

In Confidence

Office of the Minister of Police

Chair, Cabinet Social Wellbeing Committee

## **PUBLIC CONSULTATION – FIREARMS PROHIBITION ORDERS**

### **Proposal**

1. I seek agreement to release a document for public consultation on whether a Firearms Prohibition Order regime should be introduced in New Zealand, and if so, how such a regime could look.

### **Executive Summary**

2. Firearms Prohibition Orders protect the public from harm by prohibiting certain people – such as those who have been convicted of serious violence and/or firearms offences – from accessing, being around, or using firearms. They work by:
  - 2.1. setting and monitoring conditions by which people subject to a Firearms Prohibition Order are expected to abide by. The attached draft consultation document seeks input on the nature of conditions, which could include prohibitions on possession, as well as residing in, or visiting locations where firearms are present.
  - 2.2. establishing penalties for breaching conditions of the Firearms Prohibition Orders.
3. If implemented, a Firearms Prohibition Order regime would support and complement the proposals in the Arms Legislation Bill. The Arms Legislation Bill is aimed at improving public safety by adjusting regulatory frameworks to improve controls on the use and possession of firearms:
  - 3.1. improving controls on the use and possession of firearms will help reduce the likelihood of firearms getting into the wrong hands and being misused.
  - 3.2. as we strengthen the overall regulatory framework, we also need to consider how else we can prevent the misuse of firearms and ensure that high risk people do not have unlawful access to firearms.
  - 3.3. while people likely to be subject to any future Firearms Prohibition Order regime would be unable to gain a firearms licence, they would not be prohibited from being able to access or use firearms (for instance under the supervision of a licenced firearms owner).
  - 3.4. Firearms Prohibition Orders offer additional controls beyond those established by the licensing and regulatory framework. They provide a more targeted

means of preventing firearms from getting into the wrong hands by restricting access to firearms, beyond ownership.

4. Firearms Prohibition Orders could be another tool that Police could use to prevent firearms from ending up in the wrong hands, and help address organised crime in a context where there are known links between organised crime groups, violence and illegal firearms. Firearms Prohibition Orders therefore also complement Police's significant and growing action to combat organised crime, and respond to increasing concerns about the criminal use of firearms.
5. I seek agreement to consult publicly on whether New Zealand should implement a Firearms Prohibition Orders regime, with specific questions aimed at seeking the public's views on the parameters of how such a regime could operate, covering:
  - 5.1. qualifying criteria – what mix (type) of convictions, how many and how recent.
  - 5.2. conditions – what type of conditions should apply.
  - 5.3. decision-making – whether decision-making sits with Police or the Courts.
  - 5.4. monitoring and enforcement – what enforcement and search powers are desirable.
6. Obtaining the public's input will help fine-tune how, if introduced, such a regime would operate in New Zealand.
7. Attached is the draft consultation document. Subject to your agreement, I propose that public consultation on the document lasts for approximately six weeks, beginning Monday, 11 November and finishing just before Christmas. This consultation document is purposely open, not indicating a preferred design but traversing a range of design options and briefly identifying the operational effectiveness and human rights issues associated with each one.
8. I will report back to Cabinet in the New Year following consultation and analysis of feedback.

## **Background**

9. Many people in New Zealand have access to firearms, and the majority of users are legitimate and law abiding.
10. However, firearms are inherently dangerous. As the terror attack on 15 March 2019 showed, firearms in the wrong hands create significant risk for our communities. Firearms are also used by criminals and organised crime groups to threaten, intimidate, and cause injury and death.
11. The Arms Act 1983 (the Act) sets out New Zealand's broad firearms framework, including a firearms licensing regime. The Government is strengthening the regime through the Arms Legislation Bill (the Bill) currently before Select Committee.
12. The changes being progressed through the Bill aim to strike a better balance between enabling the lawful and legitimate possession and use of firearms, while

ensuring more focus on managing the risk of misuse. For example, proposals to strengthen the licensing regime will make sure those people who present a risk to public safety cannot get a firearms licence, while those who are convicted of a serious crime will have their firearms licence revoked. Likewise, strengthening security requirements will help prevent the leakage of firearms into criminal hands.

13. Alongside the Bill, we also need to consider how else we can prevent the misuse of firearms – as well as preventing high risk people from having unlawful access to firearms outside the licensing context. A person with a history of serious violence offending, firearms offences, or breaches of Protection Orders is unlikely to be regarded as a ‘fit and proper’ person to obtain a firearms licence. However, this does not rule out the possibility that they would be able to access or use firearms, for instance, under the immediate supervision of a licensed firearms holder or through illegal access.
14. In 2017, as part of its 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. Such orders exist in four Australian States (New South Wales, South Australia, Tasmania, and Victoria). This year, Bills have been introduced in Queensland (May 2019; Private Members’ Bill) and Northern Territory (September 2019) to introduce Firearms Prohibition Orders.
15. Every year, the number of firearms seized by Police increases. In the six month period from April to September 2019, Police seized 883 illegal firearms. And, in the last 12 months, increasing numbers of high-risk firearms such as pistols, military style semi-automatics (MSSAs), and cut down shotguns and rifles have been seized.
16. There is also a well-known link between organised crime groups, violence, drugs and illegal firearms. Recent analysis indicates that 44 percent of members and prospects of New Zealand adult gangs had been charged with an offence involving a firearm during their lifetime while ten percent had been charged with five or more offences involving a firearm. As such, Firearms Prohibition Orders would also link with, and support, the Government’s investment in combatting organised crime.

### **Firearms Prohibition Order regimes protect the public from harm by preventing high risk individuals from accessing firearms**

17. Firearms Prohibition Orders protect the public from harm by prohibiting those people deemed high risk from using, accessing or being around firearms. The orders work on the basis that those people with convictions for serious violence and/or firearms offences pose a risk of further, similar offending due to their criminal history. As such, Firearms Prohibition Orders would not impact on law-abiding licensed firearms owners, who are subject to the controls set out in the Arms Act 1983.
18. Firearms Prohibition Orders work by:
  - 18.1. setting and monitoring conditions that people subject to a Firearms Prohibition Order are expected to abide by, and
  - 18.2. establishing penalties for breaching conditions of the Firearms Prohibition Orders.

19. Firearms Prohibition Order conditions regularly used in Australian States include prohibitions on possession of firearms, and residing in or visiting locations where there are firearms, parts or ammunition. These restrictions go well beyond those a general licensing and control regime can impose. Thus, while existing licensing controls set out who can legally possess or use firearms, a Firearms Prohibition Order can go further by prohibiting an individual from visiting or residing at any property where firearms are located or likely to be located, including firearms shops, shooting clubs and ranges or where firearms are illegally held.
20. Firearms Prohibition Orders can also provide additional search powers to Police, and penalties for breaches of the order itself.
21. Having a Firearms Prohibition Order regime would enable additional controls to be put in place to prevent high risk people from accessing firearms. As such, they would be another tool to prevent firearms from ending up in the wrong hands – particularly important in a context where there are known links between organised crime groups, violence and illegal firearms.
22. A formal evaluation of the Firearms Prohibition Order regimes in Australia has not been carried out, but a review of the search powers component of the New South Wales regime was done after the first 22 months. While firearms were found in only two percent of search events conducted (29 searches), those searches revealed 25 firearms, 9 firearms parts and 26 lots of ammunition. Overall, 416 items were seized in 1,343 search events, including 51 other weapons, including explosive devices, nunchakus, swords and knives, and a range of illegal substances and associated paraphernalia.

### **Consultation would help inform the policy settings should a Firearms Prohibition Order regime be introduced in New Zealand**

#### *Key policy settings of a Firearms Prohibition Order regime*

23. If New Zealand is to implement a Firearms Prohibition Order regime, then key policy settings need to be considered in the design process, including:
  - 23.1. **Qualifying criteria** – what mix (type) of convictions, how many and how recent; whether convictions prior to Firearms Prohibition Orders coming into force would be included, and whether gang membership should be considered as a qualifying criteria.
  - 23.2. **Conditions** – what type of conditions should apply and for how long would a Firearms Prohibition Order last.
  - 23.3. **Decision-making** – whether decision-making sits with Police or the Courts, and when an application would be made.
  - 23.4. **Monitoring and enforcement** – whether existing powers would apply or whether there would be new powers (i.e. additional search powers), the scope of any new powers, and sanctions for breaching Firearms Prohibition Orders.
24. I recommend that public consultation be undertaken to identify whether or not the public considers there is a need for a Firearms Prohibition Order regime in New

Zealand, and if so, to inform the development of policy options on each of the above four design parameters.

25. Obtaining the public's input will help fine-tune how such a regime would operate in New Zealand should one be introduced.

#### *Design of the draft consultation document*

26. The attached consultation document consists of five key parts, along with an introduction and conclusion:
  - 26.1. Part One sets out the **objectives** of a Firearms Prohibition Order regime.
  - 26.2. Part Two sets out **options for the criteria** for determining who would qualify for Firearms Prohibition Orders, with specific consideration around conviction history, and whether gang membership should be part of that criteria.
  - 26.3. Part Three sets out **options for conditions** of a Firearms Prohibition Order – for instance, what activities would be prohibited, and how long a Firearms Prohibition Order would last.
  - 26.4. Part Four sets out **options for the application and decision-making process**, including whether the decision to issue a Firearms Prohibition Order should be made by the Court or by the Commissioner of Police.
  - 26.5. Part Five sets out **options for the monitoring and enforcement powers**, covering how compliance with the Firearms Prohibition Order would be monitored and enforced, and what additional powers Police would have to do so.
27. The consultation questions are based on the considerations and options set out for each design parameter. The consultation document is purposely open, not indicating a preferred design but traversing a range of design options and briefly identifying the operational effectiveness and human rights issues associated with each one.

#### *Timeframe for the proposed public consultation and report back*

28. Subject to Cabinet's approval of the consultation document, I propose to consult the public over a period of six weeks commencing 11 November 2019.
29. I will report back to Cabinet in the New Year following consultation and analysis of feedback.

#### **Firearms Prohibition Order regimes need to balance public safety with the protection of rights and freedoms**

30. While Firearms Prohibition Orders prohibit particular individuals from possessing firearms, they can also prohibit the subject person from visiting or residing in a place where firearms, parts or ammunition are located. As such, depending on how they are designed, they can limit a number of fundamental rights and freedoms.

31. If New Zealand was to implement a Firearms Prohibition Order regime, we would need to learn from the experiences of our Australian colleagues, and previous proposals to implement Firearms Prohibition Orders in New Zealand:
- 31.1. In New South Wales, the making of a Firearms Prohibition Order also provides Police with significant powers of warrantless search, including the person, their residence, and any vehicle they happen to be travelling in. In 2016, after reviewing the first 22 months of operation of these search powers, the Ombudsman found that only two percent of search events (29 out of 1,343 search events) resulted in firearms, parts or ammunition being found. However, over a third of the people searched under the Firearms Prohibition Order search powers were not subject to a Firearms Prohibition Order.
- 31.2. In New Zealand, a Private Members' Bill, the Arms (Firearms Prohibition Orders) Amendment Bill, was voted down at first reading in September 2018, largely on the basis that it proposed a regime that was limited in applicability to gang members. The Attorney-General found the Bill unjustly limited both section 17 (freedom of association) and section 25(c) (right to be presumed innocent) of the New Zealand Bill of Rights Act 1990.
- 31.3. 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 were too severe for a reverse onus offence. Any regime in New Zealand would need to avoid this blanket approach, and the design considerations identified in the Attorney-General report have been included in the draft consultation paper.
- 31.4. In New Zealand, a new Private Members' Bill, the Arms (Firearms Prohibition Orders) Amendment Bill (No 2), was introduced in July 2019. The Bill is exactly the same as the previous Bill, and therefore has the same limited applicability and the same unjust limitations on rights and freedoms.
32. Both the New South Wales experience and the Private Members' Bills point to a need for regimes to be carefully designed so as not to be too broad. The design parameters set out in the attached consultation document include a range of options which, if implemented, would provide for different balances between public safety, human rights, costs and risk. A broader regime is likely to have better public safety outcomes, whereas a more targeted regime is likely to have a lower impact on human rights, and therefore present fewer restrictions on the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.
33. While the Private Members' Bill is unduly limited in its applicability, there is some justification for focusing on gang membership given the links between unlawful firearms possession, gang culture, intimidation, and violence in New Zealand. The consultation document specifically includes a question regarding whether gang membership should be a qualifying criteria, and if so, how a risk assessment process could also apply in those cases to help address the freedom of association limits identified by the Attorney-General.

34. Public consultation will provide us with an indication of where the community considers the line should be drawn between broader and targeted proposals. Any proposal for a Firearms Prohibition Order regime would need to find an appropriate balance between protecting the public from harm and protecting fundamental human rights and freedoms in a way that ensured the continued trust and confidence in the Police generally.

### **Impact on Māori**

35. The release of the *Ināia Tonu Nei: Māori Justice Hui* report in July 2019 highlights a growing concern about inequalities in the criminal justice system, and a recognition that more needs to be done to address those inequalities. Such concerns also mirror the Waitangi Tribunal's concerns about Māori reoffending rates in its *Tū Mai Te Rangi!* report.
36. Māori are over-represented at all stages in the criminal justice system. There is a reasonable likelihood that Māori would be over-represented in the cohort of people who could become subject to Firearms Prohibition Orders. Specifically, Firearms Prohibition Orders may have a disproportionate impact on Māori men as the majority of serious violence and/or firearms offences are committed by men (for instance, 91 percent of offenders prosecuted for a serious violence offence with a firearm in 2017 or 2018 were male).
37. The Crown has a duty of active protection, and Māori also feature higher in victim statistics, particularly for violent interpersonal offences. The 2018 New Zealand Crime and Victims Survey for instance, indicated Māori women were more likely to be victims than the national average, particularly for family violence and intimate partner violence. Māori may therefore benefit should a Firearms Prohibition Order regime be implemented as it may result in fewer Māori (particularly Māori women) being victims of violence.
38. There is an obligation to act fairly towards Māori and non-Māori. Part of this obligation involves reflecting the importance of whānau, and the interconnectedness of people within Te Ao Māori. Depending on how it is designed, a Firearms Prohibition Order regime has the potential to impact on family and whānau relationships, for instance, through the use of non-association orders, which may prevent someone from visiting or associating with other whānau members.
39. The framework for a Firearms Prohibition Order regime would therefore need to be developed in such a way as to not unduly impact on Māori but at the same time, balance the need for public safety and the protection of Māori, particularly Māori women, from intimidation and violence. This is particularly important in light of the recent Waitangi Tribunal's report, *He aha i pērā ai?*, which highlighted the importance of ensuring that our consultation processes provided sufficient information about the impact on Māori before any final proposal is presented to the Committee for decisions.

### **Impact on youth offenders**

40. While most offenders prosecuted for serious offences are 18 years or older, there is the potential that, depending on the criteria, some youth offenders would meet the

criteria for a Firearms Prohibition Order. Māori youth, who are more likely to breach protection orders than other ethnic groups, may be disproportionately represented in this number.

41. The imposition of such orders could deepen a young person's involvement in the criminal justice system through breaches of those orders. At the same time, we also need to be mindful that offences which would qualify for a Firearms Prohibition Order are serious offences, and there is a need to protect the public from such offenders, no matter their age. Moreover, young people can be subject to protection orders from the age of 16, and the breach of these can also bring a young person deeper into the criminal justice system.
42. Should we develop Firearms Prohibition Orders, we will need to find a balance between public safety, and the impacts of placing such orders on a young person regardless of their criminal history.

### **Impact on the justice system**

43. The number of people who may be subject to a Firearms Prohibition Order will depend on the parameters of the final framework.
44. While the introduction of Firearms Prohibition Orders will not immediately have an impact on the corrections system, it is likely that some people subject to Firearms Prohibition Orders will breach them, and will receive a sentence of imprisonment.
45. As these people, independent of a Firearms Prohibition Order regime, would have been committing an offence (such as being in possession of a firearm without a licence), it is likely they would have been processed as a result of that offending.
46. The Department of Corrections (Corrections) has advised the introduction of a Firearms Prohibition Order regime may place upward pressure on the prison population. The scale of any impact would depend on:
  - 46.1. the number of people who are subject to Firearms Prohibition Orders.
  - 46.2. the breadth of conditions that apply to people on Firearms Prohibition Orders – more or wider conditions mean more opportunity for breaches.
  - 46.3. the level of enforcement that is applied to Firearms Prohibition Orders – more intensive enforcement means breaches are more likely to be detected.
  - 46.4. the severity of penalties that apply for breaching Firearms Prohibition Orders – stronger penalties for breaches would potentially result in longer periods of imprisonment.
47. If a decision is made to progress design work, modelling of the impacts of Firearms Prohibition Orders will be undertaken once a final design has been decided. Police would work with the Ministry of Justice and Corrections to understand the potential impacts of any proposals on the justice system and provide this advice alongside proposals in the New Year.



## **Consultation**

48. The Department of Conservation, Department of Corrections, Department of Prime Minister and Cabinet, Government Communications Security Bureau, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, Ministry of Primary Industries, Ministry of Social Development, Ministry of Transport, New Zealand Customs Service, New Zealand Defence Force, and the Treasury have been consulted on this paper.

## **Financial Implications**

49. There are no financial, fiscal or economic implications arising directly from this paper. The costs of consultation will be met out of agency baseline.
50. Due to the 'open' nature of the consultation process, and the number of potential design options reflected in the consultation document, a full modelling or costing exercise has not been carried out.
51. The Ministry of Justice developed an initial estimate of costs in 2016, based on 12 orders per year, and three searches per order per year. The ten year costs of a Firearms Prohibition Order regime with those parameters was estimated to be \$32.1 million, made up of:
- 51.1. \$13.206 million for Police (including capital, operating and personnel costs),
  - 51.2. \$0.605 million for Legal Aid (Justice),
  - 51.3. \$0.601 million for Courts, and
  - 51.4. \$17.657 million for Corrections.
52. Some costs (for instance, legal aid and court costs) may have increased since 2016. The final costs for Firearms Prohibition Orders will depend on the design of the regime, particularly the number of orders made per year, and the number and seriousness of order breaches.
53. A final modelling of costs – which would consist of the costs to Police, and the flow-on costs for the justice system – would need to be developed with the Ministry of Justice and the Department of Corrections. This will take place following public consultation if the Minister of Police seeks to progress policy design work.

## **Legislative Implications**

54. There are no legislative implications arising directly from this paper. The proposed public consultation will inform the development of policy options with legislative implications to be addressed in future papers.

## **Impact Analysis**

55. The consultation document functions as an interim Regulatory Impact Assessment. A Police internal Quality Assurance panel has reviewed the consultation document and

confirms that it is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions.

## **Human Rights**

- 56. By their nature, Firearms Prohibition Orders will constrain the rights of individuals. Depending on how it is designed, a Firearms Prohibition Order regime may impact a number of rights and freedoms contained in the New Zealand Bill of Rights Act 1990, including the freedom 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)).
- 57. As the design of the regime will follow public consultation, I am not in the place to identify to what extent those rights and freedoms are likely to be impacted. However, the justification and proportionality for any rights/freedom impacts will rest on establishing a risk of future serious firearms-enabled violent offending, and a strong rationale that specific conditions will prevent or restrict a person's access to firearms.
- 58. The extent to which any regime is targeted to specific individuals and their risk will also affect the extent of impact on human rights.

## **Gender Implications**

- 59. There are no gender implications arising directly from this paper. However, as the majority of serious violence and/or firearms offences are committed by men, a Firearms Prohibition Order regime, if introduced, would have a greater impact on men.

## **Disability Perspective**

- 60. There are no disability implications arising directly from this paper. The proposed public consultation will inform the development of policy options. The implications for disabled people will need to be considered as part of the development of the overall regime.

## **Publicity**

- 61. Subject to Cabinet's agreement to the approach, I intend to announce the start of the six week public consultation on Firearms Prohibition Orders later this month.

## **Proactive Release**

- 62. As part of the consultation process, I intend to proactively release this paper by publishing it on the Police's website.

## **Recommendations**

- 63. The Minister of Police recommends that the Committee:
  - 1. **note** that, in 2017, as part of its 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;

2. **note** that Firearms Prohibition Order regimes are not intended to regulate law abiding licensed firearms owners, but aimed at protecting the public from harm by prohibiting certain very high risk people from accessing, being around, or using firearms;
3. **note** that proposals for a Firearms Prohibition Order regime would support and complement existing work to strengthen the firearms regime, including the proposals in the Arms Legislation Bill;
4. **note** that, unless designed carefully, Firearms Prohibition Order regimes can unjustly limit fundamental rights and freedoms;
5. **note** that there are four key policy settings that need to be considered if a Firearms Prohibition Order regime was to be introduced: qualifying criteria; decision-making; restrictions, and monitoring and enforcement;
6. **agree** to a six-week public consultation process, starting on Monday, 11 November 2019, on whether New Zealand should implement a Firearms Prohibition Order regime, and seeking the public's views on the following design parameters:
  - 6.1. the criteria to determine who would qualify;
  - 6.2. what activities would be prohibited through standard and special conditions;
  - 6.3. decision-making, including whether this should sit with the Courts or the Commissioner of Police;
  - 6.4. enforcement powers, in particular search powers for Police;
7. **approve** the attached consultation document for release;
8. **note** that the Minister of Police will report back in the New Year following consultation and analysis of feedback.

Authorised for lodgement

Hon Stuart Nash

Minister of Police