

Departmental Disclosure Statement

Arms Legislation Bill

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.

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.

13 September 2019

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Part One: General Policy Statement

This is an omnibus Bill introduced under Standing Order 263(a). The amendments in the Bill deal with an inter-related topic that can be regarded as implementing a single broad policy. That policy is to improve public safety by adjusting legislative frameworks to impose tighter controls on the use and possession of arms.

The role of the Government is to enable a regulatory regime that provides for licence holders to legitimately use firearms in their work and recreation. It is also important to put in place sufficient regulatory controls, risk management systems, and enforcement powers to give the public confidence that the Government can minimise the likelihood of misuse and consequent harm to the wider community.

The Bill—

- introduces a new purpose statement for the Arms Act 1983 (the **Act**):
- creates a registry to store information on firearms and link them to licence holders in order to keep better track of firearms throughout their life cycle:
- strengthens the licensing regimes to focus more on filtering out high-risk people and behaviour, aiming to ensure firearms remain accessible only to appropriate people acting in the interests of personal and public safety:
- strengthens the Act by improving the tools available to the Police to enable them to function better as a regulator, including a more graduated suite of interventions aimed at increasing compliance with the regime:
- introduces an advisory group with membership from the firearms and non-firearms communities:
- enables more robust and transparent information-sharing and cost-recovery regimes:
- enables the issue of further guidance on aspects of the Act through a noticemaking provision:
- strengthens regulatory oversight of the importation and sale of ammunition and blank-firing guns, advertising, and manufacturers of parts:
- provides for a review of the Act to commence 5 years after the Bill is fully in force:
- introduces new offences and penalties and strengthens existing offences and penalties:
- enables New Zealand to accede to the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (the **Firearms Protocol**):
- includes other minor and technical changes.

The majority of the provisions are intended to come into force on the day after enactment date. Some provisions are intended to be staggered (as outlined below) to give Police and other affected parties, such as businesses, sufficient time to prepare information, systems, and processes to implement the changes.

Purpose of Act

The purpose statement emphasises that the Act establishes a regulatory regime to promote the safe possession and use of firearms and other weapons and imposes controls on their possession and use. It reflects that the possession and use of arms is a privilege and that persons authorised to import, manufacture, sell, supply, possess, or use arms have a responsibility to act in the interests of personal and public safety.

Registry to store information on firearms and licence holders

Currently, there is limited knowledge of how many firearms are in New Zealand, who has them, who is selling them and to whom, and how secure they are. This situation makes it easy for firearms to be acquired by criminals, via sale or theft, who then hold them outside the regulatory system. The Bill enables the creation of a full registry to store information about licence holders, their licence details, and the firearms, registered weapons, and prohibited magazines they possess.

The Bill provides for regulations to be made for the efficient operation of the registry. This may include setting out in more detail the information that licence holders or others are required to

provide, the manner in which information will be provided, and additional requirements for those with permits relating to prohibited items, gun shows, and importation.

There are obligations on persons undertaking activities within the firearms regime to enter information into the registry.

It is intended that the majority of the provisions related to the registry will come into effect 2 years from the date of enactment or earlier by Order in Council.

Licensing system design

The most important entry point to the firearms regulatory regime is through licensing. The Bill strengthens the licensing regime to enhance public safety.

The Bill enables positive behaviours, skills, and knowledge to be indicators that a person is likely to be a fit and proper person to hold a firearms licence. It also outlines behaviours that would either disqualify someone from holding a firearms licence, or indicate that a person may not be a fit and proper person to hold a firearms licence. A person who has had a conviction for serious offending, or a final protection order made against them, would not be able to apply for or hold a licence for 10 years.

The circumstances that may indicate a person may not be a fit and proper person to possess a firearm or an airgun include having been charged with or convicted of certain offences, having had a temporary protection order against them, not complying with the provisions in the Act or regulations made under the Act, exhibiting significant mental health or substance abuse issues that might adversely affect their ability to safely possess firearms or might impair judgement or behaviour, having close associations with a gang or organised criminal group, showing concerning patterns of behaviour relating to, for example:

- hatred:
- extremism:
- being assessed as a risk to national security.

In order to ensure that a licence holder continues to be a fit and proper person to hold a licence, they will be required to inform Police if a circumstance arises where they may no longer meet the requirements.

Health practitioners will have a responsibility to consider notifying Police if, after seeing or being consulted about a patient, they consider the person should not be permitted to use or possess firearms or should only do so subject to limitations that may be warranted by their mental or physical condition. Part of this notification will include an assessment of whether they believe the person poses a risk of harm to themselves or to others. Licence holders may then be required to undergo a further medical assessment or surrender their licence. To assist with this, applicants for firearms licences must provide contact details for their health practitioner to Police.

Individual firearms licences will be issued for 5 years to enable a more regular reassessment of a licence holder's patterns of behaviour, living and security arrangements, and whether there are any circumstances that may mean they are not a fit and proper person to hold a licence. Existing licence holders on a 10-year licence will be able to see out the duration of their current licence, with some transitional arrangements for applications made since the content of the Bill was announced on 22 July 2019 and before its coming into force.

General conditions on all firearms licences will require licence holders to act in a way that does not pose a risk to themselves or others when using a firearm, and permit Police to inspect firearms and their storage and security arrangements, with Police being required to give reasonable notice of an inspection. Police will also be able to inspect the security arrangements in vehicles when firearms are in transit.

A licence will be required to possess non-prohibited magazines, parts of firearms, and ammunition.

Currently, a person who is a visitor to New Zealand who intends to reside here for less than 1 year may be granted a firearms licence with a duration of up to 1 year. Such a person will not be

able to acquire ownership of a firearm or restricted weapon that they will possess and use in New Zealand.

Before lodging an appeal to the District Court, licence holders will be able to request that the refusal of a firearms licence application or a decision to revoke a firearms licence be reviewed by a delegate of the Commissioner of Police (the **Commissioner**) who was not involved in the original decision.

It is intended that the majority of the provisions related to individual licensing will come into effect 6 months from the date of enactment.

Dealers licensing regime

The Bill broadens the activities covered by a dealer's licence to be in the business of selling, possessing, supplying, hiring, manufacturing (for which approval is required), repairing, modifying, displaying, or otherwise carrying out commercial transactions involving a class of arms items. It expands the criteria for being a fit and proper person to hold a dealer's licence (who must first have a firearms licence and therefore meet those criteria) to encompass their character and reputation and whether they have:

- the appropriate competencies and resources:
- ever been adjudicated bankrupt or been a director of a company that has been put into receivership or liquidation:
- any convictions:
- a sound knowledge of firearms, licences and the legal obligations that attach to them.

If the dealer is a senior manager of a body corporate, the body corporate must have appropriate record keeping and other systems to comply with the requirements under the Act and regulations, have suitable staff, and have appropriate control and oversight.

It is intended that the provisions related to the dealer licensing regime will come into effect 12 months after the date of enactment.

Licensing for shooting clubs and shooting ranges

The Bill provides for licensing of shooting clubs, including pistol clubs, and shooting ranges. It defines shooting clubs and shooting ranges and specifies requirements for shooting clubs to be granted a certificate of approval and for shooting ranges to be certified, both by the Commissioner.

Shooting clubs must have rules relating to the safe operation of firearms and promoting their safe possession and use, be appropriately administered, and be able to safely manage shooting activities. Shooting ranges must meet safety standards. The duty manager of a certified shooting range must have a firearms licence and be appropriately trained in shooting range management.

Police will also be able to inspect shooting clubs and shooting ranges and their documents.

It is intended that the provisions related to the licensing for shooting clubs and shooting ranges will come into effect 2 years after the date of enactment.

Acceding to United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition

The Bill contains amendments that enable New Zealand to accede to the Firearms Protocol. Those amendments include—

- a requirement that all firearms manufactured in New Zealand or imported have an identifying mark:
- new offences, which can be applied extraterritorially, relating to the illegal manufacture of arms items, the illegal trafficking of firearms, parts, and ammunition, and the falsifying, altering, or removal of firearms markings:
- a requirement that records of firearms manufactured in New Zealand be kept for at least 10 years:
- 2 technical changes to the definition section to add silencers to the definition of parts for all firearms, and to clarify that antique firearms do not include firearms manufactured after 1899:

- consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and the Extradition Act 1999 to reference the Firearms Protocol and new offences to enable New Zealand to co-operate with other State Parties under the Firearms Protocol, and the Convention (the consequential amendments would come into effect by Order in Council as these are dependent on accession to the Firearms Protocol).

In accordance with Standing Orders, all multilateral treaties must be presented to the House for parliamentary treaty examination. New Zealand completed this process in 2004. The Government intends to accede to the Firearms Protocol following passage of this Bill.

Clarifying and strengthening Act

Amendments are being made to clarify and strengthen the Act.

The Bill recognises the risk of harm to the public that can result from ready access to ammunition and strengthens the ammunition regime by requiring a permit to import any quantity of ammunition and requiring an ammunition seller to hold a current firearms licence with conditions for record-keeping.

The Bill requires a permit for importing blank-firing guns. This will enable Police to receive a sample and test it before it is imported. This is so Police can determine whether it can be readily converted to fire ammunition, therefore meeting the definition of a firearm.

In relation to the transitional provisions in the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, the Bill confirms that the exemption for existing businesses will be made permanent for manufacturing prohibited parts and allowing the use of prohibited items for testing those parts.

The Bill enables the Commissioner to issue notices that provide guidance or administrative details about any aspect of the Act or regulations made under the Act (such as security requirements, identification numbers for firearms and magazines manufactured in or imported into New Zealand, and how to demonstrate the positive behaviours, skills, and knowledge that indicate a person is fit and proper to hold a licence). The Commissioner must consult the new Firearms Advisory Group, and may consult others, before issuing a notice.

The Ministry of Foreign Affairs and Trade, the New Zealand Customs Service, and the Department of Conservation will be able to access information from the registry, to assist the agencies in performing or exercising the functions, duties, and powers of their roles. More detail setting out the manner of gaining access, the level of authority to gain access, and conditions on the use and disclosure of information will be set out in direct data access agreements that are approved by Ministers.

The Bill establishes a Firearms Advisory Group to advise the Commissioner on matters that contribute to achieving the objectives of the Act. It also provides for the Minister of Police to undertake a review of the Act when the amendment Act (this Bill once enacted) has been in force for 5 years.

The Bill clarifies that endorsements on licences that enable an individual to possess restricted weapons, pistols, and prohibited firearms last for the length of time left on the licence that is being endorsed and a new application for an endorsement must be made when an application is made for a new licence. The exception to this is wild animal recovery and pest-control endorsements, which will last for 2 years or the length of the licence, whichever is shorter.

Compliance, enforcement, offences, and penalties

The Bill provides a new tool where there are minor infringements against the Act or the Arms Regulations 1992 to enable action to be taken at an early stage. Improvement notices will be able to be issued to firearms and dealer licence holders, ammunition sellers, or shooting range operators, that will outline requirements that are not being, or unlikely to be, met. Improvement notices may include remedial steps that should be taken by a particular date. If the identified requirements in the notice are not met, that could result in the licence being revoked. Improvement notices will also be able to be given to shooting clubs and shooting ranges following an inspection.

The Bill also provides for immediate temporary suspension of a firearms or dealer's licence in certain circumstances at the commencement of a revocation process, and the potential immediate seizure of firearms and other items. There is a five year stand down period before someone can apply for a firearms licence after having had an earlier licence revoked. A shooting club or shooting range may be required to suspend its operations for failing to comply with an Improvement Notice.

The Bill updates a number of penalties in the Act to make them more fit for purpose and commensurate with the seriousness of the offending. The Bill also includes new offences related to—

- the supply of information required for the registry:
- selling or supplying ammunition without a firearms licence:
- failure to permit inspection of firearms and security:
- possession of non-prohibited parts, magazines, or ammunition without a firearms licence:
- conducting or operating an unapproved shooting range.

Clarification of fee setting powers to enable cost recovery

The Bill enables Police to recover their costs for certain activities under the Act (which does not include responding to calls for service relating to potential offending, conduct of criminal investigations, or prosecuting criminal offences). It provides for the Minister of Police to develop regulations for the charging of a fee if the proposed charge is consistent with a set of criteria and the Commissioner has consulted with affected parties. The criteria include that—

- the fee or charge is not more than the actual and reasonable costs of the activity:
- the fee is generally obtained from the users and is as far as practicable commensurate with a user's own use of the service to which the activity relates:
- the costs are efficiently incurred:
- the relationship between the costs and the nature and duration of the activity is clear.

How Act binds the Crown

The Bill changes how the Act applies to the Crown by expanding and clarifying the categories of government employees or agents who are exempted from some of the Act's provisions. The changes fall into 3 categories—

- the classes of person in the Crown's service who may lawfully import, carry, or possess firearms or other items is expanded to include visiting law enforcement officers (when approved by the Commissioner), Ministry of Defence staff (under direct supervision), people approved to provide training to Police or New Zealand Defence Force personnel, and Customs officers:
- the exemption that allows the Crown to import, possess, or manufacture firearms or parts now extends to agents acting on the Crown's behalf:
- clarifying that certain requirements in the Act do not apply to the Crown, unless regulations provide that they do.

Regulations

In addition to the new regulation-making powers outlined above, the Bill provides for a number of additional regulation making powers.

Other minor and technical changes

The Bill includes minor and technical changes to improve the operation of the Act, including changes for modernisation purposes.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	YES
<ul style="list-style-type: none"> • Review of Firearms Control in New Zealand – June 1997 (https://www.police.govt.nz/about-us/publication/review-firearms-control-new-zealand-june-1997) • Arms Amendment Bill (No 3): Report of the Law and Order Committee – 2005 (https://www.parliament.nz/resource/en-NZ/50DBSCH_SCR5371_1/9e74261def8adc1d1643094dc8f46d819e6952ad) • Inquiry into issues relating to illegal possession of firearms in New Zealand: Report of the Law and Order Committee – April 2017 (https://www.parliament.nz/en/pb/sc/make-a-submission/document/51SCLO_SCF_00DBSCH_INQ_68642_1/inquiry-into-issues-relating-to-the-illegal-possession) 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The Bill contains amendments that give effect to New Zealand being able to accede to the 2001 United Nations <i>Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition</i> (the Firearms Protocol). https://www.treaties.mfat.govt.nz/search/details/t/2759</p> <p>Amendments include:</p> <ul style="list-style-type: none"> • a requirement that all firearms manufactured in New Zealand, or imported have an identifying mark (such as a unique number) • new offences, which can be applied extraterritorially relating to: the illegal manufacture of firearms and parts; the illegal trafficking of firearms, parts and ammunition; and the falsifying, altering or removal of firearms markings • a requirement that records of firearms manufactured in New Zealand be kept for at least 10 years • two technical changes adding silencers to the definition of ‘parts’ for all firearms, and to clarify that antique firearms do not include firearms manufactured after 1899 • consequential amendments to the Mutual Assistance in Criminal Matters Act 1992 and Extradition Act 1999 to reference the Firearms Protocol and new offences to enable New Zealand to co-operate with other State Parties under the Firearms Protocol, and the Convention (consequential amendments would come into effect by Order in Council as these are dependent on accession to the Firearms Protocol). 	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
<p>The National Interest Analysis for the Protocol was prepared in 2004 by New Zealand Police. https://www.parliament.nz/en/pb/sc/reports/document/47DBSCH_SCR2875_1/protocol-against-the-illicit-manufacturing-of-and-trafficking</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Arms (Purpose, Licensing, Registry and Trading) Amendment Bill, New Zealand Police, June 2019 (https://www.police.govt.nz/arms-legislation-bill-regulatory-impact-analysis)	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
A Regulatory Impact Analysis (RIA) and a Cost Recovery Impact Statement (CRIS) for the paper <i>Strengthening the framework for the safe use and control of firearms</i> were submitted to Cabinet in June. Cross-agency Quality Assurance Panels reviewed the considered the RIA and CRIS and considered they met the quality assurance criteria.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
Stage 1 – Cost Recovery Impact Statement – Proposal to amend fee setting provision in the Arms Act 1983 (https://www.police.govt.nz/cost-recovery-impact-statement-proposal-amend-fee-setting-provision-arms-act-1983)	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Refer to pages 2-5 and 83-89 the Regulatory Impact Analysis (https://www.police.govt.nz/arms-legislation-bill-regulatory-impact-analysis)	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Compliance and the level of regulator effort are important to ensure the strengthened firearms regulatory regime functions effectively.</p> <p>For example – compliance with the firearms registry, new licensing obligations on dealers, shooting clubs and shooting ranges, and all actors in the firearms regime behaving in a way that is consistent with the new purpose statement.</p> <p>For example – regulator effort in utilising the full range of compliance tools to encourage licence holders to comply and enforce obligations, using enhanced inspection powers effectively to ensure compliance.</p>	

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?

The Bill contains amendments which, if passed, would enable New Zealand to accede to the Firearms Protocol. Becoming party to the Firearms Protocol supports New Zealand's efforts to combat transnational organised crime, and provides strong enforcement options to penalise those involved in the illegal manufacture and trafficking of firearms. It also signals New Zealand's commitment to addressing the impact that illegal arms transfers can have on regional and international security.

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

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

There are a number of new offences in the Act:

- clause 31 (new sections 22A and 22B): without reasonable excuse possessing parts, magazines or ammunition without a licence (maximum penalty \$10,000)
- clause 53 (new sections 38B and 38K): without reasonable excuse conducting or operating an unapproved shooting range or club (maximum penalty \$10,000)
- clause 70 (new section 55C): without reasonable excuse failure to permit the inspection of their firearms or where they are secured (maximum penalty \$10,000)
- clause 70 (new section 55D): illegal manufacturing of firearms or parts (maximum penalty 10 years)
- clause 70 (new section 55E): illegal trafficking of firearms, parts, or ammunition (maximum penalty 10 years)
- clause 70 (new section 55F): falsifying a firearms markings (maximum penalty 10 years)

- clause 70 (new section 55G): removing or altering firearm markings (maximum penalty 3 years)
- clause 71 (new section 58A(2)): failing to provide information without reasonable excuse to the registry (maximum penalty \$10,000)
- clause 71 (new section 58A(5)): providing false or misleading information to registry (maximum penalty \$20,000 or 2 years).

One section that has a number offences related to misuse of licences has had its mens rea (mental) elements clarified and penalties increased:

- clause 57 (section 42: with intent to deceive adds to firearms licence, alters licence in any way, lends to another person, uses the licence of another person, supplies information knowing it to be incorrect (maximum penalty \$20,000 or 2 years)).

A number of strict liability offences have had defences added (generally 'without reasonable excuse') and penalties increased:

- clause 10 (section 5(4)): dealing without a dealer's licence (maximum penalty \$10,000 or 6 months)
- clause 14 (section 10(3)): a dealer taking possession for sale of a pistol, restricted weapon, prohibited items unless in certain circumstances (maximum penalty \$10,000 or 6 months)
- clause 15 (section 11(3)): dealers or their employees or agents not having a firearms licence and selling (maximum penalty \$10,000)
- clause 16 (section 12(3)): dealer not maintaining records relating to the receipt, sale, or manufacture of firearms as required by regulations, and not producing firearms or allowing security inspections (maximum penalty \$10,000 or 6 months)
- clause 29 (section 20): in possession of firearm and not the holder of a firearms licence (maximum penalty \$15,000 or 1 year).
- clause 40 (section 28(5)): when licence revoked, for not delivering firearm, pistol or restricted weapon to Police (maximum penalty \$10,000 or 6 months)
- clause 47 (section 34(3)): the holder of a firearms licence does not inform Police in writing within 30 days of any change of address (maximum penalty \$2,000)
- clause 52 (section 38): not giving four days' notice to Police of intended removal of Pistol, prohibited firearm, prohibited magazine or restricted weapon out of New Zealand (maximum penalty \$2,000)
- clause 59 (section 43A(1)): sells by mail order a firearm or any ammunition for firearm or restricted weapon without order signed by purchaser and bearing an endorsement by Police (maximum penalty \$10,000 or 6 months)
- clause 64 (section 48): without reasonable cause discharges a firearm, airgun, pistol or restricted weapon in or near a dwelling house or public place (so as to endanger, annoy or frighten any person) (maximum penalty \$10,000 or 6 months)
- clause 66 (section 52(1)): except for lawful purpose presents a firearm, pistol, airgun or restricted weapon at any other person (maximum penalty \$10,000 or 6 months)
- clause 66 (section 52(2)): presenting an item at a person, without lawful or sufficient purpose, in circumstances in which it is likely to lead that person to believe that the item is a firearm (maximum penalty \$10,000 or 6 months)
- clause 69 (section 55B) having a dealer's licence or an endorsed licence holder fails to produce for Police, or does not permit inspection of, any pistol, restricted weapon, or prohibited firearm or magazine (maximum penalty \$10,000 or 6 months)
- clause 72 (section 59(4)): failure to comply with a notice to surrender a firearm that has not been brought up to a safe standard after a notice from police to bring it up to safe standard (maximum penalty \$10,000 or 6 months)

- clause 79 (new section 66A (old section 39)): owners of firearms not reporting the loss, theft or destruction of any of their firearms (maximum penalty \$10,000)
- clause 79 (section 66B (old section 40)): any person in possession of a firearm who refuses to give name, address or date of birth or gives false particulars to Police (maximum penalty \$10,000 or 6 months)
- clause 79 (section 66C (old section 41)): failure to surrender airguns or antique firearms (no Dealers licence or Firearms Licence) (maximum penalty \$10,000 or 6 months)
- clause 82 (section 74(1)(r)): non-compliance with any regulations, in the case where it has been identified to be an offence in the regulations to do so (maximum penalty \$2,000).

Four penalties are being decreased:

- clause 30 (section 21): possessing an airgun unless you are over 18 or between 16-18 with a firearms licence (from \$1,000 and/or 3 months to \$1,000 only)
- clause 63 (section 46): carrying an imitation firearm without a lawful, proper, and sufficient purpose (from \$4,000 and/or 2 years to \$4,000 or 1 year)
- clause 65 (section 50D): carriage or possession in public place of prohibited firearm without lawful purpose (from 7 to 5 years)
- clause 67 (section 53A(2)): possesses a prohibited firearm at the time of committing an offence punishable by imprisonment for a term up to 3 years (from 7 to 5 years).

Five offences are having their reverse onuses related to licences, permits, and conditions removed, as well as some increases to their penalties:

- clause 21 (section 16(3)): importing without permit (maximum penalty \$15,000 or 1 year) (note section 17 (burden of proof) repealed by clause 23)
- clause 31 (section 43B re-enacted as section 22C): restrictions on selling or supplying ammunition (maximum penalty \$10,000)
- clause 51 (section 36): carrying pistol or restricted weapon without authority (maximum penalty \$10,000 or 6 months)
- clause 58 (section 43): selling or supplying firearm or airgun to unlicensed person (maximum penalty \$20,000 or 2 years)
- clause 62 (section 44): selling or supplying pistol or restricted weapon to person without a permit to possess (maximum penalty \$30,000 or 3 years).

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice (Justice) was consulted about the offences and penalties during the development of the Bill. Justice considered that some of the offences and penalties are irregular and may sit outside best practice (particularly the strict liability offences attracting imprisonment, and the offences that may engage the deemed possession element in section 66). However, Justice did not oppose the proposals and noted that there are competing concerns being weighed (i.e. between operationality and any limits on rights).	

Privacy issues

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?	YES
The Bill provides for direct data access agreements to registry information for the new Zealand Customs Service, the Ministry of Foreign Affairs and Trade and the Department of Conservation. The Bill also consequentially amends the Intelligence and Security Act 2017 to enable the New Zealand Security and Intelligence Service to enter into a direct data access agreement to registry information. The Bill includes protections for any such agreements including approval by relevant Ministers, and consultation with both the advisory group and with the Privacy Commissioner.	

The Bill also contains provision for health practitioners to consider notifying Police if they have concerns about the behaviours of persons whom they know have a firearms licence.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

The Privacy Commissioner has been engaged in consultation with Police regarding the information sharing proposals, including the proposals to alert health practitioners of an individual's firearms license status and notes the significant improvements in the proposal as it has developed to this point.

External consultation

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?

YES

Police officials discussed the main proposals in the Bill with members of the Firearms Community Advisory Forum (FCAF) on 25 July 2019, and with Gun Control New Zealand. FCAF noted whether the costs of the changes for licence holders will outweigh the benefits, and what action will be taken to address unlawful firearms. FCAF expressed a willingness to engage with Police in the development of regulations such as the registry and cost recovery. There was general comfort with the approach to phasing in the five year licence term that ensures those who have a licence expiring during the period before the Bill is passed are not disadvantaged. Gun Control New Zealand has indicated support for the policy decisions giving effect to the Bill. It would like to see fees collected from licence holders ring fenced for firearms administration, to recognise the significant demand of the regulatory system on Police. It is concerned about controls over what collectors are able to collect and how these items are stored, and controls over clubs and ranges to provide health and safety and the environment.

Other testing of proposals

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?

YES

The agencies consulted on the Bill consider the provisions related to their areas of interest are workable and complete.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill 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

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>Clause 46 (new section 33C) makes the two year limit on the duration of endorsements held by pest controllers to apply retrospectively from 12 April 2019.</p> <p>Clause 9 of new Part 2 of Schedule 1 provides that existing licence holders whose licence does not expire before enactment date, but apply to renew their licence between 23 July 2019 (the date the content of the Bill was announced) and enactment date, will receive a five year licence (which will initially be a 10 year licence until the Bill is in force). Those who apply for a firearms licence for the first time after 23 July 2019 will be able to apply for a five year licence (which will also initially be a 10 year licence until the Bill is in force).</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
<p>The Bill clarifies a number of offences as being strict liability offences, adds defences to the offences (generally 'without reasonable excuse'), and increases their penalties. These are in generally identified in part 3.4 above.</p> <p>Strict liability offences are appropriate: in a regulatory context if the offence involves the protection of the public from those who voluntarily undertake risk-creating activities; when there is a need to provide an incentive for people who undertake those activities to adopt appropriate precautions to prevent breaches; and where the defendant is best placed to establish absence of fault because of matters primarily within their knowledge. The firearms offences meet the above grounds.</p> <p>The Bill decreases the penalty for an offence that has an existing reverse onus. This is section 46 (through clause 63) which provides that carrying an imitation firearm without a lawful, proper, and sufficient purpose is an offence - with a reverse onus on the defendant to prove on the balance of probabilities a lawful, proper, and sufficient purpose. This is appropriate as they are best placed to do so; however, the penalty is being decreased from 2 years to 1 year imprisonment.</p> <p>The Bill amends three sections that may in certain circumstances engage the current section 66 of the Act (these are section 20 (through clause 29 – increasing the penalty from \$1,000 and/or 3 months to \$15,000 or 1 year imprisonment), section 50D (through clause 65 – decreasing the penalty from 7 years to 5 years) and section 53A(2) (through clause 67 – also decreasing the penalty from 7 years to 5 years).</p> <p>Section 66 provides a rebuttable presumption around possession. This means when a firearm is found on land or in a building that a person is occupying, or in a vehicle that a person is driving, it is deemed to be in their possession unless they can prove on the balance of probabilities that the firearm was not their property and it was in the possession of some other person. This places a reverse onus on the defendant in these circumstances to disprove possession.</p> <p>Police considers that firearms and related items are inherently dangerous, are a privilege to possess, and any use or carriage needs to be justified, with the onus appropriately being placed in the defendant. Police consider that amending the burden may inappropriately liberalise the carriage, possession and use of firearms if in practice it becomes much more difficult for Police to disprove beyond reasonable doubt that a person did not have a lawful, sufficient, and proper purpose and/or possession.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Clause 83, new section 89(5) provides an immunity from liability in civil proceedings to the members appointed to the Commissioner's Firearms Advisory Group for good-faith actions or omissions related to their duties, functions and powers. Clause 81 (section 74 amended – Regulations) includes new section 74(1)(rb)(v) which allows for regulations to be developed on matters not inconsistent with the Act which relate to the immunity from civil liability of members of the advisory group.</p> <p>Clause 83, new section 91(5) provides that a health practitioner who acts under section 91 (Health practitioners may give Police medical reports of persons unfit to use firearm) in good faith is not liable for a criminal, civil or disciplinary proceeding by disclosing personal information.</p>	

Significant decision-making powers

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?	NO
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Powers to make delegated legislation

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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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Clause 82 amends section 74 (Regulations) to provide for new regulation making powers in relation to:

- providing criteria for finding an applicant for a firearms licence is fit and proper
- prescribing the details that persons carrying on business are required to enter into the registry relating to the sale or supply of ammunition
- prescribing the particulars of annual reports for shooting clubs
- advertising, promotion or displaying of firearms, parts, magazines or ammunition from those who sell or hire out those items
- requirements of sellers/hirers to provide information to customers
- matters related to health practitioners notifying Police
- requirements for marking firearms, parts and magazines with identifying marks
- matters for the efficient operation of the registry
- requirements for providing information to Police where there are not identifying marking requirements
- requiring specified particulars to be recorded in the registry
- matters related to operation of the Commissioner's Firearms Advisory Group
- matters relating to the review process
- providing for other persons to be authorised to carry or possess certain arms items belonging to the Crown.

Clause 83, new sections 79 - 86 provides for regulations relating to cost recovery.

Clause 17 of new part 2 of Schedule 1 provides for regulations for transitional matters.

Regulations are reviewed and approved through the Cabinet process and subject to the scrutiny of the Regulations Review Committee.

Clause 83, new section 87 provides for the Commissioner of Police to issue notices that provide guidance or details of an administrative nature in relation to certain regulations, some specified matters and generally about any aspect of the Act or regulations where the Commissioner thinks further guidance is useful.

Guidance notices must either be published in full in the *Gazette* or information included regarding where to find details of the notice.

Any other unusual provisions or features

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