



## **Submission from Gun Control NZ to the Finance and Expenditure Select Committee on the Arms Legislation Bill**

### **Who supports this submission?**

The summary of this submission is made on behalf of **x number of** people. These people have signed up to the summary submission on our website at [www.guncontrol.nz](http://www.guncontrol.nz). All of them have valid email addresses and we have separately provided a list of these people to the Select Committee secretariat to verify the number.

We also commissioned an opinion poll from UMR, which shows that 70% of Kiwis support strengthening New Zealand's existing gun laws. Only 16% of those surveyed were opposed to stronger gun laws. The full results are attached to this submission and are also available at <https://www.guncontrol.nz/media/most-new-zealanders-back-stronger-gun-laws>

### **About Gun Control NZ**

Gun Control NZ advocates for stronger gun laws to make us safer. Gun Control NZ provides a voice for the majority of New Zealanders who want change. The ban on most semi-automatic weapons was a good first step but much more needs to be done. The gun lobby is fighting hard to oppose the stronger gun laws wanted by most New Zealanders. We need to ensure they don't succeed, as they have done in the past.

We are not opposed to gun ownership. We support properly vetted people being able to own registered rifles and shotguns, so long as those guns are not semi-automatic.

Gun Control NZ is a not-for-profit organisation run by volunteers. We are not aligned with any political party or government body. The founding members have backgrounds in public health and public policy. Hera Cook is a public health researcher at the University of Otago. Nik Green started a petition to ban semi-automatic weapons. Philippa Yasbek has significant experience in regulation and legislation.

# A summary of our views on key points in the Arms Legislation Bill

## Purpose statement

We support the proposed addition of a purpose statement. The current 1983 Act lacks a purpose statement. It is important to emphasise that the purpose of the legislation is safety. It will also be useful to explicitly state that firearms ownership is a privilege and not a right.

## Creation of a register

We support the creation of a register. Registers make firearms owners more accountable for their weapons and more likely to store them appropriately. They also reduce the flow of guns to unlicensed people and have been shown to reduce firearms thefts. Registers are useful for solving crimes and are an important tool for improving the safety of police officers and other frontline workers.

## Licensing - fit and proper person test

We support the inclusion of specific factors to be considered in assessing someone's suitability for a firearms licence. The list of factors indicating that someone is not a fit and proper person should be expanded to include offences that demonstrate a reckless disregard for the safety of others. This would include offences such as drunk driving and dangerous driving.

## Licensing - length of licence period

We support shortening the licence period. People's circumstances can change significantly over 10 years. Canada and the UK both have 5 year licenses. Australian states have a range of terms depending on the firearm. Some are as short as 1 year. We recommend a 3 year license term. This was at the bottom of the range recommended by Thorp but is appropriate given the rapid changes (such as online radicalisation) that are possible in a short period of time.

## Control of ammunition sales

We support the provisions that create stronger controls on ammunition sales. Only licensed firearms owners should be allowed to purchase ammunition. Licensed firearms owners

should also only be allowed to purchase ammunition that is suitable for their registered firearms. Ammunition sales should be recorded on the register.

## A detailed analysis of the Arms Legislation Bill

We are broadly supportive of the Bill but have highlighted the following elements as worthy of further comment or discussion.

### Purpose statement (clause 5, new section 1A)

We support the proposed addition of a purpose statement. For too long, the Courts have suffered from a lack of Parliamentary guidance on the interpretation of the Arms Act. This has led to decisions that have overly privileged the interests of individual gun owners over public safety. The new purpose statement will correct that imbalance by acknowledging the responsibility that all firearms users have to ensure both personal and public safety.

We also believe that it is useful to explicitly state that firearms ownership is a privilege and not a right. The legal position is clear: in New Zealand there is no right to own a firearm<sup>1</sup>. But emphasising that the ownership and possession of firearms is a privilege, will further shift the balance towards public safety and away from the interests of individual gun owners. For too long, the law has prioritised the convenience of individual gun owners over public safety, with horrific consequences.

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**Do you have anything additional to add on the purpose statement?**

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### Registry to store information on firearms and licence holders

Establishing a register of firearms in New Zealand is a key priority for Gun Control NZ. We have undertaken an extensive literature review on the benefits of registration, which we have attached to this submission.

There is a strong case for firearms to be centrally registered to facilitate tracing the ownership of specific firearms to individuals as part of an integrated registration/licensing regime.

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<sup>1</sup> The Kiwi Party Incorporated v The Attorney General [2019] NZHC 1163 [27 May 2019]

Firearm registration serves to increase the accountability that firearm owners have for their firearms by linking firearms to licensees. There is evidence that when firearm registration is adopted as part of a comprehensive licensing regime it can have a positive impact on reducing firearm-related injuries and crime, that registration makes it more difficult for criminals to access firearms and that it may also help reduce suicide rates. International evidence also demonstrates the information from registration schemes is highly valued by police because it improves officer safety (e.g. when executing search warrants), supports criminal investigations (e.g. by tracing weapons recovered from crime scenes), and improves public safety (e.g. enabling seizure of weapons in cases of domestic violence).

Our literature review draws on lessons from overseas and notes a number of steps to minimise the establishment and operational costs of a registry, the importance of focusing on data integrity in the design of the scheme, that firearm registration needs to be modern and user friendly, and the need for supporting programmes to ensure widespread registration.

The world has certainly moved since 1983 when New Zealand decided to abandon universal firearm registration. The development of IT systems since the 1980s makes tracing firearms more efficient. Firearms registration can generate useful information for police, and there is now much clearer evidence from overseas that firearm registries are having positive effects.

Canada is the most well-known example of a highly politicised registration scheme, with the Canadian government disestablishing the registration scheme for long-guns (e.g. rifles and shotguns) in 2012 – a decision largely made on the basis of substantial cost-overruns from the project, despite a formal evaluation finding the registry was cost-effective. At the other end of the spectrum, Australian states and EU members have acknowledged the benefits from universal firearm registration schemes and are continuing to invest in improving their schemes.

The design of the register should maximise usability, minimise barriers to registration and limit potential sources of human error such as free text responses.

Paper-based forms and records should be eliminated due to the risks of duplication and human error in data transposition.

We recommend that private sales of firearms should not be allowed to continue because of the risks to data integrity in the register if both parties fail to complete the transaction. We understand that the motor vehicle registry has gaps in it where one of the parties has failed to complete their part of the online sales transaction. All sales should be recorded by a dealer or potentially an online broker.

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**Do you have anything to add on the question of registration?**

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## Licensing - general comment

No licensing system on its own can protect public safety. Licensing screens large numbers of people to try and prevent relatively rare events (homicides, suicides). It's not possible to predict ex ante who will commit crimes or suicide, we can only screen out those with obvious red flags. While there are improvements that can be made to the current system, it needs to be supported by other public safety measures such as the semi-automatic ban and registration of firearms. [More details to come with data to support the difficulties of ex ante screening]

## Licensing - fit and proper person test

We support the clause 33 (new section 22G) list of factors that would disqualify an individual from holding a firearms licence.

Clause 36 (new section 24A(1)(a)) could disqualify licence applicants who have criminal convictions overseas. An issue faced by the New Zealand Police is that they do not necessarily have the ability to obtain criminal records from overseas jurisdiction. We propose that all applicants who have lived more than 6 months in another country be required to produce a police certificate from that country. This system is used by Immigration NZ to check the criminal records of prospective immigrants.

The list of factors in clause 36, new section 24A(1) indicating that someone may not be a fit and proper person should be expanded to include convictions for offences that demonstrate a reckless disregard for the safety of others. This would include offences such as drunk driving and dangerous driving. The list in this section is not definitive of somebody's fitness to hold a licence, the final decision is still at Police discretion.

Some elements of the factors in clause 26, new section 24A(1) should be shifted to the new section 22G. They are factors that should automatically disqualify an individual from holding a firearms licence, rather than being discretionary factors. In particular, automatic disqualification should apply to anyone in the following circumstances:

(i) the applicant is a member of a gang or an organised criminal group: (those with close affiliations should remain in the discretionary category of section 24A(1)

(j) the applicant has convictions for behaviour demonstrating the exhibition, encouragement, or promotion of violence, or hatred, or extremism: (those who have just shown general tendencies in this direction should be considered under the discretionary category of section 24A(1).

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**What are your views on the fit and proper person test?**

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## Licensing - length of licence period (clause 37, amendment of section 25)

We support shortening the licence period from 10 years to 5. A person's circumstances can change significantly over 10 years. There are also practical issues with a longer licence period such as changes of address or the death of the licence holder. New Zealanders have some of the highest rates of moving house in the developed world. Moving house is not just about a change of address: it means a change in storage arrangements. Canada and the UK both have 5 year licenses. Australian states have a range of terms depending on the firearm. Some are as short as 1 year.

It is worth quoting at length from the Regulatory Impact Statement attached to this Bill (highlights are ours):

Fifty percent of first time licence applicants are aged between 16 and 30 years of age. Twenty-two percent of these are in the 16-19 year age range. The next fit and proper assessment will be held when the age range of these people is 26 to 40 years. It can be expected that the circumstances of these applicants will have changed significantly in terms of residence, income security, financial obligations, relationships, marital status and family obligations. Some of these changes may have impacted on their fit and proper status.

Data shows that, of those aged 16-19 when first issued a firearms licence, thirty-one percent had been convicted of an offence by the time they reach 20 years of age. **By the time licence holders reach the age of 30 years, forty-five percent have been convicted of an offence.** These convictions are predominantly driving convictions with the largest proportion alcohol related driving offences. The two next biggest groups are drugs and anti-social behaviour, followed by violence related convictions.

This data shows that young firearms licence holders are more prone to criminal activity than the rest of the population. So much for the gun lobby claim that licence holders are law abiding and the problems are all with criminals. It turns out that many licence holders are criminals. At the very least, licence holders under the age of 30 should be vetted every 3 years. We know that criminal offending is much more common in young people: people tend to age out of crime. We now also know that young firearms licence holders are much more likely than the general population to be committing offences. Unfortunately many of these offences are related to factors, such as drugs, alcohol and violence, which indicate their unsuitability to have a firearms licence.

Given this data, we would recommend that a higher minimum age is established for holding a firearms licence.

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**What are your views on the length of the licence term and minimum age for holding a licence.**

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## Licensing - health practitioner notification

We are supportive of the new section 91 that would require health practitioners to consider notifying the Police if they believe that someone is unsuitable to hold a firearms licence.

This provision is less stringent than section 18 of the Land Transport Act 1998. Section 18 requires medical practitioners to inform the land transport authorities if in their opinion any of their patients should not be allowed to drive a motor vehicle. The provision in this Bill only requires that health practitioners consider notifying the Police of a person's suitability to hold a firearms licence. On a per use basis, guns are much more dangerous than cars. This would justify amending the proposed section 91 to require reporting, not just to consider reporting.

On the other hand, perpetrators of gun violence are frequently stigmatised as mentally ill, even when they have no underlying mental health issues. For crimes such as homicide, only a small percentage of offences are carried out by those suffering from serious mental illness:

"Results indicate that homicide [by those with serious mental illness] comprised 8.7% of all homicides in New Zealand over the study period. Psychotic illness is present more often than expected on a population rate basis, confirming that homicide is a rare but recognised complication of serious mental illness.

Across the period studied, homicide [by those with serious mental illness] has fallen as a proportion of total homicide from approximately 19% in 1970 to 4% in 2000, or an annual reduction of 4.2%.

The absolute numbers of homicide [by those with serious mental illness] each year have remained static over the period 1970-2000.

Of those with serious mental illness who committed homicide, 28.6% had no prior contact with mental health services, and 10.3% had been admitted within the month preceding the homicide."<sup>2</sup>

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<sup>2</sup> Simpson, A. I. F., McKenna, B., Moskowitz, A., *et al* (2003) *Myth and Reality: The Relationship Between Mental Illness and Homicide in New Zealand*. Auckland: Health Research Council of New Zealand. Accessed at: [https://s3.amazonaws.com/academia.edu.documents/39949211/Myth\\_and\\_Reality\\_The\\_relationship\\_between20151112-19172-20174y.pdf?response-content-disposition=inline%3B%20filename%3DMyth\\_and\\_Reality\\_The\\_relationship\\_between.pdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIWOWYYGZ2Y53UL3A%2F20190927%2Fus-east-1%2Fs3%2Faws4\\_request&X-Amz-Date=20190927T232505Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=14256b5949f2fa3c5c0402b0598544f86c629d9ca603b01fdc020f18c7978f03](https://s3.amazonaws.com/academia.edu.documents/39949211/Myth_and_Reality_The_relationship_between20151112-19172-20174y.pdf?response-content-disposition=inline%3B%20filename%3DMyth_and_Reality_The_relationship_between.pdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIWOWYYGZ2Y53UL3A%2F20190927%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20190927T232505Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=14256b5949f2fa3c5c0402b0598544f86c629d9ca603b01fdc020f18c7978f03)

We also recognise that the demographic of firearms license holders (older men) are some of the least likely to acknowledge and seek professional help for mental health problems.

Thorp<sup>3</sup> also considered this question in some depth and sought the views of different medical practitioners and health policy groups. There was no consensus amongst those he consulted but this Bill implements Thorp's recommendations of voluntary disclosure by health practitioners.

We note that section 19 of the Land Transport Act 1998 enables the suspension of the driver's licences of those subject to Compulsory Treatment Orders under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Thorp recommended that the Police should be notified of Compulsory Treatment Orders for the purposes of suspending the subject's firearms licences. We recommend that the Select Committee consider implementing Thorp's recommendation on this issue.

We are unsure how appropriate it is for clause 34 (new section 23(2A)) to require that a licence applicant give details of their health practitioner to Police. Nothing in the Bill enables the Police to seek information directly from the health practitioner so it is unclear what the purpose of this clause is. If the Police have concerns about the health of an applicant, it would be more appropriate for there to be provision for the Police to require the applicant to produce a health certificate from a medical practitioner.

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**What are your views on the health practitioner notification?**

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## Licensing - inspection of security arrangements (new section 24B(2)(a))

We would support the Police undertaking unannounced inspections of security arrangements (at a reasonable hour). A Police analysis of firearms thefts has identified that in nearly two-thirds (62%) of the cases for which there was information, the owner had not conformed to security requirements and a third (32%) were stolen from unattended vehicles, some with keys left inside the car. Unannounced inspections create a genuine risk of detection of non-compliance. The possibility of unannounced inspections is likely to increase owners compliance with security requirements.

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**What are your views on the inspection of security arrangements?**

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<sup>3</sup> Review of Firearms Control in New Zealand: Report of an Independent Inquiry Commissioned by the Minister of Police. June 1997

## Control of ammunition sales

We support the provisions that create stronger controls on ammunition. Controls on ammunition make it more difficult for the owners of illicit firearms to obtain ammunition. Only licensed firearms owners should be allowed to purchase ammunition. We strongly support the new section 22B restricting the possession of ammunition.

We also recommend a new provision which only enables licensed firearms owners to purchase ammunition that is suitable for their registered firearms. This creates a strong incentive to register all firearms.

Ammunition sales should be recorded on the register. This would both ensure that the ammunition is only sold to those with registered weapons that require that calibre of ammunition. It would also enable the Police to detect any suspicious patterns of ammunition purchases that warrant further investigation. This requirement could be added to the new section 93(1)

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**What are your views on the control of ammunition sales?**

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## Dealers licensing regime (new Part 2)

The Regulatory Impact Statement highlights a number of problems with the current dealer licensing regime. In particular, the Police appear to have found it very difficult to revoke dealer licences in all but the most egregious cases. Examples of clearly unsuitable dealers include:

- In 2016, a dealer's licence was revoked after the licence holder was found to own 172 cannabis plants, be in possession of cocaine and possessing a 0.22 rifle that was insecure and not stored in a manner compliant with the Arms Regulations.
- A dealer had their licence revoked after being sentenced to 4 years imprisonment for 17 charges of GST fraud.
- Other revocations have included where dealers were convicted of firearms offences, possession of banned substances, or for temporary protection orders (ie family violence).

Given the standard for dealers has been “excellent character” there are clearly some shortcomings in the regulatory regime if dealers are committing such serious offences before their licences are revoked.

We strongly support the improvements to the dealers licensing regime. In particular, it's important that there are greater regulatory obligations on gunsmiths. Currently, they are more lightly regulated than secondhand dealers and pawnbrokers. Given their ability to manufacture and modify firearms, it is important that they are properly regulated.

We recommend that if a body corporate is engaged in the dealing of firearms (via a senior manager with a dealers licence), then the directors or officers of that body corporate must also hold a firearms licence. This new provision would mirror clause 15 (new section 11) which requires that the employees of a licensed dealer cannot undertake any dealer activity without a firearms licence. The senior manager of a body corporate is accountable to the directors or officers for their dealing (and other business) activity and so it is important that those directors or officers are also judged to be fit and proper people.

We also recommend that the shareholders of a body corporate that deals in firearms should have to hold a firearms licence.

These provisions for directors and owners would ensure that someone who is disqualified from holding a dealers licence is unable to continue in the trade via a body corporate. It would also ensure that a body corporate with a firearms dealing business is not subject to the control or influence of unfit or improper people.

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**What are your views on the licencing of dealers?**

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## Record keeping

Clause 16 (new section 12) requires dealers to record information about their transactions and to store that information for at least 10 years. They are exempted from recording that information if it is provided to the Police for inclusion in the registry. We recommend that dealers should be required to load that information into the registry and not keep separate records. The value of the registry is undermined if it doesn't include all available information. Obviously, records need to be kept separately in the transition period before the registry is established.

The new section 22D requires ammunition sellers to keep records of ammunition sales. These records should also be included in the registry (see discussion above on ammunition sales).

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**What are your views on record keeping?**

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

Gun Control NZ supports acceding to United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The Protocol is a legally binding instrument to counter the illicit manufacturing of and trafficking in firearms at the global level. It forms part of global efforts to combat trans-national crime and terrorism.

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**What are your views on acceding to the UN protocol?**

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## Blank firing guns

We support the closing of the loophole around the importation of blank firing guns. Unethical dealers have been importing blank firing guns which can be easily converted to fire live ammunition.

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**What are your views on blank firing guns?**

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## Data sharing (new Part 7)

We support the provisions enabling data sharing between DOC, MFAT, Customs and Police on firearms. These measures are necessary to create a consistent, coherent and effective regulatory regimes for firearms.

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**Do you have any views on data sharing?**

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## Cost recovery (clause 83, new sections 79-85)

The amendments update the fees setting and cost recovery powers in the Act. While this is not an issue for the legislative design, we wish to reiterate our view that there should be full

cost recovery for the licencing system. We think that the cost of the register should be made free or very low cost for users to encourage maximum compliance. We think it's appropriate for taxpayers to subsidise this cost, given the large public benefits from the system. We also note that the marginal cost of licencing is high (ie each individual choosing to be vetted imposes not insubstantial additional costs, whereas the marginal cost of registration is low (ie there is a substantial fixed cost for the IT system, but the additional cost of registering a weapon is relatively low). It is most appropriate to fully cost recover where the marginal cost is high.

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**Do you have any views on cost recovery?**

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## Firearms Advisory Group (new section 88)

We support the Firearms Advisory Group including representatives of the non firearms-owning community.

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**Do you have any views on the Firearms Advisory Group**

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## Review of Act (new section 95)

We support a review of the Act after 5 years of operation to identify ways in which it can be improved.

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**Do you have any views on the review of the Act?**

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## Shooting clubs and shooting ranges (new Part 6)

We support the regulation of shooting clubs and shooting ranges from a public safety perspective. The emergence of activities such as long range shooting (the target is anywhere from 600 to 1800 metres from the shooter) create different risks to public safety. Shooting ranges also create public health risks by exposing shooters (and those who maintain the range) to lead as well as environmental risks from lead accumulation. We recommend that the Commissioner should also consider the risks from lead exposure and accumulation when approving shooting clubs.

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**Do you have any views on the regulation of shooting clubs and ranges?**

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## Advertising (new sections 74(1)(ja))

We support restrictions on the advertising of firearms. Advertising restrictions are a commonly used public health tool to restrict the glamourisation of harmful things such as cigarettes and alcohol.

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**What are your views on the advertising restrictions?**

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## Comment on National Party proposals

We also provide some comments below on the National party's 13 demands, if the subject is not already addressed above.

### Firearms Protection Orders

Firearms Protection Orders are based on a similar provision in the Victorian law. However, they appear to have been imported completely by the National party without consideration of the context of other provisions in the Arms Act 1983.

Despite their claims, as currently drafted, the Firearms Protection Orders (FPO) in the National party bill are not automatic: they are at the discretion of the Police Commissioner. Individuals can already have their licences revoked for serious offences. The extra measure that FPOs would create is the ability to ban particular individuals from living in a house where firearms are stored or being on the premises of a gun dealer or shooting range. The FPOs would also be limited to gang members.

In our view, it could be useful for any individual who has their firearms licences revoked, to also be banned from living in a house where firearms are stored or visiting dealers or shooting ranges. These extra prohibitions shouldn't be limited to gang members though. They could provide an extra layer of protection in cases of domestic violence or where one family member is considered unsuitable for a firearms licence but still accesses the firearms of others in the family (which was the case with the Raurimu massacre).

We have not yet examined the interaction between FPOs and search and surveillance powers (these are not mentioned in the National Party Bill).

## Regulation Making Powers from Tranche One

This is a technical law-making issue, rather than a policy one. We would defer to those with superior legal expertise such as the Law Society or the Bar Association.

## Exemptions for Sports Shooting

The Regulatory Impact Statement analyses this issue in some depth. Our main comment is that the shooters affected by these changes do not compete in the Olympics or Commonwealth Games. They are generally practitioners of Practical Shooting. The sport of Practical Shooting originated from competitions in California in the 1950s with the goal of developing handgun skills for defensive use. Many of the competitions involve moving through fake houses and shooting at targets based on human dimensions. We do not support exemptions for Practical Shooting sub-disciplines that require the use of banned semi-automatic firearms. Not all Practical Shooting sub-disciplines are affected by the semi-automatic weapon ban.

## Pest Control Exemptions

The pest control exemptions in the current legislation have not yet been implemented. In our view, the 5 year review of the legislation will be the right time to assess the impact on pest numbers and pest control costs.

## Collector Exemptions

We are concerned that the collector exemption is too weak and creates a number of risks to public safety. In our view, all semi-automatic weapons held by collectors should be permanently disabled as they are in Australia.

There have been some serious crimes committed by collectors in the past: During the Napier siege, one Police officer was shot dead, and two were seriously injured, as well as a neighbour. The perpetrator was a gun collector whose licence had lapsed. The double murder of the Thomases in Wellington was also perpetrated by a collector.

People who continue to own prohibited semi-automatics (but have a collector or memento exemption) are required to remove a "vital part" of the gun to make it inoperable. The vital part has to be stored at a separate address. If the vital part is a firing pin, these can easily be bought online (and are unlikely to be picked up by Customs because they don't look different to other non-gun hardware) or manufactured.

## Banning visitors from purchasing firearms

As currently worded, we do not understand the proposal.

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**Do you have any views on the National Party proposals?**

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