

URGENT

The Hon Stuart Nash
Minister of Police
Parliament Buildings
Wellington

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Commissioner of Police
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Dear Minister and Commissioner,

ASSURANCES NEEDED ON SURRENDERS OF AMMUNITION

Introduction

1. We represent the Council of Licenced Firearm Owners (COLFO) in relation to the recent and proposed changes to New Zealand's arms law. COLFO represents all substantial shooting sports organisations.
2. COLFO welcomes the initiative in the regulations which came into effect on 29 November (the latest regulations) to reassure people who may be awaiting Police decisions when the amnesty expires on 20 December. This letter asks for action on similar uncertainties for holders of prohibited ammunition.
3. There is an urgent need to repair relations with the various firearms communities. From what COLFO is told, we are heading toward a serious shortfall in the collection of prohibited firearms. The gap in the latest regulations leaves an opportunity for you to reassure firearms communities.
4. You chose not to consult COLFO on the latest regulations. They are extraordinarily hard to interpret. COLFO could have offered advice to make them more effective. It would have recommended the omission of the inflammatory provision to reduce or eliminate compensation for banned items in quantities the police think is more than necessary.

Further necessary changes and reassurances

5. Our client and our client's members seek confirmation that people in the following circumstances will not be punished:
 - A. People who want to surrender prohibited ammunition;
 - B. People who want to take steps to hand in or to modify prohibited ammunitions for compliance without exposing themselves to prejudicial police attention.

- C. People unsure whether they have prohibited ammunition, who want a police view on whether it is prohibited or not, or on the steps they propose to take to render it not prohibited ammunition, without exposing themselves to prejudicial police attention;
 - D. People who have ammunition that may be affected by the outcome of COLFO's judicial review application, and who want to hold it safely until that is known, not using it or supplying it to others in the meantime.
2. The issues may cross the boundaries between your respective jurisdictions. Some of our requests may be best dealt with by the Minister; others by the police. We address this letter to you both for convenience. You will determine which person can most appropriately respond.

Background

- 6. Ammunition is very rarely inherently dangerous; it becomes dangerous only in a firearm. Despite fear-mongering, on its own it is generally harmless and stable, with less risk of hurting someone than the petrol for the lawnmower, the BBQ gas bottle, or containers of garden pesticide.
- 7. We assume that the prohibition of ammunition defined in the Order was an ancillary precaution. Some categories show reflex hostility to anything associated with military origin, without any connection to human safety. If the ban on those became effective it could marginally reduce the potential availability of the kinds of ammunition likely to be used in firearms that have now been prohibited. But those types are also suitable for firearms that have not been banned. Other ammunition categories (armour piercing for example) are more understandably banned.
- 8. The conditional amnesty on prohibited ammunition finished on 30 September 2019. This has confused people who expected the amnesty to align with the firearms amnesty ending 20 December. That mistaken view has been shared by at least some police call centre advisers. Some owners have remained in possession of prohibited ammunition through ignorance that they had it, or ignorance that it was prohibited.
- 9. When people find banned ammunition it and realise that what they have is prohibited, they will usually wish to surrender it. But first they may want confirmation. The regulations are extremely hard to follow. They want to call police for advice. But many have by now heard of the severe punishments for conviction under the new law, and they will be anxious about identifying themselves, without comfort on what the Police might then do.
- 10. We have advised people to ask third parties to make enquiries if they are concerned about a disproportionate police response to an enquiry. But many will not want to put a third party in the position of themselves perhaps becoming a target of Police interest. Rightly or wrongly, there is a perceived risk of police vindictiveness or scapegoating, particularly when it becomes clear that the confiscation scheme has failed.
- 11. The latest regulation changes do not address the situation of owners who want to know the court's decision on COLFO's application for judicial review, before destroying or surrendering ammunition which may be legitimised by that decision. Others will want to hold on to their ammunition in case it is needed to qualify for the compensation if the Court holds that it should not have been ruled out.

Remedies

12. We have advised COLFO and its members and supporters that some of the risk of the criminalisation that occurred to people without their knowledge on 30 September may be mitigated by the defence of reasonable excuse. But the boundaries of that are uncertain.
13. COLFO asks that you reassure people who worry about illegality, with regulations to extend the amnesty. COLFO asks that the regulations at the least set out ways in which people can approach the police without prejudice, to check their situation, to understand the police interpretation, and then to surrender their prohibited ammunition.
14. The objective should be simple. The law should recognise that, for reasons beyond the control of many honest owners, compliance in the current amnesty cannot be achieved, or should be deferred while circumstances and the law and regulations are clarified. They should have a lawful course to follow without penalty.

Existing reassurance on prohibited ammunition

15. We are instructed that Deputy Commissioner Mike Clement recently advised Michael Dowling, the Chair of COLFO, that the police will not prosecute people who surrender prohibited ammunition up to and including 20 December. Mr Dowling was told that surrendered ammunition would be treated as if it were covered by the amnesty governing firearms and other prohibited items. We understand from what was said that the policy would be implemented under the statutory encouragement of s 59B of the Act and not by amendment of the relevant Order or regulations. This understanding was reiterated in our conversations with the Police call centre.
16. COLFO seeks formal confirmation of the stated intention. It would be more straightforward for the public to understand if the prohibited ammunition amnesty parallels the main amnesty.
17. As you know, our client is contesting the inclusion of tracer ammunition and enhanced-penetration ammunition in the Order in an application for judicial review CIV 2019-485-67 [the litigation]. We are informed that some people are awaiting more news of the timetable for that court process, before deciding what to do now. They understand that their position became problematic on 30 September. We assume that they think it is no worse for them now, if they wait before approaching Police with their ammunition.
18. Our client and its members and their members would like to reach an understanding with police on an official position in respect of the affected categories of prohibited ammunition while that litigation is underway.
19. Accordingly we suggest suitably authoritative statements from either the Minister or police, as appropriate. We have assumed that you will be loath to advise in terms that prematurely (from your perspective) undermine the finality of the 20 December date for a compensation close off. But you have rejected compensation for ammunition outright, so strictly the 20 December date is not pertinent to ammunition. Nevertheless, alignment may help to reduce public (and police) confusion about significant deadlines.
20. We think you might usefully advise along the following lines:

- a) The amnesty period for prohibited ammunition defined in the Arms (Prohibited Ammunition) Order 2019 will now be aligned by regulation with the amnesty for firearms;
 - b) While a formal extension of the amnesty is being finalised, police do not intend to prosecute for possession of prohibited ammunition if it is surrendered by midnight on 20 December 2019;
 - c) The (so-called) buy-back compensation for surrendered firearms remains due to expire on 20 December;
 - d) Prohibited ammunition surrendered at any time will be unlikely to result in prosecution if it has been identified to police before a deadline expires, if it is retained in safe storage under an arrangement for delivery at some later time;
 - e) If and to the extent that the current firearms amnesty (which is to end on 20 December) is extended, police will treat it as also extending the non-prosecution period for possessing prohibited ammunition. In other words any extension to the firearms amnesty will include an extension to the amnesty for prohibited ammunition;
 - f) Police will accept and respond to enquiries about the law, and its interpretation, from intermediaries such as dealers, gunsmiths, shooting sports organisations and lawyers, without trying to find out who wants the information. Such enquiries may extend to provision of samples, without liability to the intermediary.
21. COLFO also asks that until the outcome of the litigation is known, police undertake that:
- i) They will not act to seize or destroy tracer ammunition and enhanced penetration ammunition (as defined in the Order);
 - ii) They will cooperate to keep records of prohibited ammunition surrendered or otherwise collected by police in a manner sufficient to enable payment of compensation if and to the extent that the Litigation decision indicates that compensation should be paid;
 - iii) So far as is feasible, the above assurance of adequate record keeping will relate also to ammunition surrendered to date.
22. COLFO does not ask that regulations to authorise the suspension of enforcement and the assurances described in the preceding two paragraphs protect a holder of prohibited ammunition from prosecution in respect of unlawful use or supply of the ammunition.

General considerations

23. COLFO seeks formal assurance notwithstanding the prevalence of informal assurances of no action from various local police officers. Among the reasons is that the fine detail of the reassurances in the latest regulations will tend to suggest to a court that it was not open to the police to offer extra-regulatory waiver or exemption assurances of general application. It could be held to be improper.
24. Accordingly, though police have announced their intention to use discretion to not prosecute people who are caught out by delays beyond their control in certain relevant circumstances, that is not enough.

25. There are rule of law reasons of principle to support formalizing the reassurances needed. Firearm owners and lawyers are already concerned about the bad precedents becoming established in this area, essentially allowing police to legislate and to suspend legislation by fiat. Our client's member organisations would strongly prefer a more principled solution. A de facto amnesty could be formally advised under conditions. But it should be effected by Order in Council or regulation under the transitional powers. The proper method is for you to decide.

Yours faithfully
FRANKS OGILVIE



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