

In Confidence

Office of the Minister of Police

Chair, Cabinet Social Wellbeing Committee

FIREARMS PROHIBITION ORDERS: CONSULTATION OUTCOMES AND DRAFT MODEL FOR CONSIDERATION

Proposal

- 1 This paper seeks in-principle approval for the development of a Firearms Prohibition Order regime for New Zealand, based on a draft model, with further detail and costings to be provided by December 2020.

Relation to government priorities

- 2 This proposal relates to the Government's priority outcome of supporting healthier, safer and more connected communities.
- 3 Firearm-related crime represents a real risk to community safety. While the firearms licensing and regulatory regime has recently been strengthened, there is scope to further reduce the opportunity for high-risk individuals to have access to firearms.
- 4 Firearms Prohibition Orders promote the safety of communities by prohibiting high-risk people from accessing, being around, or using firearms. Introducing Firearms Prohibition Orders logically flows on from, and consolidates the work to date aimed at improving public safety and reducing the harms associated with the illegal use of firearms.
- 5 While work on developing Firearms Prohibition Orders began well before the Christchurch terror attack in March 2019, Firearms Prohibition Orders can be seen as a third phase of reducing firearm-related harm as follows:
 - 5.1 Phase One: addressing the immediate need by prohibiting dangerous firearms through the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019
 - 5.2 Phase Two: strengthening and improving the existing licensing and regulatory system through the Arms Legislation Act 2020
 - 5.3 Phase Three: preventing high-risk people from having access to firearms by introducing Firearms Prohibition Orders.
- 6 Firearms Prohibition Orders would particularly support initiatives aimed at addressing harm from organised crime groups, including the Transnational Organised Crime strategy, and the Government's organised crime work programme.

Executive Summary

- 7 Firearms Prohibition Orders prohibit people deemed 'high risk' from accessing, being around, or using firearms. They work by setting out the:
 - 7.1 conditions that people subject to a Firearms Prohibition Order are expected to meet, and
 - 7.2 penalties for breaching the above conditions.
- 8 Firearm crime is relatively low in New Zealand compared to other jurisdictions. However, firearms are used in a broad range of offences and their presence and use in the criminal underworld is growing.
- 9 In 2017, as part of an inquiry into the illegal possession of firearms in New Zealand, the Law and Order Select Committee recommended that Firearms Prohibition Orders be implemented in New Zealand.
- 10 Following Cabinet approval [SWC-19-MIN-0164 and CAB-19-MIN-0559 refer], New Zealand Police conducted a public consultation process between November 2019 and January 2020.

Outcomes of the public consultation process on Firearms Prohibition Orders

- 11 The public consultation document was deliberately broad as it was intended to obtain the public's thoughts on Firearms Prohibition Orders, and to identify preferred design parameters should a regime be introduced into New Zealand.
- 12 Overall, 41 submissions were received but not all submitters responded to all questions. Of these submissions:
 - 12.1 24 submitters (69% of those who responded to the question) considered the criminal use of firearms in New Zealand to be a problem
 - 12.2 21 submitters (62% of those who responded to the question) supported the concept of Firearms Prohibition Order.

Developing a Firearms Prohibition Order regime for New Zealand

- 13 I consider there is value in introducing a Firearms Prohibition Order regime to improve public safety. Such a regime would build on the changes to the firearms regime we have already put in place by preventing high-risk people from having access to firearms.
- 14 A range of prohibition regimes exist in the United Kingdom, Canada, and five states and territories of Australia (New South Wales, South Australia, Victoria, Tasmania and Northern Territory). Appendix One provides an overview of these regimes.
- 15 Feedback from other jurisdictions indicates that Firearms Prohibition Orders are important as a part of a broader toolbox to improve public safety, and combat firearm-related crime.

- 16 I am proposing a model that balances the various public and individual rights and interests, including public safety, for in-principle approval. The model consists of the following key design parameters and elements:

Key Parameter	Proposed model
Eligibility	<ul style="list-style-type: none"> conviction-based orders for firearm-related offences, serious violent offences, criminal harassment, or breaches of protection orders or restraining orders (and imposed as part of sentencing at the discretion of the decision-maker) preventative (civil) orders where person considered high-risk based on behaviour and activity age of eligibility - 16 years and older
Conditions	<ul style="list-style-type: none"> one broad condition prohibiting obtaining, purchasing, possessing, accessing, manufacturing or using firearms, parts, magazines, and ammunition standard conditions that can be modified by decision-maker as per the needs of the subject person: <ul style="list-style-type: none"> not associating with people with firearms on or about their person or under their control not residing at premises where there are firearms not visiting locations or premises where there are firearms duration - 10 years, or five years in relation to 16 and 17 year olds
Decision-making	<ul style="list-style-type: none"> judicial decision-maker with orders made by either a sentencing court (conviction-based orders) or District Court (preventative civil orders)
Compliance	<ul style="list-style-type: none"> current search powers (no change) penalty - up to five years' imprisonment for breach of order, or seven years' imprisonment if the breach related to a prohibited firearm additional offence to supply someone subject to an order with a firearm, part or ammunition - penalty to mirror breach of order reverse onus - persuasive burden level (no change with existing Arms Act 1983 reverse onus provisions)

- 17 The model proposes two different types of orders, reflecting two different groups perceived as high-risk:

- 17.1 those convicted of certain offences, on the basis that people who commit such offences have demonstrated a risk they will commit similar offences in the future.
- 17.2 those whose prior behaviour and actions indicate there are high risks associated with them having access to firearms. This could include a range of evidence such as previous convictions, criminal associations, because the person has shown patterns of behaviour demonstrating a tendency to exhibit, encourage or promote violence, hatred or

extremism, or because the person is assessed as a real risk to New Zealand's national security.

18 The proposed model:

18.1 addresses most of the issues identified in the Attorney-General's section 7 New Zealand Bill of Rights Act 1990 (NZBORA) reports on the two Private Member's Bills: Arms (Firearms Prohibition Orders) Amendment Bill (2018 and 2019), including providing for a judicial decision-maker, proportionate penalties, and specified durations for orders

18.2 provides for the rehabilitative and reintegration needs of subject people, whānau, families and communities, to be taken into account by allowing the standard conditions to be modified as per the needs of the subject person.

19 The model proposes to retain the current reverse onus provisions, set out in section 66 of the Arms Act 1983. Not retaining this provision in relation to Firearms Prohibition Orders would create a perverse situation where someone with a Firearms Prohibition Order would have a lower burden on them than someone in the identical situation, who is not subject to a Firearms Prohibition Order.

20 Once the proposed regime is approved in-principle, Police will work with the Ministry of Justice, Ara Poutama Aotearoa - Department of Corrections, Oranga Tamariki and Te Arawhiti to finalise the legislative policy, and modelling and costing detail for the regime. Further policy work would include finalising the evidential threshold required for the making of an order, particularly in relation to preventative Firearms Prohibition Order, and the mechanism for those subject to an order to appeal the order or seek changes to the conditions.

21 I propose to report back to Cabinet by December 2020 with the final detailed policy detail and costings, with the aim of having a Bill introduced in 2021.

Background: Firearms Prohibition Orders

22 Many people in New Zealand have access to firearms, and the majority of users are legitimate and law abiding.

23 However despite this, the unlawful use of firearms is prevalent:

23.1 from January to April 2020, there were 902 separate proceedings relating to firearm possession or carriage offences (including possession of a prohibited weapon), of which 816 resulted in court action

23.2 between 1 March 2019 and 16 March 2020 2,277 firearms were seized, recovered, or collected by Police during routine policing activities

- 23.3 in a single operation against the Mongols (Operation Silk) 33 firearms were seized over four months of 2020, including multiple prohibited semi-automatics.
- 24 Firearms Prohibition Orders are a tool designed to improve public safety by prohibiting high risk people from accessing, being around, or using firearms. They work by setting out:
- 24.1 the conditions that people subject to a Firearms Prohibition Order are expected to meet, and
- 24.2 penalties for breaching these conditions.
- 25 While firearm crime remains relatively low in New Zealand, firearms have for a number of years, been used in a broad range of offences as indicated in Table One. Their presence and use in the criminal underworld is growing. This was visible in the tragic shooting of Constable Matthew Hunt in a routine traffic stop on 19 June 2020. The 2019 terrorist attack in Christchurch also shows the high harm impact of misuse of firearms.

Table One: Firearms-related selected violent offences

	2014/15		2015/16		2016/17		2017/18		2018/19		2019/20*	
	#	% of total	#	% of total	#	% of total	#	% of total	#	% of total	#	% of total
Murder	7	12.5	6	9.7	7	5.9	13	32.5	58	50.4	11	16.18
Attempted murder	3	23.1	9	34.6	3	17.7	10	43.5	49	80.3	2	20.0
Aggravated robbery	197	9.8	223	10.1	300	11.6	233	9.7	175	8.9	196	10.0
Other acts intended to cause injury	26	44.8	19	38.0	25	40.3	36	43.3	22	30.1	31	49.2
Total of the above offences	233	10.9	257	10.9	335	12.3	292	11.4	304	13.7	240	11.4

* Up to 11 Jun 2020. Source: New Zealand Police Crime Statistics using ANZSOC categories

- 26 In 2017, as part of an inquiry into the illegal possession of firearms in New Zealand, the Law and Order Select Committee noted that firearms prohibition orders were used in Australia to proactively manage high-risk individuals and their possession of, use of, and association with firearms. The Committee recommended that Firearms Prohibition Orders be implemented in New Zealand.
- 27 Following Cabinet approval [SWC-19-MIN-0164; CAB-19-MIN-0559], New Zealand Police conducted a public consultation process on Firearms Prohibition Orders.

Outcomes of the public consultation process

The public consultation process

- 28 The public consultation process ran for eight weeks from 11 November 2019 until 13 January 2020. Police also sent targeted emails to key stakeholders, including the firearms community, those with an interest in gun control, those with an interest in human rights and privacy, and those representing Māori interests.
- 29 The public consultation document was deliberately broad, as it was intended to obtain the public's views on Firearms Prohibition Orders, and potential design parameters.
- 30 Submitters were asked to consider a range of design choices under the following four key design parameters (eligibility, conditions, decision making and compliance), and how those choices may impact or interact with each other.

Summary of submissions

- 31 Forty one submissions were received during the consultation period.
- 32 Thirty submissions were from individuals and 11 were made on behalf of a group or organisation including Amnesty International Aotearoa New Zealand, Council of Licenced Firearms Owners, Gun Control New Zealand, New Zealand Law Society, New Zealand Police Association, the Office of the Privacy Commissioner, and Victim Support New Zealand.
- 33 Not every submitter answered or expressed a clear position on every question. Of the 41 submitters:
 - 33.1 35 expressed a position on the criminal use of firearms in New Zealand. Twenty-four (24) of these submitters (69%) considered the criminal use of firearms in New Zealand to be a problem, while 11 submitters (31%) did not
 - 33.2 34 expressed a position on Firearms Prohibition Orders. Twenty-one (21) of these submitters (62%) supported the concept, while 13 submitters (38%) did not
 - 33.3 35 expressed a position on whether Firearms Prohibition Orders would reduce the risk of harm caused by criminal use of firearms. Seventeen (17) of these submitters (49%) considered they would, while 18 submitters (51%) were of the view they would not.
- 34 Throughout the process, submitters – both supporters and non-supporters of the concept of Firearms Prohibition Orders – raised issues such as human rights and privacy, the potential impact on Māori and communities (particularly rural communities), and the rehabilitation needs of offenders.

- 35 At the same time, submitters also noted the impact of firearms-related crime on victims (particularly family violence victims) and communities, violations of victims' rights (including the right to life), and the broader social (and health) costs associated with firearm crime and injuries.

Developing a Firearms Prohibition Order regime for New Zealand

A Firearms Prohibition Order regime would improve public safety by reducing the risk of firearm-related harm

- 36 I consider there is value in introducing a Firearms Prohibition Order regime to improve public safety in New Zealand.
- 37 The Arms Act 1983 promotes the safe use and control of firearms and other weapons. However, the misuse of firearms continues to be a challenge in New Zealand. For instance:
- 37.1 from January to April 2020, there were 902 separate proceedings relating to possession or carriage offences (including possession of a prohibited weapon), of which 816 resulted in court action
- 37.2 between 1 March 2019 and 16 March 2020 2,277 firearms were seized, recovered, or collected by Police during routine policing activities
- 37.3 in a single operation against the Mongols (Operation Silk), terminated on 23 June 2020, 33 firearms were seized including multiple prohibited semi-automatics.
- 38 The Arms Act 1983 sets out the parameters for who may lawfully hold a firearm licence including the 'fit and proper' person test. Currently, someone who is not a fit and proper person under the Arms Act 1983 is not able to obtain a firearms licence or legally own a firearm.
- 39 While a person considered high-risk (such as a person with a history of firearm-related offending or serious violent offending) would not be considered a 'fit and proper' person, this would not prevent such individuals from:
- 39.1 legally accessing or using firearms, for instance, under the immediate supervision of a Firearms Licence holder
- 39.2 associating with people in possession of firearms
- 39.3 residing at, or visiting locations where firearms are held, including gun shops, arms fairs, or gun clubs.
- 40 Introducing a Firearms Prohibition Order regime would address these gaps and reduce the risk of such individuals accessing and misusing firearms. Firearms Prohibition Orders would work alongside the recently strengthened legislative and regulatory regime to reduce and manage the risks associated with firearms and the likelihood of firearms ending up in the hands of those that would use them to do harm.

- 41 Firearm crime, particularly in the context of organised crime groups, represents a real risk to community safety. While the proposal in this paper is not specifically aimed at targeting organised crime groups, the well-established links between gangs, firearms and violence means that Firearms Prohibition Orders would add to the tools available to disrupt organised crime.

Firearms Prohibition Orders are common in other jurisdictions...

- 42 Firearms prohibition regimes exist in the United Kingdom, Canada and five Australian jurisdictions (New South Wales, South Australia, Tasmania, Victoria and Northern Territory). Further detail is in Appendix One.
- 43 Most of these jurisdictions provide for firearms prohibitions following convictions for serious offences, and/or as a preventative measure where there are public safety concerns associated with the person accessing or using firearms. Many of these regimes have existed for some time and their feedback indicates that firearms prohibition regimes are important as an additional tool to improve public safety, and combat firearm related crime.
- 44 No formal evaluations have been undertaken, but two reviews or inquiries into aspects of particular Firearms Prohibition Order regimes have informed this design:
- 44.1 In 2016, the New South Wales Ombudsman reviewed 22 months of the operation of new broad warrantless search powers for the New South Wales regime. While firearms were found in only two percent of search events, those searches revealed 25 firearms, nine firearms parts and 26 lots of ammunition. Moreover, the searches as a whole resulted in 416 items, including 51 other weapons, being seized.
- 44.2 In 2019, the Victoria Legal and Social Issues Committee conducted an inquiry into the Victoria legislation approximately 16 months after its introduction in the context of the first successful appeal from the issuing of an order (subsequently reinstated on appeal). Just over 200 searches resulted in 54 firearms-related charges, along with the seizure of 12 firearms, and a range of firearm parts, ammunition, and other weapons.
- 45 Both regimes involved broader search powers than present in New Zealand. The Victoria regime, in particular, also allows for searches of associates of the person subject to the prohibition order.

... and a Firearms Prohibition Order regime must reflect New Zealand's unique environment

- 46 Jurisdiction's firearm prohibition regimes reflect varying points of balance of safety and human rights' considerations. These differences are important when considering the effectiveness of the regime, the use of valuable policing resource and what regime would work most effectively in New Zealand.

- 47 In 2018, a Private Member's Bill, the Arms (Firearms Prohibition Orders) Amendment Bill, was drawn from the ballot. Based significantly on the New South Wales regime, the Bill was voted down at first reading in September 2018, largely because the proposed regime was limited to gang members and excluded other high-risk individuals. The Private Member's Bill was subsequently re-introduced in July 2019.
- 48 The Attorney-General found that both Bills unjustly limited both section 17 (freedom of association) and section 25(c) (right to be presumed innocent) of the NZBORA. Specifically, the Attorney-General was concerned the Bill included no explicit link between gang membership and relevant offences, that the proposed prohibition orders would be indefinite in nature, and that the proposed penalties of up to 14 years' imprisonment were too severe for a reverse onus offence.
- 49 New Zealand cannot simply adopt a model from another jurisdiction. A New Zealand model needs to be appropriate for our country, our particular environment and our human rights obligations. While the public safety objective of Firearms Prohibition Orders is likely to demonstrably justify some limitations on the rights and freedoms contained in NZBORA, the key issue will be ensuring that any impairment is the least necessary to achieve the objective of Firearms Prohibition Orders. The combined impact of the various design choices need to be carefully assessed.

Proposed draft model for Firearms Prohibition Orders in New Zealand

- 50 The following table sets out the draft proposed model for a New Zealand Firearms Prohibition Order regime.

Key Parameter	Proposed model
Eligibility	<ul style="list-style-type: none"> conviction-based orders for firearm-related offences, serious violent offences, criminal harassment, or breaches of protection orders or restraining orders (and imposed as part of sentencing at the discretion of the decision-maker) preventative (civil) orders where person considered high-risk based on behaviour and activity age of eligibility - 16 years and older
Conditions	<ul style="list-style-type: none"> one broad condition prohibiting obtaining, purchasing, possessing, accessing, manufacturing or using firearms, parts, magazines, and ammunition standard conditions that can be modified by decision-maker as per the needs of the subject person: <ul style="list-style-type: none"> not associating with people with firearms on or about their person or under their control not residing at premises where there are firearms not visiting locations or premises where there are firearms duration - 10 years, or five years in relation to 16 and 17 year olds

Decision-making	<ul style="list-style-type: none"> judicial decision-maker with orders made by either a sentencing court (conviction-based orders) or District Court (preventative civil orders)
Compliance	<ul style="list-style-type: none"> current search powers (no change) penalty - up to five years' imprisonment for breach of order, or seven years' imprisonment if the breach related to a prohibited firearm additional offence to supply someone subject to an order with a firearm, part or ammunition - penalty to mirror breach of order reverse onus - persuasive burden level (no change with existing Arms Act 1983 reverse onus provisions)

51 By setting out two eligibility pathways for orders, the model seeks to target two different high-risk groups:

51.1 those convicted of certain offences. This high-risk group would be those who are convicted of offences that either involve violence or reflect an underlying threat or risk of violence. Targeting this high-risk group recognises that people who commit such offences have demonstrated a risk they will commit similar offences in the future.

51.2 those whose prior behaviour and actions indicate there are high risks associated with them having access to firearms. This high-risk group would include those that have engaged in or supported activity that either involves violence, or reflects an underlying threat or risk of violence. This may include a package of evidence made up of, for example, previous convictions, criminal associations, demonstrating a tendency to exhibit encourage or promote violence, hatred or extremism, or being assessed as a real risk to New Zealand's national security.

52 The proposed model has been developed having consideration for:

52.1 the outcomes of the public consultation process

52.2 the Attorney-General's section 7 NZBORA reports on the Private Member's Bills: Arms (Firearms Prohibition Orders) Amendment Bill (2018 and 2019)

52.3 overseas models, and the reviews outlined in paragraph 44

52.4 the recent judgment in *Chisnall v The Chief Executive of the Department of Corrections* [2019] NZHC 3126 (*Chisnall*) where the High Court issued a declaration of inconsistency in relation to extended supervision orders.

Policy proposals on the detail and costs of the a Firearms Prohibition Orders regime will come back to Cabinet in December

53 This paper provides the high-level design proposal for Firearms Prohibition Orders, however it does not provide the policy detail as to how each element

would operate. This detailed thinking will be further developed before final policy decisions are sought from Cabinet.

- 54 While the proposed model aims to achieve out an appropriate balance between individual and public rights and interests, some elements could be broadened or narrowed. For instance, some areas which will be considered further over the next few months include:

- 54.1 whether or not to extend the jurisdiction of the Youth Court to include the ability to issue Firearms Prohibition Orders. There are some benefits in young people who offend having their offences heard in Youth Court. However, cases involving 17 year olds who have committed serious offences can currently be heard in the District Court, while 16-17 year olds can also be referred to the District Court for sentencing. The benefits and risks of any change in this regard will be carefully considered.
- 54.2 the breadth and nature of standard conditions. These conditions are important to prevent the subject person from being able to access a firearm. They also need to be modifiable to recognise the rehabilitative and reintegration needs of a subject person, including their employment and cultural needs, and to reflect the need to balance the possible impact on rights and freedoms, such as the freedom of association (section 17 of NZBORA). Conditions may also need to reflect prohibitions that apply to all or most orders (such as a prohibition on visiting gun dealers or attending arms fairs), as well as conditions that are specifically relevant to a particular subject person (such as prohibitions on associating with particular people or visiting particular locations).
- 54.3 the behaviours and activity that would potentially lead to the Court issuing a preventative Firearms Prohibition Order, and accompanying evidential threshold. This would likely include consideration of criminal history, broader patterns of behaviour and actions (such as extremism or promotion of hatred), associations, information / intelligence known to law enforcement agencies, being subject to a control order, and being a returning offender (or subject to a returning offenders order).
- 54.4 whether a special counsel process (or similar) should be used if proceedings involve classified information.
- 54.5 whether preventative orders should have a shorter duration than conviction-based orders or be subject to specific review periods.
- 54.6 rights of review and appeal. While the orders could be appealable through normal Court mechanisms, there may be a need to enable a person who is subject to an order to seek a review of conditions to recognise that changes may occur in a subject person's circumstances and rehabilitation needs, such as their employment situation or prospects which may be obstructed by existing conditions.

Next steps

- 55 Once Cabinet has approved the high-level model in principle, either in whole or in part, my officials will work with officials from other relevant agencies (and where appropriate undertake further consultation with key stakeholders) to:
- 55.1 develop the policy detail required to enable the legislative development of a Firearms Prohibition Order regime
 - 55.2 develop the modelling of impacts and costs for the regime.
- 56 I intend to bring the final detailed model, with costings back to Cabinet by December 2020, with the aim of introducing a Bill during 2021.

Financial Implications

- 57 The modelling and costing of Firearms Prohibition Orders will follow in-principle approval from Cabinet and some further refining. Costs directly relate to characteristics of a regime yet to be fully defined or assumptions that need worked through, for instance:
- 57.1 the number of orders made by courts following convictions for eligible offences, or via a preventative model
 - 57.2 the type and breadth of conditions imposed
 - 57.3 the number of breaches of orders.
- 58 Impacts on Police operations and resources (e.g. monitoring compliance with Firearms Prohibition Orders) will be assessed alongside costs to other parts of the justice system including:
- 58.1 Courts: time required to consider applications, appeal processes, and in dealing with breaches
 - 58.2 Legal aid for preventative orders and appeals
 - 58.3 Corrections: breaches may result in upward pressure on the prison population.
- 59 This modelling and costing analysis will be presented as part of the proposed December Cabinet report back.

Legislative Implications

- 60 The proposals in this paper would require amendment to the Arms Act 1983. A Bill is included on the Government's legislative programme with a category 5 priority (drafting instructions to be provided to Parliamentary Counsel Office in 2020). I propose that, following final policy advice being received in December, a Bill would be introduced in 2021.

Impact Analysis

Regulatory Impact Statement

- 61 The Quality Assurance panel considers that the Regulatory Impact Analysis partially meets the Quality Assurance criteria. A key gap identified is the costing of the policy, which would be undertaken should Cabinet agree to work progressing on the model outlined in this paper.

Climate Implications of Policy Assessment

- 62 The Ministry for the Environment has been consulted and confirms that the Climate Implications of Policy Assessment requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

Impact on Māori

- 63 Firearms Prohibition Orders are likely to impact on Māori, particularly Māori men, because both Māori and men are overrepresented in the type of offences that are likely to qualify for a conviction-based Firearms Prohibition Order. Similarly, there will also be an impact on Māori young people (16-17 year olds).
- 64 There is also the potential that the preventative Firearms Prohibition Order would also disproportionately impact on Māori because the type of considerations taken into account would likely include prior convictions. This means that Māori would be disproportionately affected as civil respondents.
- 65 However, the ability to modify the standard conditions to meet the needs of the subject person will help enable rehabilitative and reintegration needs to be taken into account. This would include recognition of employment and cultural needs, and may help reduce any disproportionate impact of a Firearms Prohibition Order on Māori, particularly Māori in rural communities.
- 66 It should be remembered that Māori are also disproportionately overrepresented as victims of crime. Deterring and preventing crime involving firearms would also benefit Māori as disproportionate victims of crime.

Impact on other population groups

- 67 The following table indicates that Firearms Prohibition Orders may differentially impact on certain population groups, although the level of impact will depend on the final design parameters:

POPULATION GROUP	HOW THE PROPOSAL MAY AFFECT THIS GROUP
Pacific people	Firearms Prohibition Orders may impact on Pacific people because Pacific men are also overrepresented in the criminal justice system. The ability to modify the standard conditions to meet the needs of the subject person will help enable rehabilitative and reintegration

	<p>needs of Pacific people to be taken into account, including their employment needs.</p> <p>Pacific people are also disproportionately overrepresented as victims of crime. Firearms Prohibition Orders may also help to reduce firearm-related violence against Pacific people.</p>
Women	<p>Firearms Prohibition Orders are unlikely to have any specific impact on women as most serious crime is committed by men. However, Firearms Prohibition Orders may help to protect women as the regime may help reduce firearm-related violence against women. This may particularly benefit Māori and Pacific women, who are overrepresented as victims in family violence incidents.</p>
Children and young people	<p>Young people are able to obtain a firearms licence, or become respondents in protection orders from the age of 16. Given this, Firearms Prohibition Orders would apply to young people (aged 16-17 years). This may increase the impact on Māori given the overrepresentation of Māori young people within the criminal justice system.</p> <p>While inclusion within the regime could deepen their involvement in the criminal justice system, not including young people would leave a gap in our ability to address both the serious risk presented by a small number of young people.</p>
Rural communities	<p>Firearms Prohibition Orders may impact on rural communities as people subject to a Firearms Prohibition Order may not be able to work or visit rural communities. This may also increase the impact on Māori given the rural nature of many Māori communities.</p> <p>There is also a protection element – as access to firearms in rural communities may be greater than in non-rural communities, the existence of Firearms Prohibition Orders may also provide protection from firearm violence.</p> <p>The ability to modify the standard conditions to meet the needs of the subject person will help enable the rehabilitative and reintegration needs (including their employment needs) of the subject person to be taken account when a Firearms Prohibition Order is made.</p>

- 68 A Firearms Prohibition Order regime should not have any specific impact on disabled people, gender diverse people, ethnic communities, or veterans.

Human Rights

- 69 Firearms Prohibition Orders can constrain the rights of individuals. However, firearm crime also impacts on the broader rights of victims, particularly in family violence situations (for instance, the right to life). There is an obligation on Government to protect victims, and reduce victimisation.
- 70 A Firearms Prohibition Order regime may impact a number of rights and freedoms contained in the NZBORA, including the freedoms of association (s 17) and movement (s 18), the right to be secure from unreasonable search (s 21) and the right to be presumed innocent (s 25(c)).
- 71 The proposed model has been designed with the aim of limiting the impairment of the identified rights and freedoms to no more than necessary to

achieve the objectives of Firearms Prohibition Orders. It responds to most of the concerns raised by the Attorney-General in the section 7 NZBORA reports on the Private Member's Bills: Arms (Firearms Prohibition Orders) Amendment Bill (2018 and 2019), for instance, by:

- 71.1 providing for orders based on actual convictions / behaviour and actions as opposed to primarily based on membership of a group. This reduces the likelihood that the proposed model would unjustly impair the freedom of association.
 - 71.2 providing an end timeframe for orders (10 years for orders made in relation to adults, and five years for orders made in relation to 16 and 17 year olds) as opposed to an order that operates indefinitely (i.e. no end time).
 - 71.3 providing standard conditions would be modifiable to meet the person's rehabilitative and reintegration needs as opposed to being inflexible on the making of the order. This reduces the likelihood the proposed model would unjustly impair either the freedom of association or the freedom of movement.
 - 71.4 providing for a judicial decision-maker as opposed to having no judicial scrutiny or oversight, with further consideration to be given to appeal and review mechanisms.
 - 71.5 setting out a penalty that is proportionate (five years). The Attorney-General considered the Private Member's Bills proposed penalty of 14 years to be disproportionate when compared to other offences with similar penalties.
- 72 Section 66 of the Arms Act 1983 creates a rebuttable presumption that, once the prosecution has proved that a person was in occupation of any land or building (or was the driver of a car) where a firearm has been found, that person is presumed to have been in possession of the firearm. It is then up to the person to prove that the firearm was not his or her property, and was in the possession of another person.
- 73 The proposal retains the current reverse onus provisions for breaches of Firearms Prohibition Orders, specifically those relating to situations where the subject person was found in a location (or was the driver of a car) with a firearm. Retaining the reverse onus at the existing level reduces the likelihood of perverse outcomes where a person subject to the Firearms Prohibition Order will be able to defend themselves more easily than a person not subject to a Firearms Prohibition Order.

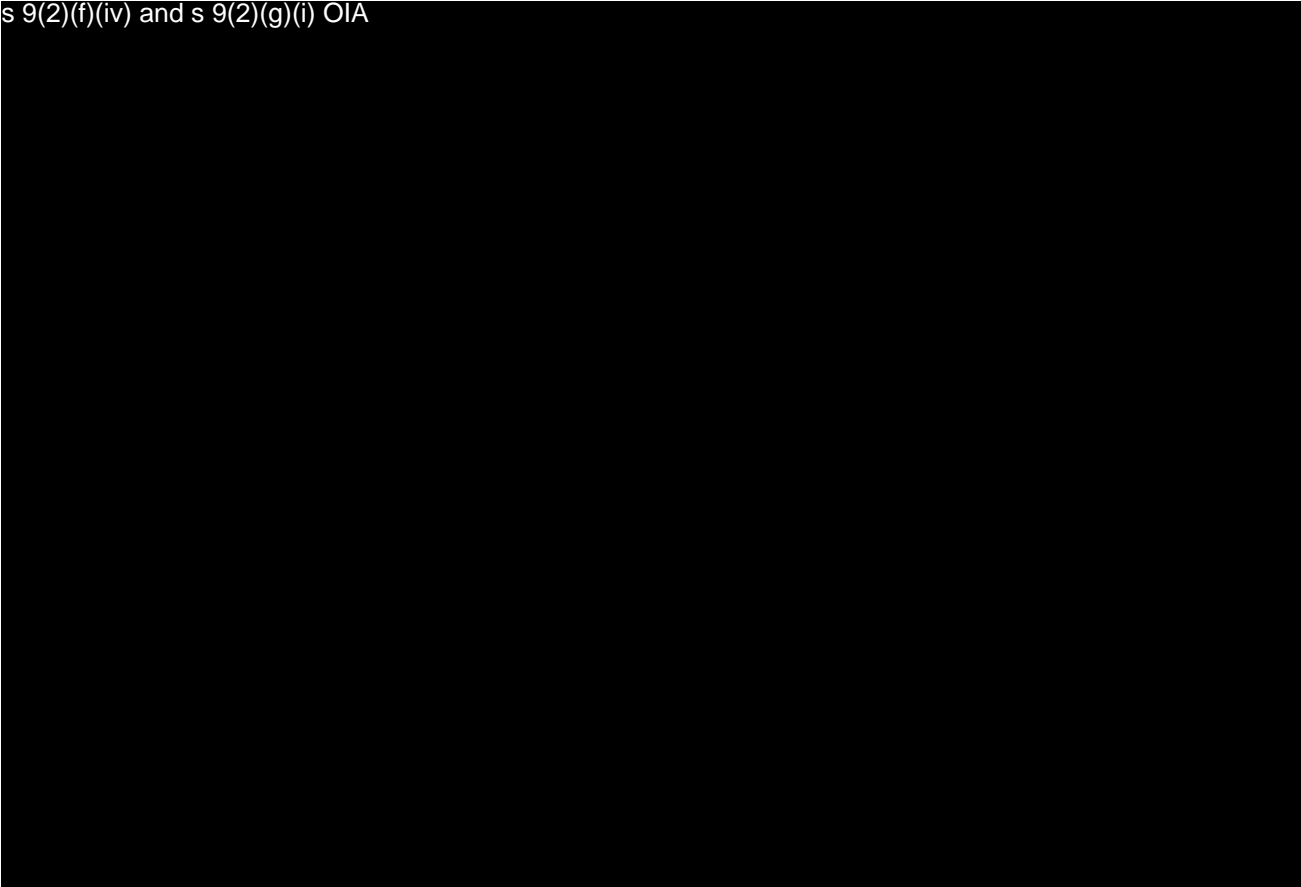
Consultation

Agency consultation

- 74 The Departments of Conservation, Corrections, Prime Minister and Cabinet, Inland Revenue, the Ministry of Business, Innovation and Employment (Immigration and Worksafe New Zealand); the Ministries of Foreign Affairs

and Trade, Health, Justice, Primary Industries, Social Development, Transport, and Women, New Zealand Customs Service, New Zealand Defence Force, New Zealand Security Intelligence Service, Oranga Tamariki, State Services Commission, Te Arawhiti, Te Puni Kōkiri, and the Treasury have been consulted on this paper.

s 9(2)(f)(iv) and s 9(2)(g)(i) OIA



Communications

78 No communications or publicity are proposed at this stage.

Proactive release

79 This paper, and the summary of submissions report will be publicly released when the Firearms Prohibition Orders Bill is introduced into the House to inform public submissions during the select committee process.

Recommendations

The Minister of Police recommends that the Committee:

Public consultation process and summary of submissions

- 1 **note** that in October 2019, Cabinet approved New Zealand Police undertaking a public consultation process on Firearms Prohibition Orders [SWC-19-MIN-0164; CAB-19-MIN-0559 refers];
- 2 **note** that 41 submissions were received during the consultation period, and that of those submitters who expressed a position on Firearms Prohibition

Orders (34 out of 41 submitters), 62% supported the concept of a Firearms Prohibition Order;

- 3 **note** that submitters identified a range of issues, including human rights, privacy and public safety associated with Firearms Prohibition Orders and firearms offending;

Developing a Firearms Prohibition Order regime in New Zealand

- 4 **note** that introducing a Firearms Prohibition Order regime would build on work to date to improve public safety and reduce the risk and harms associated with firearms;
- 5 **note** that developing a Firearms Prohibition Order regime suitable for New Zealand will involve considerations of New Zealand's human rights and privacy protections, and New Zealand's unique environment;
- 6 **approve in principle** the development of a Firearms Prohibition Order regime for New Zealand, based on the following parameters

6.1 *Eligibility:*

- 6.1.1 conviction-based orders based on convictions for firearm-related offences, serious violent offences, criminal harassment, or breaches of protection orders or restraining orders (and imposed as part of sentencing at the discretion of the decision-maker);
- 6.1.2 preventative (civil) orders where person considered high-risk based on behaviour and activity;
- 6.1.3 eligibility from the age of 16 years;

6.2 *Conditions*

- 6.2.1 one broad standard condition prohibiting obtaining, purchasing, possessing, accessing (etc.) of firearms, parts, magazines, and ammunition;
- 6.2.2 standard conditions that can be modified by decision-maker as per the needs of the subject person:
- 6.2.2.1 not associating with people with firearms on or about their person or under their control;
- 6.2.2.2 not residing at premises where there are firearms;
- 6.2.2.3 not visiting locations or premises where there are firearms;
- 6.2.2.4 duration - 10 years, or five years in relation to 16 and 17 year olds;

6.3 *Decision-maker:*

6.3.1 judicial decision-maker;

6.4 *Compliance*

6.4.1 current search powers (no change);

6.4.2 penalty - up to five years for breach of order, or seven years if it involved a prohibited firearm;

6.4.3 offence to supply someone subject to an order with firearm, part or ammunition – penalty to mirror breach of order;

6.4.4 reverse onus - persuasive burden level (no change with existing Arms Act 1983 reverse onus provisions);

- 7 **note** that the Firearms Prohibition Order regime referred to in recommendation 6 is subject to further policy design and costing;
- 8 **direct** the New Zealand Police, in conjunction with relevant agencies, to undertake the further design and costing work required to develop a Firearms Prohibition Order regime;
- 9 **direct** the Minister of Police to report back to Cabinet Social Wellbeing Committee with a final proposal for a Firearms Prohibition Order regime by December 2020.

Authorised for lodgement

Hon Stuart Nash

Minister of Police

Appendix One: Firearms Prohibition Order regimes in other jurisdictions

	Canada	United Kingdom	Australia				
			New South Wales	South Australia	Tasmania	Victoria	Northern Territory
Act / empowering leg	Criminal Code Note: applies to firearms and some weapons	Firearms Act 1968	Firearms Act 1996 (also existed in Firearms Act 1989)	Firearms Act 2015 (also existed in Firearms Act 1977)	Firearms Act 1996	Firearms Act 1996 (inserted by Firearms Amendment Act 2018)	Firearms Act 1997 (inserted by Firearms Legislation Amendment Act 2019)
Who issues	Courts (part of sentencing) Preventative orders made by Court on application by Police	Legislative prohibition (automatically triggered following conviction and sentencing)	Commissioner of Police Can be delegated	Made by Court or Commissioner of Police (can be delegated) Interim order issued by Police Officer (28 days)	Commissioner of Police Can be delegated	Chief Commissioner of Police Can be delegated	Commissioner of Police Can be delegated
Grounds for issuing	Mandatory orders made after conviction (or discharge) for certain offences. Discretionary orders made after conviction or discharge for certain offences (depending on Judge's discretion). Preventative orders made in interest of public safety.	Life: Sentenced to life imprisonment or preventive detention, or to a term of imprisonment for 3+ years. Five years: Sentenced to imprisonment / youth custody or similar for 3 months – 3 years. Note: suspended sentences attract the same prohibition.	In the public interest – Person is not fit to have a firearm.	Interim: Not fit and proper person / possession would be likely to result in undue danger to life or property. Commissioner: as above or person member of criminal gang or subject to control order under the Serious and Organised Crime (Control) Act 2008. Court: convicted of using firearm or ammunition in commission of offence or not fit and proper	In the public interest – person is unfit to possess or use a firearm	In the public interest: - criminal history of the individual - behaviour of the individual - people they associate with - on information known to the Chief Commissioner about the individual, the individual may pose a threat or risk to public safety.	In the public interest: - criminal history of the individual - behaviour of the person - people with whom the person associates - on basis of criminal intelligence or other information the Commissioner holds about the person or their associates - on information held by Commissioner, they pose a threat or risk to public safety.
Duration	Mandatory: - 10 years (first offence) - Life (second offence). Discretionary: 10 years (can be life if offence against intimate partner). Preventative: 5 year.	Life or five years depending on prison sentence.	No specified end date.	No specified end date.	No specified end date.	10 years for people 18+ and 5 years for people aged under 18.	10 years for people 18+ and 5 years for people aged under 18.
Effect - search	No search powers specifically tied to orders. Searches with warrants or warrantless searches with belief on reasonable grounds.	Search warrant where JP or sheriff (Scotland) satisfied there is reasonable ground for suspecting an offence is being or about to be committed. General warrantless search power with reasonable cause.	Warrantless search powers of person, premise and any vehicle, vessel or aircraft occupied by or under person's control.	Warrantless search powers of person, premise, and any vehicle, vessel or aircraft occupied by or under person's control.	No search powers specifically tied to orders. Searches with warrants, or warrantless searches with cause.	Warrantless search powers of person, premise, and any vehicle, vessel or aircraft occupied by or under person's control. Warrantless search powers of any person in company of subject person if reasonable suspicion (that may be committing / about to commit an offence or has a firearm / firearms-related item in their possession).	Warrantless search powers of person, premise, and any vehicle, vessel or aircraft occupied by or under person's control. Warrantless search powers of any person in company of subject person if reasonable suspicion (that may be committing / about to commit an offence or has a firearm / firearms-related item in their possession).
Effect – acquire, possess or use	Person prohibited from having access to any weapon including firearms and ammunition.	Not able to possess firearms or ammunition.	Must not acquire, possess, or use firearms, parts or ammunition.	Must not acquire, possess, use firearm, parts of ammunition.	Must not possess or use firearm.	Must not acquire, possess, carry or use a firearm or firearm related item.	Prohibited from acquiring, possessing or using firearm / firearm related item, or being in company of person who acquires, possesses or uses a firearm / related item.

	Canada	United Kingdom	Australia				
			New South Wales	South Australia	Tasmania	Victoria	Northern Territory
Effect – Residence / location / persons	Where police officer believes person with a firearm is cohabiting or associating with person subject to an order, and that the subject person may access firearms, then officer can apply for order, limiting access (on such terms and conditions as Judge considers appropriate).	No specific prohibitions.	<p>Person must not reside at premises where firearms, part or ammunition kept/found.</p> <p>Person must not attend following premises without reasonable excuse – dealers, shooting ranges or firearms club, or other premise as prescribed in regulations.</p>	<p>Person must not:</p> <ul style="list-style-type: none"> - be present at a firearms club, shooting range, shooting gallery, arms fair, or firearms dealer (or manufacturer or repairer). - become or remain member of firearms club or in company of anyone who has physical possession or control of a firearm. - be present at or reside at premises where there is a firearm, part, sound moderator or ammunition. <p>Person must inform other person over age 18 who resides or proposes to reside at same premises of order.</p>	<p>The person must not apply for or accept employment that would the person access to firearms or ammunition or paintball firearms or paintball pellets.</p> <p>The person must not act as an agent for a business carrying on under a firearms dealer licence or paintball business, or participate in the management of a business carried on under a firearms dealer licence or paintball business.</p>	<p>Person must not enter or remain on premises on which person carries out business of being a firearms dealer, a shooting range, a handgun target shooting club, a handgun target shooting club, a firearms collectors club, a shooting club, a place where a handgun target shooting match is occurring, premises where firearms are stored or a prescribed premise.</p>	<p>Prohibited premise includes firearms dealerships, armourers, a shooting range, a handgun target shooting club, a firearm collectors club, a shooting club, a place where a shooting match is occurring, a firearms fair, a shooting gallery, a paintball range or place where paintball activities are carried out, a where firearms are stored.</p> <p>Offence if subject person intentionally in company of another person, and that other person has possession or is using a firearm or firearm related item and subject person has knowledge of that.</p>
Effect on other persons	Offence for someone to provide firearm to a prohibited person / unauthorised person.	Offence for someone to sell or transfer firearm/ammunition or repair, test or provide a firearms or ammunition to a person prohibited from having a firearm or ammunition in their possession.	Person must not supply or give possession of firearm, part of ammunition to subject person.	<p>Person must not supply subject person with firearms, parts or ammunition.</p> <p>Offence to bring firearm, part or ammunition onto premises where subject person resides.</p>	<p>Person must not sell or give firearm to subject person.</p> <p>Holder of firearms dealer licence must not employ a subject person in role that gives person access to firearms or ammunition.</p>	<p>Person must not give possession of firearm or firearm related item to subject person or enable/permit them to possess, carry or use firearm or firearm related item.</p> <p>Warrantless search powers of any person in company of subject person if reasonable suspicion (committing / about to commit an offence or have firearm / related item in possession).</p>	<p>Person commits an offence if action (intentional or reckless) that results in a subject person acquiring, possessing or using a firearm or firearm related item.</p> <p>Warrantless search powers of any person in company of subject person if reasonable suspicion (committing / about to commit an offence or have firearms / firearms related items in their possession).</p>
Exemptions	Court can exempt person if firearms required for sustenance or employment	Person may apply to Court / Sheriff (in Scotland) for removal of prohibition.	Commissioner may exempt a person from specific effects / conditions.	The Registrar may exempt a person, unconditionally or subject to conditions, from a specified provision.	No specific powers to exempt from conditions.	No specific powers to exempt from conditions.	No specific powers to exempt from conditions.
Appeal rights	Judge may revoke order, on application by person, if satisfied that circumstances for which order was made have ceased to exist.	Person may apply to Court / Sheriff (in Scotland) for removal of prohibition.	Right of review to Civil and Administrative Tribunal.	Person can appeal interim order to Registrar. Person can apply to the Civil and Administrative Tribunal for review of the decision to make an order.	A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of an order.	Right of review of decision to make order to Victorian Civil and Administrative Tribunal. Can also review if more than half time for order has expired.	Right of review of decision to make order to Northern Territory Civil and Administrative Tribunal.