



# **Inquiry into issues relating to the illegal possession of firearms in New Zealand**

Report of the Law and Order Committee

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(Kanwaljit Singh Bakshi, Chairperson)  
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*Presented to the House of Representatives*

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# Inquiry into issues relating to the illegal possession of firearms in New Zealand

## Summary of Recommendations

The Law and Order Committee makes the following recommendations to the Government:

### Sale and supply of firearms and ammunition

- 1 that the law be amended so that a firearms licence is required to possess ammunition, unless the person in possession of the ammunition is under the immediate supervision of a firearms licence holder (page 7).
- 2 that the law be amended so that a firearms dealer's licence be required to sell or supply ammunition by way of a business (page 7).
- 3 that the law be amended so that dealers be required to keep records of sales of ammunition (page 8).
- 4 that it create a Police registration process for websites that wish to facilitate the buying, selling, or trading of firearms, parts of firearms, or ammunition online. It would be an offence to operate such a website without current registration (page 8).
- 5 that the permit to procure process be extended to cover the sale or transfer of all firearms (page 9).

### Definition of military-style semi-automatics

- 6 that the Police investigate the creation of a category of restricted semi-automatic firearm (rifle and shotgun) to replace the MSSA firearm endorsement category (page 10).

### Effectiveness of licensing, training, and registering firearms

- 7 that firearms prohibition orders be implemented in New Zealand (page 12).
- 8 that the Police Arms Manual guidelines on determining who is fit and proper to possess firearms be codified within the Arms Act 1983, with any necessary modifications, to improve the overall certainty and consistency of the licensing process (page 13).
- 9 that it implement a stand-down period after revocation of a licence, before a new application for a firearms licence can be made (page 13).
- 10 that the Arms Act 1983 be amended to clearly state that a gang member or prospect must not be considered a fit and proper person to possess firearms and therefore must not hold a firearms licence (page 15).

11 that the law be amended to require the Police to record the serial numbers of all firearms possessed by licence holders upon renewal of their licence or inspection of their premises (page 16).

#### **Criminal offending with firearms**

12 that it review the penalties in the Arms Act 1983 (page 18).

13 that the law be amended so that where a dealer has committed an offence under the Arms Act 1983, the court must treat this as an aggravating factor at sentencing (page 18).

14 that the Police undertake further work to determine appropriate security standards for “A” category firearms (page 19).

15 that the law be amended to make it clear that the secure storage requirements must be met to the satisfaction of the Police, before a licence or endorsement can be issued (page 19).

16 that it extend the power under regulation 29 to allow the Police to enter premises to inspect the security of “A” category firearms (page 19).

17 that the Arms Act 1983 be amended so that failure to comply with the storage regulations must result in revocation of a firearms licence (page 19).

#### **Reducing the number of grey firearms**

18 that it clarify the amnesty in section 10 of the Arms Act 1983 and extend it to include MSSAs, “A” category firearms, and the handing in of firearms to the Police (page 21).

19 that the Police develop policy guidance so that, under the amnesty, when people hand in firearms that are unlawfully in their possession, or report firearms lost, stolen, or destroyed, the Police will have the discretion not to prosecute for the possession offence, subject to police inquiries not revealing offending other than breach of lawful possession of firearms(s) under the Arms Act 1983 (page 21).

#### **Importing firearms into New Zealand**

20 that it ensure that visitors who have imported firearms and have been in the country for up to twelve months for a sporting holiday or competition should have the export of the firearms checked by the Police when they leave New Zealand (page 24).

# 1 Introduction

In March 2016, the New Zealand Police seized 14 illegally owned firearms from a home in Takanini. Among the firearms seized were military-style semi-automatic firearms (MSSAs). As a result of this discovery and a general increase in firearm seizures by the Police, we resolved to carry out an inquiry into the illegal possession of firearms in New Zealand. We decided on the following terms of reference to guide the inquiry:

- how widespread firearm possession is among criminals, including gangs
- how criminals, gangs, and those who do not have a licence come into possession of firearms
- what changes, if any, to the current situation may further restrict the flow of firearms to criminals, gangs, and those who do not have a licence.

New Zealand has a very low crime rate with firearms, at about 1.4 percent of all violent crime. The Police believe that most illicit firearms in New Zealand have entered the illicit market through theft of individuals' firearms or firearms from dealers' premises, illegal transfer from a licensed owner to an unlicensed owner, or illegal importation into New Zealand.

In 2014/15, there were 242,056 licensed firearm holders in New Zealand. We note that the overriding majority of firearms users in New Zealand are law abiding. Thus, our recommendations aim to reduce the flow of firearms to criminals, gangs, and those who do not have a licence, without unfairly impinging on law-abiding firearms users.

There are three broad categories of firearms in the New Zealand market:

- those that are lawfully possessed by licence holders (with correct endorsements)
- those that are possessed by unlicensed people and are not held or used for criminal purposes ("grey" firearms)
- those that are used by criminals and gangs (unlicensed) in the commission of offences.

## **Background and overview of firearms control laws in New Zealand**

Firearms control in New Zealand began with the Arms Ordinance of 1845, and the first detailed firearms legislation, the Arms Act, was passed in 1920. The Arms Act 1920 included a system of permits to procure firearms and an obligation to register individual weapons. Automatic pistols were declared to be unlawful weapons and a licence was required for the possession of other handguns.

The 1920 Act was replaced with the Arms Act 1958. Permits were required for the import of firearms and unlawful weapons (any automatic pistol), and for the possession of firearms and ammunition. A certificate of registration was required for all firearms and pistols. However, a single permit to procure a shotgun enabled the purchase of more than

one shotgun. No person was to be registered as the owner of any firearm if, in the opinion of police, that person was not a fit and proper person to be in possession of that firearm. The age limit was set at 16 years for the possession of firearms.

In 1973, checks on the firearms register found that 66 percent of entries were inaccurate in some respect, and that a large number of the rifles registered could not be located. The costs associated with maintaining the paper-based register outweighed its benefits, so it was decided to stop registering firearms and rely on a more intensive screening of applicants during the licensing process.

### **Arms Act 1983**

The Arms Act 1983 came into force after a decade of consultation. Its purpose was to “consolidate and amend the law relating to firearms and to promote both the safe use and control of firearms and other weapons”. The Act provided lifetime licences to persons aged 16 years or over who the Police considered to be “fit and proper” to be in possession of a firearm. There was no requirement to register most weapons, except for pistols and restricted weapons, which also required a permit to procure.

### **Arms Amendment Act 1992**

After the shooting of 13 people at Aramoana, there was a call for tighter firearm controls. The Amendment Act added MSSAs to the list of weapons that required a licence endorsement to possess and a permit to procure. The Act also revoked lifetime licences, required shooters to apply for new 10-year licences, and restricted ammunition sales to firearms licence holders.

### **Arms (Military Style Semiautomatic Firearms and Import Controls) Amendment Act 2012**

Amendments passed in 2012 focused on the classification of MSSAs. They covered four main areas:

- a clearer and more adaptable definition of MSSAs
- an extension of regulation-making powers so that the Police can declare a firearm or type of firearm to be an MSSA
- a right of appeal to allow firearms owners to challenge the classification of a firearm as an MSSA
- restrictions on importing airguns that have the appearance of being pistols, restricted weapons, or MSSAs (these are defined as restricted airguns).

## 2 Sale of firearms and ammunition

### Requirements for sale of firearms and ammunition

It is an offence to sell firearms, restricted weapons, or ammunition to a person who does not hold a firearms (or dealer's) licence. A dealer's licence permits the holder to sell, and manufacture for sale, firearms and airguns by way of a business. It lasts for one year from the date of issue.

Under section 43A of the Arms Act, selling firearms or ammunition by way of "mail order" requires a written order, signed by the purchaser and the Police, confirming that the purchaser holds a valid firearms licence.<sup>1</sup> This section covers online purchases such as Trade Me transactions, unless the transaction is carried out in person. Where a sale is carried out in person, the seller is legally required to ascertain that the purchaser is the holder of a firearms licence, but a written order is not necessary.

Under section 43B of the Arms Act, it is an offence to sell or supply ammunition to a person who is not a firearms licence holder or a licensed dealer. The section also provides that it is a good defence to prove that:

- the ammunition was supplied to a person for use under the immediate supervision of a firearms licence holder; and
- when the person was in possession of the ammunition, they were always under the immediate supervision of a firearms licence holder.

A firearms dealer's licence is not required to sell or supply ammunition by way of a business. We consider that this should be a legal requirement.

### Recommendations

1 We recommend to the Government that the law be amended so that a firearms licence is required to possess ammunition, unless the person in possession of the ammunition is under the immediate supervision of a firearms licence holder.

2 We recommend to the Government that the law be amended so that a firearms dealer's licence be required to sell or supply ammunition by way of a business.

### Record of dealings by licensed dealers

The Arms Act requires licensed dealers to record the details of every receipt, sale, or manufacture of a firearm. It also requires the Police to inspect these records every 12

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<sup>1</sup> Ammunition is not defined in the Arms Act, but it is interpreted in a similar way to "safety ammunition" as defined in various Hazardous Substances Regulations made under the Hazardous Substances and New Organisms Act 1996, namely in terms of an article that comprises:

- (a) a cartridge, fitted with a primer and containing an explosive; and
- (b) one or more projectiles contained wholly or partly within, or fitted to, the cartridge.

months. We consider that ammunition should also be covered by a legal requirement for dealers to keep records of a sale.

We note that there is no equivalent legal requirement for private sellers or buyers to record the details of a firearms transaction. We considered whether the Arms Act should be amended to create a legal requirement for all sellers to record the details of a transaction. However, such a requirement would be difficult, if not impossible, for the Police to enforce because of the private nature of such sales. In addition, although such a requirement might help in tracing a firearm when recovered from a crime, it would do little to target the illegal sale, or theft, of firearms.

### **Recommendation**

3 We recommend to the Government that the law be amended so that dealers be required to keep records of sales of ammunition.

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### **Sale of firearms and ammunition online**

Many submitters raised concerns about the ability to purchase firearms online.

We note that only authenticated users may sell firearms on Trade Me, and only “A” category firearms may be advertised on Trade Me. However, sellers do not need to enter their firearms licence number before listing a firearm on the website. To bid or ask a question on a firearms listing on Trade Me, a person must enter their firearms licence number. However, this number is not validated.

We also note that it is possible to bypass certain requirements during an online transaction. For example, transactions may take place in person to avoid the “mail order” requirement, and there is no way to be sure that the firearm being delivered is the same firearm that was advertised online.

We heard that the Police are working closely with Trade Me in this area. We believe that providing online sellers like Trade Me with the ability to check a firearms licence number would strengthen the administration and management of firearms in New Zealand.

We recommend that the Government consider creating a registration process for online firearms dealers in order to enhance the transparency of online transactions. Specifically, we propose that any website that facilitates the buying, selling, or trading of firearms, parts of firearms, or ammunition in New Zealand must be registered with the Police. Registered websites would display proof of Police registration and it would be an offence to operate such a website without being registered.

### **Recommendation**

4 We recommend to the Government that it create a Police registration process for websites that wish to facilitate the buying, selling, or trading of firearms, parts of firearms, or ammunition online. It would be an offence to operate such a website without current registration.

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### **Permit to procure**

Pistols, MSSAs, and restricted weapons can be supplied only to a purchaser who has a permit to procure issued by the Police. Permits may be issued only to persons with the appropriate endorsement and are valid for one month.

The Arms Regulations outline the process for obtaining a permit to procure. An application requires the name and firearms licence number of both the applicant and the owner, among other details.

We recommend that a permit to procure be required for the sale or transfer of all firearms. The permit process would give details of firearms transactions to the Police and it would allow them to slowly build up a database of firearms possessed by individuals. Although there would be an administrative burden on buyers, sellers, and the Police, the process would ensure better monitoring of private sales.

We heard that Police's planning for the future includes processes that will enable permits to procure to be obtained online. This would reduce the administrative burden on buyers and sellers, especially those located in rural New Zealand. However, we note that some parts of the transaction will always be face to face, as required by the Arms Act.

### **Recommendation**

5 We recommend to the Government that the permit to procure process be extended to cover the sale or transfer of all firearms.

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### 3 Definition of military-style semi-automatics

#### Problems with the current definition of military-style semi-automatics

MSSAs are defined as any semi-automatic firearm that has any of the features listed in section 2 of the Arms Act. MSSAs require an “E” endorsement to possess, and are subject to increased security requirements, as set out in the Arms Regulations.

We are concerned about whether the current classifications are sustainable or enforceable. They make a distinction between MSSAs and other semi-automatic firearms (rifles and shotguns). However, it is difficult for legislation to take into account the interchangeability of parts and the wide variety of firearm grips. In particular, the way MSSAs are currently classified raises three grounds for concern:

- “A” category firearms can be converted to MSSAs
- dealers can manufacture MSSAs
- “A” category parts can be imported and used to make MSSAs.

To address this, one possible option would be to amend the Arms Act to require all semi-automatic rifles and semi-automatic shotguns to require an “E” category endorsement. Consequently, there would be a requirement to have an “E” endorsement for the possession of any semi-automatic firearm or shotgun, and to provide special reasons when applying to import these firearms.

Many submitters were opposed to this option because they feared it would entail significant costs for the firearms community. These costs include additional fees, paperwork, and security arrangements. Submitters also noted that many people have semi-automatic rifles and shotguns for sporting purposes.

Another option would be to classify as MSSAs all semi-automatic rifles and shotguns with detachable magazines, and those with integrated magazines that have a capacity of more than 15 rounds. This option would cover the majority of semi-automatic rifles that have detachable magazines.

Our preferred option is to redefine an MSSA as a semi-automatic with a magazine holding, or capable of holding, 11 rounds or more. This proposal was put to the Government in 2010 but did not progress. One difficulty with this proposal is that, unless there are controls on the purchase of large magazines, there would be many “A” category firearms in the community, subject to minimum controls, that could readily be converted to MSSAs by fitting a large magazine.

#### **Recommendation**

6 We recommend to the Government that the Police investigate the creation of a category of restricted semi-automatic firearm (rifle and shotgun) to replace the MSSA firearm endorsement category.

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## 4 Effectiveness of licensing, training, and registering firearms

### Current process of firearms licensing

The current regime focuses on people being “fit and proper” to possess firearms. The Police are responsible for administering firearms legislation. Firearms in New Zealand are primarily controlled by the Arms Act 1983, the Arms Regulations 1992, and the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984. These are expanded by policy directions.

One of the objectives of the current firearms licensing regime is to “maintain public safety and reduce crime by promoting the safe use and control of firearms and other weapons”.<sup>2</sup>

Persons applying for the issue or renewal of a firearms licence must be 16 years of age or older and be a fit and proper person to possess a firearm. A first-time applicant is required to attend and pass a firearms safety course before submitting their licence application. The Police interview applicants, inspect their firearm security arrangements, and interview referees to determine whether the applicant is fit and proper to possess a firearm.

A standard firearms licence (commonly referred to as an “A” licence) is issued under the Arms Act and permits the holder to possess sporting-type shotguns and rifles, and certain air rifles. However, specialist weapons such as pistols, MSSAs, and restricted weapons require an additional application for a licence endorsement. Firearms licences must be renewed every 10 years and endorsements need to be reapplied for at the termination of a firearms licence.

One of the conditions of a firearms licence is that all firearms possessed by the licensee must be stored securely. The Arms Regulations 1992 outline the security requirements, which are enhanced for pistols, MSSA firearms, and restricted weapons.

### Screening of applicants

The current vetting process includes, but is not limited to:

- information held on police computer systems, including criminal records, intelligence data, and Court Orders such as Family Violence Protection Orders
- for first-time applicants, a face-to-face interview with an unrelated referee
- a face-to-face interview with the applicant and their partner, spouse, or next of kin
- physical inspection of the security in place for firearms
- recording information about firearms held, ensuring that the security inspected is appropriate for the firearms the applicant claims to possess

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<sup>2</sup> Police Arms Manual 2002, paragraph 2.5.

- any other inquiry that the Arms Officer considers necessary.

Several submitters felt that more stringent restrictions ought to be applied to the current licensing regime. Their suggestions included raising the minimum age required to obtain a licence to 18 years, applying a more onerous vetting process, shortening the renewal period to five years, and introducing firearms prohibition orders.

We heard that reducing the duration of firearms licences from 10 years to five years would incur considerable administrative costs. In addition, it is unclear whether this increase in cost would provide any real benefit in reducing the number of firearms held by unlicensed people. This is because most licence holders successfully renew their licence every 10 years.

In Australia, firearms prohibition orders are used in three states. They are used to proactively manage high-risk individuals and their possession of, use of, and association with firearms. In New South Wales, anyone subject to such an order faces substantial penalties for possessing firearms. They cannot knowingly be in the company of people with firearms, and cannot knowingly reside at or visit a location where there are firearms. The police can stop and search a person who is subject to a firearms prohibition order. They can also search houses and vehicles the person occupies, without a warrant, to check whether an order has been breached.

The Minister of Police has indicated that consideration is being given to introducing firearms prohibition orders in New Zealand. We support this initiative where it strengthens the ability of the Police and the Judiciary to issue prohibition orders under certain prescribed circumstances.

### **Recommendation**

7 We recommend to the Government that firearms prohibition orders be implemented in New Zealand.

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### **Codification of the “fit and proper” guidelines**

Under section 24 of the Arms Act 1983, the Police shall issue a firearms licence if a person is assessed as fit and proper to possess firearms. However, there is no legislative definition of “fit and proper” for the purpose of this section. As the administrator of the legislation, the Police have developed a process and standards to ensure compliance with this provision.

The Police Arms Manual 2002 describes a fit and proper person as “a person of good character who will abide by the Laws of New Zealand and the provisions of the Arms Act 1982, the Arms Amendment Act 1992 and the Arms Regulations 1992”. The Manual outlines that an applicant could be considered not a fit and proper person if:

- they have been the subject of a protection order
- they have shown no regard for the Arms Act or Arms Regulations
- they have been involved in substance abuse
- they have committed a serious offence against the Arms Act or any other Act, or a series of minor offences against the Arms Act

- they have committed crimes involving violence or drugs
- they have affiliations with a gang involved in committing violent offences or in conflict with another gang
- they have been or are involved in matrimonial discord involving violence or threats of violence
- they have exhibited signs of mental ill health, or attempted to commit suicide or other self-injurious behaviour
- they have not complied with security conditions
- or if, for some other reason, they are considered not fit and proper.

The Police are reviewing whether there could be further legislative guidance for determining whether a person is fit and proper to possess a firearm.

### **Recommendation**

8 We recommend to the Government that the Police Arms Manual guidelines on determining who is fit and proper to possess firearms be codified within the Arms Act 1983, with any necessary modifications, to improve the overall certainty and consistency of the licensing process.

### **Revocations and refusals of firearms licences**

A firearms licence shall be refused where there are reasonable grounds to suggest that the applicant is not fit and proper to possess firearms. Where a licence has been granted, section 27 of the Arms Act governs the revocation of that licence. A revoked firearms licence may be reinstated on appeal to the Courts.

Some submitters, including the New Zealand Police Association, expressed concern about the revocation of firearms licences. In particular, they note that the Courts often reject key elements of the Manual's policy when revoked licences are appealed. We believe that codifying the "fit and proper" guidelines into the Arms Act would address this issue.

However, we believe there should also be a stand-down period following revocation of a licence, before a new application for a firearms licence can be made.

### **Recommendation**

9 We recommend to the Government that it implement a stand-down period after revocation of a licence, before a new application for a firearms licence can be made.

### **Gang members and prospects**

The evidence indicates that unlawful firearms possession and use is an integral aspect of gang culture in New Zealand. In 2014, the Police analysed 3,969 patched members and prospects belonging to 32 New Zealand adult gangs. They looked at the proportion charged with a serious violence offence involving a firearm or an offence against the Arms Act. The analysis showed that 44 percent of the members and prospects had been charged

with an offence involving a firearm, and that 9 percent had been charged with five or more offences involving a firearm during their lifetime.

In April 2016, the Police identified 29 firearm licence holders who were members of a New Zealand adult gang. Six of these licences have since been revoked or surrendered.

We note that the current law creates difficulty in refusing to issue or renew a firearms licence to an applicant solely on the basis that they are a member of a gang. This is because determining whether a person is fit and proper requires consideration of several factors.

In the recent case of *Innes v Police*, it was found that gang membership is directly relevant to whether a person is fit and proper to hold a firearms licence.<sup>3</sup> However, the fact that Mr Innes was a patched and active member of a gang that actively engages in criminal activity was not the sole reason that he was considered not fit and proper. Other factors were his failure to advise the Police of his current address, to surrender his licence after it was revoked, and to clarify the whereabouts of his firearms after his licence was revoked.

In June 2014, Cabinet approved the “Whole-of-Government Action Plan to Reduce the Harm Caused by New Zealand Adult Gangs and Transnational Crime Groups”. This Action Plan aims to combine law enforcement with social service intervention and has four key components:

- establishing a multi-agency Gang Intelligence Centre
- developing a programme of social initiatives, “Start at Home”, to support gang members and their families to turn away from the gang lifestyle
- establishing multi-agency Enforcement Taskforces to strengthen border protection, prevent the financing of crime, and target profit received from crime
- strengthening legislation, including options for a firearms prohibition order regime, the legal authority and protections for Police undercover operations and informants, and the use of drug detector dogs at domestic maritime ports and airports.

We support this Government initiative, and recommend that the Arms Act be amended to clearly state that a gang member or prospect must not be considered a fit and proper person to possess firearms and therefore must not hold a firearms licence.<sup>4</sup>

The amendment would take the form of section 27A, which currently states that the Police may decide that a person’s involvement with domestic violence constitutes grounds for deciding that a person is not a fit and proper person to possess firearms and should not be issued with a firearms licence or should have their licence revoked. We believe that such an amendment would greatly reduce the number of firearms used by criminals and gangs in the commission of offences. It would also provide Police with the appropriate mandate to identify and pursue gang members who they believe are in the possession of firearms.

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<sup>3</sup> *Innes v Police* [2016] NZDC 4538, paragraph 42 of the judgement.

<sup>4</sup> The definition of ‘gang’ would be the same as stated in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013.

## Recommendation

10 We recommend to the Government that the Arms Act 1983 be amended to clearly state that a gang member or prospect must not be considered a fit and proper person to possess firearms and therefore must not hold a firearms licence.

### Firearms safety courses

The Mountain Safety Council delivers the firearms safety course nationally under a letter of agreement with the Police. The course is primarily for new firearms licence applicants who are required to complete a firearms safety training course and pass a theoretical test.

The Whakatūpatō programme is a joint venture between the Mountain Safety Council, the New Zealand Police, and iwi. It aims to provide firearms safety training to remote and rural communities where, for many reasons, it may be difficult to access this training. The training is generally delivered in a way that observes tikanga Māori. However, the content can be adapted to suit other community groups.

Submitters raised concerns about the Mountain Safety Council's decision to shift from training delivered by volunteers to training delivered by paid staff. In particular, the concerns were that losing so many volunteers would mean that the training programme was no longer tailored to the community, and that this would be a disincentive for people to become firearms licence holders.

We understand that a tender process is under way for the delivery of the firearms safety programme. We expect that the outcome of the successful tender will be a programme that is widely accessible throughout New Zealand.

### Registration of firearms

Because there is no system for individual firearms to be registered, the Police do not maintain a record of all firearms owned by firearm licence holders. The Police encourage owners to record the make, model, and serial number of their firearms on a free website called SNAP for identification and tracking purposes. However, this is not a legal requirement and is not enforceable.

The Police hold information about pistols, restricted weapons, and MSSAs possessed by licence holders. This is because such weapons may be sold or supplied only to a person holding a permit to procure, or imported by means of an import permit. A permit to procure is issued by a member of the Police, and individuals are required to confirm having taken possession of these firearms where such a permit has been issued. The Police use information from the permit process to record the details of the pistol, restricted weapon, or MSSA against the person's firearms licence.

There are several issues with registering firearms, many of which were raised in the 1997 Thorp Report and the 2001 report of the Law and Order Committee on the Arms Amendment Bill (No 2) 1999. These include:

- the cost of implementation and the time it would take
- lack of evidence that registration will result in a reduction of violence involving firearms

- difficulties with obtaining a high degree of compliance and accuracy
- the number of illegal firearms that would remain outside the system (including those in possession of the criminal community), which would significantly reduce the benefits of registration.

In 1996, Australia implemented mandatory registration of all firearms. However, it is unclear whether the system reduced the use of illicit firearms. Although there was a decline in firearm homicides and firearm-related crime, most homicides in 2005-06 involved firearms that were not registered (90 percent) and offenders who did not have a firearms licence (87 percent).<sup>5</sup>

We recommend that instead of creating a firearms register, the legislation be amended to require the Police to record the serial numbers of firearms owned by licence holders. This would be done when a licence holder renews their licence and the Police visit their premises to check their security arrangements, or when the Police inspect a licence holder's premises for any other reason, such as change of address. This would involve a requirement for firearm owners to produce all their firearms on demand at the time of inspection. This approach would require fewer resources to maintain and would increase the amount of information available to the Police.

### **Recommendation**

11 We recommend to the Government that the law be amended to require the Police to record the serial numbers of all firearms possessed by licence holders upon renewal of their licence or inspection of their premises.

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<sup>5</sup> Megan Davies and Jenny Mouzos, "Homicides in Australia: 2005-06 National Homicide Monitoring Program annual report", *Australian Institute of Criminology Research and Public Policy Series*, pp. 3-57.

## 5 Criminal offending with firearms

### Resolving burglaries and reducing theft of firearms

In 2015/16, more than 72,000 burglary victimisations were recorded, a 13.7 percent increase since 2014/15. Burglary from licensed firearms owners is deemed to be the primary source of firearms for criminals. Rural properties are often targeted as a source of illicit firearms because of the high availability of firearms and their remote location.

Research from the 1997 Thorp Report indicates that shotguns and rifles, including sawn-off weapons, were the weapons of choice for criminals and gangs. This is likely to be due to the limited availability of pistols and MSSAs, which are subject to higher security requirements and make up much less of the firearms market. Although it is very difficult to estimate the number of firearms in the possession of criminals and gangs, the Thorp Report estimated this at between 10,000 and 25,000 in 1997. No other formal estimate has since been made.

We heard that the Police have taken several steps in 2016 to target burglary, including a “Burglary Focus” national tasking, the development of a best-practice guide to responding to burglaries, district- and national-level operations, and a review of case files to identify opportunities for improvement.

In June 2016, the crime of dwelling burglary was raised from a volume crime to a priority offence. The new policy set the expectation that police would attend after every such burglary. We note that this applies only to house break-ins, and does not cover other residential or commercial burglaries, such as out-buildings or yards. However, where any firearm has been reported stolen, this is treated as a priority offence regardless of the type of premises.

### Amending the penalties under the Arms Act 1983

Several submitters expressed concerns about the penalties under the Arms Act; in particular, that the current penalties have very little deterrent effect.

We heard that inflation has considerably devalued the financial penalties, reducing the financial hardship imposed on offenders. In addition, New Zealand has low maximum custodial penalties compared with overseas jurisdictions. This is because penalties under the Arms Act are treated as administrative breaches rather than as offences that can carry serious criminal consequences.

We note that many of the current penalties under the Arms Act are out of date and do not reflect the seriousness of the offences. We recommend that the Government review all of the penalties in the Arms Act, including:

- section 16: importing firearms without a permit
- section 20: possession of firearms without a licence

- section 43: selling or supplying a firearm to an unlicensed person
- section 45: unlawful carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives except for lawful, proper, and sufficient purpose.

We also propose that if the person committing an offence under the Arms Act is a dealer, the court should treat this as an aggravating factor at sentencing. Dealers have to be particularly held to account because the impact of their offending can have greater consequences than a private owner's non-compliance with the Arms Act.

### **Recommendations**

12 We recommend to the Government that it review the penalties in the Arms Act 1983.

13 We recommend to the Government that the law be amended so that where a dealer has committed an offence under the Arms Act 1983, the court must treat this as an aggravating factor at sentencing.

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### **Regular checks on the storage of firearms**

Regulation 19 of the Arms Regulations makes every firearms licence subject to security precautions. It outlines the reasonable steps a licence holder must take including keeping on the holder's premises one of the following:

- a lockable cabinet, container, or receptacle of stout construction in which firearms may be stored
- a lockable steel and concrete strong room in which firearms may be stored
- a display cabinet or rack in which firearms may be immobilised and locked so that none of them may be fired.

Regulation 28 sets out tighter security requirements for pistols, MSSAs, and restricted weapons. One option for increasing the security of firearms would be to extend the security standards for pistols, MSSAs, and restricted weapons to "A" category firearms. We recommend that the Police undertake further work to determine appropriate security standards for "A" category firearms. We think that the current standards need to be increased. However, we do not think that the new standards need to be as restrictive as those for pistols, MSSAs, and restricted weapons.

We recommend amending the legislation to make it clear that the secure storage requirements in regulations 19 and 28 must be met to the satisfaction of the Police before a licence or endorsement can be issued.

Regulation 29 empowers police to enter premises to inspect the security of these weapons, but this power does not extend to the security of "A" category firearms (sporting rifles and shotguns). We recommend that this power be extended to "A" category firearms to allow police to check that licensed users are complying with the storage regulations. We also recommend that non-compliance with the storage regulations be grounds to revoke a firearms licence.

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## Recommendations

14 We recommend to the Government that the Police undertake further work to determine appropriate security standards for “A” category firearms.

15 We recommend to the Government that the law be amended to make it clear that the secure storage requirements must be met to the satisfaction of the Police, before a licence or endorsement can be issued.

16 We recommend to the Government that it extend the power under regulation 29 to allow the Police to enter premises to inspect the security of “A” category firearms.

17 We recommend to the Government that the Arms Act 1983 be amended so that failure to comply with the storage regulations must result in revocation of a firearms licence.

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## Increased resourcing

Concerns have been raised about the amount of police resources available to target criminal offending and the importation of firearms. Organisations based in regional and rural areas expressed concern about the shortage of Police in rural areas. They believe that this is a primary cause of firearm theft in rural communities.

Firearms licensing by the Police is funded from a combination of Crown revenue and fee revenue from applications for firearms licences, dealers’ licences, and firearm licence endorsements. However, the revenue obtained from fees covers less than half of the cost of firearm licensing.<sup>6</sup>

In 2015, the Police began a project to strengthen the administration and management of the Arms Act. Part of this project includes assessing all costs associated with administering the Act, and the current level of funding. We expect that the initial phase of this project will be concluded by the end of 2017, and that it will give a clearer picture of what needs to be done to meet future costs.

Ideally, the cost of administration and management of the Arms Act should be self-funded. That is, costs should be met through revenue generated by the licensing regime. We note, however, that if the costs of complying with the Act become a barrier to compliance, then it may be counterproductive to ensure that people become licence holders and maintain their licence.

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<sup>6</sup> Based on the Police’s 2013/14 and 2014/15 Annual Reports.

## 6 Reducing the number of grey firearms

### Grey firearms

“Grey” firearms are firearms that are in the possession of unlicensed people for a variety of reasons, such as inheriting a firearm on the death of a licence holder, or the expiry of the gun owner’s licence. Grey firearms are not used for criminal purposes. There are concerns that thefts of these firearms are much less likely to be reported because the owner should not have been in possession of the firearm to begin with. Thus, we considered the possibility of an amnesty or buy-back scheme to reduce the number of grey firearms in New Zealand.

We heard that, as part of the review project, the Police are improving their follow-up of licences that are not renewed. This intends to capture “forgotten” firearms in cases where the licence holder dies, or in other circumstances that lead to a firearm being with an unlicensed person. The sharper management of grey firearms will reduce this avenue of supply to the illicit market.

### Firearms amnesty

A firearms amnesty is a set period of time during which people can hand in to the Police firearms that they either do not want or do not have a licence or endorsement for, on the understanding that they will not be charged for unlawful possession under the Arms Act. No compensation is paid for the surrendered weapons, and people surrendering firearms or other items are not asked how the item came into their possession.

Since 1972, nine arms amnesties have been held in New Zealand. They are usually held in conjunction with changes to firearms legislation. The most recent amnesty was in 1999 and resulted in the surrender of 1,200 firearms. However, the campaign cost \$350,000 in the form of newspaper advertisements, posters, and letters mailed to firearms licence holders.

We note that section 10 of the Arms Act in effect provides a permanent amnesty for pistols, restricted weapons, and in practice (though not stated), MSSAs. Section 10(2) allows these weapons to be handed in to a licensed arms dealer if, for any reason, the person does not want to hand it in to the Police. We recommend that the codified amnesty in section 10 be clarified and extended to MSSAs and “A” category firearms, and that it cover the handing in of firearms either to the Police or to dealers.

The Police can use their discretion at any time with respect to prosecuting offenders. We recommend that the scope for discretion be clarified in cases where, under the amnesty, people hand in firearms that are unlawfully in their possession, or report firearms lost, stolen or destroyed. In such cases the Police should exercise their discretion not to prosecute for the possession offence, subject to Police inquiries not revealing offending other than breach of lawful possession of firearms under the Arms Act 1983.

### **Buy-back scheme**

Buy-back schemes compensate owners for firearms they no longer wish to retain. New Zealand has not had any buy-back operations, because the use of buy-backs as a gun control measure rests on the guns purchased being at substantial risk of criminal use. A decrease in the number of low-risk guns or guns owned by low-risk users will have little effect on criminal activity.

A range of issues also arise in relation to the buy-back of firearms, particularly MSSAs. Although a monetary reward would provide an incentive to surrender grey guns, on balance it appears that the risks and costs of implementing a buy-back programme outweigh the identifiable benefits.

During 1996/97, Australia operated a 12-month buy-back scheme for newly prohibited firearms. Arrangements were also made to compensate firearms dealers for loss of business related to prohibited firearms. During the buy-back, 643,726 prohibited firearms were handed in at a total cost to the Government of about A\$320 million. It was estimated that this may have led to the removal of about 20 percent of the total stock of firearms.

We believe that our recommendations regarding the codified amnesty would significantly reduce the number of grey firearms in New Zealand. We do not think that a buy-back scheme is required to meet this objective.

### **Recommendations**

18 We recommend to the Government that it clarify the amnesty in section 10 of the Arms Act 1983 and extend it to include MSSAs, “A” category firearms, and the handing in of firearms to the Police.

19 We recommend to the Government that the Police develop policy guidance so that, under the amnesty, when people hand in firearms that are unlawfully in their possession, or report firearms lost, stolen, or destroyed, the Police will have the discretion not to prosecute for the possession offence, subject to police inquiries not revealing offending other than breach of lawful possession of firearms(s) under the Arms Act 1983.

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## 7 Importing firearms into New Zealand

### Permit to import

In order to import any firearm or part of a firearm into New Zealand, a person must first apply for a permit to import from the New Zealand Police.<sup>7</sup> The permit is issued to one person and may not be transferred to any other person. It is valid for 12 months and may be revoked by a police officer at any time. A permit is not required to import small arms ammunition.

Generally, a person will require a firearms licence, or a firearms licence with the appropriate endorsements, in order to import a firearm. However, the following firearms are listed as exceptions in section 22 of the Arms Act 1983, and do not require a firearms licence to possess (although a permit to import is still required):

- bolt gun or stud gun
- humane killer
- tranquilliser gun
- stock marking pistol
- underwater spear gun
- flare pistol
- deer net gun
- pistol that is part of a rocket or line throwing equipment
- miniature cannon
- antique firearm.

Regulation 10 outlines the information that the applicant must supply. This includes the make, model, calibre, and type of the firearm. Details of the applicant's firearms licence are attached to the application, which identifies their licence, endorsements, and address. Applying for a permit to import pistols, MSSAs, restricted airguns, and restricted weapons requires the applicant to state "special reasons" as to why the weapon should be allowed into New Zealand.

A firearms dealer can apply for, and be issued with, any number of permits to import. Where a dealer applies to import firearms from different sources, separate permits are issued. Similar to an individual's permit application, a dealer must also include the exact description of the firearms that they plan to import, including the make, model, calibre, and type of firearm. If a dealer wishes to apply for a permit to import a pistol, MSSA firearm, restricted weapon, or restricted airgun, a licence holder may nominate them to import such

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<sup>7</sup> "Part" is defined in section 2 of the Arms Act 1983 as anything designed or intended to be an integral part of a pistol, restricted weapon, or MSSA but in relation to any other firearm, means the action for that firearm.

items on their behalf. However, no permit to import any of these items, except pistols, can be granted to a dealer who wishes to import such firearms to resell.

### **Managing firearm imports**

The New Zealand Customs Service applies various clearance processes depending on the way firearms enter New Zealand. Records of imports are kept on Customs' reporting system and any firearms and parts handled by Customs are stored in secure facilities. Shipments of firearms and parts enter into New Zealand through four main streams:

- import cargo stream for goods over \$1000
- electronic cargo information stream for goods under \$1000
- mail stream
- passengers importing firearms through airports.

When firearms or parts are detected in the cargo or mail streams, Customs officers intercept the item. The firearm or part is held until the importer can present an import permit and a firearms licence. Customs officers then check the description of the firearm on the import permit against the firearms or parts that have been received. However, we heard that because of a lack of resources, these checks are often not carried out as thoroughly as they could be.

### **Visitors' firearms licences and export permits**

A visitor's firearms licence allows a person to possess firearms for hunting or competition in New Zealand for up to one year. When arriving in New Zealand, the applicant completes their application for a visitor's licence by paying a fee and presenting their passport and the firearms licence issued by the country they live in. They may also apply to import firearms for these purposes.

If an applicant lives in a country that does not issue firearms licences, they need to prove that they can legally own a firearm in their own country and that they have been trained in firearms safety. These documents are examined for validity by the Police when a visitor arrives at the airport in New Zealand.

An applicant for a visitor's firearms licence must also apply for a permit to import if they plan to bring their own firearm into New Zealand. Upon arrival, all firearms must be declared to Customs officials. If a person intends to remove a pistol, MSSA, or restricted weapon from New Zealand, they must apply for an export permit from the Ministry of Foreign Affairs and Trade (MFAT). If they are leaving New Zealand with a small number of sporting firearms, visitors who have been in the country for up to three months for a sporting holiday or competition are exempted from an export permit. However, they must still notify MFAT of the firearms that they are taking out of the country. Checks are not always conducted to make sure that the firearms a visitor brings into New Zealand are the same ones they leave with.

To ensure that firearms brought into the country by visitors have been lawfully disposed of or are being taken back with them, we recommend that the Police should check the firearms when the visitor leaves New Zealand.

We note that section 38 of the Act applies to a firearms licence holder who intends to remove a pistol, MSSA, or restricted weapon from New Zealand. They must give the Police at least four days' notice of the intended removal, and must deliver their firearms licence to Police so that the endorsement can be amended. This does not relate to visitors, and is separate from the export requirements.

### **Recommendation**

20 We recommend to the Government that it ensure that visitors who have imported firearms and have been in the country for up to twelve months for a sporting holiday or competition should have the export of the firearms checked by the Police when they leave New Zealand.

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## 8 New Zealand First minority view

New Zealand First believes that this report does not adequately address the stated objectives of the inquiry.

Rather, it targets legitimate ownership of legally held firearms by licenced users, importers, and dealers, and recommends further restrictions on them by way of laws and regulations relating to them and their firearms.

The report centres on a stated presumption that theft from legitimate owners is the major source of illegal firearms falling into criminal hands, despite a clear lack of any tangible evidence supporting this claim.

The report fails completely to address the manifestly inadequate rate at which the Police either solve, or even investigate, reported thefts of firearms from legitimate owners. Further, the report provides no evidence that the policy announcements made by the Police with respect to burglary resolution rates between 2008 and 2016 are proving effective, or that they have resulted in an increase in the number of stolen firearms being recovered.

Of serious concern to New Zealand First is the failure to investigate or report on any potential pathways by which firearms may come into the illegal possession of criminals other than by theft from legitimate owners—for example, illicit importation and smuggling.

Whilst the report recommends law changes to prohibit gangs from legally owning firearms, it does not provide information or recommendations on the adequacy of sentences given to gang members and other criminals who commit offences involving illicit firearms.

New Zealand First would support an amendment to the Arms Act 1983 to specifically prohibit gang members and their prospects from being granted a firearms licence.

New Zealand First would support concrete recommendations for dramatically increasing sentences for crimes committed by gang members or their prospects involving firearms and for those sentences to be mandatory in order to deter such offending.

In conclusion, whilst there are some recommendations we would naturally agree with, we cannot support the general thrust or direction of this report or many of the recommendations contained therein.

## **Appendix A**

### **Committee procedure**

The committee met between 16 March 2016 and 5 April 2017 to consider the inquiry. We received 102 submissions from the organisations and individuals listed in Appendix B, and heard oral evidence from 20 submitters.

We received advice from the New Zealand Police.

### **Committee members**

Kanwaljit Sign Bakshi (Chairperson)

Mahesh Bindra

David Clendon

Ian McKelvie

Stuart Nash

Maureen Pugh

Aupito William Sio

Lindsay Tisch

Jonathan Young

Ron Mark replaced Mahesh Bindra for this item of business.

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## Appendix B

### List of submitters

Aaron J Hopper  
Alan Walker  
Alan Webster  
Alec M  
Alex Henshaw  
Andrew Pepper  
Anthony Blythen  
Antonio Apostolakis  
Barry Shaw  
Bert Wilson  
Brad M  
Brad Smith  
Brenton Hodgson  
Bruce Graham  
Bruce Murdoch  
Bruce Rifle Club  
Central North Island Gun Club Inc.  
Chaz Forsyth  
Chris Murphy  
Christopher Macpherson  
Colby Tyrrell  
Council of Licensed Firearms Owners  
Daniel Harrison  
Dannie Abel, Brie Hale, Mariel Bocacao  
Dr David Holdsworth  
Dr Emmet McElhatton  
Duncan McKee  
Firearms Safety Specialist NZ  
Gary  
Gary Elmes  
Gary Larkan  
Gerard Phillips  
Greater Wellington Muzzle-loading Club  
Greg Jaggard  
Griffin Adie  
Iain Storey  
Jaistone Mataio  
James Airey  
James D Henry  
Jason Ward Allen  
Joe Green  
John Bryce

John Dyer  
John Howat  
John Mead  
John Paul Browne  
John T  
John Thomas Ronaldson  
K Robinson  
Kevin F  
Laila Farah, Lisa Jiang, Azel Cinco  
Leonard Bridgeman  
Mark Jewitt  
Mark Wheeler  
Martin Kavanagh  
Melissa Veale, Erin Lockhart, India Porter, Katie Trott and Hazel Brodie  
Michael Andrews  
Michael Kinmond  
Michele Domaneschi  
Mike Loder  
Monty Williams  
Morgan O'Brien  
Mountain Safety Council  
New Zealand Antique and Historical Arms Association  
New Zealand Police Association  
Nikki Kelman  
Northland Branch, New Zealand Antique & Historical Arms Association, Inc.  
Paul Clark  
Paul Rennie  
Paulus Telfer  
Phil C  
Pierre Joubert  
Pistol NZ  
Professor Alexander Gillespie  
R K Dean  
Raymond O'Brien  
Rob M  
Robert Walker  
Robin Meaclem  
Rod Woods  
Ross C  
Ross Pierson  
Rural Women New Zealand  
Ryan Anderson and Chris Woodmass  
Sam Estall  
Samuel Sydow  
Sean Wickham  
Sporting Shooters Association of Australia  
Sporting Shooters Association of New Zealand Inc.  
Stephen Donoghue

Stephen Goodman  
Stephen P Mawdesley  
Stuart Murray  
Terry Douglas  
Tex Hood  
Trade Me Limited  
Warren Fitzsimmons  
Wellington Community Justice Project  
Wellington Service Rifle Association Inc.