



## **Arms Legislation Bill**

# **Submission for the Council of Licenced Firearms Owners**

This submission has been co-signed by 10,420 people and organisations, who believe that if this Bill is enacted it will fundamentally and detrimentally change how people in the shooting community, especially those in rural and regional areas, relate to the Police with respect to their firearms and their firearm sports.

COLFO will lodge a supplementary submission. With the compressed time allowed for submissions, it will be submitted in COLFO's name only.

We have validated each of these submitters as having individual active email addresses.

### Their names are as follows:

Joel Aagesen	Ben Abbott	David Abbott	George Abbott
Mark C N Abbott	Selena Abbott	Tassilo Abbott	Ashley Abel
Nick Abel	Bruce Abernethy	Hayden Abernethy	Jim Abernethy
Pam Abernethy	David Abplanalp	Elizabeth Abraham	Gordon Absolum
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Scott Adams	Shane Adams	Simon Adams	Simon Adams
Stafford Adams	Whitley Adams	Richard Adamson	Steven Adamson
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Ian Clow

**Edward Charles** Amanda Charlton **Nicholas Charlton Tim Charteris** Sarah Chatfield Samuel Chellp Yonghui Chen Hsin-Kuo Cheng Dean Cherry **Brian Chilcott** Warren Chin Ken Chittock Crystal Chooi Corban Christensen Martin Christensen Ben Christiansen **Debbie Christie** Lee Christie Stephen Christieson **Richard Christmas Brian Church** John Churches Justin Churchill **Tony Ciaffoni** Sean Clancey Andrew Claridge Jonathan Clark **Kevin Clark** Matthew Clark Rose Clark Ash Clarke **Geoff Clarke** Jackson Clarke Matt Clarke Paul Clarke Br Clarkin Pete Clarkson Richard Claydon Ben Cleary **Greg Cleaver Emily Cleland Bryan Clements** Erica Clementson Will Cleverdon **Kylie Clifford** Paul Clinker Richard Clough Jonathan Clow





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Murray Clunie Jeff Coad Beccy Cochrane Calvin Fraser Cochrane  Stefan Coberger Jim Cochran Beccy Cochrane Calvin Fraser Cochrane  Aw Cochrane Gordon Cochrane Jake Cochrane James Cochrane  Kay Cochrane Michael Cochrane Rose Cochrane Liam Cockayne-Goodin  Paul Cocker James Cockerill Mark Cockerill Mike Coe  Rick Coetzer Shane Cohen Simon Cohen Uri Cohen  Grant Coldicott Ashley Cole Bryan Cole Gene Cole  Hamish Cole Murray Cole Niall Cole Paul Cole  Wallace Cole Wynn Cole Jayda Coleman Murray Coleman  Sam Coleman Douglas Coleman-Avila  Josh Coles Karen Coles Lindsay Coles Michelle Coles  Tony Coles Will Coles Adam Coley Jordan Coley  Russell Colina Al Coll Ayson Coll Ben Coll  John Coll Aaron Collier Brad Collier David Colliers  Mike And Diane Stephen Collings Geoffrey Goodwin Gregory Collings  Mike And Diane Stephen Collins Bruce Collins  Mike And Diane Stephen Collins Bruce Collins  Mike And Diane Stephen Collins David Collins Denvir Collins  Collings Gordon Collins Bryce Collins  Mike And Diane Stephen Collins David Collins Denvir Collins  Mike And Diane Stephen Collins David Collins Denvir Collins  Mike And Diane Stephen Collins David Collins Denvir Collins  Mike And Diane Stephen Collins David Collins Denvir Collins  Mike And Diane Stephen Collins David Collins Denvir Collins  Mike Coe Michele Collins David Collins Denvir Collins  More Collins David Collins David Collins Jon Collins  Frim Collins Gordon Collins Jon Collins  More Collins Leslie Collins Quentin Collins Jon Collins  Paul Colls Ian Collyer Robert Colman John Colmer  Margaret Colmore Brendon Colmore-Williams  Riki Comins Terry Comins Harriet Conaghan Shawn Conaghan  Brent Congreve Caian Conne Hartley Connelly  Mark Connolly Mark Connolly Max Connolly Flynn Connolly  Gary Connolly Mark Connolly Max Connolly Flynn Connolly  Gary Connolly Mark Connolly Max Connolly Flynn Connolly  Mike Cook Murray Cook Jessica Cooke Kwade Cooke  Mike Cook Murray Cook Jessica Cooke Kwade Cooke  Michelle Cooke Nick Cooke Steven Cooke Elijah Cooksley  Traig Corban Vikic					
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## 23 October 2019

# **Arms Legislation Bill**

## **Submission for the Council of Licenced Firearms Owners**

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## **Background**

- 1. The New Zealand Council of Licenced Firearms Owners Incorporated (COLFO) is the overarching organisation for firearms users in New Zealand. It is an association of shooting sports organisations. Many of the estimated 250,000 New Zealanders who have firearms (and the hundreds of thousands more who occasionally use them) do not belong to organisations, but our membership represents the views of those who organise to hunt, target shoot, and collect firearms. We also represent people who work in the industry, including professional guides. From experience, we are confident that we represent the predominant views of firearms owners in this country.
- Our board includes representatives of six of the major member organisations including Pistol NZ, the NZ Deerstalkers Association, the National Rifle Association of NZ, NZ Antique and Historical Arms Association, NZ Service Rifle Association and Sporting Shooters Association NZ. Other members include the International Military Arms Society, Target Shooting New Zealand, New Zealand Shooting Federation, Airsoft New Zealand and NZ Black Powder Shooters Federation. COLFO has renowned and published authors on the subject of firearms and has ready access to technical experts.
- 3. We are a UN-accredited organisation and have represented New Zealand internationally at the UN Arms Trade Treaty and the UN Programme of Action. We are a member of the World Forum on Shooting Activities (WFSA).

## Introduction

- 4. The Arms Legislation Bill will fundamentally change how people in the shooting community, especially those in rural and regional areas, relate to the Police with respect to their firearms and their firearms sports. For those who want to obey the new law entirely, it will transform how they use their firearms, how they control pests, how their clubs and social gatherings work, and indeed whether they bother to volunteer to sustain such social capital.
- 5. All that will occur without evidence that any of it will make anyone safer. COLFO member organisations believe that this Bill is one of the well-known naïve 'feel-good' law proposals that will perversely generate collateral crime problems. Like other bad law proposals, it may increase precisely the kinds of casualties it is meant to reduce.
- 6. Well-meaning people have been encouraged to think that this Bill is somehow connected with reducing the risk of another terrorist attack. COLFO cannot find a single provision in this Bill that would be likely to have impeded the Christchurch killer. We are advised that Tarrant has clearly stated he chose to use the weapon he used precisely to create a political tension between firearms users and the kinds of politicians likely to exploit it. He wanted to stimulate a political response against shooting sports people. He said that if he wanted to maximise the casualties, he would have used explosives.
- 7. In our normal, Parliamentary process, our citizens would learn from each other more of the difference between rhetoric and reality of legislative amendments during the long to and fro of public discussion. Instead Parliament has been panicked into a truncated Select Committee process that is fostering entrenched divisions. No one has had the opportunity to learn from the Royal Commission. New Zealanders are being driven in ignorance to the kind of US style division that turns firearms law into a tribal identity badge. Until now we have been among

the envied countries blessed with mutual trust between firearms users and others, which has resulted in us being rated the second safest country in the world, <sup>1</sup> despite us no longer being a low crime rate country.

- 8. Our firearms culture and law are light years from the US situation. This Committee's process seems designed to transplant US hostility to New Zealand.
- 9. We urge that the submission process not close until we have all had time to consider the report of the Royal Commission on the Christchurch Attack.
- 10. Pushing through legislation that seems deliberately calculated to vilify and frustrate law abiding firearms owners will erode the respect needed by the Police generally, and not just in relation to firearms law. If the Police do not choose to turn a blind eye to many of the silly irritations in this Bill that contribute nothing to the safety of the community, we could see a collapse in firearms regulation of the same seriousness that flowed from the disastrous Canadian experiment in creating a firearms registry.
- 11. COLFO wants as many firearm owners as possible to be licensed and encouraged to police each other in the safe use of their firearm a co-regulatory model.
- 12. The Bill appears to have been drafted on the assumption that a huge increase in the procedural burden of firearms use, cracking down on licensed firearms holders, will somehow change the behaviour of criminals, and reduce the risks from unlicensed firearms owners. It is much more likely to create a dangerously irreversible tacit consensus among all users that it is simply not reasonable to expect routine compliance. The result will be that it is socially okay to feel little obligation to enforce firearms law.
- 13. COLFO has thought carefully before recording this warning so bluntly. We know that it risks a howl of objection and calls to increase punishment until people just obey. Law should be written based on how honest people act, not on how others may wish them to act. The changes in the Bill will change New Zealand's firearms culture and will tempt honest people away from compliance. The likely direction of change is the loss of clear distinction between those who try to obey and support the law and those that do not.
- 14. Any satisfaction in "I told you so" if this Bill proceeds will be greatly overshadowed for COLFO by sadness at having irreversibly lost the culture and benefits of being in a country with rational gun laws, low gun crime, and an almost universal desire among licensed firearms owners to support the law and the vetting processes, and to assist the authorities.

Our many concerns with this Bill are detailed below. In summary if this Bill is enacted -

The new 'fit and proper' test will result in people who should not be granted a
firearms licence receiving one, while some who should get a licence will be
discouraged from applying. Many of them will obtain and use firearms in the
black market, or from friends and relations who have lost sympathy for the law
and the authorities. They will operate outside the law;

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<sup>&</sup>lt;sup>1</sup> We are second on the Global Peace index after Iceland, which has more guns per capita. See http://visionofhumanity.org/indexes/global-peace-index/

- New Zealand will boast a gun registry with such immense and impractical burdens for the licensed shooting community, that they learn to ignore many requirements of the law;
- New Zealand will have a gun registry that no prudent police officer will rely upon.
   They will know that any assurance of reliability is spurious;
- A gun registry that has no way of monitoring the potential proliferation of 3D printed firearms. The impracticalities of the registry is likely to encourage more people to acquire firearms in this manner to altogether avoid the registry and its impact on their ability to use them;
- New Zealanders will set out to evade the registry requirements because they will
  conclude that their family's safety is more important than the threats of
  punishment. Few licenced firearms owners will believe in Police assurance that
  the registry is secure against hacking or insider misuse. It will represent
  information of much greater interest to criminals than to anyone else;
- New Zealanders will be sadly entertained from time to time by reports of a gun
  registry demanding and being allocated vast amounts of taxpayer money (at the
  expense of useful policing) until those responsible for it have lost power. Those
  who inherit it can allow it to expire, like INCIS (an earlier Police data disaster);
- The more speedy demise of clubs and other social capital associated with formally organised shooting. Regulatory burdens can be casually placed on the volunteers who sustain shooting clubs and ranges. But they can simply decide to stop volunteering. The need will not disappear. Sighting in shooting and competitions will move undercover, sometimes illegally, on the land of people who may be too frightened to try to stop it. Even competitions may become 'unofficial';
- Ranges are key community facilities. They provide important safety training and spaces for firearms users. Closure will diminish the pool of people in the community, including Police and Defence, who learn about firearms safety when they start out;
- Wide regulation making powers feeds the natural tendency for those with unbridled power to exercise it arrogantly. COLFO submits that the declining standard of administration of existing firearms law, including possibly the apparent ease with which Tarrant was licensed, is a reflection of this tendency since 2015. This Bill vests enormous practical discretion in the Police to make up the law as they go;
- COLFO sees a likelihood that officers will treat licensed firearms owners as they
  treat their "usual" customers because of an absence of practical remedies for
  overbearing conduct. In other words, the Police can treat law abiding people as
  criminals. They will resent that;
- Vague laws will mean that many law abiding citizens will unintentionally become criminals. They will face penalties under rules that have no obvious connection to

- safety. Even when "told" about the rules, they will not remember them or understand their obligations, because the rules have no rational safety purpose;
- Additional administrative requirements will mean that already limited resourcing for the administration of the Arms Act will be spent by Police on pointless compliance for licensed firearms owners, rather than tackling illegal use.

#### **Submission**

## **Licensing**

## **Fit and Proper**

- 15. COLFO recognises that there have been deficiencies in the application of the current 'fit and proper' test. Tarrant should have never been granted a firearms licence, and there should be changes to limit the possibilities for people like him to be licensed.
- 16. The success of the licensing system, like other criminal justice intelligence, rests on mutual respect between licensed owners and the Police, and widespread citizen voluntary action to support the law. Previously, cooperation helped the licensing system to operate with the kind of intelligence that depends on a widespread feeling of responsibility to inform the authorities of concerns.
- 17. Unfortunately, the Police have nearly dismantled in the last five years, a system that involved hours of face to face contact between people seeking licences, and instructors and assessors in a position to be alerted to characteristics of concern.
- 18. There has been a determined push to cut costs, and to replace it with an internet based service with few of the personal assessment opportunities inherent in the previous administrative arrangements.<sup>2</sup>
- 19. In 2015, the Police via the New Zealand Mountain Safety Council, dismissed their volunteer Firearms Safety Instructors based in over 147 venues around New Zealand. Ultimately they were "replaced" with online self-education and VTNZ testing venues. In decisions announced late in 2018, the Police began to further dismantle their own cadre of Arms Officers and Vetters. The decisions were to take effect in 2019. They would reduce staff numbers in those roles from over 300 to 36. They intended to centralise administration to an Arms Act Service Delivery Group in a base on the Kapiti Coast.
- 20. Before the 2015 changes, the first point of contact for all new firearms licence applicants had for many years been vetted and trained firearms safety instructors from their local communities. They assisted with safety education, administered the test on behalf of the Police and gave advice on local clubs and contacts. The trusting relationships between Arms Officers, vetters and the firearms community were at an all-time high. They were relied upon by all our constituent organisations. This was purposefully dismantled in 2015. We do not understand why this occurred. And we've seen no evidence to justify this change in approach.
- 21. The changes to the system proposed in this Bill will further erode any limited trust that still exists. Part 5 of the Bill now envisions a tick box approach through the operation of the words in s24A –

[Police may] find an applicant is not a fit and proper person to be in possession of a firearm or airgun if the member of the Police is satisfied that 1 or more of the following circumstances exist [...]

<sup>&</sup>lt;sup>2</sup> See the New Zealand Police <u>submission</u> to the Inquiry into issues relating to the illegal possession of firearms in New Zealand, 30 March 2016, at 11.

- 22. We want people with firearms to become licensed. This makes it more likely they will have, and will sustain amongst themselves, the required knowledge on firearms safety. They will have shown safe storage. Licensing is like vaccination. There is probably a critical proportion of the firearm using population that should have the training to make it perfectly normal to insist socially and formally on adherence to safety disciplines. COLFO wants to maximise the number of people who automatically demonstrate safety-focused behaviour.
- 23. The authorities have the communication addresses of licensed owners. They and we have channels to send safety reminders, encourage people to seek help and to join clubs. They can also be warned of problems.
- 24. They are incentivised to act within the law (so as not to risk losing the licence and having to surrender their firearms). They have incentives to encourage others to get licenced.
- 25. Potential applicants will see the new criteria list as a barrier to application but this will not necessarily stop them from owning or using firearms. Police will know that if they sensibly exercise discretion to allow the licensing of a person, despite failing on a criterion, a merciless media will report it as an obvious Police failure when the inevitable eventually happens somewhere.
- 26. But no one will know, and no media will report on, the incidents and injuries attributable to reduced licence holding and reduced mutual engagement among licensed owners, when the new rules cause a decay in voluntary compliance with the law, and drive many users to operate outside the law, either willingly or unwittingly.
- 27. A list of factors, that are mandatory in practice, signal to potential applicants that they should not bother trying to become licensed. It also exacerbates the tick box risk that Police, having satisfied themselves that none of the listed factors are present, will not then investigate other factors that could be of concern.
- 28. The list itself is problematic. Under ss24A(1)(a) (c), applicants only have to have been charged with a listed offence. It is irrelevant if the charges are subsequently dropped or the person is found not guilty. This does not respect the fundamental principal of innocent until proven guilty, and is open to abuse by Police or vexatious complainants.
- 29. Some sections, such as s24A(1)(f), have no consideration of time factored in. The application of this section could mean that someone who has ever exhibited serious mental ill-health will forever be barred. COLFO strongly supports safeguards against those with current mental illness from having access to firearms. We recognise how difficult the question can be for authorities, and understand arriving on the side of caution. But there must be encouragement for judgement.
- 30. Consider the following example:

"B" owns a dairy farm. He is a licenced firearms holder and uses firearms to manage stock, for pest control and is a recreational hunter. The region has suffered a terrible drought and the stress has put strain on his marriage. "B" knows that he doesn't feel like himself. He and his wife want him to have a chat

to his family doctor. He has never experienced mental ill-health and does not know whether what is happening is temporary or more significant.

Under the current law, "B" could be confident that his visit to the doctor will be treated confidentially and he can work through a treatment plan with him. His wife can be confident that, if she has any concerns, she can talk to the Police and have the firearms removed temporarily from their home.

"B" is also in charge of a number of other high risk tools such as tractors, chainsaws, poisons and baling equipment. B's wife wants him to see his GP as she is worried about all of these items.

After this Bill is passed, "B" is worried that without his knowledge or awareness of what is 'significant', his doctor will tell the Police. His experience of Police managing issues like this in the community is that they come to the home and remove the firearms without discussion. That would cause him embarrassment and everybody would know he is not coping.

"B" is also worried that if he goes to his doctor, he will be almost automatically disqualified from applying to renew his licence in 5 years' time (ss24A(a)(f)). "B" and his wife are concerned that this period in their lives could permanently affect their standing in the community, B's ability to hunt with friends and even their livelihoods (as firearms are a necessary tool for their farm).

So "B" does not seek support.

- 31. The Ministry of Health advises that "about 47% of New Zealanders will experience a mental illness and/or an addiction at some time in their lives...for most people, mental illness is usually 'episodic' in nature and a good recovery is made, in a timeframe that varies from person to person."<sup>3</sup>
- 32. COLFO believes that the absence of nuance in this provision will mean unjustified stigmatisation of people with mental health issues, a widespread disregard for the law, and a reduction in people with firearms licences seeking professional help.
- 33. The vagueness of the language in s24A(1)(i) in regard to gang association, means that many people, who should be licensed will not do so because they will believe they could be caught by this provision. Having a family member in a gang should not prevent you from being part of the licensed system. COLFO strongly supports reducing criminal access to firearms, but providing a loose arbitrary test like this will not prevent their access. It will only decrease compliance.
- 34. People who are discouraged from applying for their firearms licence are likely to obtain firearms on the black market. Not having a licence will only discourage those that were intending to be law abiding citizens it does not provide a target to those who may be on the edges of compliance.

<sup>&</sup>lt;sup>3</sup> https://www.health.govt.nz/our-work/mental-health-and-addictions/mental-health/mental-health-work-ministry

- 35. COLFO recommends that the current fit and proper provisions in the Arms Act 1983 remain unchanged, but the following is done to ensure that its application is robust:
  - (a) Ensure the regulation-making power in s74(1)(bb) is disciplined. The Police should have to seek approval from the shooting community on factors that should be taken in to account (not mandatory exclusions). Approval from the community should be provided by way of the Firearms Advisory Committee (that reports directly to the Minister as outlined in paragraphs 103 109 of this submission);
  - (b) Funding that was previously withdrawn from the administration of the Arms Act<sup>4</sup> be reprioritised back in to administration of the Act, and protected from future scavenging by unsympathetic Police budget controllers;
  - (c) Undertake a review of the 'fit and proper' application process that takes in to account the Royal Commission of Inquiry into the Attack on Christchurch Mosques, and engages with the community on the experiences they have had with the application process; and
  - (d) Provide a scalable set of responses to concerns about mental health. They should guide health practitioners about when they should act, provide assurance to licence holders about how they will be treated, and limit how Police respond. For example, it might be possible to expect a temporary surrender of firearms with a set period of review with no automatic permanent black mark against the ability to renew a licence in the future.

#### Life of licence

- 36. COLFO is aware of considerable delays in processing the paperwork for the renewal of a licence. Section 25 of the Bill means that licences will need to be applied for every 5 years, rather than the current 10 years. COLFO has seen no evidence to justify that reduction. It will be expensive and will consume more resources. If the purpose of doing so is to ensure more regular checks on whether a person is 'fit and proper' to hold a firearms licence, there are other less burdensome ways of doing so.
- 37. Police could develop a system of more frequent inspections of the security for firearm storage (such as every five years) and focus resources on following up concerns raised by those in the shooting community about people that are exhibiting concerning behaviours.

#### **Health Practitioner**

- 38. This Bill makes two requirements regarding health practitioners and licensing. The first requires licence applicants to provide the contact for "their health practitioner". This is a problematic barrier to potential applications.
- 39. The public discussion has been focused on the role of the GP, however if the definition of 'health practitioner' in the Health Practitioners Competence Assurance Act 2003 is adopted, applicants could provide the name of their chiropractor or occupational therapist (amongst other professions).
- 40. Are these people that the government believe are qualified to comment on the suitability of someone to hold a gun licence? Even if 'health practitioner' was more appropriately restricted,

<sup>&</sup>lt;sup>4</sup> See example of reprioritisation - See NZ Police Annual Report 2017/18, page 50.

<sup>&</sup>lt;sup>5</sup> Arms Legislation Bill, s23 (2A)

- many GPs do not have the qualifications to make psychiatric assessments. Furthermore, the Bill only requires that contact details are given. Is this deemed to be consent by the applicant for the Police to contact the health practitioner and get medical information from them?
- 41. Additionally, many people, particularly in rural areas, do not have access to an ongoing GP service but rely on locum services, or not at all. They cannot provide "their" health practitioner's details. The Regulatory Impact Assessment (RIA) indicates that Police intend to go further than publically discussed and also require a "health check" for applicants. We do not know what this could mean or how it can relate to the safety of the public.
- 42. The second requirement (s91), puts an onus on health practitioners to consider reporting people "unfit to use firearm[s]". What training or support is provided to GPs to allow them to provide this level of assessment? Are there validated tests? Is this an area where Police expect to issue authoritative guidance notices?
- 43. Practitioners may also have their own views on firearms that could influence their reaction to any information they receive from patients. A process is needed to identify and mitigate possible conflicts of interest and bias.
- 44. People and their doctors will want to know that the Police will handle the information a way that will not avoidably exacerbate mental health concerns. Experience of COLFO is that the first action in recent years is often for Police to turn up at a person's home and remove firearms without gaining any further insight or having a discussion with the person. People may simply not tell their GP if they have any concerns at a time when we are trying to encourage people to seek help.
- 45. We have been unable to find research to support the notion that health practitioners are generally more likely than other sections of the general public to be able to distinguish between mental health problems that lead to firearms misuse, and conditions that do not.
- 46. COLFO recommends a substantial rethink of the whole approach to encouraging warnings and reports. We support the supply of information to allow official action to forestall misuse of firearms. We suggest that the first priority should be looking at the incentives for fellow shooters, family members, workmates and friends. COLFO suggests that all, including doctors, bosses and friends, should be protected by sensitive law from repercussions, including liability and exposure, for good faith reporting of mental stability concerns about a firearms user.
- 47. Instead of the current Bill's punitive approach, it should be redrafted to support, foster and reward continuing social organisation and assistance to the Police by individuals and sport shooters.

## **Firearms Registry**

- 48. The establishment of a firearms registry is perhaps the most ridiculous example in this Bill of penalising law abiding citizens with ill-defined offences that will do nothing to make our communities safer.
- 49. Much of the information requested for the registry about the person holding the licence is already held by Police. It is required when applying for a licence. This Bill will create a

<sup>&</sup>lt;sup>6</sup> NZ Police, Regulatory Impact Assessment: Arms Legislation Bill, p 5.

bureaucratic behemoth. It will enrage users with frequent, impractical and confusing demands for information about individual firearms and magazines.

#### International experience

- 50. The Government is in the unique position of having important Commonwealth experience to draw on in relation to the establishment of a registry. We see no evidence that it has bothered to analyse, or perhaps even obtain, reports on overseas experience and certainly no sign of having taken lessons into account. The Canadian registry is the most well-known example of how pointless and costly registration would be. So much so that COLFO will not detail here the issues the Canadians experienced. The Select Committee should demand full details, and invite experts to brief it directly. It should not rely on Police mediated or selected reports. COLFO has seen nothing to show how the Government expects to avoid the logistical issues the Canadians faced, nor how it will achieve its intended outcome that the Canadians have so comprehensively dismissed as unachievable.
- 51. There are additional examples of registry ineffectiveness. In South Africa, a registry has reportedly not led to any decrease in the number firearms held by non-licensed people. The Small Arms Survey found that while the number of registered civilian gun owners is relatively low in South Africa compared to other countries, the country stands out due to the high number of unregistered/illicit firearms in civilian hands and its crime and murder figures are among the world's worst.<sup>7</sup>
- 52. The survey estimates that there are currently 5,351,000 firearms in civilian possession in the country. Of these, approximately 3 million are registered (legal) firearms, while the remaining 2.35 million are unregistered.<sup>8</sup> A register in South Africa is simply regulation for law abiding citizens without controlling the behaviour of illegal firearm owners.

## Domestic experience

- 53. Here in New Zealand, the previous limited registration system in relation to E-endorsed firearms has failed to be implemented successfully by Police. A detailed discussion of this is necessary to understand how registration has already been tried and failed in New Zealand.
- 54. Prior to 2010, AR15 rifles were very limited in number and supply. The reason was that most AR15s in the country had been held on an E licence since the law was amended in 1992. From the 1990's, it became increasingly common for new rifles to almost always include a vertical pistol grip. They were seen as more ergonomically correct for precision shooting.
- 55. Following the Aramoana event, and 1992 law change, owners of these firearms had the option of converting the endorsement for an existing AR15 type to either an E endorsed firearm (requiring a newly-created E endorsed licence) or converting it to a "sporting" configuration.
- 56. Those that held a "sporting configuration" had restrictions on the number of cartridges that could be held in the magazine. Other features, mostly cosmetic, were also outlawed, such as bayonet lugs. The reasons for this determination were unclear beyond that Parliament felt

<sup>&</sup>lt;sup>7</sup> Small Arms Survey 2018 (<a href="http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf">http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf</a>)

<sup>&</sup>lt;sup>8</sup> Ibid.

- that firearms that represented "Rambo-style military look-alikes" should be controlled. The Police would not engage with the community on the reasons. Many in the community believed that cosmetic determinations like the bayonet lug had no relevance to firearms safety.
- 57. At the time, almost the only way you could meet the "special reason" requirement in the Act to import a new AR15 rifle was to hand in an existing E registered endorsed firearm to get an import permit for a new one. The Police insisted on this regime though it was widely thought that it was without lawful foundation.
- 58. This meant that the price of these rifles was artificially high; running from \$5,000- \$10,000 each. Only a handful of enthusiasts had them, and these were mainly in the professional pest control/dedicated target shooter space. The artificial price made them a more attractive target for burglars.
- 59. E endorsement licence holders were very thoroughly vetted. They were required to store the firearms registered and endorsed on that licence with extremely high security. As far as COLFO knows there has never, in 25 years, been an incident of the holder of an E licence committing an offence with an E registered firearm.
- 60. This all changed in 2009 when the Police unilaterally announced that they had reinterpreted the terms of the Act. They alleged that a "thumbhole stock", which allowed a semi-automatic rifle to remain an A category firearm (classified as a "sporting configuration"), now incorporated a military pattern free-standing pistol grip. As a result, they claimed that those rifles required an E endorsement to maintain legal ownership.
- 61. COLFO engaged with the Police. We strongly argued that the interpretation was incorrect. We urged that the difference between A and E rifles should be based on sound policy and safety distinctions, not cosmetics. We outlined distinctions that would depend on function, magazine capacity and potential modifications. Police did not engage with the shooting community. They insisted that thumbhole stocked semi-automatic rifles must be E category.
- 62. This was challenged in Court. The High Court found that the Police decision on the basis of the thumbhole was unlawful and ultra vires.<sup>10</sup>
- 63. Following the decision, Police did not engage with the shooting community to find consensus and a way ahead. Instead they allowed category A licence holders who had been affected by the decision (and were endorsed) to choose to convert their firearm to a style requiring a category E licence and receive an E endorsement on their licence to reflect this.
- 64. This also affected the Police's ability to unilaterally enforce their import surrender policy (outlined above), which they should have expected.
- 65. The practical result of all this was AR15 rifles, which only had cosmetic differences from the E category rifles (essentially less "military looking") entered the country in far greater numbers than previously. There remained a difference between an E and A rifle cosmetically, but there was a major loophole from the perspective of anyone expecting the law to relate to function, not cosmetics.

<sup>&</sup>lt;sup>9</sup> See Minister for Police, Hansard, 28 November 1991

<sup>&</sup>lt;sup>10</sup> Police v Lincoln [2017] NZDC 15411 at [58] – [74].

- 66. The law contained nothing stopping a person with an A licence buying parts that would, if fitted to the A category firearm turn it into a firearm that should be treated as E category. The most obvious part that should have been controlled was large capacity magazines. The shooting community warned the Police that this was a significant problem. As far as we know, they did not engage with us on these warnings at any level at this time.
- 67. It also meant the price of rifles plummeted and became very affordable. Rifles which were worth \$10,000 second hand were suddenly selling for under half that.
- 68. Moreover, a person could purchase a magazine (like the 30 round ones used in the 15 March attack) without proof of a firearms licence or an E licence endorsement, which was required to use it. An offence was committed if a large capacity magazine and an A category semi-automatic were located together, but enforcement was uncommon.
- 69. The rifle used on 15 March had been illegally converted to an E configuration, namely by inserting a high capacity magazine. The law should not have permitted Mr Tarrant to purchase the magazines which greatly increased the number of rounds that could have been fired without reloading and replacing the magazine.
- 70. There have been claims that the implementation of a more extensive registration would have made the Christchurch event more unlikely. In COLFO's view, the firearm used should have been covered by existing registration requirements. Certain firearms are required to be registered pistols, collectors' items and formally E category firearms. That is, from the moment that the 30 round magazine was inserted in the rifle, it was legally required to be registered as an endorsed E category firearm and recorded on an endorsed firearms licence.
- 71. It is clear that not only did the police fail to consistently and adequately maintain this limited registration system, they do not have the capability or capacity to implement a wider system as they are promising to do under this Bill.
- 72. Another domestic example of the Police's inability to maintain a registry is their own catalogue of firearms. We note that while the NZDF is able to state how many firearms they hold, the Police are only able to give an approximate number.

#### The practicalities of a registry

73. The practicalities of changing from a system centred on registration of a licence holder to registration of a firearm are confusing and immense. Simple examples can explain –

"A" is a license holder living as a final year student in a university hall of residence. Under this Bill, she registers her address as the hall of residence. She must also register her family home as this is where the firearm is normally kept (s34). Previously she would have just had to register where she resides.

"A" brings her firearm to university to join friends who are going tramping at the weekend. She will take her rifle and have an evening hunt. At the university, the firearm will be stored in the university shooting club's secure safe. Club officials have the keys. Under the Bill, "A" will need to update the register that the firearm

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<sup>&</sup>lt;sup>11</sup> See <u>COLFO</u> Review of the <u>Law and Order Select Committee Report</u> at 4.

is changing location (s93(1)(e)) to the university safe, and that the 'possession' of the firearm will be temporarily transferred to the club officials (s94(2(a)).

How this is achieved is not clear as the Bill does not seem to contemplate multiple licensed firearms holders who could have "possession" of the firearm in the safe (as they are all in control of it). A failure on either issue could see separate \$10,000 fines.

If she collects the firearm from the club safe at 5pm (when a key holder can meet her) and then keeps the firearm locked in her hostel bedroom until they leave the next morning, the requirement to once again update the location of the firearm is unclear.

"A" will need to again update the location in the registry when they set out on their tramp, she must say where the firearm will be (s93(1)(e)) and also that the possession has also transferred back to her (s94(2)(a)). Failure is punishable with another \$10,000 fine.

As is common in tramps, hunts, and outdoor activity generally "A" and her friends may change plans several times, including on the way to their intended route. A river may be uncrossable, or a vehicle is not available. If she is to stay overnight at a different location, she will have to update that location (including theoretically from the middle of the bush) or be liable for a \$10,000 fine.

Any person who intends to be in possession of a firearm must notify that to the register (s94(1)(c)). During the weekend, "A" will likely be in possession of her friends' firearms if any others bring them (as she is driver of the vehicle). She must inform the register of that — which includes getting all the details required under s93(1)(e) such as the particulars of the make, model and identifying markings. It is not clear whether she should also register a temporary transfer (under s 94(2)(a) even though the possession may or may not occur).

If she is going in a friend's vehicle, the driver of that vehicle will have similar exposures. If they are unlicensed, they will therefore be recording in the registry (if in fact they have access to it) that they intend to break the law.

"A"'s friends should also register possible intention of possession of the rest of the groups' firearms, then actual possession, as they could be left with them – say if the rest of group leaves them at the hut while going for a walk. There could be multiple instances of unlawful possession, or transfers of possession. If some stay in the car with them, while the rest grab takeaways that seems to be now unlawful.

74. This is one of the most simple and everyday examples COLFO has considered. There are hundreds more that are equally likely. Clearly "A" – a law abiding licence holder – and her friends, will be impelled to disregard many such obligations under the Bill and expect every other sane person to do the same.

75. The confusing nature of the registration of firearms, rather than just a licence holder, is amplified by loose legislative drafting. The interchangeability of terms could mean the same thing or different things throughout the Bill. For example, what is the difference between the use of 'kept' in s34(1) versus 'location' in s93(1)(e) when deciding where a firearm is for the purposes of the registry. Or when is "possession" in s93(1)(e) different from a "temporary transfer" in s94(2)(a).

#### **Data Security**

- 76. The registry will present a serious issue of data security. New Zealanders have this month been worried by a cyber-attack which gave hackers access to one million New Zealander's private health data including name, date of birth, address, ethnicity, and national health number, whether a smoker or heavy drinker, whether due for immunisations or cervical screening, whether someone had undergone an X-ray or ultrasound, and information on chronic conditions like diabetes, including lab results for tests like blood sugar, and prescriptions.
- 77. This follows a data breach at the Ministry of Culture and Heritage where people's addresses, birth certificates and other private information were accidentally uploaded online, the Budget 19 papers and more recently confidential accounts being accidentally placed online by Treasury, and a data breach at the Commerce Commission.
- 78. The registry will be a juicy target for criminals. From it, they can learn exactly what and where firearms are available to be taken. The guiding principle should be to minimise the amount of information to what is strictly necessary to achieve an outcome.
- 79. Licensed firearm owners understand the attraction of criminals to what they own. They are cautious in letting others know what they have and where they are. Frequently they do not tell their family where they are. Police claim that the biggest source of illegally held firearms is burglary of licensed firearms owners. Prudent owners will not support a system that could make their homes and families a target for informed burglary.
- 80. Licensed firearms owners will be discouraged from updating the registry if they think it puts them or their families at risk. We are aware anecdotally of otherwise deeply responsible people who say they have already made the decision to hide firearms that could be attractive to criminals. They will not become registered to reduce the risk of making their family homes a special target.
- 81. Additionally, while data security is the biggest risk created by the Bill, there are no specified penalties for unauthorised access to the registry. <sup>12</sup> If the most likely reason for unauthorised access to the data is for criminal purposes, this surely should be addressed.

## **Ammunition registration**

82. The Bill also requires a system of registration for those who sell or supply ammunition to keep a record for ten years of who they sold to, the quantity and type they sold, and the firearms licence at "their place of business" (s22D). This assumes that all sellers of ammunition do so for the purposes of business.

<sup>&</sup>lt;sup>12</sup> Arms Legislation Bill, s58A contains offences relating to the registry but there is no offence for unauthorised access.

- 83. It is common for office holders in shooting clubs to bulk purchase ammunition that is on-sold to members as a way of reducing the cost. There is no intent to profit from the sale. It is confusing in the Bill whether this practice can continue as it should because no harm is created or whether the office holders would now be subject to penalties of up to \$10,000.
- 84. COLFO understands that the government may wish to use these records as a means of understanding if people are bulk buying ammunition for criminal intent (as opposed to the above legitimate exercise). However, records held for 10 years do little to signal to Police if there is a person of concern in the community. Instead, Police should be trying to rebuild the mutual trust that used to exist with the shooting community to ensure that intelligence is shared.

## **Shooting Clubs & Ranges**

## Shooting clubs

- 85. COLFO strongly objects to a certification regime for shooting clubs. Membership of volunteer shooting clubs should be encouraged as they provide a safe training space for new firearm licence holders, a community facility that provides wellbeing beyond the objectives of the club, a means of gathering information about concerning behaviour that is passed on to Police, and a way of building trust in the community.
- 86. COLFO is not aware of any pertinent problem this requirement is supposed to address. The RIA states that a regulatory framework is necessary to allow for facilities for now prohibited firearms to be used on ranges.<sup>13</sup> COLFO can find nothing in the current legislation to support this assertion that it is currently not possible to use a prohibited firearm on a range.<sup>14</sup> Nor does it see anything in the proposed framework pertinent to any risks likely to accompany the use of specially permitted semi-automatics on shooting ranges. We are not aware of any problems with use of now prohibited semi-automatics that would warrant this level of regulation. A system that that creates a regulatory burden on volunteers is an overblown solution to a government-created imaginary problem.
- 87. The RIA also states that clubs are often centres for 'extremist views' but provide no evidence of this occurring in New Zealand or how the regulation they suggest would address it. In fact, as previously mentioned, Police would be able to give hundreds of examples of shooting club members self-reporting concerns they have about people who are using their clubs or facilities.
- 88. If the Bill imposes the certification regime, a number of clubs have already indicated that they will close as they do not have the volunteers, capability or funding to comply. The current members or potential members of these clubs will continue to own and use firearms, but they will do so without the current operational support structures in place.
- 89. The true extent of the regulatory burden is mostly unknown. Earlier drafts of this Bill indicated that incorporation of clubs would be required. Whilst this has been explicitly removed from this version, it is still possible for regulation to impose this. Indications are that this is what the

<sup>&</sup>lt;sup>13</sup> NZ Police, Regulatory Impact Analysis: Arms Legislation Bill, page 39.

<sup>&</sup>lt;sup>14</sup> In fact, the application for a prohibited firearms endorsement requests the name of the range where you will test and train with your prohibited firearm.

- government intends.<sup>15</sup> The RIA indicates that the officials intend to impose a strict regime but with no detail provided, and no consultation with the shooting community.<sup>16</sup>
- 90. It is also clear that the government intends to impose costs on shooting clubs to be part of this regime, despite them or the community receiving no benefit from doing so.
- 91. The explanatory note for the Bill indicates that certification of clubs is required so that Police can ensure that they are safely managing shooting activities. Given the health and safety legislation in place, Police and Worksafe already have the ability to ensure that activities are being carried out safely. These provisions do nothing to add further safety, but add further burden on volunteers.
- 92. If further regulation is argued to be needed due to harm, how does the risk and injury in shooting clubs compare to other sporting clubs like rugby, climbing, horse eventing or mountain biking?
- 93. Section 38T of the Bill gives Police the right to enter and inspect clubs and ranges to ensure compliance with the new regimes. Given that clubs are often not fixed places, many people's homes will be subject to this provision. Giving Police the right to enter homes to inspect paperwork (that will have little or no relationship to harm) is grossly disproportionate to any conceivable harm that the government is arguing it is trying to resolve.

#### **Shooting ranges**

- 94. The Bill imposes undefined obligations on people operating shooting ranges. Currently, the community self-regulates shooting ranges safely, in members' interests. As with clubs, ranges provide a valuable space to learn safe firearms handling and to raise the alarm about people who may be behaving in a concerning manner.
- 95. The definition of a 'shooting range' is provided in the Bill as –

38A Interpretation -

shooting range—

- a) means a facility (whether indoor or outdoor), or a designated area of land, used by a shooting club or members of the public for the primary purpose of carrying out shooting activities; and
- (b) includes any defence area (as that term is defined in section 2(1) of the Defence Act 1990) used by a shooting club.

<sup>&</sup>lt;sup>15</sup> 42 Section 29 amended (Application for endorsements in respect of pistol or restricted weapon)

<sup>(1)</sup> Repeal section 29(1).

<sup>(2)</sup>In section 29(2), replace "at an Arms Office to a member of the Police for an endorsement" with "to a member of the Police for an endorsement on their firearms licence".

<sup>(3)</sup> Replace section 29(2)(a) with:

<sup>(</sup>a) a member of an incorporated pistol shooting club that holds a certificate of approval issued under **section** 

<sup>&</sup>lt;sup>16</sup> NZ Police, Regulatory Impact Analysis: Arms Legislation Bill (August 2019), page 39.

- 96. This means that current permanent ranges will be captured, but temporary ranges that people use for ad hoc competition or training will not.
- 97. The self-regulation regime, currently in place for permanent ranges, adheres to health and safety legislation, and provides an understood level of regulation for the intended use of the range. It is based on the NZ Police Range Manual (2005), in which experienced community based range certifiers provide the certification and oversight of ranges. Templates begin with the basics provided in the Manual. Organisations have developed more complex templates and manuals for their disciplines. The Pistol NZ Range Manual 2016 is extensive by comparison. The National Rifle Association of NZ has had their range template manual internationally peer reviewed and accepted. The Commonwealth Games range in India was set according to the NZ template. TSNZ and NZDA also have their own range certifiers trained to certify the templates that relate specifically to the range type.
- 98. Presumably whatever regulation the Police have in mind with their new power will impose on ranges a much higher standard (say that of the NZDF) than is required to ensure safety. The higher standards required for Defence or Police ranges are in place because of the use of non-civilian firearms. Imposing that level of regulation on most ranges would be completely unnecessary. Any restrictions beyond the current good structure should be done in consultation with the community, not imposed by the Minister.
- 99. An increased regulatory burden and cost on shooting ranges will cause many to limit their hours. Some will close. People will continue to use firearms in a range-like environment but will do so outside of the regime for instance on rural properties or on riverbeds. These environments are considerably more difficult to control. The possibility of the general public being somewhere in the vicinity of a live range is considerably higher, than a signposted and controlled boundary of an existing shooting range (which has fulfilled the safety requirements as per The Police Range Manual (2005)).
- 100. The licensed firearms community understands the level of risk at a shooting range which is why they so stringently adhere to their rules. Nothing in this Bill will enhance the safety on a range. Take for example the recent incident at a Police shooting range where a police officer accidently discharged his firearm while returning it to its holster.<sup>17</sup> This Bill would not prevent an accident like that happening again. But it will increase the likelihood that such an incidence occur away from the safety and control facilities of a range.
- 101. There is also nothing in this Bill to determine how and when prohibited firearms may be used on ranges despite the RIA stating that this needs to occur. It is even more important for users of this type of firearm to be able to learn how to handle them in a safe environment before they are used elsewhere. They have frequently done so up to now, on recognised ranges.
- 102. As with other parts of this Bill, the likelihood of both range closures, and the spread of unauthorised range activity will impact more on rural communities.

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<sup>&</sup>lt;sup>17</sup> Police officer shoots himself in buttock when putting Glock pistol in holster on training course, NZ Herald, 24 September 2019.

## **Advisory Group**

- 103. COLFO welcomes a proposed formalisation of arrangements for better policy and advisory input on firearms. In COLFO's view, Ministers have been sand-bagged on a number of issues by the Police. From what we have seen from OIA requested material, the Police advice to Ministers has been incomplete, biased, and often wrong on technical matters. It shows a very poor grasp of regulatory design issues, and almost no disciplined research. The RIA has a number of incorrect assumptions. The most obvious falsehood is that a benefit of this Bill will be to "build trust and confidence with the firearms community".<sup>18</sup>
- 104. COLFO has endeavoured to work constructively with Police for many years. It has been achieved with a good number of officers. But it has become increasingly frustrated by Police using firearms consultation as merely a process to be followed, rather than a constructive source of expertise. Our experience has too often seemed to indicate a senior Police view that consultation is an irksome cosmetic process, something to undergo to tick the procedure list.
- 105. COLFO suggests key changes to turn the Firearms Advisory Group into a constructive forum. It should:
  - a. Have genuine responsibility and some power. For example, it should have power to veto any exercise by Police (through Orders in Council) of the constitutionally offensive provisions for suspension of statutory protections, and the extension of offences by changes in definitions or other regulation. With genuine veto on regulation, responsibility is more likely, people of more calibre are prepared to put their time into the task, and most importantly of all, the Police will be obliged to pay it respect, and to keep it fully informed if they want its support;
  - b. Have the appointment power specified to get genuine experts, or trusted representatives. The first is so the body has legitimate authority, not only on the decisions it makes, but more importantly, to generate support and buy-in among shooting sports people and professional firearms users. If its composition is focussed on expertise, and mana within the community, then it will serve its vital communication function best feeding information both ways. Up to inform the Minister and policy, and back down to generate more community trust and understanding;
  - c. Not be doomed as a debating forum by inserting political activists into what should be a working body with everyday practical decision-making and information exchange. People with the rooted objectives of limiting current rights and enjoyments will compromise confidentiality, and destroy the potential for the industry group to deal frankly (or bluntly) with each other;
  - d. Recognise that separate anti-gun comment on policy proposals is a completely different function from every-day maintenance of a healthy mutual working relationship between the Police and the leadership of shooting sport organisations, including dealers and other industry experts. If idealistic hope of consensus means that anti-gun zealots are injected into the formal advisory group, it will become a dysfunctional body that the Police can afford to treat as cosmetic. Industry

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<sup>&</sup>lt;sup>18</sup> NZ Police, Regulatory Impact Assessment: Arms Legislation Bill, p 4.

representatives know that the Minister will want anti-gun input. The Minister can designate a panel of people if the Minister wishes to get anti-gun input. They can encourage formal interaction between the sides. But that should not be at the expense of effective functioning of the industry advisory body. Conceivably relationships might emerge between the partisan sides that reduce the political temperature. But to force them to function together on practical detail is more likely to condemn the advisory body to deadlock.

- e. Ensure that the trust of firearms owners that the group is properly focused, and that the extraordinary powers are not being abused by people with agendas other than respectful advancement of safety. Police should be able to entrust the advisory group with confidences in the expectation that they will work effectively to influence shooting sport organisations and professionals. Expecting Police to trust such information to a group including sworn political opponents would be naïve in the extreme. A body of political opponents will function more like the House of Representatives, where parties with firmly opposing positions necessarily bring prepared positions. They are obliged to adhere to their party line. Genuine compromise must happen elsewhere. If the Minister has clearly indicated who will be consulted on policy matters (in distinction to the practical exercise of discretion that the advisory body should help manage) then the industry will try to engage with the Minister's anti-gun nominees;
- f. Have express powers for the advisory body to report directly to the Minister if it chooses, and not just the Commissioner of Police. It should have a budget that enables it to engage its own secretariat in case servicing by the Police becomes too compromising of its deliberations.
- 106. Finally, COLFO observes that the Firearms Community Advisory Forum has been in operation for years. If the Government or the Police had any respect for consultation it would have been consulted on this Bill. If it had been, it would have helped avoid many of the impractical parts of this legislation.
- 107. It is clear that if nothing substantial changes, another group reporting directly to the Commissioner will be ignored, as has the Firearms Community Advisory Forum.
- 108. We also strongly recommend that the Advisory Group be authorised to report directly to the Minister of Justice if it wishes, as well as to the Minister of Police. This Bill offends against many basic principles of justice, and ignores constitutional safeguards. COLFO would like to think that the Government might not have gone so far with such poor legislation if a control department had responsibility for testing the drafts at an earlier stage. The Government has stated that firearms reform is of the highest priority to them, therefore the availability of timely information and expertise should be provided at the highest level.
- 109. Direct reporting to a Minister by a consultative group is normal. This Government has established bodies to report directly to Ministers on other issues, such as the Small Business Council that reports directly to Minister Nash. If the issues are important, Ministers should want to hear unfiltered from the community on both small business, and on firearms.

#### **Dealers**

- 110. Licensed firearms owners should feel that buying their firearms, ammunition and parts through reputable licensed dealers is in the interests of both parties. COLFO is concerned that the regulatory burden of this Bill on dealers will mean higher costs. If dealers are disadvantaged, users will have less competition among dealers, and gaps with prices in the informal or black market may foster dealings away from licensed dealers.
- 111. Buying through reputable dealers ensures that only licensed firearms owners are purchasing the goods. Knowledgeable staff engage with users. As well as customer service and advice, especially to inexperienced buyers (to match and build their needs and experience) that helps dealers build knowledge of potential problem customers.
- 112. The Bill instead loads dealers with pointless licensing procedures and demands. They appear to have no proportionate connection to safety or any other legitimate regulatory purpose. For example, s12 requires dealers to hold at their place of business a list of all transactions going back 10 years. This is in addition to entering the information in the registry. If the registry is dependable and secure, dealers should be able to rely on it. They will have business reasons for keeping some information, for example to deal with warranty claims. But the rest is not explained.
- 113. It is unclear who will be caught by the requirement to have a dealer licence, and how the law will be applied to them. The Bill requires that a licence must be sought if, for various firearms activities, you are doing so "in the course of carrying on business". Does that mean trading in the hope of profit? Many firearm owners, particularly collectors, regularly buy and sell firearms. They try out different models and build their collections. The law is not clear at what point hobbyists must apply for the dealer's licence.
- 114. The new stated responsibilities of a dealer seem like something from the rules of an anticompetitive guild. It is entirely unclear what the Police should want to enforce with the business standard provisions of Section 6(b).<sup>19</sup>
- 115. Inserting an over-riding criterion of pertinence to law compliance, or safety, could narrow the new needs for 'suitable staff' and 'appropriate oversight and control of the proposed dealer activity'. <sup>20</sup> But even with such an overlay, the provision seems designed to generate a new super-structure of Police interest in business delivery methods, without any safeguards against pointless hostility to change that becomes the hallmark of most unconstructed licencing regimes. For example, recent Police activity under wide discretions in the administration of liquor licensing laws have seen Police become political advocates

<sup>&</sup>lt;sup>19</sup> Section 6(b) - in the case of an applicant who is a senior manager of a body corporate, and who, in reliance on section 5(3), is applying for a dealer's licence to enable the body corporate to carry on a dealer activity, the commissioned officer of Police must take into account whether—

<sup>(</sup>i) the body corporate has suitable staff; and

<sup>(</sup>ii) the body corporate has appropriate record-keeping systems and other systems to comply with the requirements of this Act and any regulations made under this Act; and

<sup>(</sup>iii) the applicant will have appropriate oversight and control of the proposed dealer activity or activities for which the dealer's licence is sought; and

<sup>(</sup>iv) may take into account any other matters the commissioned officer of Police considers relevant. <sup>20</sup> Arms Legislation Bill, s6(b)

- campaigning for and against local authority policies. They have harassed particular licensees in renewal proceedings, to scare others into adopting Police preferred operating hours, despite formal Council and Authority decisions to the contrary. Parliament should not further encourage such constitutional impropriety by the Police.
- 116. The dealers' licences will require that a dealer must have specific activities approved (s5A). This provision is highly likely to be used for informal exercise of Police zealotry, so that they get extra-legal de facto power. The consequences are likely to be more trading outside the formal market.
- 117. It is common, particularly in rural areas where there are limited firearm outlets, for customers to bring in unusual models of firearm to be sold 'on behalf'. The Bill may require that the dealer only accept those items for which they have previous approval.
- 118. This provision may end up favouring the major national chain dealers and restrict competition in the market. Chains have the scale and resources to ensure they get the widest possible licensing. If the purpose is to get more people trading their firearms in a legal manner through reputable channels, this requirement will discourage people from doing so. If a person has been found of a fit and proper standard to deal in firearms, applying an additional regulatory layer for approval of specific business lines does nothing to enhance safety but rather limits it.
- 119. Dealer licensing requirements are another area where Police and regulation drafters are being given authority that should be reserved for Parliament. COLFO sees no justification for not reserving the licence conditions to Parliament. The Minister will have power to put further requirements on dealers that could result in large penalties, without the scrutiny of Parliament. There has been no justification of expediency or efficiency provided to require this. Regulation making power that could require sellers to tell customers about legal obligations (s74 (1)(jb)) and the ability to regulate advertising or promotion of firearms or parts (s74(1)(ja)) should be defined in law.
- 120. Furthermore Police under s7A(3), may impose "any conditions" on consent to participate in a gun show, Parliament should prescribe the objectives and constraints on all these powers is completely arbitrary and without any transparency.
- 121. The Government has indicated it may wish to restrict promotion of firearms in that same way that tobacco is restricted. The Smokefree Environments Act 1990 provides for restrictions in legislation. There is no policy justification for treating firearms like tobacco. There is no evidence that dealer advertising is a material influence on choices to use firearms in crime, nor that there is an inherent harm to a user from use. There is no justification for that level of restriction. And if there was, there is certainly no justification for anything that enables the Police to make things up as they go along, when even the boundaries on tobacco restrictions are established by Parliament, not taken outside of this Act.

#### **Possession of Ammunition**

122. Section 22B of the Bill creates an offence for anyone who is not a licence holder to be in possession of ammunition. This offence is absurd. First, as outlined below in paragraph 166, there is no definition of ammunition.

- 123. Second, ammunition is not inherently dangerous. It is far more stable in the hands even of idiots, than a knife, or a motor-bike or a rental scooter. There is already regulation about the safe handling of ammunition in the Arms Regulation 1992
  - 19 Conditions relating to security precautions
  - (1) Every firearms licence shall be subject to the following conditions:
    - (a) the holder shall not put a firearm in such a place that a young child has ready access to it:
    - (b) the holder, where he or she has both a firearm and ammunition for it in his or her possession, either—
      - (i) shall take reasonable steps to ensure that the ammunition is not stored in such a way that a person who obtains access to the firearm also obtains access to the ammunition; or
      - (ii) shall ensure that, where the ammunition is stored with the firearm, the firearm is not capable of being discharged:
- 124. Third, under the proposed approach to "possession" from time to time almost anyone in a household with a firearm will be legally "in possession" of the ammunition. The impractical nature of this provision can be illustrated by this example:

"C" visits a friends' rural property for the weekend. The friend is a licensed firearm holder and has firearms and ammunition stored securely on the property. "C" doesn't know where this is stored or how to access it, but is aware that it is likely to be on the property while she is there.

She is accompanied by another friend, D, who knows nothing about the firearm or ammunition. During the weekend, C's friend pops in to town, leaving C and D as the only ones there. Under this Bill, C would now be in possession of the ammunition. And as a non-licence holder, she would be in breach of the law.

This is despite C not being able to access the ammunition, nor understanding how to use it in a firearm if she tried. The status of D is equally problematic.

If the friend was required to take it off the property when they went to town, the ammunition is likely to be less secure as it would be in a vehicle (not a safe).

125. It is probable that most houses in rural areas will have ammunition somewhere. Non-licence holders will often be home when a licence holder is not. Is the licence holder expected to take the ammunition when departing the property (therefore not leaving it with a non-licence holder)? If they take it with them, or are heading on holiday and leave the ammunition in the car, what about the other people in the car? Can they go in to collect shopping, or buy fish n' chips, leaving non-licence holders in the car?

- 126. Licence holders would rarely announce to anyone the ammunition they have stored on their property. That is not because it is dangerous on its own. It is because of the association with the firearms. They often do not tell other family members where it is, and how much is there, when there are children in the home. That can be because it is hidden separately from both the firearms cabinet, and the bolt or some other vital parts, as part of the precautions against children (including visiting children) trying to access 'forbidden fruit'. And they adopt routine silence as a precaution against advertising themselves to criminals. In some households, with extended family and frequent visitors, ammunition is not announced to reduce the risk it is 'borrowed'.
- 127. Accordingly most non-licensed members of households with a firearms, whether or not they know anything, or next to nothing of the ammunition, could be criminalised by these provisions. They are unlikely to be taking any notice of these law changes. They will not imagine it could be doing anything as stupid as criminalising them, because it has no connection to any legitimate safety objective. Unwittingly, people will become offenders if they innocently spend time at a friend's place when the licence holder is not present but ammunition is, or house-sit, or attend to feed the cat, or to watch a neighbour's Netflix subscription.
- 128. Properly stored ammunition does not pose any risk. Even when not locked away it is only a risk that the law should engage when used by someone with criminal intent in a firearm. The controls on firearm use is the safeguard on that. COLFO has supported in the past the informal constraint, intended to oblige people to renew their licences, by confining sale of ammunition to licence holders.
- 129. COLFO is being led to regret such encouragement as it seems to have fuelled irrational fears, almost superstition about items associated with firearms. There is no benefit to the community from such an impractical liability with a penalty of up to \$10,000 on innocent non licence holders.
- 130. The Government may argue that the 'reasonable excuse' provision in s22B(2) would prevent the people being penalised in the situations outlined above. But the purpose of the restriction is so mysterious that a court will have no steer on what is reasonable, or not. There is simply no justification for criminalising possession of an innocuous good that is far less dangerous than other equipment that frequently kills people. The purpose seems to be purely to feed superstitious hysteria. It is of course an indication of how Police intend to act with their new powers. Testing this new offence through the courts will create unnecessary hardship and do nothing to make the community safer.

## **Import Permits**

131. COLFO supports the intention to tidy up the import permit process. Licensed firearms owners have struggled to find consistent and adequate information from Police on how to meet their obligations under existing law. On occasions the Police have simply asserted powers and prohibitions without even trying seriously to link them to the law. However, to ensure that this intention is fulfilled, the legislation needs to ensure concise definitions of permeable goods (like ammunition (refer paragraph 166)), and clear timeframes for application.

Currently, importation permits can take between months and years to process without any justification as to the reason for the delays.

# **Appeal Rights**

- 132. Under the current system, confining objection or appeal rights to the Courts means that they are not practical for many people. Court processes are too expensive. The low likelihood of challenge to a decision appears to COLFO to have contributed to a culture in which Police feel free to assert interpretations and their powers that are simply not justified.
- 133. The replacement of s62 therefore recognises, but does not deal with a long recognised problem. The new section provides a mandatory first "appeal" to the Commissioner.<sup>21</sup> It is only for applications for and revocation of a firearms licence. Any effective appeal or review process should apply to all the wide Police discretions in regard to firearms.
- 134. The cheap and informal objection right to be extended to exercise of powers against dealers, import and other permit decisions. The review should be by an independent person, not answerable to the Commissioner of Police. The Bill should prescribe that the applicant should not be charged more than a reasonable fee just enough to discourage meritless applications.

## Cost

- 135. Sections 79 86 set up significant powers for the Minister, on the advice of Police, to recover costs for the new firearm regime. The new procedures will be costly. Especially because they appear to demand submission to application procedures and Police discretions that even the Police will find hard to interpret.
- 136. The Minister says that he intends to recover the cost for services from those that use the system.<sup>22</sup> COLFO members understand and accept that charges may be acceptable when they are the beneficiaries of the service provided by Government.
- 137. However, firearms owners will not be "using" the new bureaucracy. It offers them no safety, or other benefits. It offers no benefits to anyone. COLFO submits that the Police have irresistible temptations to not care whether 'services' are necessary or valuable. They will exaggerate the costs, and to load them onto firearms users. They have a proven history of dodgy accounting and ignoring budget tags or lines.<sup>23</sup>
- 138. COLFO proposes a provision that authorises the Auditor General to determine with a disciplined process, how much of the administration of the Arms Act benefits law abiding firearms owners. The provision will authorise the Minister and the Police to recover only the amount of cost of the system that is independently determined from time to time to be of benefit to such users.
- 139. The Police must be disciplined by:
  - a. A requirement for independent verification of cost claims; and

<sup>&</sup>lt;sup>21</sup> s62B(2) requires that a decision of the Commissioner, before an appeal may be lodged with the District Court.

<sup>&</sup>lt;sup>22</sup> NZ Police, Regulatory Impact Assessment: Arms Legislation Bill, page 5.

<sup>&</sup>lt;sup>23</sup> NZTA has raised concerns about the diversion of funds contracted for traffic law enforcement.

- A requirement that the liability on firearm users depend on net benefits they derive, not the costs the Police choose to impose on themselves with procedures likely to benefit no one
- 140. Rigorous review by the Auditor General, taking account of Canadian experience, will determine that the registry is of minimal value to anyone, and certainly not to licensed firearms owners. There should also be an analysis of the benefit to the wider community of firearm use, in particular pest control.
- 141. This safeguard is particularly important as the full costs of this Bill have not been analysed. As per the RIA, this has not been carried out because of "tight timeframes". <sup>24</sup> COLFO recommends that this Bill is not progressed until MPs have the benefit of full knowledge about how much this new regime will cost taxpayers.
- 142. In the minds of most firearms owners, they will be put at risk by elements of this new regime, like the registry, not benefited by it.

## **Offences Regime**

- 143. This Bill contains significant increases to penalties for existing and new offences. COLFO has compiled a table of the most significant, attached as Appendix A.
- 144. We are not aware of any evidence that should have persuaded the government that these increases will do anything to deter unsafe firearm use. It is likely to have the opposite effect—it will make criminals out of those people who in all other aspects have been law abiding citizens, generally ready and willing to support the Police and to play their part in reporting and deterring crime in their communities.
- 145. The Prime Minister's former Chief Science Advisor, Sir Peter Gluckman, has stated in advice to the Government that there is no evidence of the supposed 'deterrent' effect of harsher sentences. And the Government's Safe and Effective Justice Advisory Group, Te Uepu Hapai i te Ora, advises that an overemphasis on punishment criminalises too many people.
- 146. In fact Te Uepu Hapai i te Ora, specifically drew attention to the punishment regime for minor driving offences stating –

"However, many people told us that the costs associated with complying with our driving laws (for example, obtaining a valid driver licence in rural areas where it is necessary to travel out of town to do so) can be prohibitively high. As a consequence, many people with limited resources end up breaking the law."<sup>26</sup>

147. The penalty regime imposed by this Bill, which creates fines of up to \$10,000 for failing to update the gun registry will have at least the same effect. It will be another obstacle for people not to engage with the system and in fact operate outside of it. But it will now also extend to many people unwittingly. And of course, if it fails to obtain community consensus that it must

<sup>&</sup>lt;sup>24</sup> Ibid, page 9.

<sup>&</sup>lt;sup>25</sup> Sir Peter Gluckman, "Using evidence to build a better justice system: the challenge of rising prison cost" (29 March 2018), page 10.

<sup>&</sup>lt;sup>26</sup> Te Uepu Hapai i te Ora, He Waka Roimata (9 June 2019), page 48.

- be obeyed, it will shift many people to the 'scoff-law' category, who have previously considered it unthinkable to be conscious law-breakers.
- 148. COLFO is advised that judges are always disturbed by what appear to be disproportionate sentences. They will compare the apparent harm and wickedness of some of the new offences, with tariff penalties for other minor crime. The penalties imposed are significantly more than comparable offences. For example, the maximum fine for the usual offence of providing a false statement to police is \$2,000.<sup>27</sup>
- 149. Judges may decide tacitly to act on the new offences to become largely unenforceable. Discharging without conviction is common when judges consider the consequence of a criminal record is disproportionate. That will fuel complaints of discrimination on the basis of class or race. They may convict and discharge without penalty, or use only the bottom of the penalty scale. COLFO is open to a more scale of graduated offences where only those with criminal intent face higher penalties.
- 150. On the other hand, such is the hysteria that has been generated derivatively by people who tend to think that US social division is present in New Zealand, that the law may lead some judges to denounce firearm users with swinging penalties. That may contribute to user hostility to law generally, particularly in rural areas. It may also lead Police in such areas to 'de-emphasise' enforcement of firearms law, to avoid community hostility. Such law can still be used, however to target people who might be described as "usual suspects".

## Fix the original Bill

151. This Bill is far more reprehensible after close study than was feared from the Government announcements. But among the disappointments is that it has not taken the opportunity to fix obvious problems from the rushed Arm (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 [the Amendment Act]. That Act was made in a climate of political excitement. It did not follow good legislative processes. It did not benefit from proper consultation. This Bill gives the Committee the opportunity to fix these issues now.

#### Compensation

- 152. COLFO is now confident that the current disastrously low collection rate of prohibited firearms under the amnesty is a reflection of owners contemplating not handing them in under the current compensation regime. There is no good reason to delay, if they think the offer is fair. We were initially told by many that they feel outraged, but still expect to surrender the prohibited arms at the end of the period if no improvement has been made to the compensation. That sentiment seems to be shifting. We now hear more of a resigned or defiant preparedness to give prohibited arms to others more willing to run with the risk of being outside the law, or with better access to hiding places. Others say they are still intending to surrender the arms, but only because they have convinced themselves that the offer will change to be more fair. They are talking to each other and persuading themselves that the law cannot be enforced against so many people who are only holding out for their rights.
- 153. COLFO has no way to know where predominant sentiment is now, and we are reluctant to poll or otherwise formally test the water, in case the questions themselves become influential. But

<sup>&</sup>lt;sup>27</sup> Summary Offences Act 1981, s24.

we warn the Committee and the Government, that we think New Zealand is on track to a surrender rate well below the low rate achieved in Australia. And our compensation is less fair or reasonable.

- 154. We think the current approach is catapulting prohibited weapons into the unlawful sector. The RIA claimed that the Bill would build trust and confidence with the firearms community. That is the Orwellian joke of the year. The compensation scheme must be made more fair. The Police said to the Justice Select Committee that collecting these firearms is likely to take years.<sup>28</sup>
- 155. Currently, many firearm owners are receiving up to 70% of market value for their firearms and a lot are receiving much less. Firearms are valuable items. People have invested in them, the way others invest in rare books, or paintings, or beautiful ceramics, because they feel they are triumphs of human workmanship. People have always coveted and prized weapons and decorated them and polished and loved them. Taiaha and mere are valued by New Zealanders. And thousands have deep knowledge of firearms in the same way. They love them for what they see as their intrinsic beauty. Under respectable approaches internationally to property rights, a premium would be paid to compensate for the sense of hurt involved in confiscation of property lawfully held by a law-abiding person.
- 156. The Amendment Act empowered the Minister to regulate for compensation. It did not oblige him to exclude compensation for economic loss. <sup>29</sup> He chose to regulate for a blanket denial of such compensation. COLFO urges MPs to correct the situation. People who want to follow the law and hand in their weapons, are instead being encouraged to nurse resentment, and to listen to urgings to civil disobedience. It is material that this is occurring at a time when many other groups appear to be largely immune to Police enforcement of law against unlawful occupations of land, and other breaches of law, in the name of protest.
- 157. No evidence has been put forward by the government to explain why the rates of compensation seem deliberately set to punish firearm owners. Some conspiracy theories among owners see it as calculated to generate news stories that will inflame relations between firearms owners and the rest of the community. The RIA for the regulations state that there must be balance with the views of the non-firearms user community who will not want to see the firearms owners 'overcompensated'<sup>30</sup>. This can only reflect an underlying opening prejudice that firearms ownership is wrongdoing that deserves punishment.
- 158. The Government cannot complain if owners generally see as a denunciation, an approach that they are inherently wrongdoers. Such hostility does not build "trust and confidence." It appears to foreshadow eventual outlawing of firearms. Whether that is the objective, or the less offensive objective of just being effective in removing prohibited firearms from circulation, firearms owners should at the very least receive fair market value.

<sup>&</sup>lt;sup>28</sup> See comments by Deputy Police Commissioner Mike Clements at the Justice Select Committee, 12 September 2019.

<sup>&</sup>lt;sup>29</sup> See Reg 28I of the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019.

<sup>&</sup>lt;sup>30</sup> NZ Police, Regulatory Impact Assessment: Implementation of Arms Amnesty: Compensation for individuals and dealers and Prohibition of certain types of ammunition, page 19.

- 159. Firearms owners are being doubly penalised by not receiving any compensation for ammunition that is either now prohibited (under the Amendment Act) or useless because they have no suitable firearm to use the ammunition in. This is particularly detrimental to sport shooters who may have large stores of now useless practice ammunition. They are grossly out of pocket.
- 160. The Committee should take this opportunity to fix the compensation debacle. That may require an extension to the current amnesty to maximise the potential for people to hand in firearms.

#### **Pest Control Exemption**

- 161. The rushed Amendment Act meant that MPs did not appreciate the pressing legitimate needs for pest control use of semi-automatics.
- 162. The Amendment Act allows for already established pest control companies to apply for endorsed licences. The framework set up for this exemption does not reflect the realities of how pest control actually works. Farmers carry out much of it, regularly, on their own land, and with their neighbours. They do it as and when they find concentrations. They choose the times to maximise the reduction in pests, by knowing conditions and striking when the right combination presents. It is frequently not feasible to rely on contractors, even if they were available.
- 163. Recreational hunters also carry out a large amount of pest control as volunteers and at their own expense. An example we are aware of a hunter who last year culled 1000 goats, and 2,000 3,000 turkeys. Since the prohibition, they have not culled any.
- 164. Pest control exemptions should be more widely and easily available, subject only to secure storage and use in accordance with permit conditions. They should not be limited to 2 year renewals which increases business uncertainty, increases non-productive work hours and increases costs. Farmers must be able to immediately react to pests, such as Canadian geese. The damage done by these pests to crops, to water quality (pollution) and stock feeding options can be substantial. They must be dealt with when the flocks arrive. A farmer who realises they are on their property cannot be expected to wait for days for an exempted pest control company to arrive.
- 165. COLFO has been told of a recent case where wild pigs attacked a flock of sheep and their lambs. The farmer could not destroy the herd of pigs. The farmer's semi-automatic firearm would have quickly stopped the slaughter, but it had been surrendered.
- 166. New Zealand has a goal of Predator Free 2050, and the Coalition agreement calls for alternative use to 1080 as a means of getting there.<sup>31</sup> We should be taking the opportunity to increase our efforts in this area, not limit them.

#### **Sporting Exemption**

167. The Government has failed to listen to sport shooters who have now been unfairly penalised. We are a sporting nation with a strong emphasis on encouraging people to get outside. There is no reason why we cannot continue to support our world class shooters.

<sup>&</sup>lt;sup>31</sup> See Labour NZ First Coalition Agreement, page5.

168. We note that the Minister of Police received advice in May that provided a number of options that would have allowed for the continuation of the sport.<sup>32</sup> They were not carried in to the current Bill. We strongly recommend that the Committee refer to the submissions from the NZ Service Rifle Association and Pistol New Zealand for more detailed discussion on this issue.

### **Definition of Ammunition**

169. The Arms Legislation Act 2019, provided for the first time a definition of 'prohibited ammunition' -

2D Meaning of prohibited ammunition

In this Act, prohibited ammunition means any ammunition declared by the Governor-General by Order in Council made under section 74A to be prohibited ammunition for the purposes of this Act.

- 170. It failed to provide a definition of 'ammunition'. The ramifications of this loose drafting has implications for clauses in the current Bill (as outlined elsewhere in this submission). COLFO strongly recommends that the Committee seek to correct this issue that provide a definition for ammunition that relies on the four common elements of ammunition
  - a. Casing
  - b. Projectile
  - c. Detonator (primer)
  - d. Propellant
- 171. It is important in any drafting of a definition that it is clear that ammunition does not include Class  $1^{33}$  goods like fireworks and flares. Nor should it catch deactivated ammunition (for example those without a propellant or detonator).

#### **Conclusion**

172. The RIA for this Bill states -

"There has been robust stakeholder engagement with stakeholder recommendations included in the final proposal."<sup>34</sup>

- 173. That is simply untrue. Robust stakeholder engagement would have highlighted the problems with the drafting of this Bill, and the impact it will have on the community.
- 174. COLFO is supportive of firearms laws that are robust and focused on ensuring a safer New Zealand. But this rushed through, poorly consulted, badly designed Bill is going to put New Zealanders in danger by increasing the risks of criminal acquisition and use of firearms.
- 175. We strongly recommend that the Committee report back to the House that this Bill is unfit for purpose and urge the Minister to start again with genuine consultation.

<sup>&</sup>lt;sup>32</sup> NZ Police, Sporting Exemptions Options Discussions (<a href="https://www.police.govt.nz/sites/default/files/publications/ipr-19-130-sporting-exemptions-options-discussion-03-06-19.pdf">https://www.police.govt.nz/sites/default/files/publications/ipr-19-130-sporting-exemptions-options-discussion-03-06-19.pdf</a>), accessed 9 October 2019.

<sup>&</sup>lt;sup>33</sup> Hazardous Substances and New Organisms Act 1996

<sup>&</sup>lt;sup>34</sup> Regulatory Impact Assessment: Arms Legislation Bill, page 8.

# APPENDIX A: Penalties under the Arms Act 1983 compared to new penalties in the Arms Legislation Bill:

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Dealers to be licensed	5	\$1000	Dealers to be licensed	Section 5 – increase	Increase to \$10,000 fine or 6 months imprisonment.
Restriction on possession of pistol, prohibited items, or restricted weapon by licensed dealer	10	\$2000	Restriction on possession of pistol, prohibited firearm, prohibited magazine, or restricted weapon by licensed dealer	Section 10 – increase	Increase to \$10,000 fine or 6 months imprisonment.
Dealers and their employees and agents to hold firearms licences	11	\$500	Employees of licensed dealer to hold firearms licence bearing appropriate endorsements	Section 11 – increase	Increase to \$10,000 fine.
Record of dealings by licensed dealers	12	\$500	Record of dealings by licensed dealers	Section 12 – increase	Increase to \$10,000 fine or 6 months imprisonment.
Offence for licensed dealer to carry on business following revocation of his licence	15	3 months; \$1000; or both	Offence to carry on dealer activities following revocation of dealer's licence	Section 15 – increase	Increase to \$15,000 fine or 1 year imprisonment.

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Offence to import firearms, etc, without permit  (a)/(b) non-prohibited item/firearm  (c) prohibited item	16	(a)/(b) 1 year; \$2000; or both  (c) 5 years [prohibited item]	Offence to import firearms, etc, without permit	Section 16 – increase [introduced (c) non- prohibited ammunition as a category]	<ul><li>(a)/(b)/(c) Increase to \$15,000 fine or 1 year imprisonment.</li><li>(d) 5 years imprisonment [prohibited item now under subsection (d)]</li></ul>
Offence to import prohibited ammunition	16A	5 years	Offence to import prohibited ammunition	Section 16A – same penalty	No change to penalties; carve out for harbours and territorial waters of NZ.
Restrictions on possession of firearms	20	3 months; \$1000; or both	Restriction on possession of non-prohibited firearms	Section 20 – increase	Increase to \$15,000 fine or 1 year imprisonment.
Restrictions on possession of airguns	21	3 months; \$1000; or both	Restrictions on possession of airguns	Section 21 - reduced	\$1000 fine; no imprisonment
-	-	-	Restriction on possession of non-prohibited magazines and non-prohibited parts	Section 22A	\$10,000 fine; not an offence under the current Act.
-	-	-	Restriction on possession of ammunition	Section 22B	\$10,000 fine; not an offence under the current Act.
-	-	-	Restrictions on selling or supplying ammunition	Section 22C	\$10,000 fine; not an offence under the current Act.

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Production of firearms licence	26	\$500	-	No change	N/A.
Effect of revocation or surrender of firearms licence	28	3 months; \$1000; or both	Effect of revocation or surrender of firearms licence	Section 28 – 6 months; \$10,000	Increase to 6 months imprisonment or \$10,000 fine.
Notification of change of address	34	\$500	Notification of change of address	Section 34 - \$2000	Increase to \$2,000 fine.
Offence to carry pistol or restricted weapon without authority	36	3 months; \$1000; or both	Offence to carry pistol, prohibited firearm, prohibited magazine, or restricted weapon without authority	Section 36 - increase	Increase to 6 months imprisonment or \$10,000 fine.
Removal of pistol, prohibited firearm, prohibited magazine, or restricted weapon out of New Zealand	38	\$500	Removal of pistol, prohibited firearm, prohibited magazine, or restricted weapon out of New Zealand	Section 38 - \$2,000	Increase to \$2,000 fine.
-	-	-	Shooting club must have certificate of approval	Section 38B – \$10,000 fine	\$10,000 fine; not an offence under the current Act.
-	-	-	Shooting ranges must be certified	Section 38K – \$10,000 fine	\$10,000 fine; not an offence under the current Act.

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Loss, theft, or destruction	39	\$500	Loss, theft, or destruction of firearm, etc	Section 66A – \$10,000	Increase in penalties to \$10,000 fine.
Person in possession of firearm, etc, must give identifying information to Police	40	3 months; \$1000; or both	Person in possession of firearm, etc, must give identifying information to Police	Section 66B – 6 months; \$10,000 fine	Increase in penalties to 6 months imprisonment or \$10,000 fine.
Powers of Police to require surrender of airguns or antique firearms	41	3 months; \$1000; or both	Powers of Police to require surrender of airguns or antique firearms	Section 66C – 6 months; \$10,000 fine	Increase in penalties to 6 months imprisonment or \$10,000 fine.
Offences in respect of licenses	42	3 months; \$1000; or both	Offences in respect of licences	Section 42 – 2 years; \$20,000 fine	Increase to 2 years imprisonment or \$20,000 fine.
Selling or supplying firearm or airgun to unlicensed person	43	3 months; \$1000; or both	Selling or supplying firearm or airgun to unlicensed person	Section 43 – 2 years; \$20,000	Increase to \$20,000 fine or 2 years imprisonment.
Possessing, selling, or supplying prohibited ammunition	43AA	2 years	-	No change	N/A.
Mail order sale of firearm or ammunition	43A	\$1000	Mail order or Internet sale of arms items or ammunition	Section 43A – \$10,000; 6 months	Increase to \$10,000 fine or 6 months imprisonment.
Restriction on sales of ammunition	43B	\$1000	-	Repealed.	See clause 60 of the Arms Legislation Bill (first reading).

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Selling or supplying pistol or restricted weapon to person who does not hold permit to possess	44	3 years; \$4000; or both	Selling or supplying pistol or restricted weapon to person who does not hold permit to possess	Section 44 – 3 years; \$30,000	Increase from \$4,000 fine to \$30,000 fine. Potential imprisonment remains the same.
Offence to sell or supply prohibited firearm or prohibited magazine	44A	5 years	-	No change	N/A.
Offence to sell or supply prohibited part	44B	2 years	-	No change	N/A.
Carrying or possessing firearms, etc, except for lawful, proper, and sufficient purpose	45	4 years; \$5000; or both	-	No change	N/A.
Carrying of imitation firearm, except for lawful, proper, and sufficient purpose	46	2 years; \$4000; or both	Carrying of imitation firearm, except for lawful, proper, and sufficient purpose	Section 46 – 1 year; \$4000	Reduction of potential imprisonment term to 1 year; fine remains the same.
Being in charge of firearm, airgun, pistol, or restricted weapon while under the influence of drink or drug	47	3 months; \$3000; or both	-	No change	N/A.
Discharging firearm, airgun, pistol, or restricted weapon in or near dwellinghouse or public place	48	3 months; \$3000; or both	Discharging firearm, airgun, pistol, or restricted weapon in or near dwellinghouse or public place	Section 48 – 6 months; \$10,000	Increase to \$10,000 fine or 6 months imprisonment.

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Using, discharging, or carrying certain firearms except for some lawful, proper, or sufficient purpose	49	3 months; \$1000; or both	-	No change	N/A.
Unlawful possession of firearm, prohibited magazine, prohibited part, or airgun after revocation of firearms licence	49A	1 year; \$4000; or both	-	No change	N/A.
Unlawful possession of pistol or restricted weapon	50	3 years; \$4000; or both	-	No change	N/A.
Unlawful possession of prohibited firearm	50A	5 years	-	No change	N/A.
Unlawful possession of prohibited magazine	50B	2 years	-	No change	N/A.
Unlawful possession of prohibited part	50C	2 years	-	No change	N/A.
Unlawfully carrying or possessing prohibited firearm in public place	50D	7 years	Unlawfully carrying or possessing prohibited firearm in public place	Section 50D – 5 years	Reduction to 5 years imprisonment.

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Unlawful carriage or possession in public place of firearm, airgun, pistol, ammunition, explosive, or restricted weapon	51	3 years; \$4000; or both	-	No change	N/A.
Presenting prohibited firearm at other person	51A	7 years	-	No change	N/A.
Presenting firearm, airgun, pistol, or restricted weapon at other person	52	3 months; \$1000; or both	Presenting firearm, airgun, pistol, or restricted weapon at other person	Section 52 – 6 months; \$10,000	Increase to \$10,000 fine or 6 months imprisonment.
Careless use of firearm, airgun, pistol, or restricted weapon	53	3 years; \$4000; or both	-	No change	N/A.
Use or attempted use of prohibited firearm to resist or prevent arrest or commit offence  (1) use (2) possession	53A	(1) 10 years (2) 7 years	Use or attempted use of prohibited firearm to resist or prevent arrest or commit offence	Section 53A – (2) 5 years	Decrease in penalties from 7 years to 5 years imprisonment (for possession).

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
Use or attempted use of firearm, etc, to resist or prevent arrest or commit offence  (a) use (b) possession	54	(a) 7 years (b) 5 years	-	No change	No change to penalties.
Carrying prohibited firearm with criminal intent	54A	7 years	-	No change	N/A.
Carrying firearm, etc, with criminal intent	55	5 years	-	No change	N/A.
Offence to assemble prohibited firearm	55A	5 years	-	No change	N/A.
Offence of failing to produce firearm, etc, on demand or to permit inspection of firearm, etc	55B	3 months; \$1000; or both	Offence of failing to produce prohibited firearm, etc, on demand or to permit inspection of prohibited firearm, etc	Section 55B – 6 months; \$10,000	Increase in penalties to 6 months imprisonment or \$10,000 fine or both.
-	-	-	Offence of failing to produce non-prohibited firearm on demand or to permit inspection of firearm	Section 55C - \$10,000	Not an offence under the current Act; \$10,000 fine.

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
-	-	-	Offences relating to illegal manufacturing of arms items	Section 55D – 10 years	Not an offence under the current Act; 10 years imprisonment.
-	-	-	Offences relating to illegal trafficking of firearms, parts, or ammunition	Section 55E – 10 years	Not an offence under the current Act; 10 years imprisonment.
-	-	-	Offences relating to falsifying firearm markings	Section 55F – 10 years	Not an offence under the current Act; 10 years imprisonment.
-	-	-	Offences relating to removing or altering firearm markings	Section 55G – 3 years	Not an offence under the current Act; 3 years imprisonment.
Obstruction of member of Police	56	3 months; \$1000; or both	-	No change	N/A.
Offences committed by corporations	57	\$4000	-	No change	N/A.
Reporting of injuries caused by firearms, airguns, pistols, or restricted weapons	58	3 months; \$1000; or both	-	No change	N/A.

Original Offence title	Section in the Arms Act 1983	Arms Act 1983*	New Offence title	Arms Legislation Bill (1 <sup>st</sup> reading)*	Change
				Section 58A -	Not an offence under the current Act.
_	_	_	Offences relating to registry	Fails to provide info – \$10,000 fine	\$10,000 fine for failing to provide information without reasonable excuse.
				Intentionally fails or provides false info – 2 years; \$20,000	\$20,000 fine or two years imprisonment for intentionally failing to provide information or providing false or misleading information.
Unsafe firearms or pistols	59	\$500	Unsafe firearms or pistols	Section 59 – 6 months; \$10,000	Increase in penalties to 6 months imprisonment or \$10,000 fine.
Regulations	74(1)(r)	Not a penalty	-	Section 74(1)(r)	Regulations can be made prescribing offences under the Arms Act and the fines that may be imposed in relation to such offences may not exceed \$400 – the proposal is to increase this to \$2,000.

# **APPENDIX B: Guide to Submission**

Arms Legislation Bill	Commentary in submission
s2 (Interpretation)	Definition of Health Practitioner – paragraphs 39 - 41
	Definition of dealer activity – paragraph 113
s5B (3)(a) – dealer must specify the activity they will carry on	Paragraphs 116 - 118
s6 (b) – body corporate to carry out dealer activity	Paragraph 115
s7A – Gun shows	Paragraphs 119 – 120
s12 – record of dealings by licensed dealers	Paragraph 112
Part 3 – Permits to Import	Paragraph 131
s22B – Restriction on possession of ammunition	Paragraphs 122 - 130
s22C – Restriction on selling or supplying ammunition	Paragraphs 82 - 84
s22D – Ammunition seller to keep record of ammunition sales	
s23 (2A) – application for firearms licence: contact details for health practitioner	Paragraphs 38 - 41
s24A – fit and proper person to hold firearms licence	Paragraphs 15 – 34
	[ss24A(1)(a) – (c): paragraph 28
	ss24A(1)(f): paragraphs 29 – 32
	s24A(1)(i): paragraph 33
s25 – duration of firearms licence	Paragraphs 36 - 37
s33C(2) – duration of endorsements	Paragraph 164
s34 – notification of change of address	Paragraphs 73 - 75
s38A – interpretation (shooting range)	Paragraphs 95 – 96
s38B – certificate of approval (shooting club)	Paragraphs 89 – 93
s38B(2) – application in form prescribed by Commissioner	

Paragraphs 97 - 102
Paragraph 93
Paragraphs 76 - 81
Paragraphs 143 – 150 Appendix A
Paragraphs 132 – 133
Paragraphs 133 - 134
Paragraph 35
Paragraphs 89 – 92
Paragraph 121
Paragraphs 119 – 120
Paragraphs 135 - 142
Paragraphs 103 - 109
Paragraphs 42 - 47
Paragraphs48 – 72
Paragraphs 73 – 75
Paragraph 73 - 75