

## **Submission to the Select Committee on the Arms Legislation Bill:**

### **Gun Registry**

1. The establishment of a firearms registry is perhaps the most ridiculous example in this Bill of penalising law abiding citizens with ill-defined offences that will do nothing to make our communities safer.
2. Much of the information requested for the registry about the person holding the licence is already held by Police. It is required when applying for a licence. This Bill will create a bureaucratic behemoth. It will enrage users with frequent, impractical and confusing demands for information about individual firearms and magazines.

### ***International experience***

3. The Government is in the unique position of having important Commonwealth experience to draw on in relation to the establishment of a registry. We see no evidence that it has bothered to analyse, or perhaps even obtain, reports on overseas experience and certainly no sign of having taken lessons into account. The Canadian registry is the most well-known example of how pointless and costly registration would be. So much so that COLFO will not detail here the issues the Canadians experienced. The Select Committee should demand full details, and invite experts to brief it directly. It should not rely on Police mediated or selected reports. COLFO has seen nothing to show how the Government expects to avoid the logistical issues the Canadians faced, nor how it will achieve its intended outcome that the Canadians have so comprehensively dismissed as unachievable.
4. There are additional examples of registry ineffectiveness. In South Africa, a registry has reportedly not led to any decrease in the number firearms held by non-licensed people. The Small Arms Survey found that while the number of registered civilian gun owners is relatively low in South Africa compared to other countries, the country stands out due to the high number of unregistered/illicit firearms in civilian hands and its crime and murder figures are among the worlds' worst.<sup>1</sup>
5. The survey estimates that there are currently 5,351,000 firearms in civilian possession in the country. Of these, approximately 3 million are registered (legal) firearms, while the remaining 2.35 million are unregistered.<sup>2</sup> A register in South Africa is simply regulation for law abiding citizens without controlling the behaviour of illegal firearm owners.

### ***Domestic experience***

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<sup>1</sup> Small Arms Survey 2018 (<http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>)

<sup>2</sup> Ibid.

6. Here in New Zealand, the previous limited registration system in relation to E-endorsed firearms has failed to be implemented successfully by Police. A detailed discussion of this is necessary to understand how registration has already been tried and failed in New Zealand.
7. Prior to 2010, AR15 rifles were very limited in number and supply. The reason was that most AR15s in the country had been held on an E licence since the law was amended in 1992. From the 1990's, it became increasingly common for new rifles to almost always include a vertical pistol grip. They were seen as more ergonomically correct for precision shooting.
8. Following the Aramoana event, and 1992 law change, owners of these firearms had the option of converting the endorsement for an existing AR15 type to either an E endorsed firearm (requiring a newly-created E endorsed licence) or converting it to a "sporting" configuration.
9. Those that held a "sporting configuration" had restrictions on the number of cartridges that could be held in the magazine. Other features, mostly cosmetic, were also outlawed, such as bayonet lugs. The reasons for this determination were unclear beyond that Parliament felt that firearms that represented "Rambo-style military look-alikes"<sup>3</sup> should be controlled. The Police would not engage with the community on the reasons. Many in the community believed that cosmetic determinations like the bayonet lug had no relevance to firearms safety.
10. At the time, almost the only way you could meet the "special reason" requirement in the Act to import a new AR15 rifle was to hand in an existing E registered endorsed firearm to get an import permit for a new one. The Police insisted on this regime though it was widely thought that it was without lawful foundation.
11. This meant that the price of these rifles was artificially high; running from \$5,000- \$10,000 each. Only a handful of enthusiasts had them, and these were mainly in the professional pest control/dedicated target shooter space. The artificial price made them a more attractive target for burglars.
12. E endorsement licence holders were very thoroughly vetted. They were required to store the firearms registered and endorsed on that licence with extremely high security. As far as COLFO knows there has never, in 25 years, been an incident of the holder of an E licence committing an offence with an E registered firearm.
13. This all changed in 2009 when the Police unilaterally announced that they had reinterpreted the terms of the Act. They alleged that a "thumbhole stock", which allowed a semi-automatic rifle to remain an A category firearm (classified as a "sporting configuration"), now incorporated a military pattern free-standing pistol grip. As a result, they claimed that those rifles required an E endorsement to maintain legal ownership.
14. COLFO engaged with the Police. We strongly argued that the interpretation was incorrect. We urged that the difference between A and E rifles should be based on sound policy and safety distinctions, not cosmetics. We outlined distinctions that would depend on function, magazine

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<sup>3</sup> See Minister for Police, Hansard, 28 November 1991

capacity and potential modifications. Police did not engage with the shooting community. They insisted that thumbhole stocked semi-automatic rifles must be E category.

15. This was challenged in Court. The High Court found that the Police decision on the basis of the thumbhole was unlawful and ultra vires.<sup>4</sup>
16. Following the decision, Police did not engage with the shooting community to find consensus and a way ahead. Instead they allowed category A licence holders who had been affected by the decision (and were endorsed) to choose to convert their firearm to a style requiring a category E licence and receive an E endorsement on their licence to reflect this.
17. This also affected the Police's ability to unilaterally enforce their import surrender policy (outlined above), which they should have expected.
18. The practical result of all this was AR15 rifles, which only had cosmetic differences from the E category rifles (essentially less "military looking") entered the country in far greater numbers than previously. There remained a difference between an E and A rifle cosmetically, but there was a major loophole from the perspective of anyone expecting the law to relate to function, not cosmetics.
19. The law contained nothing stopping a person with an A licence buying parts that would, if fitted to the A category firearm turn it into a firearm that should be treated as E category. The most obvious part that should have been controlled was large capacity magazines.<sup>5</sup> The shooting community warned the Police that this was a significant problem. As far as we know, they did not engage with us on these warnings at any level at this time.
20. It also meant the price of rifles plummeted and became very affordable. Rifles which were worth \$10,000 second hand were suddenly selling for under half that.
21. Moreover, a person could purchase a magazine (like the 30 round ones used in the 15 March attack) without proof of a firearms licence or an E licence endorsement, which was required to use it. An offence was committed if a large capacity magazine and an A category semi-automatic were located together, but enforcement was uncommon.
22. The rifle used on 15 March had been illegally converted to an E configuration, namely by inserting a high capacity magazine. The law should not have permitted Mr Tarrant to purchase the magazines which greatly increased the number of rounds that could have been fired without reloading and replacing the magazine.
23. There have been claims that the implementation of a more extensive registration would have made the Christchurch event more unlikely. In COLFO's view, the firearm used should have been covered by existing registration requirements. Certain firearms are required to be registered – pistols, collectors' items and formally E category firearms. That is, from the

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<sup>4</sup> *Police v Lincoln* [2017] NZDC 15411 at [58] – [74].

<sup>5</sup> See [COLFO Review of the Law and Order Select Committee Report](#) at 4.

moment that the 30 round magazine was inserted in the rifle, it was legally required to be registered as an endorsed E category firearm and recorded on an endorsed firearms licence.

24. It is clear that not only did the police fail to consistently and adequately maintain this limited registration system, they do not have the capability or capacity to implement a wider system as they are promising to do under this Bill.
25. Another domestic example of the Police's inability to maintain a registry is their own catalogue of firearms. We note that while the NZDF is able to state how many firearms they hold, the Police are only able to give an approximate number.

### ***The practicalities of a registry***

26. The practicalities of changing from a system centred on registration of a licence holder to registration of a firearm are confusing and immense. Simple examples can explain –

"A" is a license holder living as a final year student in a university hall of residence. Under this Bill, she registers her address as the hall of residence. She must also register her family home as this is where the firearm is normally kept (s34). Previously she would have just had to register where she resides.

"A" brings her firearm to university to join friends who are going tramping at the weekend. She will take her rifle and have an evening hunt. At the university, the firearm will be stored in the university shooting club's secure safe. Club officials have the keys. Under the Bill, "A" will need to update the register that the firearm is changing location (s93(1)(e)) to the university safe, and that the 'possession' of the firearm will be temporarily transferred to the club officials (s94(2)(a)).

How this is achieved is not clear as the Bill does not seem to contemplate multiple licensed firearms holders who could have "possession" of the firearm in the safe (as they are all in control of it). A failure on either issue could see separate \$10,000 fines.

If she collects the firearm from the club safe at 5pm (when a key holder can meet her) and then keeps the firearm locked in her hostel bedroom until they leave the next morning, the requirement to once again update the location of the firearm is unclear.

"A" will need to again update the location in the registry when they set out on their tramp, she must say where the firearm will be (s93(1)(e)) and also that the possession has also transferred back to her (s94(2)(a)). Failure is punishable with another \$10,000 fine.

As is common in tramps, hunts, and outdoor activity generally "A" and her friends may change plans several times, including on the way to their intended route. A river may be uncrossable, or a vehicle is not available. If she is to stay overnight

at a different location, she will have to update that location (including theoretically from the middle of the bush) or be liable for a \$10,000 fine.

Any person who intends to be in possession of a firearm must notify that to the register (s94(1)(c)). During the weekend, “A” will likely be in possession of her friends’ firearms if any others bring them (as she is driver of the vehicle). She must inform the register of that – which includes getting all the details required under s93(1)(e) such as the particulars of the make, model and identifying markings. It is not clear whether she should also register a temporary transfer (under s 94(2)(a) even though the possession may or may not occur).

If she is going in a friend’s vehicle, the driver of that vehicle will have similar exposures. If they are unlicensed, they will therefore be recording in the registry (if in fact they have access to it) that they intend to break the law.

“A”’s friends should also register possible intention of possession of the rest of the groups’ firearms , then actual possession, as they could be left with them – say if the rest of group leaves them at the hut while going for a walk. There could be multiple instances of unlawful possession, or transfers of possession. If some stay in the car with them, while the rest grab takeaways that seems to be now unlawful.

27. This is one of the most simple and everyday examples COLFO has considered. There are hundreds more that are equally likely. Clearly “A” – a law abiding licence holder – and her friends, will be impelled to disregard many such obligations under the Bill and expect every other sane person to do the same.
28. The confusing nature of the registration of firearms, rather than just a licence holder, is amplified by loose legislative drafting. The interchangeability of terms could mean the same thing or different things throughout the Bill. For example, what is the difference between the use of ‘kept’ in s34(1) versus ‘location’ in s93(1)(e) when deciding where a firearm is for the purposes of the registry. Or when is “possession” in s93(1)(e) different from a “temporary transfer” in s94(2)(a).

### **Data Security**

29. The registry will present a serious issue of data security. New Zealanders have this month been worried by a cyber-attack which gave hackers access to one million New Zealander’s private health data including name, date of birth, address, ethnicity, and national health number, whether a smoker or heavy drinker, whether due for immunisations or cervical screening, whether someone had undergone an X-ray or ultrasound, and information on chronic conditions like diabetes, including lab results for tests like blood sugar, and prescriptions.

30. This follows a data breach at the Ministry of Culture and Heritage where peoples' addresses, birth certificates and other private information were accidentally uploaded online, the Budget 19 papers and more recently confidential accounts being accidentally placed online by Treasury, and a data breach at the Commerce Commission.
31. The registry will be a juicy target for criminals. From it, they can learn exactly what and where firearms are available to be taken. The guiding principle should be to minimise the amount of information to what is strictly necessary to achieve an outcome.
32. Licensed firearm owners understand the attraction of criminals to what they own. They are cautious in letting others know what they have and where they are. Frequently they do not tell their family where they are. Police claim that the biggest source of illegally held firearms is burglary of licensed firearms owners. Prudent owners will not support a system that could make their homes and families a target for informed burglary.
33. Licensed firearms owners will be discouraged from updating the registry if they think it puts them or their families at risk. We are aware anecdotally of otherwise deeply responsible people who say they have already made the decision to hide firearms that could be attractive to criminals. They will not become registered to reduce the risk of making their family homes a special target.
34. Additionally, while data security is the biggest risk created by the Bill, there are no specified penalties for unauthorised access to the registry.<sup>6</sup> If the most likely reason for unauthorised access to the data is for criminal purposes, this surely should be addressed.

### ***Ammunition registration***

35. The Bill also requires a system of registration for those who sell or supply ammunition to keep a record for ten years of who they sold to, the quantity and type they sold, and the firearms licence at "their place of business" (s22D). This assumes that all sellers of ammunition do so for the purposes of business.
36. It is common for office holders in shooting clubs to bulk purchase ammunition that is on-sold to members as a way of reducing the cost. There is no intent to profit from the sale. It is confusing in the Bill whether this practice can continue – as it should because no harm is created – or whether the office holders would now be subject to penalties of up to \$10,000.
37. COLFO understands that the government may wish to use these records as a means of understanding if people are bulk buying ammunition for criminal intent (as opposed to the above legitimate exercise). However, records held for 10 years do little to signal to Police if there is a person of concern in the community. Instead, Police should be trying to rebuild the

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<sup>6</sup> Arms Legislation Bill, s58A contains offences relating to the registry but there is no offence for unauthorised access.



mutual trust that used to exist with the shooting community to ensure that intelligence is shared.