

## **ARMS AMENDMENT BILL**

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AS REPORTED FROM THE FOREIGN AFFAIRS, DEFENCE  
AND TRADE COMMITTEE

### **COMMENTARY**

#### **Recommendation**

The Foreign Affairs, Defence and Trade Committee has examined the Arms Amendment Bill and recommends that it be passed with the amendments shown in the bill.

#### **Conduct of the examination**

The Arms Amendment Bill was referred to the Foreign Affairs, Defence and Trade Committee on 24 November 1998. The closing date for submissions was 31 January 1999. We received and considered 12 submissions from interested groups and individuals. We heard five submissions orally. We spent one hour and 38 minutes hearing evidence and consideration took two hours and 26 minutes. We received advice from the New Zealand Police (the Police).

This commentary sets out the details of our consideration of the bill.

#### **Purpose of the bill**

The bill amends the Arms Act 1983 for the purpose of permitting personal protection officers (PPOs) of foreign Heads of State and other dignitaries visiting New Zealand to carry firearms and other weapons in New Zealand, subject to both the written approval of the Commissioner of Police and to whatever conditions he considers appropriate to impose. The Arms Act 1983 does not allow foreign PPOs to carry weapons in New Zealand, for personal protection purposes, under any circumstances.

The powers conferred by this bill are intended to be available only while the APEC meetings are being held in New Zealand in 1999. It is expected that some of the world's most prominent leaders will be attending the APEC meetings and the Government believes it is essential that security measures against potential terrorist threats are in place to protect these people. The Government knows that many foreign dignitaries, when travelling abroad, expect to be protected by both the Police of the country they are visiting and their own PPOs. In many countries

PPOs carry firearms. The Government is accordingly aware that although the Police will be primarily responsible for the security of foreign dignitaries and will provide a very high degree of protection, some dignitaries might be reluctant to attend the APEC meetings if their PPOs are not able to carry weapons.

## **Issues raised in submissions**

### **Opposition to the bill**

All twelve submissions were opposed to the bill. However, two submissions qualified their opposition to the bill stating that this approach was preferable to the Police turning a 'blind eye' or giving a blanket exemption to foreign PPOs carrying firearms during the APEC meetings.

### **Carriage and importation**

Most of the submissioners were concerned that the bill will enable the foreign PPOs to carry any type of firearms including restricted weapons. There is, however, a significant limitation on the apparent breadth of the bill. That limitation is that the Commissioner of Police will decide what weapons a foreign PPO may carry. Those weapons will be itemised on the authority and the permit to import issued by the Commissioner of Police.

We agree with the Commissioner of Police that he needs to have the discretion to decide what weapons foreign PPOs may import and carry. The Commissioner of Police will decide in each case what those weapons will be. A high degree of threat may justify the carrying of restricted weapons.

As well as determining the type of firearms and ammunition, the Police will determine the number of firearms that foreign PPOs will be able to import and carry. The details of the firearms, including the serial number, and the ammunition will be recorded and all the weapons will be checked into and out of New Zealand.

We support these provisions because we believe the bill provides a greater degree of transparency in that the Police will know exactly what firearms are being carried and by whom. The Police will have the primary responsibility for protecting visiting dignitaries and will be able to integrate foreign PPOs into their security plans.

### **Accountability and attributes of the foreign personal protection officers**

Six of the submissions expressed concern that the foreign PPOs would not be accountable for their actions while in New Zealand. There was also concern amongst several of the submissioners that it would be difficult for the Police to assess that a foreign PPO is "well-trained and competent and is a fit and proper person to discharge the duties. . ." (clause 2, section 65D 1 (b)).

The Police have assured us they will remain in charge of overall security. All dignitaries and their PPOs will be accompanied by the Police PPOs and be subject to their direction. In the event of any threat to a dignitary, it will be the role of the foreign PPO to protect and escort the dignitary away from the threat. It will be the role of the Police to respond directly to the threat in question. Moreover, while in New Zealand, the foreign PPOs will be subject to New Zealand law and they will not be afforded diplomatic immunity. The Police will brief the foreign PPOs on the relevant New Zealand law and the Police policy and procedures in respect of the carriage and use of firearms.

The Police, in order to verify the competency and attributes of the foreign PPOs, will have regard to personal files, work records and their experience as a PPO and

any other available information. The Police will also require that the foreign PPO speaks fluent English.

The Commissioner of Police assured us that he will be applying the same criteria to every country in considering and deciding on applications for authorities for foreign PPOs.

## **Proposed amendments**

### **Clause 2 (section 65E)—Conditions of written authority or written permit**

We recommend the addition of “or storage” to the conditions listed in the proposed section 65E (2) of the Arms Act 1983. This will allow the Commissioner of Police to impose conditions of storage in a written authority or permit for situations when the firearm is not being carried on duty.

### **Clause 2 (section 65EA)—Inspections**

We recommend a new section 65EA be added. The new section will enable the Commissioner of Police or any other member of the Police authorised in writing by the Commissioner to require the foreign PPOs to produce their weapons and ammunition to the Police for inspection. The section will ensure that the Police can check that the foreign PPOs are complying with the conditions of their authorities and permits.

Consequential amendments to the new section 65B (3) and the new section 65E (2) result from the addition of this new proposed section to the Arms Act.

### **Clause 2 (section 65C)—Expiry of sections 65A to 65F**

We agree with four of the submissioners who queried the necessity for the provisions of the bill to extend to 31 December 1999. The powers conferred by this bill are intended to be available only while foreign dignitaries are visiting New Zealand during September 1999 and therefore we recommend that the proposed new sections 65A to 65F to the Arms Act expire with the close of 30 September 1999.

## **Conclusion**

We reiterate that the purpose of this bill is to ensure the safety of visiting Heads of State and dignitaries while attending APEC meetings in New Zealand in September 1999. The hosting of the APEC summit is an unprecedented event for New Zealand and requires a level of security greater than that which has had to be provided here before. It is not the purpose of the bill to be used as a tool for limiting the rights of New Zealanders to lawful protest during the APEC meetings. Rather, the process by which foreign PPOs may bring firearms into New Zealand is now more strictly controlled by the Police than ever before. We commend this bill with the proposed amendments to the House.

## **Alliance minority view**

This bill, if enacted, erodes the established law, and the public policy behind that law, that foreigners who enter New Zealand will not be permitted to carry guns for the purpose of protecting themselves or other persons. Under the current law such armed protection if deemed necessary would be provided by members of the New Zealand Police or the New Zealand Armed Forces.

However, the attendance at APEC, in early September 1999, of up to 21 Heads of State or prime ministers has been presented by the Government as necessitating an amendment to the Arms Act to allow foreign personal protection officers

(PPOs) to carry firearms. In the view of the Alliance, this follows pressure from the United States and probably other countries.

From Government statements, in the view of the Alliance, the public believe that:

1. Only a few Heads of State or prime ministers of the 21 countries will be allowed to have PPOs with their own firearms;
2. That permission to carry arms will be in place for only the small length of time that the Heads of State and prime ministers are in New Zealand in early September;
3. That PPOs will only carry small sidearms with limited firepower.

In the view of the Alliance however, the bill does not meet the public expectation.

### **Who qualifies for protection?**

“Protected persons” in this bill in clause 2 (section 65A) includes “internationally protected persons” within the meaning of the Crimes (Internationally Protected Persons and Hostages) Act 1980. That term covers not just Heads of State but ministers and officials of foreign countries. “Protected person” includes, in addition, any other person whom the Commissioner of Police considers warrants protection by a foreign PPO. So the net is far wider than the public expected, and in the view of the Alliance, wider than Parliament expected, would be the case.

### **What type of guns?**

The public are expecting that for a few days PPOs will be entitled to carry small sidearms. In the view of the Alliance their expectations will not be met. Clause 2 (section 65B) allows for a wide variety of arms to be carried by PPOs. These include “restricted weapons” which can be anything from machine guns and machine pistols to rocket launchers. Up to 21 delegations will be able to apply for permission to carry restricted weapons.

### **The role of the Commissioner**

The Commissioner of Police, per clause 2 (section 65D) “may issue a written authority under section 65B (1)”. It is already clear from Government statements that United States’ PPOs wish to be issued with permits and that this will happen. So much for the Government subjecting the United States to the “strict” tests under the legislation. It is clear that there are similar expectations from other APEC countries.

Under subsection (1) (b) of the same section, the Commissioner must decide if the PPO is “a fit and proper person” to be able to carry arms.

In the view of the Alliance, how the resources are to be marshalled to determine this vital question for so many delegations has not been satisfactorily answered. The language barrier alone with many delegations will be a problem apart from the inability to thoroughly check the character of the applicant. What member of the Indonesian security apparatus can be approved as a “fit and proper person” given the appalling human rights record of the entire Indonesian security apparatus?

### **Checking the gun carriers**

Part of the promotion of this amendment has been the contention that the New Zealand Police and Armed Forces can not adequately protect the important visitors. The Alliance does not accept that. But with the granting of permission to carry firearms for potentially hundreds of foreign PPOs and the possibility of incidents involving New Zealand citizens, the Police will have their work cut out advising and checking on these PPOs to see that they are conforming with New Zealand law and policies. If the Police fail to carry out that task, they will be in

breach of their duties. In order not to be in breach, that will require an enormous concentration of Police resources in order to safeguard the interests of the public.

#### **Duration of the legislation**

Originally, the bill was to expire on 31 December 1999. In the view of the Alliance, that was a clear indication that the measures were not just for the "unusual" situation of having so many world leaders in New Zealand at one time. We have had CHOGM. So it is not that unusual. Clearly most world leaders are not able to spend that length of time in New Zealand. Thus, it follows that a far greater erosion of present law was intended than the arming for a few days of PPOs of world leaders. Now the majority of the committee has agreed that the legislation will expire at the end of September 1999.

Most world leaders will have left New Zealand well before the end of September 1999.

#### **Conclusion**

The New Zealand Police and Armed Forces could adequately carry out the task of protecting the APEC leaders. In the view of the Alliance, the pressure to erode our legislation and public policy on the carriage of arms comes from foreign governments, in particular the United States. The Government has failed to withstand that pressure. The Alliance believes that is a serious erosion of our sovereignty. Furthermore, the amendment is not the restricted legislation that the public expects.

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## KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

*New (Majority)*

┌  
Subject to this Act,  
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Text inserted by a majority

<*Subject to this Act,*>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

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*Hon Clem Simich*

## ARMS AMENDMENT

### ANALYSIS

Title	
1. Short Title and commencement	
2. New heading and sections inserted	
<i>Foreign Personal Protection Officers</i>	
65A. Interpretation	65C. Power to permit temporary importation of firearms, etc, by foreign personal protection officer
65B. Power to authorise foreign personal protection officer to carry and have possession of firearms, etc	65D. Grounds for issue of written authority or written permit
	65E. Conditions of written authority or written permit
	65EA. Inspections
	65F. Power to revoke
	65G. Expiry of sections 65A to 65F

### A BILL INTITULED

#### **An Act to amend the Arms Act 1983**

BE IT ENACTED by the Parliament of New Zealand as follows:

5     **1. Short Title and commencement**—(1) This Act may be cited as the Arms Amendment Act 1998, and is part of the Arms Act 1983\* (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

10     **2. New heading and sections inserted**—The principal Act is amended by inserting, after section 65, the following heading and sections:

*“Foreign Personal Protection Officers*

15     **“65A. Interpretation**—In this section, and in sections 65B to 65F,—

**“‘Foreign personal protection officer’** means any person employed by a foreign government or international organisation to protect a protected person:

\*1983, No. 44

Amendments: 1985, No. 5; 1987, No. 166; 1992, No. 95

“ ‘International organisation’ means any organisation of States or Governments of States or any organ or agency of any such organisation; and includes the Commonwealth Secretariat:

“ ‘Protected person’ means— 5

“(a) An internationally protected person within the meaning of the Crimes (**Internationally Protected Persons and Hostages**) Act 1980:

“(b) Any other person whom the Commissioner considers warrants protection by a foreign personal protection officer. 10

“65B. **Power to authorise foreign personal protection officer to carry and have possession of firearms, etc—**

(1) Notwithstanding anything in this Act, the Commissioner may issue to any foreign personal protection officer a written authority authorising the officer, when acting in the course of his or her duties as a foreign personal protection officer, to carry or have in his or her possession in New Zealand, while that written authority is in force, such firearms, airguns, pistols, and restricted weapons, and such quantities and types of ammunition as are specified in that written authority. 15 20

“(2) Nothing in this Act renders unlawful the carriage or possession of firearms, airguns, pistols, restricted weapons, or ammunition by any foreign personal protection officer in accordance with the terms and conditions of a written authority issued to that officer under **subsection (1)**. 25

“(3) Every written authority issued under **subsection (1)** must state—

“(a) The full name of the foreign personal protection officer to whom it is issued: 30

“(b) The name of the foreign government or international organisation by which the foreign personal protection officer is employed:

“(c) The name of the protected person who is being protected by the foreign personal protection officer: 35

“(d) The date on which the written authority is issued:

“(e) The date on which, unless sooner revoked under **section 65F**, the written authority expires (which date is a date specified in the written authority as the date on which it expires or any earlier date on which the person to whom the written authority is issued leaves New Zealand): 40

“(f) Particulars of the number and type of firearms, airguns, pistols, restricted weapons, or ammunition that the

foreign personal protection officer may carry or have in his or her possession by virtue of the written authority:

5 “(g) The condition specified in **section 65E (1)** and any other conditions imposed by the Commissioner under **section 65E (2)**:

*New (Majority)*

“(h) The condition specified in **section 65EA (2)**.

10 “(4) Where the foreign personal protection officer is or may be 1 of a number of foreign personal protection officers deployed at the same time to protect any protected person, a written authority issued under **subsection (1)** may state the total number of firearms or the total number of any type of firearms or both that may, by virtue of that authority, be deployed by  
15 all of the foreign personal protection officers on any shift.

**“65C. Power to permit temporary importation of firearms, etc, by foreign personal protection officer—**

(1) Notwithstanding anything in this Act, the Commissioner may issue to any foreign personal protection officer a written  
20 permit permitting the officer to import into New Zealand for use—

“(a) By the officer in the course of his or her duties as a foreign personal protection officer; or

25 “(b) By the officer and other foreign personal protection officers in the course of their duties as foreign personal protection officers,—

such firearms, airguns, pistols, and restricted weapons and such quantities and types of ammunition as are specified in the written permit.

30 “(2) Nothing in this Act renders unlawful the importation into New Zealand of any firearms, airguns, pistols, restricted weapons, or ammunition by any foreign personal protection officer in accordance with the terms and conditions of a written permit issued to that officer under **subsection (1)**.

35 “(3) Every written permit issued under **subsection (1)** must state—

“(a) The particulars specified in **paragraphs (a) to (c) of section 65B (3)**:

40 “(b) The full name of each foreign personal protection officer who may, while holding a written authority under **section 65B (1)**, carry or have in his or her possession the firearms, airguns, pistols, restricted weapons, or

ammunition to which the permit relates or any of them:

“(c) The date on which the written permit is issued:

“(d) The date on which the written permit, unless sooner revoked under **section 65F**, expires (which date is a date specified in the written permit as the date on which it expires or any earlier date on which the person to whom the written permit is issued leaves New Zealand): 5

“(e) Particulars of the number and type of firearms, airguns, pistols, and restricted weapons and the quantity and types of ammunition that may be imported into New Zealand under the authority of the written permit: 10

“(f) The condition specified in **subsection (4)**: 15

“(g) The condition specified in **section 65E (1)** and any other conditions imposed by the Commissioner under **section 65E (2)**.

“(4) Every written permit issued under **subsection (1)** is subject to the condition that the foreign personal protection officer to whom it is issued remove from New Zealand, before the permit expires, the firearms, airguns, pistols, restricted weapons, and ammunition to which the permit relates. 20

“(5) Where any foreign personal protection officer has in his or her possession on his or her arrival in New Zealand any firearms, airguns, pistols, restricted weapons, or ammunition, he or she must produce or declare them to the New Zealand Customs Service or the Police. 25

“(6) Unless the importation of the items produced or declared under **subsection (5)** is authorised by a permit under **subsection (1)** or any other provision of this Act or any provision of any other Act, any Customs officer or member of the Police may seize the items so produced or declared. 30

“(7) Any items seized under **subsection (6)** must be returned to the foreign personal protection officer on his or her departure from New Zealand. 35

“**65D. Grounds for issue of written authority or written permit**—(1) The Commissioner may issue a written authority under **section 65B (1)** or a written permit under **section 65C (1)** to any foreign personal protection officer on being satisfied (on the basis of such assurances or evidence or both as the Commissioner considers, in his or her discretion, to be sufficient) that— 40

“(a) The protected person whom the foreign personal protection officer is employed to protect will be visiting New Zealand; and

5 “(b) The foreign personal protection officer is well-trained and competent and is a fit and proper person to discharge the duties of a foreign personal protection officer.

“(2) The Commissioner must,—

10 “(a) In deciding under **subsection (1)** whether to issue a written authority or a written permit; and

“(b) In deciding under **section 65E (2)** what conditions to impose as conditions of any written authority or written permit,—

15 take account of the extent of the special protection that, in the Commissioner’s opinion, is required to protect the protected person.

“**65E. Conditions of written authority or written permit**—(1) It is a condition of every written authority issued under **section 65B (1)** and of every written permit issued under **section 65C (1)** that the foreign personal protection officer to whom it is issued produce that written authority or written permit for inspection whenever required to do so by any member of the Police.

25 “(2) The Commissioner may impose, as conditions of a written authority issued under **section 65B (1)** or as conditions of a written permit issued under **section 65C (1)**, such conditions with regard to the carriage or possession ~~or storage~~ or importation of the firearms, airguns, pistols, restricted weapons, or ammunition to which the written authority or  
30 written permit relates (being conditions additional to the condition specified in **subsection (1)** and the condition specified in **section 65C (4)** ~~and the condition specified in section 65EA (2)~~) as the Commissioner thinks fit.

*New (Majority)*

35 “**65EA. Inspections**—(1) The Commissioner or any other member of the Police from time to time authorised in writing by the Commissioner to carry out inspections under this section may at any time—

40 “(a) Require a foreign personal protection officer to produce for inspection—

*New (Majority)*

- “(i) Every firearm, airgun, pistol, or restricted weapon being carried by the foreign personal protection officer; and
- “(ii) All ammunition being carried by the foreign personal protection officer; and 5
- “(b) Inspect—
- “(i) Every firearm, airgun, pistol, or restricted weapon produced in response to a requirement made under **paragraph (a)**; and 10
- “(ii) All ammunition produced in response to a requirement made under **paragraph (a)**.
- “(2) It is a condition of every written authority issued under **section 65b (1)** that the foreign personal protection officer to whom it is issued— 15
- “(a) Comply with any requirement made of that personal protection officer under **subsection (1) (a)**; and
- “(b) Permit any firearm, airgun, pistol, restricted weapon, or ammunition produced in response to a requirement under **subsection (1) (a)** to be inspected under **subsection (1) (b)**. 20
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- “65F. **Power to revoke**—(1) The Commissioner may at any time revoke any written authority issued under **section 65b (1)** or any written permit issued under **section 65c (1)**.
- “(2) If a written authority or written permit is revoked under **subsection (1)**, the foreign personal protection officer to whom it was issued must immediately deliver the firearms, airguns, pistols, restricted weapons, and ammunition to which the authority or permit relates into the possession of the Police and, as soon as practicable after they have been so delivered, arrange for their removal from New Zealand. 25 30
- “65G. **Expiry of sections 65A to 65F**—(1) **Sections 65A to 65F** expire with the close of **<31 December 1999, and on 1 January 2000>** **<30 September 1999, and on 1 October 1999>**—
- “(a) Those sections, and the heading above **section 65A**, are to be treated as having been repealed; and 35
- “(b) All written authorities issued under **section 65b (1)**, and all written permits issued under **section 65c (1)**, are to be treated as having been revoked.

“(2) If a written authority or written permit is treated under **subsection (1) (b)** as having been revoked, the personal protection officer to whom it was issued must—

5       “(a) Immediately deliver the firearms, airguns, pistols, restricted weapons, and ammunition to which the authority or permit relates into the possession of the Police; and

      “(b) As soon as practicable after they have been so delivered, arrange for their removal from New Zealand.”