

## Privacy Commissioner's Submission to the Finance and Expenditure Committee on the Arms Legislation Bill (177-1)

### 1. Executive Summary

- 1.1. I welcome the opportunity to provide a submission on the Arms Legislation Bill ('the Bill'). I am supportive of sensible gun reform and recognise the important public safety implications of ensuring that only fit and proper persons have access to firearms. While privacy is not the only matter for consideration, I am keen to ensure that the legislation is fit for purpose and appropriately accounts for individuals' right to privacy.
- 1.2. The functions of the Privacy Commissioner include examining new legislation for its possible impact on individual privacy. The Privacy Act 1993 is New Zealand's main privacy law. It governs the collection, use, storage and disclosure of personal information and provides a mandate for my Office to consider wider developments or actions that affect personal privacy. Central to my examination of any proposed legislation is the principle that policy and legislation should be consistent with privacy rights unless there is very good reason (and evidence) to override those rights.
- 1.3. The Bill as introduced seeks to:
  - establish a registry for storing information about firearms and their holders,
  - strengthen the firearms licensing regime and oversight of license holders and firearms dealers, and
  - establish information sharing provisions to assist with the above.
- 1.4. My comments on the Bill relate to clauses 34, 82, 91-94 and Part 7.

### *Recommendations*

- ❖ I **recommend** the purpose for which the New Zealand Customs Service (Customs) and the Ministry of Foreign Affairs and Trade (MFAT) may access the registry be tightened to only relate to the movement of firearms across the border.
- ❖ I **recommend** that for agencies with direct access to the registry the Bill include additional safeguards regarding the retention of information, restrictions regarding the secondary use of information accessed and requirement to audit access to the registry.
- ❖ I **recommend** the removal of new section 93(2), which allows the Police Commissioner to include in the firearms registry any information considered necessary or desirable to ensure the registry is complete and accurate or for the administration of the Act.
- ❖ I **recommend** the inclusion of a requirement to consult the Privacy Commissioner on the drafting of regulations made under new section 74(1)(pa), which provide for the inclusion of information in the registry.

## **2. Firearms registry**

- 2.1. The establishment of a firearms registry will require license holders to provide more information than they currently do when applying for a firearms license. This however is not a significant increase on what is currently collected as firearms owners are already required to register with information including their name, date of birth and address. The registry will now require the provision of types and serial numbers of firearms.
- 2.2. Any change in the type or nature of collection of personal information must be justified and proportionate to the need. If the proposal is unlikely to yield the desired results, the collection and aggregation of the additional personal information will not be justified. Based on our review of international experiences with firearms registration, the evidence is mixed. It is for the Select Committee to examine the likelihood that the proposal will deliver the public benefits sufficient to justify the privacy cost, given the designs, and resourcing of the proposed registry.
- 2.3. The Select Committee may also wish to consider the experiences of other countries with firearms registries, such as Australia, Canada and Germany. These countries have noted issues regarding:
  - the effectiveness in achieving outcomes, due to the limited scope of the registry (Canada),
  - keeping licensee information up to date, due to information not being updated in-between license renewals (New South Wales, Australia),
  - outdated technology, leading to data input and accuracy issues (New South Wales, Australia), and
  - the initial costs of the registry increased significantly and unexpectedly (Canada).
- 2.4. The Appendix to this submission provides further information that the Committee may find useful.

## **3. Direct access to the firearms registry (Part 7)**

- 3.1. Part 7 provides for MFAT, Customs and the Department of Conservation to have direct access to the firearms registry to assist them in performing their functions. I am satisfied that the case has been made for access by these agencies but I recommend a tightening some drafting in the Bill to ensure proportionality.
- 3.2. Direct access allows agencies to both search the registry and copy information from the registry. The information available to these agencies will be limited to:
  - name,
  - date of birth,
  - residential address,
  - firearms license number, expiry and endorsements, and
  - import and export information (MFAT and Customs only).

*Limiting the purpose of direct access for Customs and MFAT*

- 3.3. Part 7 limits each agency's access to a specific purpose. The Department of Conservation may only access the registry in relation to their function of issuing hunting permits. MFAT and Customs have access for the broad purpose of allowing them to perform their functions, duties and powers "more effectively and efficiently".
- 3.4. I **recommend** the purpose for which Customs and MFAT may access the registry be tightened to the movement of arms across the border, as their interests relate to the movement of goods across the border.
- 3.5. New section 38Z(2) could be redrafted as follows:
- *The purpose of the direct access is to assist the agencies in performing or exercising their functions, duties and powers in relation to the movement of goods.*

*Additional safeguards for direct access are required*

- 3.6. Direct access will provide MFAT, Customs and the Department of Conservation the ability to copy and retain information from the registry so it can be re-used and re-checked on an ongoing basis. This means that there could be copies of out of date or inaccurate Police information stored on these agencies systems when that same information has been corrected or updated within the Police registry.
- 3.7. Safeguards should include restrictions around the ongoing retention, use or disclosure of registry information. Similarly, the Bill should clarify that the information collected for one purpose should not be used for another.
- 3.8. New section 38ZD sets out the content of any direct access agreement. While this includes that records must be kept of access it does not include that there must be a regular audit of these records.
- 3.9. Regular and on-going audits of access to the registry is important to ensure only those with a need to access the information are doing so and that access is in accordance with the agreement.
- 3.10. I **recommend** that the Bill include additional safeguards regarding the retention of information, restrictions regarding the secondary use of information accessed and requirement to audit access to the registry for agencies with direct access to the registry.
- 3.11. New section 38ZD could be redrafted as follows:
- Remove 38ZD(i) – the ability to further disclose registry information.
  - Amend 38ZD(h) to: *'the requirements relating to storage and disposal of information obtained from the registry'*
  - Insert 38ZD(k): *'the requirements to regularly audit access to the registry'*

- Insert 38ZD(l): *‘that the accessing agency must use the information only in accordance with the purpose or purposes for which it was originally accessed’*

3.12. I welcome the provisions for consultation with the Privacy Commissioner on direct access agreements.

#### **4. Content of the registry (Clauses 82 and 83)**

4.1. Clause 82 (new section 74(1)(pa)) provides that regulations may be made to require the provision of specified information, for specified purposes in specified forms for inclusion in the registry. Clause 83 (new section 93(2)) provides that the Police Commissioner may include in the registry any information he/she considers necessary or desirable to ensure the registry is complete and accurate or for the administration of the Act.

4.2. The provision of an ability for the Police Commissioner to include any information in the registry, coupled with a requirement for individuals to comply with providing this information (new section 94), appears to circumvent the regulation making process and undermine the important transparency measures included in that process.

4.3. The Select Committee should consider section 93(2) in light of the guidance provided in chapters 14 and 18 of the Legislation Design Advisory Committee (LDAC) Guidance. This Guidance suggests that the power to require information for inclusion in the registry appears inappropriate for delegation. LDAC Guidance notes that the ability to make secondary legislation is generally a power held by the Governor-General on the advice of Ministers. LDAC Guidance also notes that legislation should not create powers that are wider than necessary to achieve the policy objective.

4.4. The ability to require the provision of information is a significant intrusion into individual privacy and it appears inappropriate to provide an official these powers. The ability to delegate information for inclusion in the registry through regulation appears to meet the policy objective without the need to delegate this power to an official.

4.5. I **recommend** the removal of new section 93(2), so that the Police Commissioner cannot require the provision of information to be included in the registry.

4.6. I also **recommend** the inclusion of a requirement to consult the Privacy Commissioner on the drafting of regulations made under new section 74(1)(pa).

#### **5. Disclosure of health information (Clause 83)**

5.1. New section 91 states that a health practitioner must consider notifying Police if they have reason to believe that the individual is a firearms license holder and they consider that in the interests of public safety, a person holding a firearms license should not be permitted to use or possess a firearm due to their mental or physical condition.

5.2. This new section imposes no obligation on health practitioners to disclose patient information to Police. Health practitioners who disclose information in accordance with clause 91 would be protected from criminal, civil or disciplinary proceedings as long as they act in good faith.

- 5.3. I support health practitioners being empowered to make good faith disclosures to Police where they believe there is a threat to an individual's or the public's safety. The proposals do not significantly alter health practitioners' current ability to disclose personal information. Health practitioners may, in accordance with the Health Information Privacy Code 1994, disclose an individual's information to Police if they believe the disclosure is necessary to avoid a prejudice to the maintenance of the law or is there is a serious risk to an individual's or the public's safety.
- 5.4. New section 91 is supported by clause 34, which requires a license holder to provide the details of their medical practitioner to Police at the time of application for a license. Police would then use this information to notify the relevant medical practitioner of the fact the individual holds a license.

## **6. Conclusion**

- 6.1. I trust my comments are of use to the Committee in its consideration of the Bill. I would be happy to present this submission to the Committee in person and be available to answer questions.

John Edwards  
**Privacy Commissioner**

## Appendix: International firearms registries

### *Australia (Federal) firearms registry:*

- The Australian national firearms registry was created following the Port Arthur massacre. In a 2015 review<sup>1</sup> of gun violence an Australian Parliamentary Senate Committee heard mixed views from submitters on the effectiveness of a registry. Some submitters noted the increasing cost and burden regarding the administration of the registry and others noted the registry assists with solving crimes by ensuring that guns can be tracked across owners.
- The 2015 review also noted the difficulties with national and state registries being inconsistent and out of date.

### *New South Wales (NSW), Australia firearms registry:*

- A report<sup>2</sup> from the NSW Auditor-General noted issues with address information on the registry being out of date and not updated in between license renewals.
- The NSW Auditor-General also noted issues with the registry using outdated technology and being prone to manual data entry issues.

### *Canada firearms registry:*

- Canada introduced a long-gun registry in 1998. The registry was disestablished in 2012 due to it being expensive and ultimately unproductive. Canada found that gun crimes generally did not involve long-guns and therefore tracking these types of guns was not useful to crime prevention.
- Canada found the costs of the registry increased significantly, in 1998 \$119 million (Canadian) was budgeted for the registry and this estimate had increased to \$1 billion by the end of 2002.

### *Germany firearms registry:*

- Germany introduced a firearms registry in 2012 following the passing of the European Union Firearms Directive. The law that introduced the registry is similar to the proposed Bill. German Police can on notice inspect gun storage by individual owners and all guns must be registryed.
- There has been no formal review of the registry's effectiveness.

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Illicit\\_firearms/Report/c05](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Illicit_firearms/Report/c05)

<sup>2</sup> <https://www.audit.nsw.gov.au/our-work/reports/firearms-regulation>