

# Departmental Disclosure Statement

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Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by New Zealand Police.

The Police certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 April 2019

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## Part One: General Policy Statement

### Purpose

This Bill amends the Arms Act 1983 (the Act), with the aim of tightening gun control to increase the safety and security of New Zealanders from death or injury from guns. The Bill recognises the extreme harm that results from the misuse of semi-automatic firearms.

The Bill seeks to remove semi-automatic firearms from circulation and use by the general population in New Zealand. The Bill achieves this by prohibiting semi-automatic firearms and magazines, and parts which can be used to assemble prohibited firearms.

The prohibition will include the existing category of semi-automatic firearms defined as Military Style Semi-Automatics (MSSAs), which are already subject to greater licensing controls under the Act compared with other types of firearms. The prohibition will extend beyond MSSAs to include most semi-automatic firearms, and some shot-guns. There are some small calibre rimfire semi-automatics and lesser capacity shot-guns that are excluded from the prohibition. These excluded firearms are commonly used in the farming, hunting recreational communities, and have a limited magazine capacity.

There is also a small number of firearms licence holders who are permitted under the Bill to import, sell, supply and possess semi-automatic firearms and other items for genuine and justifiable reasons. They will need to apply to the Police to obtain the necessary approvals in order to qualify for those exemptions.

The Bill inserts new provisions to provide a general prohibition on importing, selling, supplying or possessing:

- a semi-automatic firearm (other than a pistol), with some exceptions
- a pump-action shotgun that is capable of being used with a detachable magazine
- a pump-action shotgun that has a non-detachable tubular magazine(s) that can hold 6 or more cartridges
- magazines for shotguns that can hold more than 5 cartridges
- magazines for any other firearm that are detachable and:
  - can hold 0.22 or less rimfire cartridges and that can hold more than 10 of those cartridges; or
  - can hold more than 10 cartridges and be used with a semi-automatic or fully automatic firearm
- any other magazine that can hold more than 10 cartridges
- a part of a prohibited firearm including a component that can be applied to enable, or take significant steps towards enabling, a firearm to be fired with, or near, a semi-automatic action.

### Exemptions to import, sell, supply and possess semi-automatic firearms

The Bill inserts new provisions to provide narrow exemptions for:

- licensed dealers
- people employed or engaged by the Department of Conservation to lawfully kill or hunt wild animals, or who hold a concession by the Minister of Conservation to lawfully undertake wild animal recovery operations
- bona fide collectors of firearms

- bona fide museum curators or directors
- approved broadcasters, bona fine theatre companies or societies, or film or television production companies.

The Bill provides that only a person in one of the permitted (exempted) categories can possess a prohibited item. An exempt person or dealer can only take a prohibited item into their possession if they have a permit to import or a permit to possess, and if not imported it has come either from a licensed dealer, or a licence holder who has an endorsement to possess a prohibited item. An exception is made if the licensed dealer receiving a prohibited firearm from a member of the public immediately hands the prohibited item in to the Police. The Bill provides that only a person in one of the permitted (exempted) categories can sell a prohibited item, and only to a person who has an endorsement on their licence to possess a prohibited firearm, or a permit to possess that prohibited firearm. The Bill provides that a permit is required to import a prohibited item, and to obtain a permit there must be special reasons why the item should be allowed into New Zealand, and, for licensed dealers, the dealer must be acting for a licence holder who has an endorsement to possess a prohibited item and a permit to possess.

### **Amnesties for the return of prohibited items and for all firearms**

To allow for the prohibited items to be removed safely from the community, the Bill provides an amnesty for prohibited firearms, magazines and parts to be surrendered to dealers and the Police by 30 September 2019.

The existing amnesty provision for dealers in the Act is also expanded from pistols and restricted weapons to cover prohibited firearms that they receive. The amnesty is necessary to help ensure that the prohibited items are removed safely from the community, not only from current licensed firearms owners, but also individuals who have inadvertently come into the possession of a prohibited item and need to relinquish the item in good faith.

The amnesty will also allow time for those gun licensees who are in the exempted categories to apply for, if they wish to, the necessary endorsement and permits for any of their existing firearms that are prohibited firearms.

A new type of ongoing amnesty is also provided for in the Bill, to cover all types of firearms, to encourage the return of unlicensed and unwanted firearms, and reduce the circulation of firearms in communities. The Bill affirms that where non-prohibited firearms are handed in under the new general amnesty, Police has the discretion not to prosecute where the offence is considered to be one of possession only and there is no public interest in doing so.

### **Enforcement**

The Bill contains a range of new offences and penalties ranging from two to 10 years imprisonment, to support the effect and seriousness of the prohibitions. These include:

- unlawful possession of prohibited firearms, magazines and parts
- using or intending to use a prohibited firearm to resist arrest or commit offence
- unlawful possession in a public place
- presenting a prohibited firearm at another person
- possession while committing any offence that has a penalty of 3 years or more
- carrying a prohibited firearm with criminal intent

- importing prohibited items
- knowingly supplying or selling to person who does not hold a permit to import or possess
- using a prohibited part to assemble or convert a firearm
- knowingly supplying or selling a prohibited part
- failing to comply with a police inspection.

**Commencement**

The Bill will come into force the day after Royal Assent. It revokes the Arms (Military Style Semi-automatic Firearms) Order 2019 that was made to immediately restrict the possession of particular semi-automatic firearms by declaring them MSSAs.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
A regulatory Impact statement was not prepared due to time constraints.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The impact on affected groups is being considered in more detail as part of the prohibited firearm buy-back scheme. The scheme is still in development.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
Compliance with the prohibitions is critical to the objective of the Bill. The offences and penalties in the Bill incentivise compliance. Police will encourage and secure compliance through a range of activities, such as the provision of information and guidance to gun owners, inspection, and enforcement actions and sanctions if required.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

Police has worked with the Ministry of Foreign Affairs and Trade on the implications of the prohibitions for exports, to ensure that New Zealand protects its international reputation as a responsible arms exporter.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

Police consider that the Bill does not affect Māori rights and interests protected by the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>Clauses 10, 12, 13, 16, 17, 24, 33, 37, 39, 40, 42, 43, 44, 46, 47, 48, 50, 52, 54, and 56 amend existing provisions by including a prohibited firearm (and in some cases, prohibited magazine or item), or by amending the application of the offence to exclude a prohibited firearm, because a new standalone offence is created to apply to that specific conduct</p> <p>Clause 18 creates a new offence of importing prohibited ammunition.</p> <p>Clause 41 creates a new offence of possessing or supplying prohibited ammunition.</p> <p>Clauses 44, 51, 53, 55 and 57 create new offences in relation to prohibited firearms, covering carrying in a public place, presenting at another person, using to resist arrest or commit an offence, and carrying with criminal intent.</p> <p>Clause 45 creates new offences covering supplying prohibited firearms, prohibited magazines and prohibited parts.</p> <p>Clause 49 creates new offences covering unlawful possession of prohibited firearms, prohibited magazines and prohibited parts. It also creates a new offence of possessing a prohibited firearm in a public place.</p> <p>Clause 57 creates a new offence for using a part to build a prohibited firearm.</p>	
<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice was consulted during the development of the offence provisions in the Bill. The Ministry of Justice supports the intent of the offence provisions in the Bill and the efforts by the Police made to minimise the impact on defendant's rights in respect of new offences. The Ministry does have residual human rights concerns about the reverse onus of proof for the amended offence of unlawful possession.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>NO</b>
Due to the time constraints external consultation was not possible.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
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The proposals for exemptions from the prohibitions have been tested with the Department of Conservation to help ensure their workability.

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>YES</b>
<p>While there are no provisions that require the compulsory acquisition of private property, the effect of the Bill will be that licensed owners of prohibited firearms and other items will be committing an offence if they keep possession of those items after the amnesty period. This will be unless they fall within the small group of exempted parties, and who are able to obtain the necessary endorsements and permits.</p> <p>There will be a buy-back scheme to enable compensation for the surrender of the prohibited firearms during the amnesty period established the Bill, that is still being developed.</p>	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>
<p>The Bill includes new offences where possession of a prohibited item is part of the offence, that includes a reverse burden of proof. There is justification for the reverse onus for this offence. Possession of a prohibited firearm or item is a serious regulatory offence where the proof as to possession of a prohibited item will be the crucial element of the offence. It is considered that the defendant is in the better position than the prosecution to show proof as to possession.</p>	

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>For licensed dealers, clause 58 provides an ability to take possession of prohibited items if they immediately surrender it to the Police. Dealers also do not need to record any particulars of the receipt of the item. There is also an ability for people who would be considered to be in illegal possession of a prohibited item to hand in firearms with exemption from prosecution for possession (at Police discretion).</p> <p>Maintaining discretion for the Police to prosecute where anyone is considered to have the requisite criminal intent upholds and supports the purposes of providing the new offences.</p> <p>However, as a transitional measure Schedule 1 provides an amnesty for prohibited firearms, magazines and parts to be surrendered to dealers and the Police by 30 September 2019. The amnesty is necessary to help ensure that the prohibited items are removed safely from the community, not only from currently licensed gun owners, but also individuals who have inadvertently come into the possession of a prohibited item and need to relinquish the item in good faith.</p>	

## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>Clause 66 replaces an existing power to make delegated legislation, which provides the power to add to the definition of military style semi-automatic fire arm through Order in Council. The new power allows for definitions of prohibited firearms, magazines and ammunition to be amended or replaced, and for specific firearms, magazines or ammunition to be declared to be prohibited.</p> <p>The new power will operate the same way as the previous power. The power is necessary to ensure that changes can easily be made to restrict newly designed or manufactured firearms that may have the same capacity or risk for harm, but do not strictly meet the existing definition. This is crucial to preventing dangerous high-risk weapons circumventing the prohibitions.</p> <p>Orders in Council are reviewed and approved through the Cabinet process and subject to the scrutiny of the Regulations Review Committee. The Orders are also a confirmable instrument and must be confirmed by Parliament or are revoked.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 65 amends an existing regulation-making power, by including a new power to provide for storage or other precautions in relation to prohibited firearms. The power is necessary to ensure that any permitted prohibited firearms are safely and securely stored to prevent theft or misuse of the weapons. This is needed to support the effectiveness of the overall prohibition regime.</p> <p>Orders in Council are reviewed and approved through the Cabinet process and subject to the scrutiny of the Regulations Review Committee.</p>	

#### **Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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