

Short-Form Supplementary Departmental Disclosure Statement

Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill, dated 1 April 2019, which can be found at this link

<http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=125>

This supplementary disclosure statement was prepared by New Zealand Police.

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

9 April 2019

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>In the Supplementary Order Paper:</p> <p>Clause 19 has been amended to remove reference in error to 'restricted airgun';</p> <p>Clause 42 has been amended to reduce the maximum term of imprisonment and include 'without reference excuse';</p> <p>Clause 49 has been amended to change the new section 50C offence to clarify the application of 'without reasonable excuse'; and</p> <p>Clause 57 has been amended to clarify that the offence applies to licensed dealers.</p>	

1.1. Was the Ministry of Justice consulted about these provisions?	YES
<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 offences of unlawful possession of prohibited firearms or prohibited magazines.</p>	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	YES
<p>In respect of imports of prohibited items, new clause 1B of Schedule 1 authorises Customs to deliver the prohibited items to Police, under the Customs and Excise Act 2018. Such items may be subject to compensation pursuant to new clause 4 of Schedule 1.</p> <p>While there are further 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>The Supplementary Order Paper inserts new transitional provisions that allow for the establishment of the Government's proposed buy-back scheme (Schedule 1, clause 5). This provides for the power to make regulations by Order in Council to enable compensation for the surrender of the prohibited items during the temporary amnesty period established by the Bill. Clause 1 of Schedule 1 provides that the amnesty from the possession related offences (under clause 3) ends six months after the date on which regulations are made or any later date prescribed by Order in Council.</p> <p>New clause 4 of Schedule 1 provides that where any items are surrendered to the Police they become the property of the Crown, and that compensation may be paid for the item under any regulations made under clause 5; however this is only to the extent authorised under the regulations.</p>	

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	YES

6. Do the proposed amendments:	
<p>The Bill includes new offences where possession of a prohibited item is part of the offence that includes a reverse burden of proof (similar to what applies to the possession offences already in the Arms Act 1983). 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 establish whether or not they had possession. However, clause 61 of the Supplementary Order Paper has removed the reverse onus of proof in respect of prohibited parts.</p>	

Civil or criminal immunity

7. Do the proposed amendments in the Supplementary Order Paper create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments 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?	NO
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Powers to make delegated legislation

9. Do the proposed amendments 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?	YES
<p>Clause 66 replaces an existing power to make delegated legislation 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> <p>The Supplementary Order Paper changed the power so it is limited to amending and adding to the descriptions of prohibited firearms and prohibited magazines, rather than replacing the descriptions.</p> <p>The Supplementary Order Paper also includes a new power in clause 66 to make regulations by Order in Council that provide for transitional and saving provisions concerning the Bill coming into force, including that specified provisions in the Act do not apply to some people, specified provisions repealed or amended by the Amendment Act continue to apply to some people, and that conditions may apply to the possession and use of a prohibited item during the temporary amnesty period (as defined in clause 1 of Schedule 1). The provision and any regulations made under it will be repealed by 31 December 2020.</p>	

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p>Clause 65 amends existing regulation-making powers, 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>Regulations are reviewed and approved through the Cabinet process and subject to the scrutiny of the Regulations Review Committee.</p> <p>The Supplementary Order Paper includes two additional new regulation-making powers under this clause. The first power allows for limits to be prescribed on the categories of exempt persons (who may apply to import, sell, supply and possess prohibited items) that relate to controlling wild animals or pests. Under this power the animals or pests relevant to the activities of these exempt persons may also be prescribed. The second power allows for transitional matters to be dealt with where an Order in Council is made that amends the descriptions of prohibited firearm or magazine, or declares ammunition to be prohibited ammunition.</p> <p>The Supplementary Order Paper also includes a regulation-making power to apply to the amnesty period under Clause 1 of Schedule 1, by clarifying that regulations can also be created for transitional and savings matters for prohibited items.</p> <p>The Supplementary Order Paper also provides in Schedule 1 under clause 5 for the power to make regulations by Order in Council to enable compensation for the surrender of the prohibited items during the temporary amnesty period established by the Bill.</p>	

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>As noted above in question 9, the Supplementary Order Paper includes a new power in clause 66 to make regulations by Order in Council that provide for transitional and saving provisions concerning the Bill coming into force, in addition to the provisions in Schedule 1.</p> <p>The power is unusual in that it appears to overlap with the new transitional power in clause 65 (noted in question 10 above). However, the purpose of this power is to accommodate manufacturing and exporting businesses affected by the prohibitions in the Bill.</p> <p>The select committee process raised concerns that these businesses would not be able to continue to operate under the Bill as drafted. This power would allow for appropriately drafted transitional regulations to provide for these businesses to continue operating in the interim. This transitional approach will enable Police to work through feasible longer term options with each impacted business, to be considered as a part of the proposed second tranche of firearms reforms. This approach was considered the preferable option, rather than including these businesses as a further exemption category. The regulations have been amended through the Amendment Act to provide for some limited exemptions for current manufacturers of magazines and parts.</p>	