

BRIEFING FOR THE MINISTER OF POLICE			
Priority	<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> Non-urgent		
	This Bill may have its first reading on 16 May 2018.		
Subject	Arms (Firearms Prohibition Orders) Amendment Bill – Member’s Bill		
Date	9 April 2018	Ref	BR/18/60

Executive summary

1. An Arms (Firearms Prohibition Orders) Amendment Bill - a Member’s Bill under the name of the Hon Paula Bennett – has been drawn from the ballot. It will be transferred to Chris Bishop as National’s Police spokesperson.
2. The Bill amends the Arms Act 1983 to:
 - a. specify that a gang member must not be issued a firearms licence;
 - b. provide for the issue of firearm prohibition orders (FPOs) by the Commissioner of Police against high-risk gang members. Anyone who is subject to an FPO must not possess a firearm, part or ammunition or be present with another person who possesses such items;
 - c. prohibit the supply of a firearm, part or ammunition to a person known to be subject to a FPO;
 - d. prohibit the person with a FPO from residing where there are firearms, parts or ammunition present; and
 - e. prohibit the person with a FPO from attending specified places where firearms are sold or used.
3. Police supports the proposal that a gang member must not be issued a firearms licence. However, the provisions in the Bill are insufficient to meet its objectives of preventing gang members from possessing firearms. The revocation powers in the principal Act are insufficient to prevent the transfer of firearms from the legal civilian armoury to the illegal armoury. Revocation needs to be supported by a power to suspend a licence and require any firearms and ammunition possessed to be immediately surrendered until the revocation process is completed.
4. [REDACTED]

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[REDACTED]
[REDACTED] Additionally there is an anomaly in the proposed penalty regime which proposes a lesser penalty for the possession of military style semi-automatics.

5. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Recommendations

Police recommends that the Minister of Police:

- a) **agree** to recommend to your Government colleagues and coalition partners that the Government opposes the Arms (Firearms Prohibition Orders) Amendment Bill at the First Reading Stage; and Yes/No

- [REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Minister's comments and signature

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Hon Stuart Nash
Minister of Police

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Arms (Firearms Prohibition Orders) Amendment Bill – Member’s Bill

Purpose

1. The Arms (Firearms Prohibition Orders) Amendment Bill – a Member’s Bill in the name of Hon Paula Bennett (to be transferred to Chris Bishop) (the Bill) – was drawn from the ballot on 3 May 2018.

Provisions - The Bill aims to restrict gang members’ possession of firearms

2. The Bill as drafted amends the Arms Act 1983 by providing that
 - i. A firearms licence must not be issued to a person who in the opinion of a commissioned officer of Police is a member of a gang or subject to a firearms prohibition order (FPO).
 - ii. A firearms licence may be revoked if the holder is, or is seeking to become, a member of a gang.
 - iii. The Commissioner of Police may make a FPO against a person if:
 - a. in the opinion of the Commissioner, it is necessary, in the public interest, to ensure that the person does not have possession of a firearm; and
 - b. the person is a member of a gang; and
 - c. the person has, within the past 10 years, been convicted of—
 - (i) an offence under the Arms Act:
 - (ii) an offence under the Domestic Violence Act 1995:
 - (iii) a serious violent offence.
 - iv. It is an offence for a person who is subject to a FPO to acquire, possess or use a firearm or part, punishable by a term of imprisonment not exceeding 14 years where the firearm is a pistol or restricted weapon, or in any other case, 5 years.
 - v. It is an offence for a person who is subject to a FPO to acquire or possess ammunition punishable to a term of imprisonment not exceeding 5 years.
 - vi. Every person commits an offence if they supply, or give possession of, a firearm, part or ammunition to another person knowing that the other person is subject to a FPO, punishable
 - a. where the firearm is a pistol or restricted weapon, by a term of imprisonment not exceeding 14 years:
 - b. in any other case, by a term of imprisonment not exceeding 5 years.
 - vii. A person who is subject to a FPO commits an offence if a firearm, part, or ammunition is kept or found on premises at which the person is residing, punishable by a term of imprisonment not exceeding 12 months.
 - viii. A person who is subject to a FPO must not, without reasonable excuse, attend or be present at—
 - a. the place of business of a licensed dealer:
 - b. a shooting range:
 - c. the premises of a firearms club.

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Membership of a firearms club is not a reasonable excuse for the purposes of this provision.

- ix. A person issued with a FPO has a right of appeal to the District Court.
- x. The Commissioner's power to make FPOs cannot be delegated.

3. The two key elements of the Bill are discussed below.

A: Gang Members/Associates are not fit and proper to hold a firearms licence.

Prohibiting the issue of firearm licences to gang members and associates would be helpful

- 4. Police can already decline an application for a firearms licence if the individual is considered not a fit and proper person and can revoke a licence on the same grounds. Police primarily uses an operational process and standards set out in the Police Arms Manual 2002 for determining whether a person is fit and proper.
- 5. Under the Manual, being a member of a gang is one of the factors Police takes into consideration when determining whether a person is fit and proper to have a firearms licence. However, courts have not always supported Police refusing to issue or renew a firearms licence to an applicant solely on the basis that they are a member of a gang¹. This means that the firearms regime is not adequately tailored to prevent gang members from getting a firearms licence even though they may be associating with others who have a history of violent offending.
- 6. Police sees advantages in providing, for the avoidance of doubt, that the Arms Act is amended to specifically allow Police to make gang membership on its own sufficient grounds to determine a person is *not* fit and proper to possess firearms. This has been included in previous advice provided to you [REDACTED]. This advice was also reflected in one of the recommendations from the Law and Order Committee *Inquiry into the illegal possession of firearms in New Zealand* (2017 Inquiry) which the previous Government supported in its Response.

But relying on the current revocation process, which only enables seizure of the licence, is insufficient

- 7. Individuals are able to acquire their licence before joining a gang or identified as a prospect and before acquiring a history of serious offending.
- 8. Once identified as an associate gang member the revocation process can commence. This is a drawn-out process and results in only the licence being revoked. Neither the Arms Act nor the proposed Bill allows Police to immediately suspend licences and to require any firearms to be surrendered. Delays in this process allows firearms to be passed to associates prior to the licence being revoked.

¹ see *Police v Cottle* [1986] 1NZLR 268; *Fewtrell v Police* 14 CRNZ 372; *Jenner v Police* [2016] NZDC 4102; *Innes v NZ Police* [2016] NZDC 4538.

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9. There is no ability in the Arms Act to seize any ammunition that may be possessed.
10. Successful revocations are generally accompanied by the person declaring that they do not possess any 'A category' firearms.
11. In its response to the 2017 Inquiry, the previous Government proposed introducing the power to suspend licences in a proposed Arms (Firearm Prohibition Orders and Firearms Licences) Amendment Bill. The New Zealand First minority view report also stated that they would support an amendment to the Arms Act to specifically prohibit gang members and their prospects from being granted a firearms licence. They also noted there were other recommendations that they would naturally support but these were not specified.
12. A Firearms Community Advisory Forum (FCAF) sub-committee supported a legislation change that would prevent gang members from obtaining a licence as did the two Ministerial advisers to Minister Bennett (one of whom is a FCAF member).
13. If the government decides to support this Bill, the weaknesses in the revocation process, the inability to suspend a licence, or require immediate surrender of firearms would need to be addressed. Without this it risks giving gangs the incentive to access firearms through identifying people who are legitimate holders of firearms licences or encouraging others, without a serious criminal history, to apply for a firearms licence.

B: Firearms Prohibition Orders (FPOs)

FPO regimes operate in some other jurisdictions

At-sentencing orders

14. Specific orders prohibiting a person from possessing firearms have been implemented in Canada and Australia. The Canadian Criminal Code requires a judge at sentencing to prohibit a person from possessing any firearm, cross-bow, prohibited or restricted weapon or device, ammunition, or explosive substance if the person has been convicted of certain offences. Discretionary weapon prohibition orders are also available to Canadian judges at sentencing. New Zealand Police has not yet considered formal evaluations of 'at sentencing' orders but understands that such orders tend to be used as preventative measures for offenders convicted of repeat illegal possession. They are not targeted on violent and high-risk offenders.

Police issued orders

15. FPOs have been introduced in Australia in New South Wales (NSW), South Australia and Tasmania. The introduction of FPOs in NSW was designed to manage the risk posed by adult gang members. The NSW Police Force position is that FPOs (with the necessary search powers) are an effective tool in combating firearms and gang-related offences.² Their view is evidenced from empirical data that shows a reduction in shootings across NSW including

² NSW Ombudsman (August 2016) *Review of police use of the firearm prohibition order search powers*, p. 104

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shootings relating to organised crime and gangs. Electronic interceptions have also indicated concern from criminal targets about the penalties and search powers associated with FPOs. NSW had served 1,317 people with an FPO as at 31 October 2015. Early evaluation of the NSW Police's use of search powers has been undertaken by the NSW Ombudsman. The Ombudsman's Report notes "that police have largely targeted the cohort of people Parliament intended when conducting searches under the FPO search powers".

The possibility of amending the Arms Act to provide for FPOs has been discussed publicly for some time

16. Police has provided advice over a number of years proposing the introduction of an FPO regime in New Zealand. The previous Government considered the introduction of FPOs, in the context of a Whole of Government Action Plan on Tackling Gangs and Transnational Crime Groups but no policy approvals were obtained [REDACTED]
17. Additionally, in its response to the FPO-related recommendation contained in the Law and Order Committee's 2017 Inquiry Report, the previous Government committed to providing for FPOs in an Arms (Firearms Prohibition Orders and Firearms Licences) Amendment Bill.

Manifesto and cross-party commitments

18. The National Party included the introduction of FPOs in its 2017 election campaign policies. FPOs were not part of the New Zealand Labour Party's 2017 Manifesto. The New Zealand Labour Party and New Zealand First Coalition Agreement included a commitment to a serious focus on combatting organised crime but no specific reference to FPOs. The Confidence and Supply Agreement between Labour and the Green Party only references United Nations' Sustainable Development Goals which include the goal to reduce violent crime (SDG 16).

Firearms community

19. The Firearms Community Advisory Forum subcommittee supported the concept of Firearms Prohibition Order but with caveats. The then Minister Bennett's special advisers noted the benefits of a FPO for Police but expressed concerns around the risk of unintended consequences for the 'fit and proper' community. Similar concerns have been voiced in the wider firearms community.

Contentious Issues

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

22. Currently, section 18(2) of the Search and Surveillance Act 2012 provides Police with the power to carry out a warrantless search of a person (and enter the place where they are) and seize firearms, if they have reasonable grounds to suspect that the person is in breach of the Arms Act. Section 18(3) provides Police with the power to carry out warrantless searches of places, and seize firearms found there, if they have reasonable grounds to suspect that there may be firearms present at the place and an Arms Act offence (such as possession of weapons without an appropriate licence) is being, has been, or is about to be committed.
23. The Member's Bill does not have any additional or modified search powers. Therefore, a Police officer will need to form reasonable grounds to suspect the person with an FPO is in breach of the Arms Act 1983 before a search could be conducted of the location where the person resides.
24. Police considers that a FPO regime that does not include enhanced search powers, means that the regime will deliver no significant enhancements to the controls over the possession of firearms already contained in the current firearms licensing regime.

25. [REDACTED]

26. [REDACTED]

The penalties proposed in the Bill draw attention to the need to review all the penalties in the Arms Act and introduce an anomaly with the treatment of military style semi-automatics

27. A penalty of up to 14 years imprisonment for possessing a pistol or restricted weapon in contravention of a FPO far exceeds other penalties in the Arms Act. You have been briefed previously on the need for a comprehensive review of all the penalties in the Arms Act [REDACTED]

28. The introduction of the proposed new penalty on its own without reviewing all the penalties will draw attention to the anomalies that already exist and the need for comprehensive review.

29. There has been a vocal call for stronger penalties from firearms lobbyists. The 2017 Inquiry included a recommendation for a review of all the penalties.

MSSAs

30. The most serious offence of possessing pistols or restricted weapons in contravention of an FPO does not include possession of MSSAs.

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31. Pistols, restricted weapons and MSSAs are all potentially serious-harm weapons if misused and therefore all have controls over their import, possession and procurement in the Arms Act. MSSAs have been the weapon of choice in recent mass shootings in the United States. A MSSA was used by Quinn Patterson when he murdered two real estate workers in Northland in 2017.
32. To the extent that penalties influence criminal offending, excluding MSSAs would encourage the possession of MSSAs over other serious-harm firearms.
33. [REDACTED]

Next steps

34. There are three options open to the Government.
 - 34.1. *Support the Bill progressing to the select committee:* This would be consistent with the previous Government's approach but would fail to take on board many of the recommendations of the 2017 Inquiry. Police does not support this approach as the Bill constitutes only partial reform of the firearms licensing system. [REDACTED]
 - 34.2. *The Government take responsibility for the Bill.* This approach has all the limitations of the first option and is therefore not recommended by Police.
 - 34.3. *The Government oppose the Bill at First Reading stage:* This would give time to:
 - A. Develop a more comprehensive amendment Bill
[REDACTED]
 - B. Progress examination of other legislative options for tackling gangs and organised crime groups.

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35. Police recommends opposing the Bill at First Reading stage.

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Mark Evans
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