons. In 2017 the Law and Order Committee Inquiry into the illegal possession of firearms in New Zealand made 20 recommendations, 17 of which involved strengthening legislation. These recommendations, some of which are covered in this paper, have not progressed.

Broader issues in the system

17. Beyond the significant challenges in the classification regime, Police have identified a number of other gaps or weaknesses in the current regulatory framework. These include:
 - 17.1. The ease of obtaining a licence or endorsed licence and weaknesses;
 - 17.2. The lack of a limit to the number of firearms that can be obtained and held;
 - 17.3. The lack of a requirement for licence holders to record the number of firearms they have, or any details that would identify their firearms, such as a serial numbers.
 - 17.4. Very few restrictions on the trading of firearms (e.g. the current law allows individuals to sell to one another with no record of the sale);
 - 17.5. A licence holder can purchase any type of ammunition, including high capacity magazines and armour piercing bullets;
 - 17.6. Police has limited authority to inspect licence holders' and, to a lesser extent, dealers' compliance with ownership, sales, and use privileges.
18. These issues are not addressed in this paper. Significant work has been undertaken in these areas. Subject to Cabinet approval, I intend to return to Cabinet in the coming weeks with further proposals for consideration.

Proposed Amendments: Prohibition and restrictions on semi-automatic firearms, parts, magazines and ammunition

19. I propose a number of amendments to the Arms Act 1983 to ensure the significant reduction in the number of, and access to, semi-automatic firearms in New Zealand, and to tighten up the licensing, sales and monitoring regimes.

Ban semi-automatic firearms

20. Recognising the high harm that results from the misuse of semi-automatic weapons, I propose we significantly limit access to weapons that in any meaningful sense are assault weapons. We can achieve this by banning:
- 20.1. Option 1: all semi-automatic firearms (including MSSAs), OR
- 20.2. Option 2: semi-automatic firearms (including MSSAs), but excluding semi-automatic .22 calibre rifles with a maximum 10-round magazine, and semi-automatic and pump-action shotguns with a maximum 5 round magazine.
21. Compared to the current legislative setting, both options will remove virtually all MSSAs from the market. Both options also remove all semi-automatic weapons that can be used as or turned into assault weapons. Option 2 is intended to preserve access to the semi-automatic firearms that are most widespread, commonly and lawfully used. In doing so, it aims to leave the majority of legal owners, in particular, hunters and farmers, still able to retain and use the most common firearms.
22. There can be no guarantee that this ban will prevent incidents causing serious harm to the public, but this change is intended to increase public safety by significantly inhibiting opportunity for multi-casualty incidents and limiting the frequency of incidents and the number of deaths and injuries.
23. Recognising there are legitimate business uses, such as commercial pest control for some types of semi-automatic firearms, there will be limited exclusions to the ban. It is proposed this will follow a similar model to Australia, where a person is required to demonstrate that no other type of firearm will be equally effective for their particular business. Given what we know about current business uses of firearms, it is expected the number of these exemptions will be small.²
24. This ban will require a legislative design that is agile and responsive to new developments in weapons technology, such as a schedule of items amendable by Order in Council.
25. This is likely to be viewed positively by the general public who would likely consider the restriction an appropriate step to protect the public from unsafe use of semi-automatics and MSSAs, s 6(c)
Opposition from firearms users will likely be limited by allowing exceptions for legitimate business use.

² Only 9% of firearms licence holders give business reasons for needing a firearm and only a small proportion of these relate to commercial pest control.

Ban parts to create semi-automatic firearms

26. There will still be firearms in the community after the ban with the ability to be converted to generate semi-automatic type gunfire. Given the ease of purchasing online and importing parts that enable this type of firearms conversion, this presents a real public safety risk.
27. To minimise this risk, I propose to also ban any parts with the ability to convert semi-automatic or any other type of firearm to MSSAs, or manufacture MSSAs, or cause a firearm to generate semi-automatic, automatic or close to automatic gunfire, including but not limited to:
- AR: Upper Receiver, Lower Receiver, Bolt Carrier Group, Bolt group, Trigger Group, Lower Parts Kit, Barrels, Magazines and parts thereof, Gas Tube, Gas Block, Buffer Tube, Charging Handle.
 - AK: Receiver, Bolt Carrier Group, Barrel, Gas Block, Gas Tube, Trigger Group, Magazines and parts thereof.
 - Other: Telescopic stock, Free standing pistol grip, Carbine Stock (non-telescopic, but still part of these types of firearms), Folding stock, Magazine loader, Sub-calibre conversion kits, Bump stock, Gattling triggers.
28. This is likely to be understood by the public as a necessary step to ensure there are no opportunities to circumvent the ban on semi-automatic weapons and MSSAs.

Ban high capacity magazines

29. High capacity magazines reduce the frequency of the need to reload the firearm, and speeding up reloading, enabling the user to continue firing. They can generate a very high casualty rate in a short space of time. s 6(c)
30. To reduce the public safety risk of misuse, I propose banning:
- any detachable magazines for firearms other than .22 calibre, AND
 - all magazines capable of holding more than 10 rounds, AND
- magazines for shotguns capable of holding more than 5 rounds.

Restrict nature and type of ammunition

31. A standard firearms licence holder can purchase ammunition without any restrictions on the type or volume of ammunition. I propose to restrict the availability of high calibre ammunition capable of causing high harm. I propose banning the sale and possession of:
- armour piercing, incendiary, tracer, and similar type ammunition.
32. I propose that, as is the case in Australia, there are restrictions placed on the quantity of ammunition that can be purchased and a requirement that ammunition is only sold to purchasers for firearms for which the purchaser is licensed.

33. Given the potential for high harm and lack of legitimate business need or recreational purpose for large calibre or armour piercing bullets, it is likely the impacts on current firearms users will be minimal.

Offences for prohibited firearms, parts and ammunition

34. A ban on all semi-automatics (including MSSAs), related parts and ammunition will be supported by:
- Police powers to enter the property of firearms licence holders to inspect firearms, and
 - specific offences with appropriate penalties for the possession, transfer, sale or import of these firearms and associated accessories and ammunition.

Collectors

35. A total ban on all semi-automatics has implications for the 11,600 collectors of firearms that hold semi-automatic A Category firearms, pistols, MSSAs, restricted weapons and parts thereof and ammunition in accordance with a C endorsement on their standard firearm licence or dealer's licence.
36. C endorsed licence holders fall into the following groups:
- General (hobby) collector: 3 756
 - Memento/heirloom: 189
 - Museum: 64
 - Theatrical: 156
37. Items held under a C endorsement must be disabled. However, at present the part that has been removed to disable the firearm can be held separately. When a collector sells an item from their collection they also sell the entire item (firearm/weapon plus the removed part). Options for dealing with this are:
- Provide an exemption as these people maintain high security which is audited/inspected once every three years – some risk remains as collectors for instance have had their licence revoked e.g., as a result of domestic violence incidents
 - Provide an exemption but require the item to be permanently disabled i.e., not retain the critical part – the effect of this is to reduce the market value of the firearm/weapon
 - Provide no exemption for collectors, and buyback their collections – challenging to estimate the value.

Amnesty for firearms, accessories and ammunition

38. Firearms may be possessed by unlicensed and inexperienced persons through a range of circumstances. These can include firearms possessed by a deceased relative or friend, found in public places or private premises and taken from a licensed person by those concerned about the owner's state of physical or mental health. Such firearms are generally held with no criminal intent but the person is unaware of what to do with the firearm.
39. A firearms amnesty is a set period of time during which people can hand in to Police firearms that they either do not want, or do not have a licence or endorsement for, on the understanding that they are not charged for an unlawful possession offence under the Arms Act. No compensation is paid for the surrendered weapons. People surrendering firearms or other items during the amnesty need not be questioned as to how the item(s) came into their possession, or be required to supply their name if they do not wish to do so.
40. New Zealand Police has held nine arms amnesties since 1972. These have usually been held in conjunction with changes to firearms legislation or some other specific concern. For instance, an amnesty held in 1979 was specifically directed at the unlawful possession of firearms by gangs. The 1999 amnesty campaign cost \$350,000 with 1200 firearms surrendered to Police (about \$300 per firearm).
41. Currently the only amnesty provision relates to protecting licensed dealers. Section 10 of the Arms Act provides for licensed dealers to receive pistols and restricted weapons from individuals who are not licence holders. The dealer is required to pass them on immediately to Police for inspection and inquiries. The regulations specify that the dealer does not need to record the name and address of the person who supplied the item.
42. It is proposed that the amnesty provision be expanded so that the anonymity of the person handing in the firearm applies to all firearms handed in to Police or licensed dealers. This should also be publicised to encourage the public to voluntarily hand over semi-automatics covered by the ban.
43. Police will develop policy guidance so that, under the amnesty, when people hand in firearms that are unlawfully in their possession, or report firearms lost, stolen, or destroyed, the Police will have the discretion not to prosecute for the possession offence, subject to police inquiries not revealing offending other than breach of lawful possession of firearms(s) under the Arms Act.

Creating a buy-back initiative for prohibited items

44. Buy-back schemes compensate owners for firearms they no longer wish to retain, usually following legislation or policy change. A ban as described above will be accompanied by a buy-back as these firearms would have previously been lawfully acquired property. New Zealand has not had any previous buy-back operations.
45. During 1996/97, Australia operated a 12-month buy-back scheme for newly prohibited firearms. Arrangements were also made to compensate firearms dealers for loss of business related to prohibited firearms. During the buy-back, 643,726 prohibited firearms were handed in at a total cost to the Government of about A\$320

million. It was estimated that this may have led to the removal of about 20 percent of the total stock of firearms.

46. As there is no way of knowing how many semi-automatics are currently owned by Firearms Licence holders in New Zealand it is difficult to estimate the cost of buy-back.
47. The cost of a buy-back would be significant. Drawing on the known number of MSSAs in 2016 (13,724) and using 10 percent of the estimated number of rifles in 2016 (75,881), it has been initially estimated to be at least \$315 million. This is based on an estimate of \$3,500 per firearm. Further detailed work will be required to test this estimate. My advice is that the Australian buy-back involved a price based on the assessed value of the firearm. I will consider these options.
48. Given these proposals present a significant shift in our firearms laws which will impact the user community, I consider the costs of a buy-back are necessary.

Transitional provisions

49. I have circulated a separate paper detailing an option to approve an Order in Council to extend the definition of MSSA to include a wider range of weapons. If Cabinet agreed to the provisions set out in paragraph 20, transitional measures would be required to remove the incentive to rush to buy firearms prior to any permanent measure coming into effect.

Consultation

50. The Ministry of Justice, the Treasury and the Department of Prime Minister and Cabinet have been consulted on aspects of this paper.

Financial Implications

51. In the time available it has not been possible to undertake an accurate assessment of the costs of the proposal. The final costs will be influenced by the option chosen by Ministers, the incidence of ownership of various types of firearms, participation rates in any buy-back scheme, how the buy-back price is determined, and how the buy-back scheme is administered. Further work is needed on determining the buy-back price, administration of the buy-back scheme, and other costing assumptions to determine likely costs.
52. The option chosen by Ministers will have a significant impact on the costs. We expect that the option to ban all semi-automatic weapons will have a substantially higher cost than options with exceptions as we expect the incidence of gun ownership to be heavily weighted towards .22 calibre rifles and shotguns.
53. In 1996 Australia put in place mandatory firearm buy-back program. The programme was reported to have resulted in 650,000 semi-automatic rifles and shotguns, pump-action shotguns, and military type semi-automatic rifles firearms being taken out of private hands at a cost of around \$320 million. The Government increased the Medicare levy from 1.5% to 1.7% of income for one year to finance the buy-back programme.

54. Ignoring inflation, and factors such as price differentials and differences in gun ownership and participation rates, on a per capita basis this would imply a cost of approximately \$90 million if New Zealand instituted a similar buy-back programme to that put in place in Australia.
55. Further work is also necessary on how any buy-back scheme is funded.
56. Before deciding whether to fund the proposals through the Budget 2019 operating allowance, further work is required by officials on other funding options, such as reprioritisation within existing baselines or funding through a cost-recovery mechanism, such as whether a short-term ACC levy increase, similar to the Medicare levy increase used in Australia, is possible.
57. The Minister of Police will discuss with the Minister of Finance by 21 March updated costing information and an initial assessment of other options for funding the proposals to allow consideration of any proposed Budget 2019 funding at the planned meeting of Budget Ministers on 25 March.
58. Cabinet will be updated and be asked to consider any further decisions necessary as proposals are developed further.

Legislative Implications

59. The proposals in this paper require amendments to the Arms Act 1983, and an enabling power to make Regulations was the amendments come into force.
60. This paper seeks Cabinet agreement for the Minister of Police to issue drafting instructions to the Parliamentary Counsel Office, and proposes that decisions on minor policy and technical changes be made by the Minister of Police.
61. I propose that a Bill be introduced to the Justice Committee in June this year, for a four month Select Committee process, with the amendments coming into force by the end of this year.

Impact Analysis

62. A regulatory impact analysis has not yet been completed on these proposals.

Human Rights

63. There are no human rights implications with this paper.

Gender Implications

64. There are no gender implications with this paper.

Disability Perspective

65. There are no disability implications with this paper.

Publicity

66. I propose to work with the Prime Minister's office on the details of announcing any decisions by Cabinet.

Proactive Release

67. I propose to proactively release this paper subject to any redactions that may be warranted under the Official Information Act 1982, as part of the communications plan noted above.

Recommendations

The Minister of Police recommends that the Committee:

1. **note** that access to firearms is regulated through the Arms Act 1983, and it is not illegal to possess and use semi-automatic firearms in New Zealand;

2. s 6(c)

3. s 6(c)

Prohibitions and restrictions on semi-automatic firearms, parts, magazines and ammunition

4. **agree** to ban all semi-automatic firearms including Military Style Semi-Automatics, and create an exemption for legitimate business need, to be developed at Select Committee;

OR

5. **agree** to prohibit all semi-automatic firearms including Military Style Semi-Automatics, and create an exemption for legitimate business need, to be developed at Select Committee, and excluding:

5.1. semi-automatic .22 calibre rifles with a maximum 10-round magazine; and

5.2. semi-automatic and pump-action shotguns with a maximum 5-round magazine;

6. **agree** to prohibit any parts with the ability to convert semi-automatic or any other type of firearm to MSSAs, or manufacture MSSAs, or cause a firearm to generate semi-automatic, automatic or close to automatic gunfire as set out in paragraph 27;
7. **agree** to prohibit any detachable magazines for firearms other than .22 calibre;
8. **agree** to prohibit all magazines capable of holding more than 10 rounds;
9. **agree** to prohibit magazines for shotguns capable of holding more than 5 rounds;

10. **agree** to prohibit armour piercing, incendiary, tracer, and similar type ammunition;
11. **agree** to create offences and penalties to prohibit the possession, transfer, sale, distribution or import of the items prohibited in recommendations above;
12. **invite** the Minister of Police to report back to Cabinet with a recommendation for an exemption to accommodate collectors;
13. **agree** to clarify, expand and promote the amnesty provisions in the Arms Act 1983 to include all firearms;
14. **agree** to develop a buy-back initiative for newly prohibited items described in recommendations 4 and 5;
15. **note** that the final costs of a buy-back scheme will be influenced by the options approved by Cabinet, the incidence of ownership of various types of firearms, participation rates in any buy-back scheme, how the buy-back prices are determined, and how the buy-back scheme is administered;

Other matters

16. **agree** that Cabinet will be updated and be asked to consider any further funding decisions necessary as proposals are developed further, and following discussions between the Minister of Finance and the Minister of Police
17. **agree** that the Minister of Police should issue drafting instructions to amend the Arms Act 1983, to the Parliamentary Counsel Office
18. **agree** that the Minister of Police will make decisions on minor policy and technical matters that arise as the Bill is being drafted.

Authorised for lodgement

Hon Stuart Nash

Minister of Police