

In Confidence

Office of the Minister for Police

Chair, Cabinet

Arms Legislation Bill: Supplementary Order Paper – Approval for Introduction; and development of options for managing the regulatory functions of the Arms Act

Proposal

1. This paper seeks Cabinet agreement to release a Supplementary Order Paper that amends the Arms Legislation Bill, and for the Minister of Police to report back to Cabinet in [REDACTED] on a model for an independent entity that moves some accountability for some of the Arms Act regulatory functions from Police.

Background

2. The Arms Legislation Bill (the Bill) was introduced on 13 September 2019. It was referred to the Finance and Expenditure Committee which reported it back to the House on 10 February 2020. It received its second reading on 19 February.
3. On 12 June 2019 the Cabinet Social Wellbeing Committee delegated the power to take decisions on any substantive matters that may arise during the drafting process of the Arms Legislation Bill to the Prime Minister, Deputy Prime Minister, and Ministers of Finance, Justice, Police and Defence [CAB-19-MIN-0288 refers].
4. This paper notes decisions made by Ministers with Power to Act and technical amendments needed to improve the function of the Act. It also seeks approval for a number of other relatively minor policy amendments. I propose that these amendments be included in a Supplementary Order Paper (SOP) to be released at the Committee of the Whole House stage of the Bill.

Amendments previously approved by Ministers with Power to Act

5. In March 2020 Ministers with Power to Act agreed to the following amendments to the Arms Legislation Bill to be included in a SOP:¹
 - **Firearms for pest control by agricultural businesses:** remove the requirement for owners or managers of an agricultural business to establish a company before

¹ Proposals for Arms Legislation Bill Supplementary Order Paper NZ Police BR/20/16 dated 4 March 2020

they can use prohibited items for pest control, but still require them to meet the current requirements to show a necessity to use prohibited firearms;

- **Timing of post-implementation review:** bring forward the timeframe for the post-implementation review, from five years after the Bill is fully in force to three years; and
- **Post-implementation review of penalties and offences:** ensure that the post-implementation review includes a review of the offences and penalties in the Act. The review of offences and penalties would be undertaken jointly with the Ministry of Justice.

Additional minor policy amendments

6. I also propose the following amendments be included in the SOP:

- **Post-implementation review of registry:** An amendment to the post-implementation review provision in the Bill to specifically require a review of the operation of the registry that is to be kept and operated under new section 92 of the Act (clause 83 of the Bill). The establishment of a registry is one of the more controversial aspects of the Bill and this amendment is to assert that its operation is an important part of the review;
- **Regulation-making power to alter duration of licences:** To add a new regulation-making power for regulations that can provide temporary extensions to the duration of a licence to cope with exceptional situations such as natural disasters, and pandemics. The need for this was demonstrated during the COVID-19 alert levels when Police was unable to process firearms and dealers' licence applications because of restrictions and resourcing requirements. Therefore a significant number of individuals, through no fault of their own, were illegally possessing firearms, which they had held legally under their previous licence. There was a need to rely on an omnibus COVID-19 Response (Further Management Measures) Legislation Bill to place people in compliance with the law. This was not as rapid a response as regulations would have been;
- **Firearms advisory group to report to Minister of Police:** Change the Commissioner's firearms advisory group to be established under the Bill to a committee that is advisory to the Minister of Police rather than the Commissioner of Police and whose chairperson and members are appointed by the Minister. This is proposed in response to concerns raised over insufficient contestability of Police's decision making and of advice from Police on matters relating to administration of the Arms Act. Although the advisory group as set out in the Bill was intended to respond to that, it is now considered that the appointment of its members by, and advice being provided to, the Minister would provide greater independence.

- **Increased certainty for importers of firearm items:** To amend section 18(2) of the Act to provide that a permit to import non-prohibited firearms, blank-firing guns, parts of those items, and non-prohibited ammunition must [rather than may] be issued if the member of Police is satisfied that the applicant is lawfully able to possess the item and the applicant has complied with any requirement to produce a sample for examination and testing and the sample is approved by Police. This is to provide greater certainty for those wishing to import firearm items.
- **More time to develop the firearms registry:** To amend the commencement date for the provisions in the Bill relating to the registry, from 2 years after the amendment Act receives Royal assent (or earlier by Order in Council) to 3 years after Royal assent (or earlier by Order in Council). The intention to establish an independent entity to manage some of the regulatory functions under the Arms Act, including the operation of the registry, would have a significant impact on the development of Police's business case for additional funding for modernising firearms administration in accordance with the Bill (which includes establishing and maintaining a registry). The proposed ICT design and investment was based on Police's existing ICT infrastructure. Establishing a registry in a separate standalone entity would require a different approach. The design of the registry needs to follow clarity on the form of the entity which creates a consequent delay in the establishment of the registry.

Establishment of an independent agency for firearms administration

7. As administrators of the Arms Act, Police recognises that effective and efficient administration of the Arms Act contributes to ensuring that New Zealand citizens are safe, and feel safe. Before the Christchurch Terror Attacks, Police was undertaking a programme of work to modernise and streamline the administration of the Arms Act to improve trust and confidence in the system. This programme of work was put on hold as resources were re-prioritised to deliver the buy-back of prohibited firearms, magazines and parts and amnesty and to work on the implementation of the proposed changes in this Bill.
8. However during consultation and throughout submissions received by the Select Committee it was clear that the administration of some aspects of the Arms Act required more focus to increase trust and confidence. Therefore I have agreed to the establishment of an independent firearms agency for firearms administration to move some of the regulatory functions of the Arms Act away from Police. This would provide greater independence and transparency to those regulatory functions and I believe it would allow Police to focus on their core business of enforcement.
9. The concept of an independent firearms agency is not new. The *Review of Firearms Control in New Zealand* by Sir Thomas Thorpe in 1997, proposed the establishment of a firearms authority (an independent agency with its own implementation resources).²

² Part 6:4, recommendation 27.

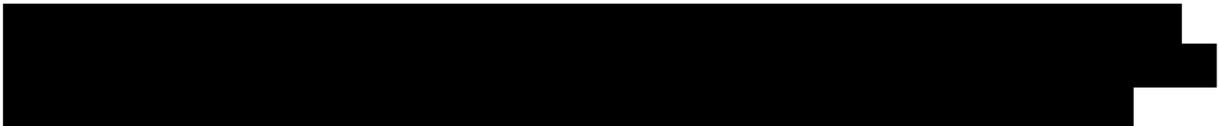
Along with the recommendation to ban military style semi-automatics, this recommendation was not progressed.

Administration of the Arms Act

10. The Arms regulatory system includes a number of different regulatory functions.

Policy advice and oversight , including:
<ul style="list-style-type: none">• regulatory stewardship• advising the responsible Minister• legislative development (including regulations)• monitoring and evaluation
Administration , including operational policy and service delivery such as:
<ul style="list-style-type: none">• Arms Manual, Police Instructions, Guidance documents• licensing (fit and proper person assessments, training of applicants)• controlling firearms (import, export, permitting and endorsements)• approvals of clubs, gun shows and certification of ranges• compliance and enforcement• dispute resolution (appeal of decision-making)
Policing services , including:
<ul style="list-style-type: none">• firearms encountered in routine situations• policing illegally held firearms in the community• policing our borders• prosecution

11.



- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

12. There is no suggestion of moving any of the enforcement elements from Police. Police will continue to have a strong interest, and in some cases a direct role, in both the policy advice and oversight regulatory function and the administration regulatory function.
13. It is proposed that officials work on more details of these [REDACTED] [REDACTED] This would enable me to report back to Cabinet in [REDACTED] with recommendations on the future administration of the Arms Act.

Impact analysis

14. The Treasury agrees that no Regulatory Impact Assessment is required for the proposals for the SOP, since they are expected to have no or only minor impacts on businesses, individuals or not-for-profit entities.

Compliance

15. The SOP complies with each of the following:
 - 15.1. the principles of the Treaty of Waitangi;
 - 15.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 15.3. the disclosure statement requirements (no disclosure statement is required as the SOP does not include any substantive government amendments as set out in CO (13) 3 of 4 July 2013);
 - 15.4. the principles and guidelines set out in the Privacy Act 1993;
 - 15.5. relevant international standards and obligations;
 - 15.6. the Legislation Guidelines (2018 edition) which are maintained by the Legislation Design and Advisory Committee.

Consultation

16. The following agencies and organisations were consulted on proposals contained in this SOP: Federated Farmers, Ministry of Justice, Ministry of Transport, State

Services Commission, NZ Customs Service, Department of Conservation, Ministry of Primary Industries, Defence, Department of Corrections, Treasury, and DPMC.

Binding on the Crown

17. This SOP makes no changes to the current extent to which the Arms Act is binding on the Crown.

Allocation of decision making powers

18. The SOP does not involve any change to the allocation of decision making powers between the executive, the courts, and tribunals.

Associated regulations

19. Regulations will be needed to bring the bill into operation, although the SOP does not impact on this. The new regulation-making power in the SOP will only need to be applied in emergency situations.

Other instruments

20. The SOP includes a provision empowering the making of legislative instruments, ie regulations that that can provide temporary alterations to the duration of a licence to cope with exceptional situations such as natural disasters, and pandemics.

Definition of Minister/department

21. The SOP does not alter the definition of Minister, Department, or chief executive of a department from that established in the Act.

Commencement of legislation

22. The Bill comes into force in stages set out in the commencement clause. The SOP does not make any changes to these dates.

Parliamentary stages

23. I propose that the SOP is released prior to the Committee of the Whole House stage under Standing Order 306 so that it forms part of the Bill as enacted.

Proactive Release

24. I propose to release this paper proactively in whole or in part as soon as practicable after the SOP is tabled in the House.

Recommendations

The Minister of Police recommends that the Committee:

1. **note** that the Arms Legislation Bill is awaiting consideration by the Committee of the Whole House;

2. **note** that the attached Supplementary Order Paper to the Arms Legislation Bill makes a number of minor policy changes to the Bill, as well as a number of technical changes;
3. **note** that the following policy changes were approved by Ministers with Power to Act:
 - 3.1 to remove the requirement for owners or managers of an agricultural business to establish a company before they can be enabled to use prohibited items for pest control
 - 3.2 to bring forward the timeframe for the post-implementation review of the Arms Act, from five years after the Bill is fully in force to three years;
 - 3.3 to ensure the post-implementation review includes a review of the offences and penalties in the Act; a;
4. **agree** to the following minor policy changes being included in the Supplementary Order Paper:
 - 4.1 to ensure the post-implementation review includes a review of the operation of the registry that is to be established under the Act
 - 4.2 to add a new regulation-making power for regulations that can provide temporary extensions to the duration of a licence to cope with exceptional situations such as natural disasters, and pandemics;
 - 4.3 to change the Commissioner's firearms advisory committee to be established under the Bill to a committee that is advisory to the Minister of Police and whose chairperson and members are appointed by the Minister;
 - 4.4 to provide that a permit to import non-prohibited firearms, blank-firing guns, parts of those items, and non-prohibited ammunition must [rather than may] be issued if the member of Police is satisfied that the applicant is lawfully able to possess the item and the applicant has complied with any requirement to produce a sample for examination and testing and the sample is approved by Police;
 - 4.5 to amend the commencement date for the provisions in the Bill relating to the registry, from 2 years after the amendment Act receives Royal assent (or earlier by Order in Council) to 3 years after Royal assent (or earlier by Order in Council).
5. **approve** the Supplementary Order paper for tabling;
6. **authorise** the release of the Supplementary Order Paper before the Committee of the Whole House stage of the Arms Legislation Bill;
7. **agree** that the Parliamentary Counsel Office may continue drafting the Supplementary Order Paper up until it is submitted to Cabinet;

8. **authorise** the Minister of Police to make any additional minor and technical drafting decisions that may be required before the Supplementary Order Paper is tabled in the House
9. **note** that the Minister of Police has agreed to the establishment of an independent regulatory entity;
10. **agree** that officials undertake further work on a model for moving accountability for some of the Arms Act regulatory functions from Police;
11. **agree** that the Minister of Police report back to Cabinet [REDACTED] on options for an independent regulatory entity.

Authorised for lodgement

Hon Stuart Nash
Minister of Police