

Rt Hon Jacinda Ardern, Prime Minister
 Rt Hon Winston Peters, Deputy Prime Minister
 Hon Grant Robertson, Minister of Finance
 Hon Andrew Little, Minister of Justice
 Hon Stuart Nash, Minister of Police
 Hon Ron Mark, Minister of Defence

BRIEFING FOR MINISTERS WITH POWER TO ACT			
Priority	<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> Time-Sensitive <input type="checkbox"/> Routine		
Subject	Proposed provisions for the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill		
Date	7 April 2019	Ref	BR/19/36

Executive Summary

This paper seeks approval to the proposed approach to legislate for the buy-back scheme through the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill.

This paper provides you with further advice on the issue of prohibited parts and recommends they be included in the scope of the buy back.

The paper also seeks approval for further policy decisions that have arisen as a result of submissions analysis over the weekend, as follows:

- managing imports of newly prohibited items arriving in reliance on a permit issued under old law, and
- a narrow exemption for a person to retain a memento or heirloom semi-automatic firearm that will be a prohibited firearm, similar to which exists in the Act now for restricted weapons.

Included in the amendments to the Bill are provisions to enable commercial wild animal and animal pest controllers to be contracted by private land owners. We have also included two minor technical amendments in the Bill, as set out at Appendix 1.

Andrew Coster
 Acting Deputy Commissioner: Strategy & Partnerships

First contact	s 9(2)(a)	
Second contact	Andrew Coster, Acting Deputy Commissioner, Strategy & Partnerships	s 9(2)(a)

Proposed provisions for the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill

Purpose

1. This paper seeks approval to introduce provisions in the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill. These provisions relate to issues which have arisen while the Bill has been before the Finance and Expenditure Committee and as we have continued to work through submissions. They will provide a legislative basis for:
 - a compensation scheme for prohibited items (the buy-back scheme)
 - managing imports of newly prohibited items arriving in reliance on a permit issued under old law
 - an exemption for a person to possess prohibited heirlooms or mementos, that would otherwise become prohibited under new law.

Background

2. On 18 March 2019, Cabinet agreed in principle to prohibit certain types of semi-automatic firearms, parts and magazines. Cabinet gave the Prime Minister, the Deputy Prime Minister, the Ministers of Finance, Police, Justice and Defence the Power to Act to make decisions on the development of a buy-back initiative [CAB-19-MIN-0105]. Ministers agreed to develop a buy-back initiative for newly prohibited firearms on 20 March 2019 [BR/19/31]. You received advice on buy-back policy settings on 2 April 2019 [BR/19/34].
3. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill implements the new prohibitions and accompanying amnesty. The Bill currently before the Finance and Expenditure Committee does not include any provisions for the buy-back scheme. The Final Departmental Report to the Finance and Expenditure Committee notes that one of the emerging themes in submissions was that details about the buy-back scheme were not available at the same time as the Bill.
4. s 9(2)(h) [REDACTED] we recommended the Bill provide for the buy-back scheme on 3 April 2019 [IPR/19/81].
5. On 4 April 2019 you agreed to the recommendation in IPR/19/81, and some of the recommendations in BR/19/34, including that:
 - The purpose of the buy-back is to get as many prohibited semi-automatic firearms out of private ownership as possible
 - The buy-back will cover lawfully acquired prohibited firearms and prohibited high-capacity magazines

- The buy-back will not pay for unlawfully acquired property or items which are not prohibited
 - Those eligible for exemptions who get an endorsement are not eligible for compensation for firearms held on that endorsement
 - Independent advice would be sought to develop the price list for approval by the end of April
 - The price list would have a maximum cap, for higher value firearms an independent panel would give advice to Ministers
 - The buy-back would run for 6 months from the date of price announcement (aligning with the amnesty period)
 - Payments would be GST inclusive, and processed by Police through Westpac.
6. We agreed to provide further advice on options for business compensation and prohibited parts.

We recommend you include prohibited parts in the scope of the buy-back

7. This paper provides you with further advice on the issue of prohibited parts and recommends they be included in the scope of the buy-back.
8. In your previous discussion about buy-back settings, we undertook to come back with further advice about the recommended scope for compensation relating to prohibited parts and accessories. The question under discussion was whether compensation would be paid for accessories that may be interchangeable with non-prohibited weapons.
9. We recommend, for the purposes of compensation, that you adopt the definition contained in the Bill for 'prohibited items', which would include "any such thing, such as a butt, stock, (other than a prohibited magazine) silencer or sight, that, although not essential for the discharge by the prohibited firearm of any shot, bullet, missile or other projectile, is designed, or intended to be, an integral part of the prohibited firearm". This would exclude 'aftermarket' accessories, i.e. those that are interchangeable with another firearm that is not a prohibited firearm.
10. Taking this approach creates some operational complexity in the buy-back, in terms of identifying which parts attached to a weapon are 'designed for' or 'integral' to it, as opposed to generic for a range of weapons, including non-prohibited weapons. However, adopting the definition within the Bill would ensure that compensation may be paid for items that may no longer be possessed as a consequence of the new legislation, and would ensure that public funds are not be unnecessarily spent on accessories that do not fall into this category.
11. As your decision on this question would be enacted through regulations to be drafted after the passing of the legislation, there will be opportunity to fine-tune the settings in relation to prohibited parts at that time.

A legislative basis for the buy-back

12. s 9(2)(h)

You have agreed to the inclusion of a provision that:

- upon surrender of the prohibited item, the property will become the property of the Crown;
- the Government will pay for that item which has become the property of the Crown, providing it is lawfully obtained; and
- creates a regulation-making power by which the level of such payments would be determined.

Proposed approach to primary legislation:

13. Prohibited items delivered or surrendered to Police after 3pm on 21 March 2019² become the property of the Crown. s 9(2)(h)

Legislation will provide a discretionary power to pay compensation for these items and only on the basis set out in regulations.

14. The legislation will also enable a regulation-making power that is broad and enables pricing methodologies and price lists to be established:

- for different classes of persons and licence holders (such as different types of licence-holders, e.g. individuals or dealers), and
- for different classes of prohibited items (such as firearms, magazines and parts, if these are included)

15. You have agreed that only lawfully acquired prohibited items will be compensated for. A person paid compensation for prohibited firearms would need to hold the appropriate licence or endorsement for that type of firearm (prior to 21 March 2019). For high-capacity magazines and prohibited parts, there is no requirement to hold a licence to possess these items. As such, the legislation provides for different classes of persons and licence holders, rather than just licence holders.

16. Legislation will provide for regulations that set out different pricing approaches that may include:

- consideration of make model and condition of items
- a minimum and maximum amount of compensation paid for a prohibited item
- conditions for receiving compensation payments (such as a cap on the number of high-capacity magazines for which compensation may be paid).

s 9(2)(h)

² This aligns with the date the Order in Council classifying some semi-automatic firearms as MSSAs, at which time people began surrendering their firearms.

17. Finally, the legislation will stipulate that the pricing approach set out in regulations may exclude economic loss, consequential loss, business interruption, and intrinsic or sentimental value.

18. s 9(2)(h)



Once regulations are developed they will include:

19. *Different compensation levels for different persons or licence-holders:* this will enable regulations to specify that those with exemptions are not covered under the buy-back, and further decisions to be made on any compensation for dealers.

20. *Compensation levels for different types of prohibited items:* this will enable regulations to specify different compensation levels and criteria for prohibited firearms, high-capacity magazines, and prohibited parts, if included.

21. *Payment for modification of shotguns down to five cartridge capacity:* the Committee heard an oral submission about the impacts of prohibiting shotguns with a magazine capacity of more than five cartridges, and the option to permanently modify these to a five cartridge capacity. This would be a considerably lower cost option than compensation for the shotgun. Should this be preferred, the regulation-making power could enable payment to be made for the gunsmith costs of making such a modification.

22. *Approach to business compensation, if any, and more detailed pricing information,* such as the number of price points per item (eg. high, middle and low).

Provision to manage import of newly prohibited items

23. Permits enabling a person to import firearms or parts last for 12 months from the date of issue, unless revoked earlier. There are import permits that were issued between 13 April 2018 and 12 April 2019 for items that:

- i. have not yet arrived in New Zealand (or may not have been released from Customs control before 12 April 2019) and
- ii. will be prohibited items from 12 April 2019.

24. We have identified that 292 permits have been issued (and not yet used) to import one or more items that are prohibited items in the Bill. We have identified that 168 of these permits are for dealers. We have not identified any import permits issued for semi-automatic firearms since 21 March 2019.

25. There is currently uncertainty around the status of items that arrive after 12 April 2019 on permits to import that were issued before the items were prohibited and

before the permit is revoked.³ Police has the ability to revoke permits, but this would need to be done on an individual basis. Revoking a permit also opens up potential for a civil proceeding in the District Court. This creates risk that imports will be dealt with inconsistently.

26. s 9(2)(h)

These provisions will:

- i. revoke permits to import issued before commencement, and
- ii. allow prohibited items that are currently in Customs control to be handed over to Police.

27. This will enable Police to work through next steps with the importer. For example, some dealers may be able to return some stock. The impacts on dealers will need to be worked through in further advice on business compensation. Individuals who legally own these prohibited items but are unable to receive them, or return them, could be eligible for compensation for these items under the buy-back scheme.

Exemption for prohibited items which are mementos or heirlooms

28. The analysis of submissions on the Bill has identified a further exemption that we propose is made. This is in respect of heirloom and memento semi-automatic firearms to come into the collector endorsement regime.

29. As drafted, the Bill has the effect that an individual who may be holding semi-automatic heirlooms from either World Wars would be prevented from continuing to possess it. Unless provision is made, these items will have to be handed in for destruction.

30. Currently, the Act provides that a person to whom a pistol or restricted weapon has special significance as an heirloom or memento may have a Collectors endorsement (heirloom or memento sub-group) on a standard licence. Collectors are required to have a higher standard of security, including making the firearms inoperable by removal of a vital part.

31. If we do not provide for the legal possession of a semi-automatic held for memento or heirloom purposes there is a risk that people will hold on to these items for sentimental reasons anyway, without the oversight and higher standard of security that would be applied if they were enabled to hold it through an endorsement.

32. We recommend that provision is made to enable those holding prohibited items for memento/heirloom purposes to possess or sell their prohibited item. This will

³ Imports that arrive after revocation of the permit to import would have unlawfully entered New Zealand and can be seized under the Customs and Excise Act 2018.

reduce the risk of those items being hidden away, or stored inappropriately, where they may be more vulnerable to being stolen and misused.

Next steps for the buy-back

33. We propose that the Minister of Police, following consultation with Ministers with Power to Act, takes a paper and regulations to Cabinet. The earliest possible dates for this would be end of April-early May. An Order in Council could bring the regulations into force the week they are agreed at Cabinet.
34. To ensure the regulations are in effect as quickly as possible and enable the price list to be released, the price list will be developed in parallel and ready for publication at the same time as the regulations.

Consultation

35. We have shared a copy of this paper with Crown Law, the Parliamentary Counsel Office, the Treasury, and the New Zealand Customs Service.

PROACTIVE RELEASE

Recommendations

It is recommended that Ministers with Power to Act:

- a) **note** the decisions made on the buy-back in BR/19/34 and IPR/19/18
- b) **agree** to include prohibited parts for compensation but exclude those 'aftermarket' parts that are interchangeable with other firearms that are not prohibited Yes/No
- c) **agree** the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill will provide a legislative basis for compensation Yes/No
- d) **agree** that legislation will set out that surrendered prohibited items will become property of the Crown, the Government has the discretion to pay for prohibited items as per the approach set out in regulations Yes/No
- e) **agree** the legislation will create a regulation-making power that may: Yes/No
 - i. apply differently to different classes of persons, licence holders, and items
 - ii. set conditions for receiving compensation payments
 - iii. consider make model and condition of items in determining price
 - iv. set a minimum and maximum price cap.
- f) **agree** the compensation provision will specify that compensation may not be based on market value, in addition to not accounting for economic, consequential, business loss or loss attributable to intrinsic or sentimental value Yes/No
- g) **note** there are a number of buy-back policy decisions which can be developed in regulations
- h) **agree** that regulations for the buy-back will be developed to come into effect late April-early May Yes/No
- i) **authorise** the Minister of Police to issue drafting instructions to the Parliamentary Counsel Office to draft regulations for the buy-back alongside further policy decisions made by Ministers with Power to Act Yes/No
- j) **note** you will soon receive further advice on business compensation and pricing approach
- k) **agree** to include provisions in the Bill to:
 - i. manage imports of newly prohibited items arriving in reliance on a permit issued under old law Yes/No

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- ii. provide an exemption for a person to possess mementos or heirlooms that will be prohibited items. Yes/No
- l) **note** the Bill has been amended to:
- i. give effect to decisions made on commercial pest controllers on 6 April 2019
 - ii. clarify two technical matters set out at Appendix 1.

Ministers' comments and signature

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Appendix 1: Two minor technical amendments to the Bill

Clause 8 (addition of “employee or agent” of licensed dealer to new section 4A(1)(a))

The list of exempt persons in new section 4A(1) previously included licensed dealers at paragraph (a). That has been expanded to include employees or agents of licensed dealers to ensure employees and agents of dealers are still able to sell firearms in line with section 11(1) of the Act. Their inclusion in the list at new section 4A still means that they will only be able to do the things listed on application, in accordance with the provisions of the Act, and in their capacity as an employee or agent of a licensed dealer.

Clause 42 (modifications to new section 43AA – offence of possessing or supplying prohibited ammunition)

In order to align the offence of possessing or supplying prohibited ammunition with the offences of possessing a prohibited part (clause 49, new sections 50C) and supplying a prohibited part or magazine (clause 45, new sections 44A and 44B) :

- the penalty has been modified to 2 years imprisonment from 5 years; and
- there will only be an offence if the possession or supply occurs “without reasonable excuse”.