

## **FIREARMS AUTHORITY BILL**

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### **EXPLANATORY NOTE**

The Police Complaints Authority in 1996 recommended an independent review of firearms control in New Zealand, following police shootings in September and November 1995 in Invercargill and Whangarei.

The police response was to conduct an internal review. However, the Minister of Police did seek an independent review to consider the effectiveness of the Arms Act 1983, and its subsequent amendments to control the use of firearms in New Zealand, and to make recommendations based on the issues raised. In particular, the review was to report on current compliance issues and the recommendations contained in the police internal review.

This independent review was completed in June 1997. It concludes:

“1. That the Arms Act 1983 and its subsequent amendments do not provide an effective code for the control of firearms in New Zealand and, in particular,

“(a) That the 1992 Amendment has received a low level of general compliance by the public, from which it follows—

“(b) That the Police have not been able to adequately enforce compliance.

“2. That there is a need for radical reform of the firearm laws. This is most likely to be achieved by a staged programme of reform, managed by an Authority not affected by conflicting interests and loyalties, in the manner outlined in this report.”

This Bill establishes a Firearms Authority, as recommended by the independent review, charged with managing the required reforms.

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## FIREARMS AUTHORITY

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### ANALYSIS

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SCHEDULE  
Firearms Control Review Recommendations  
ANALYSIS

### A BILL INTITULED

#### **An Act to establish a Firearms Authority**

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

5     **1. Short Title**—This Act may be cited as the Firearms Authority Act 1999.

**2. Interpretation**—In this Act, unless the context otherwise requires,

      “Authority” means the Firearms Authority established by section 3:

10     “Board” means the National Advisory Board established by section 9:

      “Minister” means the Minister of Police:

15     “Firearms Control Review” means the recommendations for firearms control described in the independent inquiry report entitled *Review of Firearms Control in New Zealand* commissioned by the Minister on 22 August 1996 and published in June 1997.

**3. Establishment of Firearms Authority**—(1) The Firearms Authority is established.

(2) The Authority is a body corporate with perpetual succession and a common seal, and has and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity. 5

**4. Membership of Authority**—(1) The Authority is to consist of 3 members, with knowledge and experience of 1 or more of the following matters: 10

- (a) The control of firearms:
- (b) Weapon technology:
- (c) The administration or enforcement of the provisions of the Arms Act 1983.

(2) The Governor-General on the recommendation of the House of Representatives appoints every member, and must appoint 1 member as Chairperson of the Authority. 15

**5. Term of office and remuneration of members of Authority**—(1) Each member is appointed for a term not exceeding 5 years and the Authority will cease to exist at the end of the period of 5 years beginning with the day on which this Act comes into force unless the Governor-General provides by Order in Council for it to continue, but no such order may continue the Authority for more than 3 years at a time. 20

(2) Any member may resign office at any time by written notice to the Speaker of the House of Representatives, or to the Prime Minister if there is no Speaker or the Speaker is absent from New Zealand. 25

(3) Any member may be removed from office at any time by the Governor-General upon an address from the House of Representatives for disability, bankruptcy, neglect of duty, or misconduct. 30

(4) Any vacancy that occurs is to be filled by a further appointment under **section 4 (2)**.

(5) The functions and powers of the Authority are not affected by any vacancy in its membership. 35

(6) The Higher Salaries Commission must determine the remuneration of the members.

**6. Functions and powers of Authority**—(1) The principle functions of the Authority are to assist in drafting new firearms legislation based upon the Firearms Control Review 40

recommendations and to develop and implement all other recommendations of that review as outlined in the **Schedule**.

(2) The Authority has the following further functions:

- 5 (a) To advise the Minister on gun control matters relating to—
- (i) This Act; and
  - (ii) The Arms Act 1983 and its amendments; and
  - (iii) Any other Act:
- 10 (b) To provide an annual report to Parliament on the provision of firearms control in New Zealand:
- (c) To inquire into, investigate, and monitor matters relating to the provision of firearms control:
- (d) To promote and encourage education and research in matters relating to firearms control and consult with
- 15 all national organisations.

**7. Appropriation**—The Authority is to be funded from an appropriation by Parliament.

**8. Meetings of Authority**—(1) Meetings of the Authority are to be held at such times and places as the Authority or the

20 Chairperson from time to time appoints.

(2) At every meeting of the Authority the quorum is 2 members.

(3) Subject to this Act, the Authority may regulate its procedure in such manner as it thinks fit.

**9. National Advisory Board of Firearms Authority**—

(1) A National Advisory Board of the Firearms Authority is

25 established.

(2) The function of the Board is to advise the Firearms Authority on matters thought to be appropriate by either the

30 Authority or the Board.

(3) The Board is to consist of 6 members who are appointed by the Minister by notice in writing, after consultation with the Authority.

(4) The members of the Board must include:

- 35 (a) A legal practitioner of at least 7 years' standing; and
- (b) A person nominated by the Commissioner of Police; and
- (c) A person who has, in the opinion of the Minister, wide experience in the control of firearms; and
- (d) A registered medical practitioner; and
- 40 (e) A person who carries on the business of primary production and uses a firearm or firearms for the purposes of that business; and

(f) A person who has experience in the administration of, or in participating in, a competitive discipline using firearms, being a discipline in which shooters customarily compete at the Olympic Games or the Commonwealth Games. 5

(5) The National Advisory Board must include at least 2 men and 2 women.

(6) The Minister must appoint, in consultation with the Authority, any member of the Board to be Chairperson and appoint a suitable person to be a deputy of any member of the Board, and such a person while acting in the absence of the member has all the powers, authorities, duties, and obligations of that member. 10

(7) There may be paid out of money appropriated by Parliament to the members of the National Advisory Board under this section, remuneration by way of fees, salary and allowances, and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951. 15

**10. Evidence**—(1) The Authority may, by notice in writing, require any person, who in its opinion is able to give any information relevant to an investigation or inquiry being conducted by the Authority, to furnish such information and to produce any such documents or things in the possession or under the control of that person, as in the opinion of the Authority are relevant to the subject-matter of the investigation or inquiry. 20 25

(2) The Authority may summon before it and examine on oath any person who in the Authority's opinion is able to give any information relating to the matter under investigation or inquiry, and may for that purpose administer an oath to any person so summoned. 30

(3) Every such examination by the Authority is deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961.

(4) Nothing in this section limits any powers that the Minister of Police has under any other enactment or rule of law. 35

**11. Protection and privileges of witnesses**—(1) Every person has the same privileges in relation to:

- (a) The giving of information to the Authority; and
- (b) The answering of questions put by the Authority; and 40
- (c) The production of documents or things to the Authority as such persons would possess if they were witnesses in judicial proceedings.

5 (2) No person is required to supply any information to or to answer any question put by the Authority in relation to any matter, or produce to the Authority any document or paper or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Information Act 1982.

10 (3) No person is liable to prosecution for an offence against any enactment, other than under **section 14**, by reason only of that person's compliance with any requirement of the Authority under **section 10**.

15 (4) Where any attendance of any person is required by the Authority under **section 10**, that person is entitled to the same fees, allowances, and expenses as if the person were a witness in summary proceedings before the District Court and, for the purpose—

20 (a) The provisions of any regulations in that behalf under the Summary Proceedings Act 1957 apply accordingly; and

(b) The Authority has the powers of a District Court under any such regulations to fix or disallow, in whole or in part, or increase, any amounts payable under the regulations.

25 **12. Disclosure of certain matters not to be required—**

(1) Where the Attorney-General certifies that the giving of any document or thing might—

30 (a) Prejudice the prevention, investigation or detection of offences; or

(b) Involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, being matters of a secret or confidential nature, where the disclosure would be injurious to the public interest,

35 the Authority may not require the information to be given, or, as the case may be, the document or thing to be produced.

40 (2) Subject to **subsection (1)**, the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that disclosure of the document or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by the Authority.

**13. Proceedings privileged**—(1) This section applies to the Authority and every person engaged or employed in connection with the work of the Authority.

(2) Subject to **subsection (3)**,—

- (a) No proceedings, civil or criminal, lie against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that the person acted in bad faith; and
- (b) No person to whom this section applies may be required to give evidence in any court or in any proceedings of a judicial nature in respect of anything coming to his or her knowledge in the course of the exercise of his or her functions.

(3) Nothing in **subsection (2)** applies in respect of proceedings for—

- (a) An offence against section 78 or section 78A(1) or section 105B of the Crimes Act 1961; or
- (b) The offence of attempting or conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961.

(4) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry or investigation by the Authority under this Act is privileged in the same manner as if the inquiry or investigation or proceedings were proceedings in a court.

(5) For the purposes of clause 3 of Part II of the First Schedule of the Defamation Act 1992, any report made by the Authority under this Act is deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

**14. Offences**—Every person commits an offence against this part of this Act and is liable on summary conviction to a fine not exceeding \$10,000 who—

- (a) Without lawful justification or excuse wilfully obstructs, hinders, or resists the Authority in the exercise of its powers under this Act; or
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Authority under this Act; or

(c) Makes any false statement knowing it to be false or intentionally misleads or attempts to mislead the Authority in the exercise of its powers under this Act.

5     **15. Authority to be Crown entity**—The Public Finance Act 1989 is amended by inserting in the Fourth, Fifth, Sixth, and Seventh Schedules, in its appropriate alphabetical order, the following item:

“Firearms Authority.”

10    **16. Ombudsmen Act 1975 amended**—Part II of the First Schedule of the Ombudsmen Act 1975 is amended by inserting, in its appropriate alphabetical order, the following item:

“Firearms Authority.”

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**Section 6 (1)****SCHEDULE****FIREARMS CONTROL REVIEW RECOMMENDATIONS**

1. That the new Firearms Act specifically provide that self-defence is not a legitimate purpose for the acquisition of firearms.
2. That all restricted weapons be permanently disabled.
3. That no handgun endorsee be permitted:
  - (a) To own more than two handguns during the first 12 months after gaining his or her endorsement; or
  - (b) To own more than six handguns (not including muzzle-loading handguns) at any time unless his or her club and the NZPA certify that the standard of performance attained by that endorsee and the nature of the competition(s) in which he or she has attained that the standard warrant approval of the purchase of additional handguns up to a maximum of 12.
- 4.1 That MSSAs, including those in sporting configuration (as defined by a list of makes and models), be banned and made the subject of a buy-back.
- 4.2 That an exemption be extended to those professionally engaged in animal pest control who can establish that no other firearm would be equally effective for their particular business.
- 4.3 That a technical committee be formed to settle the list of makes and models of firearm within the MSSA class.
5. That all other centrefire semi-automatics be limited to a magazine capacity of seven cartridges.
- 6.1 That semi-automatic and pump-action shotguns be limited to a magazine capacity of two cartridges.
- 6.2 That the cost of limiting their magazine capacity be met by the Government.
- 6.3 That a technical committee settle an approved method or methods of magazine limitation.
- 7.1 That the duration of the buy-back of MSSAs be approximately six months.
- 7.2 That compensation be paid at market value for banned firearms and accessories which can be used only with banned firearms.
- 7.3 That compensation be paid to firearms dealers for any proven loss of profits.
- 7.4 That a procedure be settled for assessing, paying and dealing with disputes over compensation.
- 8.1 That a general amnesty be declared for a period of 12 months commencing at the earliest convenient date.
- 8.2 That the authority presently given to dealers by s 10 (2) of the Arms Act be extended to cover all types of firearm.
- 8.3 That consideration be given to police providing firearm storage facilities for a moderate fee; and to the establishment of prototype armouries in two metropolitan centres for a trial period of up to two years.
- 9.1 That the present security regulations be replaced by provisions which fix levels of security proportionate to levels of hazard.

SCHEDULE—*continued*

FIREARMS CONTROL REVIEW RECOMMENDATIONS—*continued*

- 9.2 That a standing committee, including representatives of the Police, the security industry, the NZ Insurance Council, firearms users and firearms dealers, be set up to recommend new security standards, review these annually and recommend appropriate amendments.
- 9.3 That adequate provision be made in any new firearms control system for regular and consistent monitoring of security conditions.
- 9.4 That the practice of compliance with security conditions without inspection of security be discontinued.
- 10.1 That the new Firearms Act specifically require every applicant for a firearms licence to produce evidence of:
- (a) Satisfactory security arrangements; and
  - (b) The successful completion of an approved course in firearms safety.
- 10.2 That the Firearms Authority endeavour to define, in consultation with representatives of the Police, psychiatrists, firearms users and family violence workers, a list of characteristics which are likely to make a person unsuitable to possess firearms, such list to be used to guide the exercise of the discretionary powers to refuse and revoke firearms licences.
- 11.1 That:
- (a) Any person convicted of a “serious violent offence” be disqualified from holding a firearms licence for five years;
  - (b) Any person convicted of a violent offence involving a firearm, including the threatening use of a firearm, be disqualified from holding a firearms licence for three years;
  - (c) Any person convicted of a violent offence against someone with whom he or she is in a domestic relationship, within the meaning of the Domestic Violence Act 1995, be disqualified from holding a firearms licence for two years;
  - (d) Any person against whom a final protection order under the Domestic Violence Act has been made be disqualified from holding a firearms licence for two years.
- 11.2 That:
- (a) Any person convicted of a violent offence other than one in any of the above categories be disqualified from holding a firearms licence for two years;
  - (b) Any person convicted of an offence against the Arms Act punishable by imprisonment be disqualified from holding a firearms licence for three years unless the Court declares the person to be suitable to hold a firearms licence.
- 11.3 That in any case the expiration of a disqualification period not in itself be taken as evidence that the person is suitable to possess a firearm.
- 12.1 That in all but exceptional cases two referees be consulted as part of the vetting process.
- 12.2 That the police family violence database be consulted in relation to each firearms licence applicant.
- 12.3 That the Firearms Authority confer with the National Collective of Women’s Refuges as to the practicality of including a check with the local women’s refuge in relation to each firearms licence applicant.

SCHEDULE—*continued*FIREARMS CONTROL REVIEW RECOMMENDATIONS—*continued*

- 12.4 That in those cases where there are concerns about the suitability of a firearms licence applicant, the Police endeavour to consult an independent referee.
- 12.5 That the Firearms Authority seek to develop a procedure for the automatic notification of relevant convictions.
- 13.1 That the new Firearms Act include provisions:
- (a) Permitting voluntary disclosure by health professionals, generally along the lines of the model legislation recently approved by the APMC, but in addition requiring that any opinion so disclosed be formed “on reasonable grounds”; and
  - (b) Directing that the making of a Compulsory Treatment Order under section 28 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 be notified to the Police forthwith and have the effect of suspending any firearms licence during the continuance of the order, such suspension to be lifted if proof that the condition no longer exists and that the person concerned is again a suitable person to possess a firearm, and that in considering suitability for the purpose of that procedure consideration be given to the certificate of a “responsible clinician”.
- 13.2 That within six months the Police:
- (a) Take appropriate steps to set up, in collaboration with the Ministry of Health and other organisations involved in the mental health system, a working party to establish protocols to enable the sharing of information regarding persons with a mental health problem who have possession of or access to firearms; and
  - (b) Consider introducing a training programme for police along the lines of that introduced in the State of Victoria as Project Beacon.
- 14.1 That the present licensing system be replaced by a combined licensing/registration system based upon three-year firearm-specific licences, the new system to be introduced over three years, commencing on 1 July 1999.
- 14.2 That after the introduction of the new system any person who wishes to acquire a firearm and who still holds a 1992 licence be required to re-register under the new system.
15. That further provision be made for notification of the death of licensees, this to take into account the length of licences under any new system.
16. That a steering committee be formed, including representatives of the Firearms Authority, Police, Mountain Safety Council, Association of Polytechnics in New Zealand, and shooting groups to develop an approved syllabus and delivery method for a firearms safety course, which would include a practical training component.
17. That the new Firearms Act create offences for:
- (a) The breach of any security provision in a firearms licence; and
  - (b) The breach of the obligations created by any combined licensing/registration system,

SCHEDULE—*continued*

FIREARMS CONTROL REVIEW RECOMMENDATIONS—*continued*

and provide a range of penalties appropriate to the seriousness of such offending.

- 18.1 That the Arms Act 1983 and Arms Amendment Act 1992 be repealed and replaced with a new Firearms Act.
- 18.2 That the new statute be drafted in plain language with the goal of making the law in relation to firearms as clear and accessible as possible.
- 19.1 That the discretion controlling specially dangerous airguns presently contained in section 4 of the Arms Act 1983 be retained, but in addition an appropriate level be fixed above which high powered airguns be classified as firearms.
- 19.2 That less powerful airguns not be classified as firearms.
- 19.3 That the minimum age for the use of low-powered airguns be reduced to 14 years, but that the minimum age for the purchase of such guns remain at 18 years.
- 19.4 That provision be made for either:
  - (a) Requiring vendors of airguns to deliver to purchasers a safety brochure and to obtain an undertaking from the purchaser that no child under the age of 14 will be permitted to use the airgun except under direct adult supervision, and that any child aged 14 or over given control of the airgun will first be instructed in its proper use and be required to read and study the safety brochure; or
  - (b) A “junior licence” category for persons aged 14 years and over who wish to use airguns.
20. That purchases of ammunition be limited to those types of ammunition appropriate to the firearms licensed to the purchaser.
- 21.1 That, provided Recommendations 2 and 9 are approved, no restriction be placed on the size of firearms collections.
- 21.2 That, if those recommendations are not approved, the role and purpose of C endorsements be reconsidered.
- 22.1 That the new Firearms Act incorporate the present effect of section 16 of the Arms Act 1983 after deleting section 16(2) and adding a proviso to the following effect:

“Nothing in section 16 of this Act makes it an offence to import a firearm where—

  - “(a) Such importation is made by the arrival of a vessel in New Zealand territorial waters from a port outside New Zealand; and
  - “(b) All firearms are included in an Inwards Report made in accordance with section 26 of the Customs and Excise Act 1996; and either
    - “(i) Remain secured on that vessel in a place and manner directed by a customs officer or member of the Police; or
    - “(ii) Are removed to a place of security in accordance with s 141 (b) of the Customs and Excise Act 1996.”

with consequential amendments to the legislation by including in the definition clause the following definitions:

SCHEDULE—*continued*FIREARMS CONTROL REVIEW RECOMMENDATIONS—*continued*

- “ ‘Importation’ means the arrival in New Zealand of a firearm or part of a firearm in any manner whatever, whether lawfully or unlawfully, from a point outside New Zealand; and ‘to import’ and ‘imported’ have corresponding meanings.
- “ ‘Ship’ means a vessel used in navigation not being a vessel propelled only by oars; and includes a hovercraft or submarine.”
- 22.2 That the new Firearms Act incorporate the present effect of section 3 (2) (a) of the Arms Act 1983 with the additional words:  
“(v) An officer or agent of the New Zealand Customs Service.”
23. That the new Firearms Act provide the Commissioner with a discretion to refuse the importation of any specially dangerous weapon unless the applicant for the permit can show a need which cannot reasonably be met save by the use of such a weapon.
- 24.1 That the Firearms Authority coordinate publicity and educational campaigns on an ongoing basis.
- 24.2 That the Firearms Authority consider the use of
- (a) A free-call telephone service;
  - (b) An internet home page;
  - (c) An on-line system linking its database to firearms dealers; and
  - (d) An electronic imaging system to manage licensees’ files and associated documents.
25. That the search and seizure provisions be amended to authorise police to search for and seize a firearms licence under the same conditions as relate to firearms and ammunition.
26. That the new Firearms Act include power for the Firearms Authority to fix conditions for the establishment and operation of ranges, and to monitor and enforce such conditions.