



A Turning Point for Firearms Regulation: Implications of Legislative and Operational Reforms in the Wake of the Christchurch Shootings

Prepared by
Nathan Swinton

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PREFACE

When I arrived in New Zealand on New Year's Eve 2018, I had no intentions of writing about firearms policy. My original project concerned the relationship between Parliament and the New Zealand courts following a recent expansion of judicial power, an issue worthy of examination in its own right. The March 15, 2019 shootings in Christchurch altered the trajectory of this project, however, and gave rise to new and unexpected developments with firearms laws. These developments in turn led me to change the focus of my fellowship to firearms policy in New Zealand. I remain very grateful to the understanding and flexibility of the Ministry of Justice and Crown Law, my original host agencies, in supporting this change, as well as to the willingness of the New Zealand Police to allow me to come on board during an exceptionally active and sensitive time.

Firearms policy interests me on a number of levels. As a Department of Justice attorney on detail to the Office of then Vice President Joseph Biden in 2012-13, I assisted with developing proposals for legislative changes and executive actions to respond to the December 2012 shooting at Sandy Hook Elementary School in Newtown, Connecticut in which 20 children and six staff members were killed.¹ The proposed legislative changes failed in the Senate, and there has not been any effort since at enacting federal gun-control legislation that would be likely to pass.² As an American, I recognize that my country unquestionably has a unique problem with mass shootings and gun violence. Between May 31 and September 2 – three of the eight months that comprised my fellowship – there were 26 mass shootings in 18 different states, including a tragic first weekend of August that saw 22 people killed in El Paso, Texas on Saturday the 3rd, followed by a mass shooting in the early hours of Sunday the 4th in Dayton, Ohio that left nine dead.³

The issue of guns even reached the doorstep of my home in Washington, D.C. during my time in New Zealand. According to police reports, on June 1, 2019, an unknown person “shot up” the block where my condominium is located, leaving 20 bullets outside of the building, one of which shattered the glass door that serves as the main entrance. The bullet then became lodged into the front door to my unit. Thankfully, no one was injured in that incident. My project has caused me to reflect on multiple occasions about the extent to which guns and gun violence have become part of the fabric of everyday life for many Americans. I found most New Zealanders to be perplexed by the United States' inability to address the

¹ Baker, P. and Shear, M. (2013, January 16). Obama to “Put Everything I’ve Got” Into Gun Control. *The New York Times*. Retrieved from <https://www.nytimes.com/2013/01/17/us/politics/obama-to-ask-congress-to-toughen-gun-laws.html>.

² The legislative changes supported by the Obama administration, which included expanding background checks for firearms purchases, garnered the support of 56 Senators, not enough to overcome a potential filibuster. Zurcher, Z. (2019, March 21). US gun laws: why it won't follow New Zealand's lead. *BBC*. Retrieved from <https://www.bbc.com/news/world-us-canada-41489552>. In 2019, the Democrat-led House of Representatives passed bills expanding background checks, and, most recently, the House Judiciary Committee has approved a bill containing a provision that would enable the removal of guns from people deemed to be risks to themselves or their communities, a ban on high-capacity ammunition magazines, and an expansion of firearms prohibitions to those convicted of hate crimes. Morgan, D. (2019, September 11). Democrats pressure Republicans by advancing gun control bills. *Reuters*. Retrieved from <https://www.reuters.com/article/us-usa-guns-congress/democrats-pressure-republicans-by-advancing-gun-control-bills-idUSKCN1VV2AT>. These measures are not expected to be supported by either the Senate or the President.

³ Smith, M. (2019, September 21). Inside a Deadly American Summer. *The New York Times*. Retrieved from <https://www.nytimes.com/interactive/2019/09/21/us/summer-mass-shootings.html>.

country's pervasive issue of gun violence.⁴ It was gratifying to witness a country be determined to respond forcefully at a policy level to a mass shooting, even if there continues to be disagreement about the details of that response.

In conversations with New Zealanders, many people pointed to the Second Amendment to the U.S. Constitution as the reason for the significant differences in gun control policies between the two countries. That may be true, but only to a limited extent. Although the Second Amendment guarantees an individual right to bear arms,⁵ that right – at least as currently construed – does not compel a regulatory regime significantly dissimilar to that of New Zealand. The constitutional right to possess firearms is not an unqualified right⁶; indeed, some state laws feature certain regulatory controls that are key elements of the post-Christchurch reforms to the Arms Act.⁷ As I solicited a variety of perspectives about what sorts of firearms controls have worked well in New Zealand and what improvements are still needed, I found myself hypothesizing what aspects of New Zealand's approach would be politically and culturally acceptable at the federal level in my country. There may soon again be efforts at reforming federal gun policy in the United States that are reasonably likely to succeed, at which time I will be able to test my hypotheses. But for now, the two countries' approaches to firearms control remain far apart.

⁴ Prime Minister Jacinda Ardern reflected on this point in the wake of the Christchurch shootings. In interview with CNN, she remarked that “Australia experienced a massacre and changed their laws. New Zealand had its experience and changed its laws. To be honest, I do not understand the United States”. Fitzgerald, K. (2019, May 14). “I do not understand the United States”: Jacinda Ardern. *Newshub*. Retrieved from <http://www.msn.com/en-nz/news/national/i-do-not-understand-the-united-states-jacinda-ardern/ar-AABmeIs?ocid=iენტp>.

⁵ The Second Amendment's notoriously challenging phrasing instructs that “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed”. U.S. Const. amend. II. In 2008, the Supreme Court held that the Amendment protects an individual's right to bear arms unconnected to military service and to use for traditionally lawful purposes, such as self defence within the home. See generally *District of Columbia v. Heller*, 554 U.S. 570 (2008).

⁶ In *Heller*, the Supreme Court explicitly stated that “the right secured by the Second Amendment is not unlimited” and does not grant an individual the ability to “keep and carry any weapon whatsoever in any matter whatsoever and for whatever purpose”. *Heller*, 554 U.S. at 626.

⁷ California, for example, has a ban on many types of assault weapons and large-capacity magazines, and maintains a database of records from gun sales, including identifying information about the seller, purchaser, and firearm. See Giffords Law Center to Prevent Gun Violence. California Gun Laws Score an “A”. Retrieved from <https://lawcenter.giffords.org/gun-laws/state-law/California/>.

EXECUTIVE SUMMARY

By all indications, the year 2019 will be a significant turning point for the regulation of firearms in New Zealand. Following the tragic and unprecedented shootings at two Christchurch mosques in March, the world took note of how swiftly the New Zealand Parliament passed legislation designed to address weaknesses in the Arms Act 1983. Additional reforms covering a wide array of issues were announced shortly thereafter, with the goal of having them pass before the one-year anniversary of the shootings. But the legislative reforms tell only part of the story. New Zealand Police, the agency responsible for the Arms Act and its administration, had undertaken a years-long project to address several problems it had identified with the operation of its firearms programme. Notably, of the nine issues Police had identified with firearms policy in recent years, eight of these could be addressed by operational changes. Only one required a legislative fix.

This intersection of operational and legislative reform presents an opportunity for reflection, and this report seeks to seize that opportunity to examine Police's firearms programme and the governing legislation. The purpose of the report is two-fold. First, the report provides a comprehensive summary of firearms policy in New Zealand up through the time of the Christchurch attacks as well as a description of the operational and legislative reforms that have been proposed in recent years. Part One of the report begins by tracing the development of legislative controls on firearms; examines the state of firearms policy in the country at the time of the attacks, including Police's administration of the Arms Act and relevant case law resulting from legal challenges to Police's programme; and concludes by describing the recent reform efforts, including further proposed legislative amendments that were released in September 2019.

Second, the report in Part Two identifies and discusses six key issues that will be critical for the firearms programme as it emerges from this period of reform. These issues are:

1. The relationship between Police and the regulated sector;
2. The potential impact on the administration of the Arms Act of adding a purpose statement to the statute;
3. The opportunity for Police to define and refine its regulatory strategy;
4. Ways Police can ensure that firearms policy remains a priority;
5. Potential uses of Police's proposed new power to issue tertiary legislation; and
6. The likely change in the role of the Firearms Community Advisory Committee following the reforms.

The operational changes proposed by Police combined with the proposed legislative reforms provide Police with significant new tools for strengthening its firearms programme. A successful firearms programme now turns on how Police execute these reforms, oversees the completion of its operational reforms, and puts its new tools to work.

PART ONE: BACKGROUND OF FIREARMS REGULATION IN NEW ZEALAND

I. History of New Zealand Firearms Regulation

Regulation of firearms has existed in some form almost since the time New Zealand formally became a British colony with the signing of the Treaty of Waitangi in 1840. The basic strategy of these early control efforts mirrors that of more recent controls: restrictions on who could possess firearms and, increasingly, restrictions on the types of firearms that were legally available. Many features of the Arms Act 1983, such as a requirement that only “fit and proper” people be able to possess firearms, were enacted into law decades before in earlier versions of the statute. Similarly, some of the legislative reforms that have been proposed in 2019 – most notably a requirement that all firearms be registered with the Government – were also part of the regulatory structure in the 20th century.

1. *Firearms Use and Firearms Controls in New Zealand Before 1983*

The importance of firearms in New Zealand society dates back almost to the time of the initial contact between the Māori inhabitants and the first European settlers. Guns were brought to New Zealand by European settlers, who used them as instruments of trade with the Māori people who already inhabited the islands.⁸ Historians report that guns became desirable trading objects around 1810 with iwi in the Bay of Islands region in the far north of New Zealand, followed by three decades in which firearms possession “became the overruling passion of the Māori”.⁹ Originally bartered for sources of food like potatoes and pigs, guns were by 1830 increasingly exchanged for items like flax as firearms trading centres shifted southwards in the North Island.¹⁰ Possession of guns changed the balance of power between competing Māori iwi, with groups from the north, most notably the Ngāpuhi, conducting raids on those to the south.¹¹ These so-called “Musket Wars” lasted until around 1839, resulting in the deaths of more than 20,000 Māori.¹² For Māori during this time, possession of firearms was critical not only to preserving their tribal mana but to their very survival as well.¹³ The Musket Wars were followed by the New Zealand Wars (also called the “Land Wars”), which consisted of a series of armed clashes between Māori and Pākehā between 1843 and 1872.¹⁴

Rudimentary regulation of firearms followed not long after, with the first efforts at gun control in New Zealand aimed at limiting possession by Māori. The Arms Importation Act 1845 empowered the Crown to impose restrictions on the import and sale of firearms, ammunition, and “other warlike stores”.¹⁵ Although these controls were generally applicable and did not overtly target Māori, the preamble to the Act made clear that the law was

⁸ Urlich, D. U. (1970). The Introduction and Diffusion of Firearms in New Zealand 1800–1840. *Journal of the Polynesian Society*, 79(4), 399 at 403.

⁹ *Id.* at 399–400.

¹⁰ *Id.* at 406.

¹¹ *Id.* at 403; Forsyth, C. (2011). *New Zealand Firearms: An Exploration into Firearm Possession, Use and Misuse in New Zealand*. Wellington, New Zealand: New Zealand Deerstalkers’ Association, National Heritage Trust at 165–66.

¹² Forsyth at 166.

¹³ Urlich at 403.

¹⁴ Forsyth at 166.

¹⁵ Arms Importation Act (1845), Preamble. Retrieved from http://www.nzlii.org/nz/legis/hist_act/aia18459v1845n1327/.

concerned with “certain tribes of the Native race of New Zealand hav[ing] taken up arms against the Queen’s sovereign authority” and sought to “effectually subdu[e] the present insurrection, and . . . prevent[] the recurrence of an armed resistance to the authority of her Majesty”.¹⁶ Historical evidence also suggests that the overarching purpose of the sale and import controls was to prevent settlers from supplying Māori with firearms in order to reduce or eliminate the threat of any Māori armed resistance to settler control.¹⁷ Ultimately, these controls proved both hard to enforce and ineffective due to the preponderance of smuggling and the challenges in establishing ownership of firearms.¹⁸ To address these deficiencies and also concerns raised about various armed conflicts taking place around the same time as part of the New Zealand Wars, Parliament passed the Arms Act 1860.¹⁹ That statute imposed a licensing and registration regime for gun owners and dealers, including granting the power to the Governor to require the “stamping and marking” of imported firearms as well as firearms already present in the country.²⁰ Following the reduction in conflict between Māori and Pākehā, the Act was suspended in the South Island in 1882 and suspended in most parts of the North Island in 1885.²¹

By the early 20th century, firearms were “familiar and useful tools” in New Zealand that were kept primarily for hunting.²² Parliament ushered in a new set of controls by passing the Arms Act 1920, the stated purpose of which was to “make [b]etter [p]rovision for the [p]ublic [s]afety” by regulating firearms, ammunition, and explosives and which bore many features of New Zealand’s present-day gun laws.²³ Purportedly undergirding these legislative changes was a concern about civilian unrest, particularly concerns about labour and socialist movements elsewhere in the world in the preceding decade.²⁴ The 1920 statute made possession of automatic pistols illegal, though it allowed the Minister of Defence to issue permits for military veterans and their close relatives to possess prohibited weapons that had been “used beyond the seas”, subject to whatever conditions on use the Minister deemed appropriate.²⁵ Foreshadowing the buy-back scheme that would come almost exactly a century later, the Act authorised the Minister of Finance to compensate owners of newly prohibited weapons so long as they were turned into Police in “a serviceable condition”.²⁶ The Act, moreover, set up multiple licensing systems controlling firearms that were legal to possess; these included licensing requirements for the carrying of pistols outside of the home, for carrying or possessing any firearms (available only for those who could bear the burden of demonstrating a “lawful, proper, and sufficient purpose”), and for importing any firearms, ammunition, or explosives for purposes of sale.²⁷ It also created a permit-to-procure

¹⁶ *Id.*

¹⁷ Innes, C. (2005). *Arms Control in New Zealand 1854–61* (Master’s thesis, Massey University, New Zealand). Retrieved from <https://mro.massey.ac.nz/handle/10179/3478>.

¹⁸ Arms Importation Act (1845); Thorp, T. (1997). *Review of Firearms Control in New Zealand* (Report of an Independent Inquiry Commissioned by the Minister of Police). Wellington, New Zealand: GP Print (“Thorp report”) at 9.

¹⁹ Thorp report at 9.

²⁰ Arms Act of 1860 (38 Victoriae 1960), § VIII. Retrieved from http://www.nzlii.org/nz/legis/hist_act/aa186024v1860n38188/.

²¹ Thorp report at 9.

²² Thorp report at 10.

²³ Arms Act 1920 (11 GEO V 1920, No 14).

²⁴ Thorp report at 10–11.

²⁵ Arms Act 1920 § 3.

²⁶ *Id.* § 3(5).

²⁷ *Id.* §§ 4–5.

requirement for acquiring firearms, ammunition, or explosives.²⁸ The Act required owners to register their weapons and obligated dealers to keep records of all sales of firearms and ammunition.²⁹ Compliance with this latter requirement was so swift that within 12 years of the statute’s enactment, Police had compiled records for about 200,000 firearms.³⁰

Parliament in 1934 made a series of tweaks to the 1920 Act. Among those modifications was a broadening of the importation licensing requirement to apply to any importing (regardless of whether for purpose of sale),³¹ a change purportedly motivated by a desire to address the importation of relatively cheap firearms during the Great Depression and a rise in accidental deaths and injuries due to inferior weapons.³² The 1934 Act further gave Police the authority to deny or revoke the firearms registration of people it deemed to be unfit to possess firearms.³³ This provision marked the first time that the Arms Act imposed the “fit and proper person” standard that would be repeated in more recent firearms legislation and come to serve as the focal point of the licensing analysis up through the present day.³⁴

The next 50 years were marked by a small number of firearms-related trends. First, there was a growing movement for the relaxation of certain registration requirements, both from Police, whose resources were strained by the paper-based registration system, and from gun owners, some of whom bristled at an increase in government presence in their lives.³⁵ This movement led to the lifting of the registration and permit-to-procure requirements for shotguns in 1930, though a modified permitting requirement was reinstated in 1968.³⁶ Second, guns continued to be a common presence in New Zealanders’ lives. Hunting, fishing, and other recreational uses of guns grew in popularity, aided by the Government’s establishing the New Zealand Mountain Safety Council in 1965 to promote the safe use of firearms.³⁷ Military interests in maintaining accurate sharpshooters during the two world wars and the return of soldiers from World War II with arms in tow further added to the presence of guns in daily life.³⁸ Third, New Zealand enjoyed a period of “peaceful enjoyment”, one relatively devoid of firearms-related crime that gave little reason to expend political capital on gun regulation.³⁹

2. Arms Act 1983 and Arms Amendment Act 1992

In 1983, Parliament scrapped the then-existing firearms legislation and passed an Arms Act that placed greater weight on regulating firearms users rather than firearms themselves. Although this Act would be amended from time to time in the ensuing decades, the general regulatory structure it put into place continues to exist without significant fundamental change – though some has now been proposed – up through the time of this report. The present-day system – with its focus on licensing “fit and proper” individuals – was set into motion in 1983 when Parliament enacted the Arms Act, making the fateful decision to make the individual possessing the firearm, rather than the firearm itself, the focal point of

²⁸ *Id.* § 6.

²⁹ *Id.* §§ 9, 12.

³⁰ Thorp report at 11.

³¹ Arms Amendment Act 1934 (25 GEO V 1934, No 3) at § 2(1).

³² Thorp report at 11.

³³ Arms Amendment Act 1934 (25 GEO V 1934, No 3) at § 3.

³⁴ *Id.* § 3(1).

³⁵ Thorp report at 11.

³⁶ *Id.*

³⁷ *Id.* at 11–12.

³⁸ *Id.*

³⁹ *Id.* at 12.

regulatory control. Subsequent amendments to the statute imposed additional restrictions and made relatively minor tweaks, but the basic model put into place in 1983 has stood in place ever since.

A. Arms Act 1983

By the 1960s, the regulatory system put in place by the Arms Act 1920 had begun to break down. The firearms registry proved to be especially challenging. Police maintained paper copies of firearms registrations, with one central index kept in Wellington for shotgun registrations.⁴⁰ Indices containing registrations for other types of weapons such as pistols and rifles, however, were spread across 16 offices throughout the country.⁴¹ Information kept in the paper records could be incorrect; it was not uncommon for gun owners to be dilatory in meeting their obligation to update records following changes of address.⁴² Even a Police review of the registry was problematic. In 1967, Police embarked on a project to conduct a personal check of every firearms owner to ensure that information about owners and their guns was still accurate but elected not to assign the project a high priority.⁴³ Six years later, the project still incomplete, Police estimated that it would take it an additional 11 years to complete the task, at which point it would likely need to start its review anew to account for all of the changes in information that would inevitably occur during that time period.⁴⁴ From the work that had been completed, Police discovered that 66 per cent of entries contained at least some inaccurate information.⁴⁵

Abandoning the project to verify information in the firearms registry, Police began considering alternative regulatory structures. Its search for a different system was based on a few premises, all of which reflected the notion that the designing of a new regulatory system as well as the system itself should be owner-focused:

- That a new system could not require an expenditure of additional resources, it having been determined that it would be “politically unacceptable” either to ask the Government for more money or to require a greater financial contribution from gun owners;
- That the new regulatory system required support from gun owners;
- That the focus of the new system should be on assessing the fitness of individuals to possess guns and reducing access by persons deemed to be unfit.⁴⁶

This third consideration – placing greater emphasis on the licensing of individuals – was especially important because it further de-emphasised the importance and necessity of maintaining a firearms registry, which had already fallen out of favour with Police given how resource-intensive it had proven to be in the preceding decades. It was also a decision that would be revisited and reassessed in the ensuing decades following high-profile shootings, including after the attacks in Christchurch.

Police’s early proposals for a new system up through 1981 involved a mix of owner licensing and registration for certain types of firearms, such as shotguns, but a 1982 internal Police

⁴⁰ *Id.*

⁴¹ *Id.* at 13.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Thorp report at 13–14.

report entitled *Firearms Registration in New Zealand* shifted Police's focus even further away from a registration-centred approach.⁴⁷ The report took aim specifically at the value in continuing to maintain any firearms registry, asserting that a registry would not assist with crime prevention or detection, that the difficulties in converting the incomplete paper records from Police's current registry into an accurate register exceeded the limits of Police resources, and that perpetrators of shootings were unlikely to comply with the requirements of a registry, thereby undermining the effectiveness of such a system.⁴⁸ Instead of pouring money into what it believed would be an ineffective system, the report advocated developing a licensing system with intense vetting and using the money that would otherwise be spent on a registry to fulfil other Police duties.⁴⁹ A better approach, the report concluded, would be to "place the responsibility of safe firearms use squarely on the shoulders of the user".⁵⁰

Many of these same points were repeated by members of Parliament during the debates on the bill that would become the Arms Act 1983. Benjamin Couch, who served as the Minister of Police when the bill was introduced, noted the main message being sent by the bill: "that it is the person and not the firearm that is the danger."⁵¹ Multiple members remarked on the challenges of updating the records in the firearms registry and lauded the speed with which Police would be able to check an index containing licensing information, which was expected to be computerised.⁵² Then Minister Couch also commended the bill for having the support of the "whole community", which he attributed to the Government embarking on "a programme of consultation".⁵³ "The Bill affects the rights of 500,000 or more New Zealanders who own weapons," he remarked, "and that is why it was necessary to have detailed discussions with all of those groups."⁵⁴ Only a few members voiced concerns about the proposed legislation. Member Michael Connelly expressed support for the bill but nevertheless stated that he was "surprised" that there would be no registry.⁵⁵ "At a time when the use of firearms is escalating there should be more rather than less control in the public interest," he said.⁵⁶ In a comment that would not be out of place in discussions about New Zealand's gun laws today, Member Frank O'Flynn invoked the potential spread of US gun culture as a cause for

⁴⁷ *Id.* at 14–15. As noted in the Thorp report, the firearms debate in New Zealand in the late 1970s and early 1980s may have been influenced by a British man named Colin Greenwood, who had published a review of firearms laws in England and Wales in 1972. According to the Thorp report, Greenwood was a strong believer in a right to bear arms and argued against gun regulations, including the establishment of firearms registries. *Id.* at 15. Greenwood spoke in New Zealand at a 1982 Shooting Sports Symposium and reportedly received an enthusiastic response from the audience and interest from firearms groups who supported and then adopted his messages. *Id.*

⁴⁸ *Id.* at 177.

⁴⁹ *Id.* Notably, the Thorp report, while sympathetic to some of the problems with a registry identified by the 1982 Police report, differed with the assertions in that report in certain respects. The report questioned the assumption made in the 1982 report that a registry was not effective in assisting with crime prevention and detection as well as the assumption that owners could generally be expected not to comply with registration requirements. *Id.* at 178–80. In addition, the report identified several critical gaps left by a system revolving around individual licences, notably the inability to know how many guns were owned by the public and how many each owner possessed and the inability to ensure that firearms be given only to licensed owners. *Id.* at 179–80.

⁵⁰ *Id.* at 16 (quoting McCallum, A. (September 1992). *Firearms Registration in New Zealand*. Wellington, New Zealand.).

⁵¹ Arms Bill, Introduction, 8 September 1983 (Hansard) at 2271.

⁵² *Id.* at 2271, 2275. Member Dail Jones said that "it would be a horrendous administrative task to try to register thousands of shotguns every year". *Id.* at 2275.

⁵³ *Id.* at 2277.

⁵⁴ *Id.*

⁵⁵ *Id.* at 2279.

⁵⁶ *Id.*

concern. Licensing gun owners without an accompanying firearms register “smacks of the slogan of the gun lobby in the United States, which says that guns do not kill people: it is people who kill people”, he asserted. “Unless we are very careful – and there is no sign that we are being very careful – that kind of meaningless slogan will defeat an efficient system of gun control.”⁵⁷

Ultimately, the bill passed without difficulty in Parliament. The Act conveyed the twin goals of (1) consolidating and amending firearms laws and (2) promoting the safe use and control of guns,⁵⁸ and its central feature was the creation of a licensing system. Under this system, licences could be issued to individuals who were older than 16 and who were deemed by Police to be a “fit and proper” person.⁵⁹ Licences were valid for life and no further vetting was required in order to maintain one, though the Act conferred power on Police to revoke licences if it had reason to believe that the licensee was no longer a fit and proper person.⁶⁰ To obtain a licence, an individual had to undergo a suitability assessment by Police, submit the names of two references, and complete a test based on the Arms Code.⁶¹ But only those individuals who did not already own firearms had to undergo the full vetting; those who were already in legal possession of firearms were subjected only to a computer check to see if they had any convictions or disqualifying criminal record, with Police conducting any necessary follow-up investigations.⁶² Possession of a firearm without a licence or selling a firearm to an unlicensed person was punishable by a fine or jail time.⁶³

Endorsements were required to possess certain types of weapons, including pistols.⁶⁴ For pistols, a user had to be a member of a pistol club, a dealer, or a collector.⁶⁵ Police issued such endorsements where it determined that the applicant was a “fit and proper person to be in possession of [a] pistol or restricted weapon”.⁶⁶ Applicants then had to obtain a permit to procure the desired weapon, which was valid for one month.⁶⁷ Once they obtained licences, licensees were able to purchase an unlimited number of the types of firearms for which they had the proper endorsements, so long as they also had the requisite permits to procure.⁶⁸ Unlike the system set up by the 1920 Act, the 1983 Act did not require any firearms to be registered.

In addition to its focus on users rather than firearms, the 1983 Act sought to address what had been perceived as deficiencies with the prior system. Eliminating registration in favour of a more robust licensing system was intended to reduce the administrative burden on Police while minimising restrictions placed on firearms users.⁶⁹ Further to this point, the new regulatory structure was intended to be self-functioning, insofar as licensed firearms owners could sell and trade firearms among themselves without requiring any government involvement.⁷⁰ Shooters purportedly endorsed these goals, which eased the regulatory

⁵⁷ Arms Bill, Second Reading, 16 November 1983 (Hansard) at 3920.

⁵⁸ Arms Act 1983, Long Title.

⁵⁹ *Id.* § 24(1).

⁶⁰ *Id.* § 27.

⁶¹ *Id.*

⁶² Thorp report at 17.

⁶³ Arms Act 1983 §§ 42–59.

⁶⁴ *Id.* § 29.

⁶⁵ *Id.* § 29(2).

⁶⁶ *Id.* § 30(1)(a).

⁶⁷ *Id.* § 35.

⁶⁸ *Id.*

⁶⁹ Thorp report at 18.

⁷⁰ *Id.*

burdens on them and set up a system that was “as little restrictive of legitimate users as any arms control system in a like society, and much less restrictive than most”.⁷¹ Still, some potential challenges were evident from the start. Although Police issued 290,000 new licences by the end of 1985, including to 30,000 new applicants who had not previously been documented gun owners, the Government did not cross-check the licensees against the registration papers from the prior system.⁷² There was also no effort made to account for the approximately 20,000 guns that were known to be lost or stolen at the time the 1983 Act was passed.⁷³

B. Arms Amendment Act 1992

Less than 10 years after the Arms Act was enacted, it underwent its most significant amendment to date. The precipitating event for these changes was a now-infamous November 1990 mass shooting in Aramoana, a small township near Dunedin. There, a 33-year-old resident named David Gray embarked on a shooting rampage following a dispute with his neighbour.⁷⁴ After shooting the neighbour and the neighbour’s daughter, Gray indiscriminately shot 11 other people, including a policeman and a six-year-old boy.⁷⁵ Gray was shot in a confrontation with Police the following day.⁷⁶ The shooting, which was the worst in New Zealand history until the 2019 attacks in Christchurch, prompted review of the Arms Act for two main reasons. First, Gray used two military-style semi-automatic (“MSSA”) weapons in the attacks, neither of which was prohibited by the 1983 Act.⁷⁷ Because Gray was a licensed user, he was able to possess as many firearms as he wanted, so long as none of them were pistols or prohibited weapons, and at the time of the shooting, Gray had six semi-automatics, all of which were legally owned.⁷⁸ Second, Gray had been registered as the owner of a rifle under the regulatory regime that predated the 1983 Act, which meant that he received his licence after only limited vetting.⁷⁹ Proposed reforms were discussed, including a return to maintaining a registry of firearms owned by licensed users.⁸⁰

But the Aramoana shooting was not the only justification cited for reviewing the 1983 Arms Act. Then Police Minister John Banks described a “flooding of the world market with AK47 look-alikes in semi-automatics” by Chinese manufacturers, adding that “[m]any of the world’s shootings have been committed with this type of weapon”.⁸¹ Banks also noted that the United States, England, and Australia had all banned importation of such “tools of mass destruction” as additional grounds for reforming the law.⁸² Amendments to the law, he asserted, would have three central purposes: (1) to control more strictly the importation and possession of MSSAs, (2) to require photographs – which by necessity required periodic updates – on firearms licences, and (3) to create a new offence punishing those who

⁷¹ *Id.* at 19.

⁷² *Id.*

⁷³ *Id.* The Thorp report further states that Police “had insufficient grounds” to assume that the owners of these lost or stolen guns would have applied for licences.

⁷⁴ New Zealand History. *David Gray kills 13 at Aramoana*. Retrieved from <https://nzhistory.govt.nz/david-gray-kills-13-aramoana>.

⁷⁵ *Id.*; Hunt, T. (2014, November 15). Flashback: The Aramoana Massacre. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

⁷⁶ *Id.*

⁷⁷ Arms Amendment Bill, Introduction, 28 November 1991 (Hansard).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Thorp report at 20.

⁸¹ Arms Amendment Bill, Introduction, 28 November 1991 (Hansard).

⁸² *Id.*

possessed firearms or airguns after revocation of a licence.⁸³ Of these priorities, the desire to address MSSAs appeared to be paramount, with legislators making multiple references to “Rambo-type guns” when debating the bill.⁸⁴ Although a ban on MSSAs was proposed by the Opposition party, it was ultimately rejected based on the belief that such weapons could be used for legitimate purposes, such as hunting; that similar bans in Australia and the United States had proven to be ineffective because prohibited firearms just went underground; and that the Government would be obligated to pay compensation if MSSAs were banned, which would have been a hefty price given that there were upwards of 60,000 MSSAs in the country at the time.⁸⁵

Consistent with the announced purposes of the bill, the Arms Amendment Act 1992 made multiple key changes to the original Act. First, in an effort to control the importation and possession of MSSAs, the 1992 Act imposed a new requirement to obtain both an endorsement and a permit to procure from Police, with the same “fit and proper person” test being applied.⁸⁶ In keeping with Parliament’s focus on “Rambo-style” guns during debates about the bill, the enacted legislation defined a MSSA as a firearm that was self-loading or semi-automatic, other than a pistol, and had one of an enumerated list of features, such as a folding or telescopic butt or a military-pattern free-standing pistol grip.⁸⁷ Semi-automatic or self-loading firearms that did not include any of these features were said to be in a “sporting configuration” and fell outside the scope of being an MSSA, including the requirement to obtain a Police endorsement.⁸⁸ Although all firearms were subject to specific storage requirements, pistols and MSSAs had stricter requirements.⁸⁹ Dealers likewise now had to obtain a permit from the Police Commissioner in order to import MSSAs and restricted weapons or parts, and only upon a determination by the Commissioner that “there are special reasons” why the firearms or parts should be allowed into New Zealand.⁹⁰

Second, the 1992 Act introduced a requirement that licensed gun owners renew their licences every 10 years.⁹¹ To pay for the increased costs of the new system, there was an increase in fees for licensing, endorsements, and dealer permits, the rationale being that the taxpayers should not be expected to pay for a regulatory system if they did not use or own firearms and thus never had the occasion to use it.⁹² Unlike the licensing process that unfolded in the wake of the 1983 Act, where gun owners who had one or more firearms registered before the Act was passed were subject to more lenient vetting, the 1992 amendments required all licence

⁸³ *Id.* During the second reading of the bill, Banks added two more purposes to his description of the bill: (4) to restrict mail-order purchases of guns and ammunition to authorised “fit and proper” persons and (5) to give Police the power to remove guns from situations where there existed domestic violence. Arms Amendment Bill, Second Reading, 22 September 1992 (Hansard).

⁸⁴ See, e.g., Arms Amendment Bill, 28 November 2011 (Hansard). Then Minister Banks asserted that the bill would “put a stop to . . . 16-year-olds who might want military-style semi-automatics to enhance their Rambo image”. *Id.*

⁸⁵ Arms Amendment Bill, Third Reading, 14 October 1992 (Hansard). Police estimated that there were 12,000 to 15,000 MSSAs in the country, but firearms organisations estimated as many as 60,000. *Id.*

⁸⁶ Arms Amendment Act 1992 §§ 13, 19.

⁸⁷ *Id.* § 2(2).

⁸⁸ *Id.*

⁸⁹ *Id.* § 15 (authorising Police to impose security precautions on MSSA owners by regulation); Arms Regulations 1992, Regulation 19, 28 (setting forth storage requirements for all firearms and heightened requirements for pistols, MSSAs, and restricted weapons).

⁹⁰ *Id.* § 6.

⁹¹ *Id.* § 9.

⁹² Thorp report at 22.

holders to submit applications and be subject to full vetting.⁹³ Plastic identification cards with a photograph of the user were added to the licences to reduce the opportunity for fraud.⁹⁴ Licence holders had six months to comply with the new licensing requirements, and Police was given the authority to revoke licences or deny licence applications for failure to comply with the photograph requirement.⁹⁵

Third, the 1992 amendments imposed new offences in an effort to crack down on the prevalence of MSSAs. Amendments were added to make it illegal, and subject to either a monetary fine or jail time, to import MSSAs without a permit, to sell MSSAs to persons without a permit to import or to procure, or to possess unlawfully MSSAs.⁹⁶ The amendments further made it a crime to sell ammunition to an unlicensed user or dealer or to sell by mail firearms or ammunition to a person who failed to show documentation of an endorsement for the items being purchased.⁹⁷ Provisions were also added to the Act to permit Police to revoke the licences of, or decline to issue licences to, persons against whom protection orders had been sought or granted under the Domestic Protection Act 1982, and to conduct searches of such persons if there were reasonable grounds to believe that they were in possession of firearms or ammunition.⁹⁸ One notable change that has not received much attention was to change the definition of “member of the Police” to include both sworn and non-sworn members.⁹⁹ This change meant that non-sworn officers were now able to be involved at multiple steps in the regulatory process, including making decisions about licensing, endorsements, denying permits to import, and reinstating licences that had been revoked, though some actions were still reserved for commissioned officers only and decisions to grant importation permits for MSSAs, pistols, and restricted firearms were at the discretion of the Commissioner alone. As part of these reforms, the Government also passed the Arms Regulations 1992, which set forth greater detail about the licensing and endorsement process, among other things.¹⁰⁰

3. *The Thorp Report*

Several events that occurred in the years immediately following the 1992 amendments ensured that firearms remained a focus of Police. To begin, the requirement that all firearms owners, even those who had previously obtained lifetime licences, obtain a new licence, complete with a photograph and subject to a 10-year renewal period, proved unwieldy. Although it had been estimated that the project would be completed by 1997 and that 90 per cent of lifetime licences would be replaced by new licences (or a surrender of licence) within six months of notice being sent, by 1994 – two years after the amendments were enacted – “barely 70 percent” of lifetime licensees had in fact applied for new licences or surrendered their old ones.¹⁰¹ There was also evidence of “widespread disregard” by licensees of the storage requirements for firearms and the requirement to notify Police of changes of

⁹³ *Id.* at 22; Arms Amendment Act 1992 § 17.

⁹⁴ Arms Amendment Act 1992, Transitional provisions, § 37.

⁹⁵ *Id.* §§ 17, 38.

⁹⁶ *Id.* §§ 5, 22, 27.

⁹⁷ *Id.* § 21. The amendments also stiffened penalties for offences that were included in the 1983 Act. See *id.* §§ 23–27.

⁹⁸ *Id.* §§ 10, 29.

⁹⁹ *Id.* § 2(2).

¹⁰⁰ See generally Arms Regulations 1992. Retrieved from <http://www.legislation.govt.nz/regulation/public/1992/0346/latest/DLM168889.html>.

¹⁰¹ Thorp report at 22.

address.¹⁰² As with the gun registry-based system that existed before 1983, the lack of sufficient resources continued to plague Police. Costs of relicensing all gun owners greatly exceeded income, and the Police Firearms Co-ordinator declared on multiple occasions that unless additional and substantial resources were diverted to the programme, the goals of the relicensing project would not be accomplished.¹⁰³

Additional high-profile shootings also helped keep the focus on firearms laws.¹⁰⁴ Elsewhere abroad, there were mass shootings in Australia and the United Kingdom, including the March 1996 shooting of 16 schoolchildren and one teacher in Dunblane, Scotland, and the April 1996 shooting of 35 people in Port Arthur, Tasmania.¹⁰⁵ These international events prompted a swift policy response in Australia that included the banning of automatic and semi-automatic weapons as well as a buy-back of more than 600,000 such firearms, and a government inquiry in the United Kingdom that eventually led to a ban on all handguns.¹⁰⁶

Given these events and the challenges in implementing the 1992 amendments to the Arms Act, Police conducted an internal review of firearms shortly following the Dunblane shooting, which was broadened in August 1996 to an independent review led by a High Court judge named Sir Thomas M Thorp.¹⁰⁷ The Minister of Police directed Thorp and his team to investigate “the effectiveness of the Arms Act ... to control the use of firearms in New Zealand”, namely whether there had been “general compliance” by the public with the 1992 amendments and “whether the Police have been able to adequately enforce compliance”.¹⁰⁸ The Minister also instructed Thorp to consider whether there should be any further amendments to the Arms Act and to make any additional recommendations he considered appropriate.¹⁰⁹ This endeavour took Thorp and his team nearly one year to complete, and their investigation included conducting surveys, receiving written and oral submissions, holding public hearings, conducting studies, and visiting foreign jurisdictions.¹¹⁰

Totalling more than 250 pages, the Thorp report is widely regarded as the most extensive examination of New Zealand gun laws to date. The report traced the history of New Zealand’s gun laws, provided statistics about the prevalence of firearms at the time the work for the report was undertaken, and examined the criminal use of firearms in the country. It further discussed arguments for and against greater government regulation of guns and

¹⁰² *Id.*

¹⁰³ *Id.* at 22–23.

¹⁰⁴ In New Zealand alone, there were at least six firearms-related incidents between May 1992 and April 1996: a Paerata man who shot and stabbed six family members to death in May 1992; a Dunedin man who shot and killed five family members in July 1994; a Wainuiomata man who engaged in an armed standoff with, and who was eventually non-fatally wounded by, Police in July 1995; a mentally ill Invercargill man who in June 1995 held up a sporting goods store, stole firearms from it, and threatened to kill anybody who stopped him, before being shot dead by Police; a Whangārei man who was shot and killed by Police after taking a rifle from a sporting goods store in 1995; and a Havelock North man who was shot by Police in June 1996, when he was a prime suspect for the murder of a constable. Newbold, G. (1999). The Criminal Use of Firearms in New Zealand. *The Australian and New Zealand Journal of Criminology*. 32(1), 61, 62. Newbold briefly discusses each of these shooting events. For more detailed accounts of the shootings, see, e.g., Chronology of fatal shootings by NZ police. (2008, October 23). *New Zealand Herald*. Retrieved from <https://www.nzherald.co.nz>; Valedictory Statements, 2 August 2005 (Hansard, Volume 627, Page 22191), statement by Mark Peck (referencing June 1995 shooting in Invercargill).

¹⁰⁵ Newbold at 62.

¹⁰⁶ *Id.*

¹⁰⁷ Thorp report at 2.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 2–5.

considered the benefits and weaknesses of the system set out by the 1983 Arms Act and its amendments. Among its findings, the report estimated that there existed between 700,000 and 1 million firearms and approximately 205,000 licensed firearms users, down from the 327,000 that were estimated to exist six years earlier.¹¹¹ The report lauded the thoroughness of the vetting system, calling it “outstandingly the most useful feature of the present system”, and it also praised the Mountain Safety Council for conducting beneficial safety training courses and pistol clubs for helping to maintain tight control over the use of pistols.¹¹²

But the report ultimately identified more weaknesses in the system than strengths. It took particular aim at the lack of a firearms registry, noting that the absence of a registration system for guns meant that Police lacked information about how many guns were in the country or how many were in the possession of any given licensee, had no control over sales or transfers of firearms, was unable to trace guns to their owners, and lacked information that would be helpful to inform and develop firearms policy.¹¹³ The report also criticised the decision enshrined in the 1992 amendments to renew licences at 10-year intervals, contending that the infrequency of the renewal periods resulted in the system containing inaccurate information about licensees.¹¹⁴ Furthermore, the report observed that the regulation of firearms faced significant competition for attention within Police and that “pressures on the Police to respond to other more dramatic and urgent needs has resulted ... in the arms business being given a progressively lower priority, and becoming under-resourced”.¹¹⁵ The report identified as a final weakness the “complexity and awkwardness” of the Arms Code (a combination of the Arms Act 1983, the Arms Amendment Act 1992, and the accompanying regulations), which it attributed to the difficulty of construing the original Act and the “haste” with which the 1992 amendments were written.¹¹⁶ Bluntly stated, the report’s ultimate conclusions were as follows:

- The Arms Act and the 1992 amendments “do not provide an effective code for control of firearms in New Zealand”;
- The 1992 amendments have “received a low level of general compliance by the public”, which meant that Police “have not been able to adequately enforce compliance”; and
- “[T]here is a need for radical reform of the firearms laws”, something most likely to be achieved by a staged series of reforms managed by an authority outside of Police.¹¹⁷

Along with these general conclusions, the Thorp report outlined a series of detailed reforms stretching across firearms policy and operations. Several of the report’s proposals would come to dominate the public discussion and be enacted following the 2019 Christchurch shooting, including a ban of all MSSAs, with exceptions for persons engaged in pest control; the creation of a buy-back programme for newly banned firearms; and establishment of limits

¹¹¹ Thorp report at 27, 35–6. With respect to the reason for the difference between the 327,000 estimated licensees in 1991 and 205,000 licensees in 1997, the report attributes the decline to non-compliance with the 1992 amendments and a general drop in the number of applications due to aging and the urbanisation of society. *Id.* at 36–7.

¹¹² *Id.* at 114–16.

¹¹³ *Id.* at 117.

¹¹⁴ *Id.* at 118.

¹¹⁵ *Id.* at 120.

¹¹⁶ *Id.* at 121.

¹¹⁷ *Id.* at 237.

on magazine capacity for semi-automatic weapons.¹¹⁸ Other proposals from the report included a review of security requirements, mandating inspection of whether a licence applicant met those requirements before a licence would issue, and establishing mandatory disqualification periods of varying lengths for individuals convicted of violent offences or against whom a final protection order had been entered under the Domestic Violence Act.¹¹⁹

The report also proposed broad, systemic changes. These included the wholesale repeal of the Arms Act 1983 and the Arms Amendment Act 1992, replacing them with a statute “drafted in plain language with the goal of making the law in relation to firearms as clear and accessible as possible”, and setting up a Firearms Authority separate and apart from Police to administer the Arms Act.¹²⁰ As envisioned by the report, this latter entity would either cease to exist after a five-year period, with responsibility for the Act reverting to Police, or remain a permanent fixture in the New Zealand Government in the event that competition with other Police priorities would present an “unacceptable risk” that the problems that previously plagued the system would return.¹²¹

The Thorp report also tackled the ever-thorny issue of whether to establish a firearms registry. Addressing head on the concerns raised by Police in the 1982 McCallum report, which advocated for abandoning a firearms registry in favour of a system revolving around regulated firearms users, the Thorp report came down on the side of a registry. The report predicted that technological advances could address many of the deficiencies that existed with the previous paper-based system, namely how resource-intensive it was, and it further noted that New Zealand’s experience since adopting a licensee-centred approach in the 1983 Act demonstrated that “total reliance on personal vetting does not meet the reasonable needs of our society”.¹²² Interestingly, one of the Thorp report’s principal reasons for advocating for a firearms registry was increasing the personal responsibility firearm owners would have for their weapons. As reasoned by the report, allowing one’s firearms to be outside of one’s possession – whether it be through theft, sale, or temporary loan to a friend – would carry increased weight because the firearm could ultimately be traced back to the owner.¹²³ The Thorp report recommended that the Government aim for an 80 per cent compliance rate in order to realise the full benefits of a registry.¹²⁴

Perhaps as important as its recommendations, the Thorp report also identified a series of factors that could limit the effectiveness of any firearms reforms. First, the report noted that the proposed additional controls were generally targeted at guns that were legally possessed and affected illegally held guns only indirectly; reducing the number of illegal guns and any attendant drop in crime should be left for a long-term project, the report stated.¹²⁵ Second, the report noted that implementing effective gun control measures required more than simply amending the Arms Act. Other statutory reforms (e.g., general criminal statutes) would be necessary, as would changing attitudes about guns held by both shooters and the public at large.¹²⁶ The Thorp report also noted how the lack of sufficient information about firearms hindered the Government’s ability to enact proper controls over firearms. “Basic

¹¹⁸ *Id.* at 239.

¹¹⁹ *Id.* at 240–1.

¹²⁰ *Id.* at 244, 247.

¹²¹ *Id.* at 247.

¹²² *Id.* at 187.

¹²³ *Id.* at 187.

¹²⁴ *Id.*

¹²⁵ *Id.* at 231.

¹²⁶ *Id.* at 231–2.

information” about firearms, firearms-related crime, firearms suicides, and firearms accidents was necessary to enable meaningful reform.¹²⁷ Lastly, and consistent with its proposal to create a separate Firearms Authority, the Thorp report advocated for removing firearms policy from the Police portfolio. Meaningful reform, the report stated, would be achieved “only if the reform process is controlled by people with appropriate management and technical skills, who bring fresh minds to the many difficult problems, and are able to apply their skills and energies to resolving those problems free from the pressures of competing loyalties”.¹²⁸

4. Post-Thorp Report Reforms

Despite the breadth and comprehensive nature of the Thorp report, its release did not result in any immediate changes to the Arms Act. To the contrary, efforts to implement certain of the report’s proposals failed in Parliament. Those reform efforts that did succeed in subsequent years followed the patchwork approach to legislating: passing amendments that were relatively limited in nature and designed to address narrow, specific issues.

A. Efforts to Implement Changes Proposed by the Thorp Report

Following the release of the Thorp report, there were multiple efforts to amend the Arms Act, with some proposals derived directly from the report’s recommendations. In 1999, the Government introduced the Arms Amendment Bill (No 2), which would have broadened the purpose of the Arms Act beyond public safety to include promoting “responsible attitudes to firearms ownership, firearm transfer, and firearm security” and enhancing law enforcement as legislative goals.¹²⁹ The main features of the bill were a proposal to establish a firearms registry, increasing penalties for certain offences, and creating an infringement notice regime for registration offences.¹³⁰ The proposed registration requirements would have obligated dealers to report certain information about firearms sold and buyers to Police within seven days and would have required licensed owners apply for registration within seven days of coming into possession of firearms.¹³¹ Despite the Government’s touting the bill as its response to the Thorp report,¹³² the registration requirement was the only key recommendation from the report to be included in the bill itself.

The bill passed a second reading and was referred to the Law and Order Select Committee in 2001 but did not advance any further, and it was eventually dropped in 2004.¹³³ Looking back more than a decade later, many attribute the failure of the bill to intensive lobbying at the select committee stage by pro-gun groups, who asserted that a registry would be unwieldy and expensive and would not target illegal gun owners.¹³⁴ Other recommendations in the

¹²⁷ *Id.* at 234.

¹²⁸ *Id.*

¹²⁹ Arms Amendment Bill (No 2), Explanatory Note, General Policy Statement. Retrieved from http://www.nzlii.org/nz/legis/hist_bill/aab219993121185/.

¹³⁰ *Id.*

¹³¹ *Id.* at PART I, Registration of Firearms.

¹³² Beehive.govt.nz. (1999, July 13). *Government Gun Registration Bill Introduced* [Press release]. Retrieved from <https://www.beehive.govt.nz/release/government-gun-registration-bill-introduced>.

¹³³ New Zealand Parliament, Arms Amendment Bill (No 2), Bill History. Retrieved from https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL2696_1/arms-amendment-bill-no-2.

¹³⁴ Williamson, K. (2009, May 22). Registry idea shelved after pro-gun lobbying. *Stuff*. Retrieved from <https://www.stuff.co.nz/>. Simon Mount, who served as an assistant counsel to the Thorp Commission, described the pushback against the reform efforts as follows: “What we found at the time was that most gun owners are

Thorp report were reportedly scrapped for similar reasons; then Police Minister Jack Elder decided against including an MSSA ban in the 1999 bill out of concerns about alienating and upsetting gun owners.¹³⁵

In addition to the bill, which was introduced by the National Party, Member Matt Robson of the Alliance introduced a member's bill in June 1999 that would have established an independent Firearms Authority, as proposed in the Thorp report, to implement key recommendations from the report.¹³⁶ Then Police Minister Clem Simich pushed back against the proposal, arguing that Police had considered the recommendation from the Thorp report to establish an independent authority and rejected it.¹³⁷ Among the justifications cited by Simich were concerns about spending resources on duplicating infrastructure that already existed within Police.¹³⁸ Simich also asserted that, as a matter of sequencing, other firearms legislation should be passed first, with any authority being established later (if at all).¹³⁹ Although Robson's bill had the support of the Labour, Alliance, and New Zealand First parties, it failed to pass the first reading by a two-vote margin.¹⁴⁰

The Government tried again to amend the Arms Act in 2005, introducing the Arms Amendment Bill (No 3). Dropped from the 2005 bill was any effort to establish a registry. Instead, the primary focus of the bill was to bring New Zealand into compliance with the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.¹⁴¹ Those protocols were put into place to strengthen international cooperation in combating illicit manufacturing of and trafficking in firearms, and the bill was intended to enshrine in the Arms Act the minimum requirements needed in order for New Zealand to comply with the protocols.¹⁴² Among the chief proposals were a requirement for persons selling or manufacturing firearms to obtain a dealer's licence, a prohibition on importing firearms without a Police licence, a power for Police to issue suspension orders suspending a user's or dealer's licence or an endorsement for any violations of the Act, and an expansion of Police's authority to conduct searches for firearms and to seize illegally imported firearms or restricted weapons.¹⁴³ The bill was referred to the Law and Order Committee in 2005, where it received 234 submissions, mostly from commenters who "were unhappy about further controls over gun ownership, but [who]

sensible, law-abiding New Zealanders who support common sense regulation. But there are also a number with quite extreme political views, who oppose almost any form of regulation. There are also a number of well-organised firearms groups who mobilise to oppose reform through direct pressure on politicians." Australia took action with its gun laws. Why didn't New Zealand? (2019, March 19). *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

¹³⁵ Edwards, B. (2019, March 6). Bryce Edwards' Political Roundup: Why has gun law reform failed until now? *Evening Report*. Retrieved from <https://eveningreport.nz>.

¹³⁶ Firearms Authority Bill, Second Reading, 30 June 1999 (Hansard). Retrieved from <https://drive.google.com/file/d/0B1Iwfzv-Mt3Cd183OV9XQ01YMHc/view>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Bills Digest No 1228, Arms Amendment Bill (No 3), 2005, Background. Retrieved from <https://www.parliament.nz/resource/en-NZ/47PLLawBD12281/e22d3db40a8a570e444dde647e63862fedc0c776>.

¹⁴² *Id.*

¹⁴³ *Id.* at Main Provisions.

approved of the bill because it would not require universal registration”.¹⁴⁴ Ultimately, a majority of the Committee recommended against passing the bill, noting that New Zealand had not yet acceded to the UN Protocol, that there had been significant technological advancements and statutory changes that affected certain of the original proposals in the bill, and that the bill had not received consistent support across all governments.¹⁴⁵ The majority also pointed to a forthcoming Arms Amendment Bill (No 4), which they said would “improve the effectiveness of the Arms Act 1983 while taking into account legislation that has come into effect since 2004”, as an additional reason for opposing the bill,¹⁴⁶ though the fourth version referred to in the Committee report was never in fact released. The Committee issued its reports in 2012, and no further action on the bill has been taken.

Thus, despite the Thorp report being generally a well-received and highly regarded document, legislative reform did not follow in its wake. As Helen Clark, who served as Prime Minister from 1999 to 2008, reflected shortly after the Christchurch shootings, “I don’t remember [gun control] being on the radar at all” during her time in office.¹⁴⁷ She added: “I was Prime Minister for nine years, and it never came to the top of the pile.”

B. Narrow, Specific Amendments to the Arms Act

It was not until 2012 – 15 years after the Thorp report was released – that the Arms Act was amended, and even then those amendments were relatively modest in scope. The amendments were passed in response to the conclusion of a High Court judge in the case *Lincoln v New Zealand Police* that a regulation was invalid where it took a functional reading of the phrases “military-pattern” and “free-standing” for the purposes of determining whether a semi-automatic weapon was maintained in a sporting configuration (and thus not subject to certain regulatory requirements).¹⁴⁸ Following the decision, Parliament passed the 2012 Arms (Military Style Semi-automatic Firearms and Imports Controls) Amendment Bill to amend the definition of MSSA “to make it clearer and more adaptable to changes in firearms manufacturing”.¹⁴⁹ The bill also authorised the issuance of regulations to clarify what constitutes an MSSA: whether by declaring certain firearms or type of firearms to be MSSAs, creating a definition for MSSAs, or describing features of firearms that should be considered to be MSSAs.¹⁵⁰ Lastly, the bill imposed restrictions on importing imitation firearms that appeared to be MSSAs or pistols, noting that, because Police and the people involved must assume that such weapons are real, incidents involving such weapons command a priority Police response and therefore tie up Police resources.¹⁵¹ But the main thrust of the bill was to shore up any deficiency identified by the High Court in *Lincoln* and rebuke, even if only indirectly, the ruling in that case. As Member Judith Collins, who was Police Minister when *Lincoln* was decided and when the bill was introduced, said, Parliament

¹⁴⁴ New Zealand House of Representatives. (2005). *Arms Amendment Bill (No 3)* (Report of the Law and Order Committee) at 2. Retrieved from https://www.parliament.nz/resource/en-NZ/50DBSCH_SCR5371_1/9e74261def8adc1d1643094dc8f46d819e6952ad.

¹⁴⁵ *Id.* at 4.

¹⁴⁶ *Id.*

¹⁴⁷ Molyneux, V. (2019, March 21.) Helen Clark reveals why she didn’t change gun laws as Prime Minister. *Newshub*. Retrieved from <https://www.newshub.co.nz/>.

¹⁴⁸ The *Lincoln* case is discussed further below.

¹⁴⁹ Law and Order Select Committee, Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Bill at 2. Retrieved from https://www.parliament.nz/resource/en-NZ/49DBSCH_SCR5255_1/4e0853f8446f3f96e7f7b1b2a4652a7383ead18d.

¹⁵⁰ *Id.* at 1–2.

¹⁵¹ *Id.* at 2.

was “not going to stand by and let Police be humiliated” in its efforts to regulate MSSAs.¹⁵² Indeed, the bill passed by a 110–8 vote.¹⁵³

Additional reforms were discussed in 2016 and 2017 as part of an inquiry and report by the Law and Order Committee. The genesis of the inquiry was the seizure by Police of 14 illegally owned firearms, including MSSAs, from a home in Taranaki in March 2016.¹⁵⁴ Focusing on the illegal possession of guns, the Committee set out to address three issues: (1) how widespread firearm possession was among criminals, including gangs; (2) how criminals, gangs, and unlicensed persons came to possess firearms; and (3) what changes “to the current situation” would restrict the flow of firearms to these groups.¹⁵⁵ Following its inquiry, the Select Committee made a total of 20 recommendations, addressing the sale and supply of firearms and ammunition; the definition of MSSAs; the effectiveness of licensing, training, and registering firearms; criminal offending with firearms; reducing the number of “grey firearms” (guns possessed by unlicensed persons but that are not used for criminal purposes); and importing firearms into New Zealand.¹⁵⁶ The Committee’s recommendations were not unanimous: New Zealand First members on the Committee submitted a minority view arguing that the report deviated from the stated objectives of the inquiry by failing to address what it believed to be Police’s failure to investigate firearms thefts and other ways that firearms were obtained illegally.¹⁵⁷ New Zealand First went on to express support for banning gang members from receiving firearms licences and increasing penalties for such persons who committed crimes using firearms.¹⁵⁸

The Government, then led by the National Party, similarly stated that it did not support a majority of the recommendations in the report, despite the fact that the Committee was chaired by one of its members and was made up of a majority of National Party members.¹⁵⁹ Out of the 20 recommendations made by the Select Committee, the Government supported – either by stating an intention to pursue the reform, with or without modifications, or by expressing its general support for – eight proposals.¹⁶⁰ The government-supported proposals were those focused on the use of firearms by gangs, including:

- Implementing firearms prohibition orders to limit access to firearms by certain groups of people, including gangs;
- Amending the Arms Act to expressly state that a gang member could not satisfy the “fit and proper person” test and was therefore ineligible for a firearms licence;
- Reviewing the penalties in the Arms Act;

¹⁵² Interview with Judith Collins, 20 June 2019.

¹⁵³ Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Bill – Third Reading, 5 December 2012 (Hansard, Volume 686, Page 7237).

¹⁵⁴ New Zealand House of Representatives. (2017). *Inquiry into issues relating to the illegal possession of firearms in New Zealand* (Report of the Law and Order Committee), Introduction at 5. Retrieved from https://www.parliament.nz/resource/en-NZ/SCR_72851/f06602dd80c8bcc69220182d246269b2427510b9.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 3–4.

¹⁵⁷ *Id.* at 25.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 26. Out of the nine members, five were from the National Party, two each were from the Labour Party and New Zealand First Party, and one was from the Green Party. *Id.*

¹⁶⁰ New Zealand Law Society. (2017, June 14.) *Government responds to select committee firearms report*. Retrieved from <https://www.lawsociety.org.nz/news-and-communications/latest-news/news/government-responds-to-select-committee-firearms-report>.

- Creating a stand-down period following the revocation of a licence during which time no application for a new licence could be made;
- Clarifying that the amnesty provision in the Arms Act protecting dealers who handed in firearms to Police, including restricted weapons that were part of the “grey” market, applied to MSSAs and Category A firearms; and
- Ensuring that visitors to New Zealand who brought firearms into the country had their weapons exports checked upon their departure.¹⁶¹

Among the proposals rejected by the Government were a licence requirement for possessing or selling ammunition, codifying criteria for the “fit and proper person” test, creating a category of restricted semi-automatic firearms (rifles and shotguns) to replace the MSSA firearm category, requiring the registration of serial numbers for all firearms during licence renewals or inspections of gun owners’ premises, and amending the Arms Act to require that safe storage requirements be met before a licence or endorsement was issued.¹⁶² As part of her review, then Police Minister Paula Bennett appointed two of what she described as “independent firearms experts” to help advise her about what recommendations to support.¹⁶³ According to Bennett, many of the proposals from the Committee would not have addressed the problem of the illegal possession of guns by gangs and criminals but would have instead had an “undu[e] impact” on licensed firearms users.¹⁶⁴

In addition to considering the recommendations from the Committee, the Government offered two reforms of its own. First, the Government proposed amending the Arms Act to make clear that where Police had the power to revoke a licence, it also had the power merely to suspend a licence, either for a defined amount of time or pending a possible revocation. Such power, the Government explained, stemmed from the need to respond to minor or technical breaches of the Act – such as a licensee’s failure to comply with security regulations – that would need to be rectified or to instances in which a breach led Police to undertake a review of whether the licensee continued to be a “fit and proper” person.¹⁶⁵ Second, the Government recommended taking steps to improve the consultation process with the firearms community, noting that during the Select Committee process “[t]here were a number of submissions that referred to lack of trust in Police’s administration of the Act and the need for better communication and consultation”.¹⁶⁶ Concurring in the need for the public to have trust in Police’s administration of the Act – among other things, such trust would incentivise legal firearms users to continue to comply with the Act and not try to circumvent its requirements in order to avoid what they may consider to be burdensome and unnecessary requirements – the Government proposed a consultation process between Police and representatives of the firearms community.¹⁶⁷ The Government envisioned consulting the gun community’s representatives and, “where appropriate”, the public at large on all proposed changes to

¹⁶¹ Government Response to the Report of the Law and Order Committee on its Inquiry into issues relating to the illegal possession of firearms in New Zealand (Presented to the House of Representatives). Retrieved from https://www.parliament.nz/resource/en-NZ/PAP_74355/99e88a92a4307a2f1e88cfc35c68911e155cf7f1.

¹⁶² *Id.*

¹⁶³ *Government responds to select committee firearms report.*

¹⁶⁴ *Id.*

¹⁶⁵ Government Response to the Report of the Law and Order Committee on its Inquiry into issues relating to the illegal possession of firearms in New Zealand at 14.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

policy regarding Arms Act administration.¹⁶⁸ Doing so would help achieve “the right balance between management of risk and unnecessary compliance”, the Government concluded.¹⁶⁹

Ultimately, none of the proposals for legislative reform from the Select Committee’s inquiry and report or the Government’s response were pursued. Following the 2017 election, the Labour Party, in a coalition with Zealand First, supported by the Green Party, took control of the Government and did not pursue the recommended reforms that resulted from the inquiry.

In late 2017, Acting Deputy Commissioner Richard Chambers signed a briefing for the Police Minister that called for a two-pronged approach to changing firearms policy: (1) amending the Arms Act through the legislative process to update the Act and close widely known loopholes, and (2) modifying Police’s firearms regulations governing firearms policy to increase support for Police administration of the Act by the firearms community and increase resourcing for the programme.¹⁷⁰ With respect to legislative changes, the briefing noted that the Arms Act had not been significantly updated since 1992 and had thus been outpaced by technological changes and an increase in public access to the firearms market worldwide.¹⁷¹ The briefing went on to identify several gaps in the regulatory framework created by the Arms Act:

- That Category A licence holders were able to convert a legally held firearm into an MSSA without first obtaining either a Category E endorsement or a permit to procure;
- That certain dealers had been able to circumvent limits on importing MSSAs by importing parts that were interchangeable between MSSAs and Category A firearms and converting Category A firearms to MSSAs;
- That the ready interchangeability between Category A firearms and MSSAs allowed dealers and individuals to evade controls on record-keeping requirements pertaining to sales of MSSAs;
- That there was no legislative requirement for a buyer to present a seller with proof of licence when engaging in an online sale;
- That MSSAs could be manufactured in New Zealand by an individual who purchased the parts in kit form and there was no way for Police to ensure that such an individual had the requisite endorsement and met the relevant storage requirements; and
- That Police was not able to suspend a firearms licence pending resolution of any revocation process.¹⁷²

Because exploitation of these legislative gaps enabled gang members and persons associated with organised crime to access high-risk firearms, Police recommended closing the gaps as well as adopting the other legislation-related recommendations from the 2017 Select Committee report.¹⁷³

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Chambers, R. (2017, December 13). *Briefing for the Minister of Police, Arms Act Administration* at 1–2. Retrieved from <https://www.police.govt.nz/sites/default/files/publications/06-signed-arms-act-administration-redacted.pdf>.

¹⁷¹ *Id.*

¹⁷² *Id.* at 7–8.

¹⁷³ *Id.* at 8–9.

In addition to proposed legislative changes, the briefing recommended a series of amendments to the Arms Regulations 1992 targeted at “improv[ing] service delivery to firearm licence holders”.¹⁷⁴ These proposals stemmed from the view that “[e]nforcement alone cannot guarantee successful implementation of the Arms Act” and that “support of the legitimate and law abiding firearms community” was also necessary.¹⁷⁵ The briefing noted that Police had established a firearms community advisory group (discussed in more detail below) and would continue to meet with the group formally and informally, with Police consulting with the group “before any wider public consultation occurs on changes to either the Act or Regulations”.¹⁷⁶ Two proposals were the focus of the briefing’s recommended changes to the regulations. First, the briefing proposed offering centralised online access for the licence application process, including the ability to complete the licence-holders test online.¹⁷⁷ Moving to an online system, the briefing explained, would improve the efficiency of the licensing process and was a change supported by the firearms community.¹⁷⁸

Second, the briefing proposed increasing the fees charged for firearms-related services. Police reported a significant shortage of funds from licence-holder fees, with annual revenue shortages ranging from \$5.5 million to \$10.2 million between 2010 and 2017.¹⁷⁹ Taxpayer funds were used to make up the difference, sometimes to a significant degree: in 2010–11, for instance, Police reported that the taxpayer contribution to the firearms programme covered 83 per cent of the programme’s costs.¹⁸⁰ The briefing accordingly proposed increasing the user fee and possibly imposing a fee on certain services – namely providing import permits, recognising firing ranges, and approving gun shows – that Police had up to that point been providing for free.¹⁸¹ The briefing further noted that increasing licensing fees would also bring the firearms programme in line with the principle that the service provided by an agency directly benefits the individuals and businesses that receive that service and that taxpayers should not be in the position of subsidising private interests.¹⁸²

Few of these proposed changes to the Arms Act and the regulations were implemented before the shootings in Christchurch. In December 2018, the Government modified the Arms Regulations to authorise Police to carry out certain licensing and permitting functions electronically.¹⁸³ Aside from this small change, there was not sufficient political momentum or will to enact the other proposed reforms.

II. Pre-Christchurch Legal Requirements and Police Administration of the Arms Act

At the time of the Christchurch shootings in 2019, a regulatory system that was described by the Thorp report as being outdated in 1997 was even more so. This section surveys the regulatory landscape at the time of the shootings, focusing on (1) the present-day state of gun ownership and possession in New Zealand; (2) the legislative and regulatory requirements in

¹⁷⁴ *Id.* at 9.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 9.

¹⁷⁸ *Id.* at 9–10.

¹⁷⁹ *Id.* at 11.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 10.

¹⁸² *Id.* at 10–11.

¹⁸³ See Arms (Electronic Transactions) Amendment Regulations 2018. Retrieved from <http://www.legislation.govt.nz/regulation/public/2018/0271/latest/whole.html#d2778387e1526>.

place at the beginning of 2019; (3) legal challenges to the firearms programme in the past two decades; (4) Police's operations and administration of the Arms Act; and (5) special firearms-related projects conducted by Police as part of its firearms programme.

1. Gun Ownership and Possession Within New Zealand

Although firearms have been a major focus of New Zealand politics and policy, a relatively small percentage of the population actually owns them. In a country of just under 5 million people,¹⁸⁴ there are 248,764 active firearms licences, a figure that includes visitor licences.¹⁸⁵ Approximately 93 per cent of these licence holders are male.¹⁸⁶ Because there currently is no requirement to register most types of firearms in New Zealand, the number of total firearms in the country is unknown, with Police's most recent estimate being approximately 1.2 million.¹⁸⁷ For those weapons for which there is a registration requirement – semi-automatics, pistols, and restricted weapons – recent Police data shows that there are 65,837 such weapons in New Zealand, owned by 9,772 licensees.¹⁸⁸

As in many countries, firearms play a significant role in statistics about death and injuries. Between 2000 and 2015, there were 867 firearms-related deaths in New Zealand, or an average of 54 per year.¹⁸⁹ A majority of these deaths are suicide, with firearms being the cause of death in eight to 10 per cent of all suicides annually.¹⁹⁰ Between 2008 and 2017, there were an average of seven homicides per year involving the use of firearms, and an annual average of 121 hospitalisations due to firearms between 2000 and 2017.¹⁹¹ These numbers will be significantly higher for the year 2019 given the shootings in Christchurch.

2. Legislative and Regulatory Requirements

The regulatory regime governing firearms for both licensed users and dealers up to the point of the Christchurch attacks derived almost entirely from the 1983 Act and 1992 amendments. The statutory scheme sets out a regulatory framework for two general types of persons: licensed users and licensed dealers. The system as it existed up until early 2019 is described immediately below; a discussion of the recent operational and legislative reforms comes later in this report.

A. Licensed Individuals

All New Zealand residents who are 16 years or older are eligible to apply for a firearms licence.¹⁹² Every applicant must complete a training session on the safe handling of firearms and pass a test on the same, and this training is administered by either Police or a Police-approved contractor.¹⁹³ The firearms application requests basic identifying information from

¹⁸⁴ Stats NZ estimates the current population to be 4,917,000. Stats NZ. *Population of NZ*. Retrieved from <https://www.stats.govt.nz/indicators/population-of-nz>.

¹⁸⁵ Cook, H., and Russell, M. *Fact Sheet: Firearms in New Zealand 3 April 2019* at 1. Retrieved from <https://www.otago.ac.nz/otago708944.docx>. The number of firearms licenses is current as of October 2018.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 2. This estimate is from 2014. Researchers report that there may be upwards of 3 million firearms in New Zealand, or 4 million, inclusive of air rifles. *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 1.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Arms Act 1983 § 23(1).

¹⁹³ Arms Regulations 1992, Regulation 14. The safety training courses are typically delivered by firearms instructors provided by the New Zealand Mountain Safety Council throughout the country. See New Zealand

the applicant, including whether the individual has been denied a firearms licence previously or been convicted of a crime, as well as the name and contact information for two references: a “near relative” who normally resides with or is related to the applicant, and a non-relative who is over the age of 20 and knows the applicant well.¹⁹⁴ The basic licence application fee is currently set at \$126.50 and, until very recently, applications were submitted to Police in hard copy by mail only.¹⁹⁵

Upon receipt of a licence application, Police undertakes a qualitative examination of the applicant. The Arms Act specifies only that a person must be “fit and proper to be in possession of a firearm or airgun”, and neither it nor the regulations provide any further guidance as to what “fit and proper” means.¹⁹⁶ Additional information about the test is contained in the Arms Code, a safety manual from 2013 compiled by Police in conjunction with the Mountain Safety Council.¹⁹⁷ The Arms Code advises that persons with any of the following “may find it difficult to satisfy the Police that they are fit and proper”:

- A history of violence;
- Repeated involvement with drugs;
- Irresponsible use of alcohol;
- A personal or social relationship with people who may be deemed to be unsuitable to obtain access to firearms; or
- Indications of an intent to use firearms for self-defence.¹⁹⁸

The Code goes on to specify that self-defence is not a valid justification for having firearms in New Zealand.¹⁹⁹ As part of this assessment, Police conducts interviews with the two referees listed in the licence application as well as the applicant him or herself and also make a home visit to inspect the storage arrangements.²⁰⁰

Under the Act, firearms licences are valid for 10 years, with licences for visitors to New Zealand valid for a maximum of one year.²⁰¹ Police has the authority to revoke the licence of an individual it deems no longer to be fit and proper, and a licensee may challenge a revocation decision by seeking review directly in the District Court.²⁰² A licence is required to purchase ammunition, but not to possess it.²⁰³ Nor is a licence required for individuals of

Police. *Firearms Safety Course overview*. Retrieved from <https://www.police.govt.nz/advice/firearms-and-safety/firearms-safety-programme/firearms-safety-course-overview>.

¹⁹⁴ Arms Regulations 1992 § 15. The application form for a firearms licence can be found here:

<https://www.police.govt.nz/sites/default/files/publications/firearms-application-form.pdf>.

¹⁹⁵ New Zealand Police. *New Zealand firearms licence application*. Retrieved from

<https://www.police.govt.nz/advice/firearms-and-safety/new-zealand-firearms-licence-application>. The change to Police’s firearms programme that allowed for the electronic submission of firearms licence applications is discussed further below.

¹⁹⁶ Arms Act 1983 § 24(1)(b).

¹⁹⁷ New Zealand Police. (2013). *Arms Code*. Retrieved from

<https://www.police.govt.nz/sites/default/files/publications/the-arms-code-2013.pdf>.

¹⁹⁸ *Id.* at 40.

¹⁹⁹ *Id.* at 41.

²⁰⁰ *New Zealand firearms licence application*.

²⁰¹ Arms Act 1983 § 25(1)–(2).

²⁰² *Id.* §§ 27(1), 62.

²⁰³ Arms Act 1983 § 43B(1).

any age who use or otherwise possess firearms under the immediate supervision of a licensee.²⁰⁴

A standard firearms licence is known as a Category A licence and enables licence holders to possess sporting-type rifles and shotguns.²⁰⁵ Licence holders who wish to have pistols, MSSAs, or restricted weapons must complete two additional steps in order to do so. To start, they must obtain an endorsement on their licence, which makes them eligible to possess a certain category of firearms.²⁰⁶ Police uses the following categories to describe the different types of endorsements that are available:

- **Category B:** allows members of incorporated pistol-shooting clubs to possess pistols;
- **Category C:** allows bona fide collectors, theatre companies, and museums to possess pistols and/or restricted weapons;
- **Category E:** a now-defunct category that previously allowed endorsees to possess and use military-style semi-automatic weapons. As discussed in more detail below, under the 2019 legislative reforms, MSSAs are available only to those with a Category P endorsement, which is available to a much narrower class of people; and
- **Category F:** allows dealers and their agents to possess pistols and restricted weapons in conjunction with their business.²⁰⁷

Licence holders who seek an endorsement must submit an application with Police, which confirms the individual's qualifications for the endorsement sought (for example, checks to make sure the person is a member of a pistol club if a Category B endorsement is requested).²⁰⁸

In addition to an endorsement, licence holders must obtain a permit to procure in order to legally possess a pistol or restricted weapon. Whereas the endorsement process determines an individual's eligibility to possess a certain type of weapon, a permit to procure authorises the individual's ability to possess a specific firearm. Permits to procure are valid for one month from the time they are issued,²⁰⁹ and permit applications must include information about the licence holder and identifying information about the specific firearm to be obtained.²¹⁰ A permit is used as part of the transaction between a buyer and seller: the purchaser must present the permit to the seller, who then records information about the specific firearm to be sold on the permit and returns the permit to the purchaser.²¹¹ The purchaser must then return the permit to Police and present the newly acquired firearm for inspection.²¹² This process effectively serves as a de facto registry for more tightly regulated firearms because it allows Police to have an accounting that connects those firearms to individual licensees. Because there is currently no requirement to register *all* firearms, however, individuals with Category A licences are able to acquire as many sporting-type rifles and shotguns as they wish without Police having an accounting of the number of such firearms owned by each licence holder.

²⁰⁴ *Id.* § 50(5).

²⁰⁵ Arms Code at 42.

²⁰⁶ Arms Act 1983 § 29(2).

²⁰⁷ *Id.* § 29(2); Arms Code at 43–44.

²⁰⁸ Arms Act 1983 § 30(1).

²⁰⁹ *Id.* § 35A.

²¹⁰ Arms Regulations 1992, Regulation 2.

²¹¹ *Id.* § 26(1A)–(B).

²¹² *Id.* § 26(C).

B. Dealers

Firearms dealers, those people who sell²¹³ or manufacture firearms, must obtain a dealer's licence in addition to the general firearms licence.²¹⁴ To become licensed, a dealer must apply for a licence from Police, which determines whether the applicant is a "fit and proper" person to be a dealer.²¹⁵ A dealer's licence is known as a Category D licence.²¹⁶ A separate licence is required for each place of business, meaning that a dealer cannot open multiple businesses – or multiple locations of the same business – under once licence, and dealers' licences are not transferrable to other individuals.²¹⁷ This latter provision applies even to a dealer's agents and employees, all of whom are responsible for obtaining their own personal licences.²¹⁸ Licensed dealers are required to keep records about the receipt, sale, or manufacture of all firearms, and make those records available to Police upon request.²¹⁹ Unlike owner's licences, dealers' licences are valid for one year only and are thus subject to more frequent renewal.²²⁰ Dealers may seek the consent of Police to sell firearms at gun shows for up to five days at a time.²²¹ Firearms, other than pistols and restricted weapons, and ammunition can currently be purchased by mail or via the Internet, so long as the seller obtains a written order from Police attesting to the validity of the seller's and purchaser's firearms licence.²²²

Dealers and any other person wishing to bring a firearm or firearm parts into New Zealand must first apply for an import permit from Police.²²³ Police has the authority to require the prospective importer to submit a sample firearm for examination and testing before a permit is issued.²²⁴

C. Right to Bear Arms

One of the main and obvious differences between the United States and New Zealand with respect to firearms regulation is the absence of a constitutional right to bear arms in New Zealand.²²⁵ No person consulted for this report – including those in the firearms community –

²¹³ As noted in the Arms Code, the Arms Act defines "sell" broadly such that it includes, among other things, bartering, offering, or attempting to sell, and "exposing for sale". Arms Act 1983 § 2(1).

²¹⁴ Arms Act 1983 § 5(1).

²¹⁵ *Id.* § 5(1)–(3). As with user licences, until early 2019, Police accepted paper applications only, but it will be accepting online dealer applications in the near future following amendments in 2018 to the Arms Regulations. See Arms Regulations 1992, Regulation 3(1)(b) (permitting applications for dealer's licences to be made "electronically through an Internet site").

²¹⁶ Arms Code at 42.

²¹⁷ Arms Act 1983 §§ 6, 7.

²¹⁸ *Id.* § 11. The Act requires employees and agents of licensed dealers to be only "the holder[s] of a firearms license", not dealers' licenses specifically. *Id.*

²¹⁹ *Id.* § 12.

²²⁰ *Id.* § 8.

²²¹ *Id.* § 7A.

²²² *Id.* § 43A.

²²³ *Id.* § 16.

²²⁴ *Id.* § 18.

²²⁵ The analysis can be somewhat more nuanced than what it appears to be at first blush. The English Bill of Rights of 1688, which was codified following the Glorious Revolution, includes a section entitled "Subjects' Arms" which states that "Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law", see Eng. Bill of Rights 1688, Subjects' Arms, and for years following the Revolution this right was understood to be a right permitting individuals to have firearms for purposes of self-defence, see Winkler, A. (2013). *Gun Fight: The Battle Over the Right to Bear Arms in America*. New York: W. W. Norton & Co. at 102. Indeed, the Second Amendment to the US Constitution has been traced directly back to this provision of the English Bill of Rights as well. *Id.* And the provisions of the English Bill of Rights were expressly incorporated into New Zealand law by the Imperial Act of 1988, which could be interpreted to mean

claimed that any such right exists, though contrary views do exist. Perhaps most notably, in a report from the 2011 Law and Order Select Committee, ACT New Zealand expressed the view that, “*prima facie* law abiding citizens have the right to own firearms” and “the only basis for imposing restrictions on that right is in order to protect the safety of individual citizens”.²²⁶ But this view has not been adopted by any other political party and appears to be held only by a small minority of people in New Zealand.

Nevertheless, there has been a notable increase in rights-based rhetoric in discussions about firearms policy in New Zealand in recent years. Academic researchers have tracked the use of rhetoric that mirrors that of the National Rifle Association in the United States, including comments that suggest the authors believe there to be a right to possess firearms in New Zealand.²²⁷ Following the enactment of the MSSA ban, the national Police website was inundated with comments from overseas, many of them believed to be connected the NRA.²²⁸ Police had to shut down the website and its prohibited firearms notification forms to international traffic in order to avoid any further deluge of messages from overseas.²²⁹ Most recently, the New Zealand Police Association, a national member organisation that represents nearly all constabulary police officers and a majority of Police employees, received a high volume of hostile comments on its Facebook page following a posting about Police’s buy-back programme and eventually decided to remove the posting.²³⁰

that there is a right for Protestants to bear arms in New Zealand, though one that is subject to limitations. See Imperial Laws Application Act 1988 at Section 3(1) (“The Imperial enactments listed in Schedule 1 [which includes the English Bill of Rights of 1688] ... are hereby declared to be part of the laws of New Zealand.”). Indeed, one historian has noted that when the first firearms statute was being debated in New Zealand, “both sides [of the debate] acknowledged that settlers had a right to possess arms”, though this right is believed to be more akin to a “right of tradition and commonly held belief” than a constitutional right that could bind Parliament’s hands. Innes, C. (2005). *Arms Control in New Zealand 1854–61* (Master’s thesis, Massey University, New Zealand). Retrieved from <https://mro.massey.ac.nz/handle/10179/3478>.

The Crown has argued, however, that the English Bill of Rights does not have special status in the New Zealand constitutional system and that any right granted by the Bill has been impliedly repealed by firearms legislation, including the Arms Act 1983 and its various amendments. *Kiwi Party Inc v Attorney General*, CIV 2019-404-761, Submissions of Counsel for the Attorney General on the Application to Strike out and Application for Interim Orders at [40]. Moreover, the Crown contends that any gun rights recognised by the English Bill must be “read down” by the provisions of the New Zealand Bill of Rights Act 1990 guaranteeing freedom from religious discrimination, given the provision’s limited application to Protestants only. *Id.* And even if a right to bear arms emerged from this analysis, such a right would still be subject to government restrictions “as allowed by law”, a proviso that gives the Government broad regulatory authority. Thus, even if a right to bear arms could be said to exist in New Zealand, it would not appear to limit the Government’s authority to enact legislation regulating arms, though it could very well have an effect on public discourse and the interaction between the public and any regulatory bodies or officials.

²²⁶ Law and Order Select Committee. *Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Bill*. Commentary, ACT New Zealand Minority View at 7. Retrieved from https://www.parliament.nz/resource/en-NZ/49DBSCH_SCR5255_1/4e0853f8446f3f96e7f7b1b2a4652a7383ead18d.

²²⁷ Russell, M., and Cook, H. (2019, April 5). New Zealand gun owners invoke NRA-style tropes in response to fast-tracked legislative changes. *The Conversation*. Retrieved from <http://theconversation.com/>.

²²⁸ Interview with Morgan Gray, 31 July 2019; Interview with Michael McIlraith, 19 August 2019.

²²⁹ *Id.*

²³⁰ New Zealand Police Association. (2019, August). Trolls with guns: how rabid, pro-weapons lobby groups monster people they don’t like. *Police News* at 6–7. Retrieved from <https://www.policeassn.org.nz/>. The Association had posted four photographs from a Police enactment of the buy-back process held for the media to its Facebook page. Reportedly, within the span of four hours, the post had reached more than 32,000 people, had received more than 300 comments, and was shared more than 100 times. According to the Association, nearly all of the comments were from “overseas gun lobbyists who oppose the idea of governments taking firearms off of people” and used rhetoric “straight out of America’s National Rifle Association handbook”. The posting was

As noted below, the Government has proposed amending the purpose statement in the Arms Act to make clear that there is no right to bear firearms in New Zealand. The possible ramifications of such an amendment are discussed later in this report.

3. *Firearms Case Law*

Some have described certain members of the firearms community as being litigious, so it comes as no surprise that there have been multiple legal challenges to Police's administration of the Arms Act in recent decades. Generally speaking, there have been two such types of cases: (1) those challenging Police interpretations of statutory language or application of its regulations, and (2) those challenging Police denial or revocation of individual firearms licences.

A. Challenges Involving the Construction of the Arms Act or Accompanying Regulations

i. *Practical Shooting Institute (NZ) Inc v The Commissioner of Police*

One of the earliest cases related to the construction of the Arms Act revolved around a challenge to a wholesale ban on the importation of MSSAs into New Zealand put into place by the Commissioner of Police in June 1990 in an effort to stem the increasing number of military-style semi-automatic weapons entering New Zealand.²³¹ The ban, which was an across-the-board prohibition and did not allow for any exceptions, included a list of disallowed weapons identified by manufacturer and model.²³² Challenging the prohibition were an organisation called Practical Shooting Institute (NZ) and an individual named Rodney Maxwell Woods, who argued that imposition of the ban exceeded the scope of the Commissioner's power under the Arms Act 1983. The High Court judge hearing the case agreed with the plaintiffs. The Arms Act, the judge observed, allowed for weapons and classes of weapons to be deemed restricted by Order in Council; precisely such an order was issued by the Governor-General in May 1984, so designating weapons like anti-tank projectors, grenade launchers, and machine guns, but not including MSSAs.²³³ The Act also authorised the Commissioner to issue permits to import firearms and weapons, including restricted weapons.²³⁴ Parliament entrusted the Commissioner to exercise discretion about whether to issue an importation permit for a weapon, restricted or not, but it conditioned the granting of a permit for a pistol or restricted weapon on the Commissioner "satisfy[ing] himself that there are special reasons" why the permit should issue.²³⁵ By issuing an absolute ban on importing MSSAs, which had not been deemed restricted weapons, the Commissioner exceeded the statutory authority given to him under the Arms Act.²³⁶ The court accordingly invalidated the Commissioner's ban.²³⁷

removed after the Association determined that the overseas postings "effectively shut our members out of commenting".

²³¹ Practical Shooting Institute (NZ) Inc, et al v The Commissioner of Police [1992] 1 NZLR 709 (HC) at 710.

²³² *Id.*

²³³ *Id.* at 709-10.

²³⁴ *Id.* at 714.

²³⁵ *Id.*

²³⁶ *Id.* at 718-19.

²³⁷ *Id.* Perhaps influenced by the mass shooting at Aramoana that occurred during the pendency of *Practical Shooting*, the judge reiterated throughout his opinion that he was not evaluating the wisdom of the policy but only the legality of the Commissioner's action. *Id.* at 710 ("The Court is not concerned in this case with the

ii. *Lincoln v Police*

Nearly two decades later, after Parliament enacted tighter controls for MSSAs in the 1992 amendments to the Arms Act, restrictions on the importation of MSSAs was before the High Court a second time in the case *Lincoln v Police*. Whereas *Practical Shooting* concerned an outright ban on MSSAs, the regulation at issue in *Lincoln* was targeted at pistol grips which if configured in a particular way, would cause a semi-automatic to be deemed an MSSA and therefore subject to additional restrictions.²³⁸ Section 2 of the amended Act stated that a semi-automatic firearm would not be considered to be an MSSA if its magazine was “maintained at all times in a sporting configuration”.²³⁹ Semi-automatics that did not have, among other things, military-pattern free-standing pistol grips were considered by the amended Act to have a sporting configuration.²⁴⁰ These firearms thus fell outside the definition of MSSAs and were not subject to the various restrictions imposed on such weapons by the amendments to the Act.

The case turned on Police’s interpretation of what constituted a military-pattern free-standing pistol grip, specifically what could be considered “military-pattern”.²⁴¹ For several years following the 1992 amendments, Police’s interpretation of this phrase focused on whether a pistol grip was free-standing to determine whether it was also military-pattern, and when gun manufacturers developed a special grip that was integrated into the stock of the gun in an effort to avoid a military-pattern designation, Police did not consider semi-automatics using the specially designed grips to be military-style.²⁴² Police changed its view on this issue in 2009, however, in order to address concerns about recent developments in the manufacture of military-style weapons, including manufacturing that was intended to circumvent a firearm being designated as “military-style”.²⁴³ Instead of focusing on whether the pistol grip was free-standing, Police determined that semi-automatics with, among other things, “[a]n obvious pistol grip” that “allows a full hand pistol grip”, regardless of whether it was connected to the stock, was military-pattern.²⁴⁴ Police also had a more functional interpretation of the phrase “military-pattern” based on its view that Parliament’s intent in passing the 1992 law was to outlaw “Rambo-style” weapons that had the capacity for uninterrupted and high-speed discharge and that could be shot one-handed and from the hip.²⁴⁵ Viewed from this perspective, “military-pattern” had less to do with meeting technical standards required by the military for its armoury and was instead about whether the gun was in the style of a military weapon in that it could perform certain functions or had the appearance of features that would be found on military weapons.²⁴⁶

Though technical, the difference between these competing interpretations is significant. As the court in *Lincoln* noted, pistol grips made holding and firing guns significantly easier and

merits or demerits of the importation into New Zealand of weapons of this type. ... The crucial question is whether the Commissioner had the legal power to impose an absolute ban as he purported to do.”)

²³⁸ *Lincoln v Police* HC PMN CIV-2009-454-4753 at [17] (5 August 2009). These restrictions included needing a permit to bring the firearm into New Zealand and being required to obtain a Police endorsement before being able to legally possess the gun, with the endorsement itself potentially subject to restrictions. *Id.*

²³⁹ *Id.* at [18].

²⁴⁰ *Id.* at [19].

²⁴¹ *Id.* at [48].

²⁴² *Id.* at [21]–[23].

²⁴³ *Id.* at [24].

²⁴⁴ *Id.* at [25]–[27].

²⁴⁵ *Id.* at [73], [77].

²⁴⁶ *Id.* at [77].

allowed for one-handed firing and greater control during automatic firing. Rifles without such grips – the kind typically used in “sporting competitions” like target shooting and hunting – lacked pistol grips and were thus unable to be fired with one hand.²⁴⁷ Military-pattern pistols thus not only gave shooters greater control but also allowed them to fire two guns at one time. And if the Police interpretation of the phrase prevailed, semi-automatics with these features would be subject to certain additional restrictions, including a requirement that the owner – such as Richard Lincoln, the plaintiff in the case – have a Category E licence in order to possess one.

Just as the court held that Police overstepped its authority in enacting the ban on importing MSSAs in *Practical Shooting*, the court in *Lincoln* concluded that Police’s interpretation of military-pattern free-standing pistol grip was erroneous. Parliament, the court reasoned, “had in mind a particular kind of grip” when it used this language in the 1992 amendments, one that more closely tracked military specifications and was not dependent on a cosmetic resemblance to guns normally used for military purposes.²⁴⁸ According to the court, Police’s reading of both “military-pattern” and “free-standing” was not consistent with the natural reading of either phrase.²⁴⁹ Moreover, the court criticised Police’s interpretation for injecting a subjective element into the analysis, especially with regard to whether a pistol grip was “obvious” and could be gripped by a full hand in a military style.²⁵⁰ A Police interpretation of the Arms Act intended to tighten control of MSSAs was thus once again invalidated by the High Court.

iii. *Lincoln v Commissioner of Police*

Four years later, in 2013, Police was again hamstrung by the language of the Arms Act in another case brought by Richard Lincoln. Here, Lincoln sought five different declaratory judgments about the proper interpretation of the Arms Act as it pertains to the procuring, importing, possessing, and using of MSSAs.²⁵¹ Lincoln was in possession of a semi-automatic rifle that required a Category A permit and had inquired with Police about attaching a magazine that was capable of holding in excess of seven cartridges.²⁵² Such a modification would convert the firearm to an MSSA, for which Lincoln would be obliged to have from Police both a Category E endorsement (to possess MSSAs generally) and a permit to procure (to possess a specific MSSA).²⁵³ Lincoln argued that the conversion of his own semi-automatic into an MSSA was materially distinct from the purchase of such a weapon from a dealer because he was acting as both the supplier and procurer; thus, according to Lincoln, the Arms Act and regulations did not require him to obtain a permit to procure from Police in order to make the conversion.²⁵⁴

The court agreed with Lincoln and issued a declaration stating that a permit to procure was not required for the modification of an existing semi-automatic into an MSSA.²⁵⁵ In so ruling, the court reasoned that the relevant provision of the Arms Act did not “naturally” refer to the conversion of a semi-automatic, and that the regulations – which referred to “handing over

²⁴⁷ *Id.* at [60] (citation omitted).

²⁴⁸ *Id.* at [92]–[96].

²⁴⁹ *Id.* at [91].

²⁵⁰ *Id.*

²⁵¹ *Lincoln v Commissioner of Police* [2013] NZHC 1813 at [1].

²⁵² *Id.* at [13].

²⁵³ *Id.*

²⁵⁴ *Id.* at [25].

²⁵⁵ *Id.* at [34].

possession” of the firearm in question and obtaining possession of the procurer’s permit in order to create a record of the transaction – contemplated a two-party exchange involving a supplier and procurer.²⁵⁶ Lincoln, the court concluded, had identified “a gap in the legislative scheme”,²⁵⁷ one that Police was not able to fill on its own.²⁵⁸

B. Challenges to Individual Licensing Decisions

Along with legal challenges to Police’s interpretation of the Arms Act and regulations, litigants have also challenged decisions by Police to deny or revoke a firearms licence. Under the current iteration of the Arms Act, individuals whose licence applications are denied are entitled to challenge that decision to a District Court judge, who in turn is authorised to “vary[] or reverse” the decision of Police.²⁵⁹ District Court judges are thus authorised to make a determination that an individual is a fit and proper person for the purpose of firearms licensing, even where Police has reached the opposite conclusion. The Police determination, moreover, is reviewed by the court *de novo*, meaning that the Police decision is not afforded any deference, nor is the individual challenger responsible for persuading the court that the Police decision was wrong.²⁶⁰ Because courts may receive testimony from the challenger and any supporting witnesses in written form, this review structure could lead to the peculiar result of a Police determination about licensing, following face-to-face interviews with the applicants and any references and likely a home visit, being reversed by a judge on the basis of written testimony only.²⁶¹ Another oddity of these types of cases is that they may proceed

²⁵⁶ *Id.* at [30].

²⁵⁷ *Id.* at [32].

²⁵⁸ Most recently, a political party called the Kiwi Party brought a challenge to the first tranche of legislation enacted after the Christchurch attacks, challenging the validity of both the amendments to the Arms Act and an Order in Council that deemed all semi-automatic firearms capable of being used with a detachable magazine that can hold five or more rounds of ammunition or cartridges to be MSSAs and therefore subject to additional restrictions. With respect to the Order, the Kiwi Party argued that the Governor-General had authority under the Arms Act to declare semi-automatic weapons to be MSSAs but issued an order that extended more broadly to semi-automatic pistols. *Kiwi Party Inc v Attorney General* [2019] NZHC 1163 at [19]–[20]. Although the claim was moot almost by the time it was brought – the Order was in effect for only 21 days until the amendments were enacted, at which time the Arms Act itself contained a broader definition of MSSAs, all of which were prohibited – the court has permitted this claim to proceed. *Id.* at [23]. The remainder of the claims have been dismissed, including claims that the Select Committee considering the bill committed various procedural errors, that the use of firearms for self-defence is a Taonga entitled to special protection under the Treaty of Waitangi, and that the legislative prohibition on MSSAs were a breach of a constitutional or fundamental right to private property or to firearms ownership. *Id.* at [9], [27]–[31], [33]–[34], [39]–[42].

Unsurprisingly, the Kiwi Party also failed in its effort to invalidate the amendments to the Act itself. The Kiwi Party claimed that the use of firearms for self-defence is a taonga entitled to special protection under the Treaty of Waitangi, but the court dismissed that claim based on the fact that the Treaty did not confer any legally enforceable rights. *Id.* at [34]. The judge expressed scepticism with the premise of the Kiwi Party’s Treaty claim, remarking that “[i]t is an alarming proposition that Taonga, as that word is used in the Treaty of Waitangi, includes anything with the capacity to deliver lethal force against the exercise of arbitrary power by the Crown” or that the concept “extends to military style semi-automatic firearms, to prohibited magazines or to prohibited parts”. *Id.* at [33]. The court also dismissed the Kiwi Party’s claims that the legislative prohibition on MSSAs was a breach of a constitutional or fundamental right to private property or to firearms ownership. *Id.* at [41]–[42]. The court thus dispensed with the bulk of the lawsuit relatively easily on the grounds that there existed no legal justification for invalidating the 2019 amendments. *Id.* at [39]–[42].

²⁵⁹ Arms Act 1983 § 62(1), (3). Individuals whose application for a dealer’s licence, endorsement, or permit to procure is denied similarly have the ability to challenge that decision in the District Court. *Id.*

²⁶⁰ See *Jenner v Commissioner of Police* [2016] NZDC 4102 at [8].

²⁶¹ This outcome would be highly unlikely in the United States legal system if a federal agency made individual firearms licensing determinations that were then challenged in court. Rather, Article III federal courts in the United States are permitted to invalidate agency decisions only under limited circumstances, such as where they are found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”. 5 U.S.C.

without the knowledge of Police National Headquarters. Because licensing decisions are made by Arms Officers at the district level and because cases in the District Court are normally handled by Crown solicitors retained by the district office, National Headquarters is not always alerted to cases where a Police licensing decision is at issue.²⁶²

In *Jenner v Commissioner of New Zealand Police*, for example, the plaintiff challenged the denial of his application for a firearms licence four years after his original licence had been revoked. Jenner had been convicted on 15 counts of firearms-related offences, including selling MSSAs to undercover police officers and the possession of Claymore mines and grenades.²⁶³ Along with these convictions, Police cited additional reasons for denying Jenner a licence: evidence that he had previously improperly stored a shotgun in his home, had kept grenades and other explosives on his property, had written letters to Police which it believed to be threatening, and had appeared to still be importing firearms and parts and in possession of airgun pistols and rifles after revocation of his licence.²⁶⁴ The court's analysis assessed whether Jenner constituted a threat to himself or others and whether he was likely to sell firearms to others, and the court ultimately concluded on the basis of testimony from Jenner and certain of his acquaintances that the answer to all three questions was no, noting that several years had passed since his infractions and that he had expressed remorse for his past conduct.²⁶⁵ Consequently, the Police's decision to deny Jenner a license was reversed.

C. Potential Future Legal Challenges

The Council of Licensed Firearms Owners has threatened to take legal action challenging the 2019 reforms and the firearms buy-back process (discussed below).²⁶⁶ Although the group has declined to identify what type of challenges it might bring,²⁶⁷ it has begun a crowdfunding effort to support the potential lawsuit.²⁶⁸

III. Recent Reforms to Police's Firearms Programme and the Arms Act

Police's firearms programme has been the target of operational and legislative reforms for many years. Although Police has long identified the need for both types of reforms, only reforms to Police's administration of the firearms programme were on the agenda at the beginning of the year. Following the March 2019 shootings in Christchurch, amendments to the Arms Act became politically feasible and executing and implementing those legislative reforms has been the primary focus of the firearms programme ever since. Both types of reforms are discussed below.

§ 706(2)(A). The standard of review governing such an analysis is highly deferential to the agency. *Id* US federal courts, moreover, are permitted only to "set aside" agency decisions and have no authority to "vary" them, unlike a District Court reviewing licensing determinations.

²⁶² Interview with Joanna Bond, 31 July 2019.

²⁶³ *Jenner* at [3]–[5], [24]–[25].

²⁶⁴ *Id.* at [31].

²⁶⁵ *Id.* at [74].

²⁶⁶ Devlin, C. (2019, July 10). Gun owners crowdfund to take legal action against Government's firearms laws. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

²⁶⁷ Interview with Nicole McKee, 31 July 2019.

²⁶⁸ Devlin, C. (2019, July 10). Gun owners crowdfund to take legal action against Government's firearms laws. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

1. Police's Administration of the Arms Act and Operational Reforms to the Firearms Programme

A. Police Operations and Administration of Arms Act

Police's administration of the Arms Act in recent decades has largely been a decentralised operation. The firearms programme has been overseen by a National Firearms Manager located at Police National Headquarters in Wellington, a position that came with the rank of Inspector and a small number of administrative support staff.²⁶⁹ The bulk of the programme's operations are carried out at the district level, however. Each of the 12 districts has an Arms Officer, support staff who assist with licence applications and licence revocations, and vetters who conduct face-to-face interviews and home inspections.²⁷⁰ Arms Officers and their staff have been part of the organisational structure at the district level, meaning that they report directly to District Commanders, who oversee a variety of work within their respective districts, rather than to the National Firearms Manager.²⁷¹ The number of firearms staff within each district varies depending on need.²⁷² The Canterbury district, for example, currently has six permanent staff, one fixed-term contractor, and approximately thirty-five vetters, with approximately 32,500 licence holders throughout the district.²⁷³ All of the district-level positions, including Arms Officer, are non-constabulary.²⁷⁴

Interactions between district staff and the firearms community varies depending on the needs of individual users or dealers, but in general they are relatively limited. As required by the Arms Act and regulations, Police has periodic contact with dealers and owners as part of the licensing process, which includes face-to-face interviews with the applicant as well as references and an inspection of where the firearms will be stored.²⁷⁵ These interactions will occur at roughly one-year intervals for dealers and 10-year intervals for owners under the current Arms Act. Additional interviews and inspections occur if the owner is seeking an endorsement to be able to have a pistol or a restricted firearm.²⁷⁶ Additional interactions between Police and an individual in the firearms community may occur if there is an application to import a certain weapon, for example, or if Police initiates proceedings to revoke a licence.²⁷⁷ In addition, Police currently runs a weekly scan of firearms licence holders to track any contact they may have had with Police during the reporting period in any capacity: as an alleged offender, a witness, or a victim.²⁷⁸ District officers then take what follow-up measures they deem necessary, and generally this follow-up will involve some discussion with the licensee.²⁷⁹ Some licensees will also call the district officers with questions or inquiries about licensing or other firearms issues.²⁸⁰

²⁶⁹ Interview with Roly Williams, 30 July 2019. The position was initially housed in the Licensing and Vetting Service group at PNHQ but in 2013 was merged with the Response and Operations Group. See New Zealand Police. *A Brief History of the Firearms Administration Problem* (Memo).

²⁷⁰ Interview with Roly Williams, 30 July 2019.

²⁷¹ *Id.*

²⁷² Interview with Jason Bruce, 5 August 2019.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Interview with Kevin Plaisted, 18 July 2019.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Interview with Michael McIlraith, 19 August 2019.

²⁷⁹ *Id.*; Interview with Kevin Plaisted, 19 July 2019.

²⁸⁰ Interview with Kevin Plaisted, 19 July 2019; Interview with Dana Weir, 16 July 2019.

With respect to information about the regulated firearms sector, the programme is defined largely by “known unknowns” – information that the Police know that they lack about firearms and licensees in New Zealand. Without a firearms registry, Police lack information about the total number of firearms in the country.²⁸¹ Without a registry or records or all transfers in ownership of firearms, Police lack information about “grey firearms,” those firearms that were legally possessed by license holders but transferred to unlicensed individuals.²⁸² And with limited ability to monitor or otherwise gather information about licensees in between the ten-year intervals for renewals, Police lack information about their compliance with storage requirements and other laws and regulations. The gaps in information identified by the Thorp report have thus largely persisted in the ensuing decades.

Exacerbating the challenges created by the decentralised system and information gaps, the funding for the firearms programme is widely regarded as inadequate. In its current form, the Arms Act authorises the Governor-General to issue regulations for fees “in respect of any licence, application, or other matter under this Act”, but this power does not extend to fees related to import permit applications.²⁸³ The fee schedule presently in use was established in 1999 and charges \$123.75 for a standard firearms licence, \$200 for a dealer’s licence, \$25 for a visitor’s licence, and \$200 for an endorsement.²⁸⁴ Cumulatively, the amount of money collected from fees has fallen well short of covering the costs of administering just the licensing portion of the firearms programme, let alone the cost of the entire programme.²⁸⁵ In 2017 and 2018, Police collected \$4 million and \$5.4 million from fees, whereas the annual cost of running the firearms programme totalled approximately \$13 million.²⁸⁶ Police has tapped into general funding streams to cover the remaining costs of the firearms programme.²⁸⁷ According to some at Police, because the money taken from Police’s general operating fund is not “ring-fenced” (i.e., insulated from competing demands to use that money for non-firearms purposes), Police at both the national and district level has succumbed to pressure to use money for firearms-related work for other purposes.²⁸⁸

Police’s regulatory approach to firearms in the decades following the Thorp report has been characterised by a service-oriented mindset. This mindset is derived at least in part from the cultural values of Police, which describes its mission as “deliver[ing] services” to New

²⁸¹ Cook, H., and Russell, M. *Fact Sheet: Firearms in New Zealand 3 April 2019* at 1. Retrieved from <https://www.otago.ac.nz/otago708944.docx>.

²⁸² Common examples of the “greying” of firearms occurs when a license holder dies and the firearms are transferred to unlicensed family members or when a licensee fails to renew his or her license but still retains possession of firearms. New Zealand House of Representatives. (2017). *Inquiry into issues relating to the illegal possession of firearms in New Zealand* (Report of the Law and Order Committee), at 20. Retrieved from https://www.parliament.nz/resource/en-NZ/SCR_72851/f06602dd80c8bcc69220182d246269b2427510b9.

²⁸³ Arms Act 1983 § 74(f).

²⁸⁴ Arms Regulations 1992 § 33 and Schedule.

²⁸⁵ New Zealand Police. (2015, August). *Review of the New Zealand Police Management and Administration of Firearms* at 9. In 2013–14, for instance, there was a shortfall of \$1.1 million between fees collected from licensing and the total cost of administering the licensing process. *Id.*

²⁸⁶ Manch, T., and Kitchin, T. (2019, July 22). Firearms register among second raft of gun law reforms announced by PM. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

²⁸⁷ A Brief History of the Firearms Administration Problem at 2.

²⁸⁸ Interview with Paul Gatland, 6 August 2019. According to this interviewee, the re-direction of funds intended for firearms-related responsibilities was not uncommon at the district level. *Id.* However, this information could not be verified for this report, and the views relayed in this interview were not shared by all involved with firearms policy at Police.

Zealand communities²⁸⁹ and has made a “commitment of service” to the community, including a commitment “to meet your service expectations”.²⁹⁰ Such a service-oriented focus led to lax administration and enforcement of firearms laws and regulations in certain districts due to concerns about displeasing firearms owners, a practice that was heightened by the decentralised nature of the programme, which gives districts broad discretion over firearms-related decisions, with little national oversight.²⁹¹ The service mindset was further heightened when the Minister of Police issued a directive to Police to (1) improve how the Arms Act was administered and (2) improve the relationship between Police and the firearms-user community.²⁹²

Aside from its general commitment to service, Police’s administration of its firearms programme has not been marked by any discernible regulatory strategy. The main focus of the programme during this time appears to have been on processing licence and permit applications. When infractions did occur, enforcement was sometimes inconsistent, with districts not always following up on tips and other information received from national headquarters.²⁹³ Under the present version of the Arms Act, Police also lacks the tools and capability of implementing any sort of graduated enforcement scheme: once a licence has been issued, Police’s options if an infraction is discovered are either to issue an informal verbal warning or to pursue one of the delineated offences under the Arms Act, such as revoking a licence or a criminal penalty.²⁹⁴ If Police elects to pursue a revocation, a licensee is able to maintain possession of his or her firearms until the final revocation notice is issued.²⁹⁵

B. Special Firearms Projects

Despite the relatively straightforward nature of its firearms programme, Police has developed two innovative projects in recent years that provide it with additional contact with certain firearms owners above and beyond the face-to-face interactions necessary to carry out the standard aspects of the programme. These projects are discussed below.

i. *Firearms Community Advisory Forum*

Following the enactment of the Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Act in 2012, Police established the Firearms Community Advisory Forum (“FCAF”). The genesis of FCAF dates back to a recommendation of the Law and Order Select Committee during the law-making process. As part of its inquiry into the proposed legislative changes, the Select Committee recommended that Police “thoroughly

²⁸⁹ New Zealand Police. *Working at Police*. Retrieved from <https://www.police.govt.nz/about-us/working-police>.

²⁹⁰ New Zealand Police. *Commitment of Service*. Retrieved from <https://www.police.govt.nz/about-us/commitment-service>.

²⁹¹ Interview with Michael McIlraith, 9 September 2019. As discussed below, lax oversight by certain districts led licence and permit applicants to shop among districts for the most favourable forum for their request.

²⁹² M. McIlraith (2018, April 19). *Proposal to change the management and administration of Arms Act* (Memo for Ropu whakahaere Senior Leadership Team) at 3. The memo attributes the two priorities in this directive to the current Minister of Police, Stuart Nash. But a similar sentiment was expressed by previous Ministers, including then Minister Paula Bennett who in 2017 directed Police to have a consultation process with the firearms community. This latter point is discussed below in the section about the Firearms Community Advisory Forum.

²⁹³ Interview with Paul Gatland, 6 August 2019.

²⁹⁴ Interview with Michael McIlraith, 9 September 2019; Interview with Catherine Petery, 10 September 2019.

²⁹⁵ See Arms Act 1983 § 27(1).

explore the feasibility of establishing a statutory advisory group” that would consist of members of the firearms community and with whom Police would be able to consult in promulgating regulations concerning MSSA firearms or MSSA firearm features.²⁹⁶ Despite the fact that the Committee believed that such an advisory forum “would be a productive and positive way for the community to work with Police”, it declined to establish one as part of the legislative amendment, which pertained only to the definition of MSSAs and thus limited the jurisdiction of the Committee to that issue only.²⁹⁷ Instead, the Committee encouraged Police to develop an advisory group with which it “could work on a full range of firearm policy issues” and which would represent the views of a wide swathe of the firearms community, provide a forum for the community to give input to Police on policy and practice related to firearms, and review and make recommendations about those policies and practices.²⁹⁸ The Labour Party, then in the minority on the Committee, similarly expressed support for the formation of a wide-ranging advisory group and noted its “expectation” that Police would establish a formal group.²⁹⁹

FCAF was officially founded in 2013 and has a dual purpose. First, the group provides the opportunity for members of the firearms community to provide input on policy relating specifically to the Arms Act 1983 as well as the Arms Regulations 1992.³⁰⁰ Second, and more broadly, the group has the opportunity to review and make recommendations for consideration to Police on anything firearms-related.³⁰¹ In this sense, FCAF effectively gives its members special access privileges to Police policy makers and officials who are administering the Arms Act. Members are able to contact Police policy makers about firearms issues by email or phone like any other member of the general public, but FCAF provides them with an established channel of communication and periodic direct access to Police policy makers to discuss firearms issues. In exchange, Police hopes to benefit from FCAF’s input on proposed ideas – including both policy advice and technical expertise – and can use FCAF and its members to disseminate information throughout the firearms community.³⁰² Indeed, in June 2019, the Cabinet Social Wellbeing Committee expressly authorised Police to share drafts of proposed amendments to the Arms Act if Police believed it to be useful.³⁰³

Membership in the group is determined by Police, which uses various criteria when making its selections.³⁰⁴ These criteria include an individual’s skills and knowledge about firearms and firearms legislation, practical experience with firearms, ability to represent a diversity of viewpoints from the firearms community, personal characteristics, and ability to work in a

²⁹⁶ Law and Order Select Committee. (2012, August 11). *Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Bill*. Commentary at 6.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.* at 6–7.

³⁰⁰ New Zealand Police. (2019, June). *Firearms Community Advisory Forum*. Retrieved from <https://www.police.govt.nz/about-us/publication/firearms-community-advisory-forum>.

³⁰¹ *Id.*

³⁰² Some members of FCAF have questioned the value of the group’s more recent discussions, asserting that the group has been used more for Police to tell the gun community certain information with less of a focus on having the community provide input. Interview with Nicole McKee, 31 July 2019.

³⁰³ Cabinet Social Wellbeing Committee. (2019, June 12). *Strengthening the Framework for the Safe Use and Control of Firearms* (Minute of Decision), ¶ 127. Specifically, the Cabinet authorised Police to share draft legislation with “targeted stakeholders and experts”, but FCAF was the only such entity to be mentioned by name. *Id.*

³⁰⁴ *Id.*

group.³⁰⁵ Current membership includes representatives from 18 different firearms organisations and multiple officials who are engaged in firearms policy and operations for Police.³⁰⁶ Representatives from New Zealand Customs and the Ministry of Foreign Affairs and Trade regularly attend the meetings as well. FCAF generally meets only once or twice per year, but the group may assemble more frequently if Police is dealing with specific issues pertaining to the administration of the Arms Act.³⁰⁷ Halfway through 2019, for example, FCAF had met three times, with a fourth meeting scheduled for December. Minutes from FCAF meetings, once agreed upon by its members, are made available to the public via the Police website, along with a short statement of the issues decided.³⁰⁸ Meetings are typically conducted pursuant to what is known as Chatham House Rules, which means that although the minutes will refer to a substantive discussion, none of the statements made at the meeting will be attributed to individual members.³⁰⁹

Notably, the use of outside groups for consultation for firearms policy is not a new concept for Police. In the 1970s and 80s, Police formed a Police Firearms Selection Committee comprising the national firearms coordinator, two Police armourers, and one or two civilians, usually dealers or other individuals who were part of the gun community.³¹⁰ The group was consulted about questions pertaining to the importation of certain firearms as well as about proposed legislative changes proposed for the Arms Act 1983 and the Arms Amendment Act 1992.³¹¹ The size of this consultative group grew to include representatives from various gun organisations, many of which are part of FCAF today.³¹² According to one official at Police who participated in these outreach efforts, consulting with the group was a valuable exercise because it provided Police with knowledge about a large cross-section of the firearms community and what issues they were facing.³¹³ Among other purposes, Police would use this group to discuss the Arms Act and related regulations as well as Police's administration of firearms policy and any modifications or improvements suggested by the community.³¹⁴

ii. *Whakatūpato Programme*

The Whakatūpato Programme, the second of Police's special firearms projects, is a firearms training and licensing programme specifically aimed at rural iwi in the Bay of Plenty region of New Zealand. The programme is a joint endeavour between Police and Firearms Safety Specialists NZ Ltd; representatives from both organisations will visit Māori living in rural locations at a marae or other location to discuss firearms.³¹⁵ According to Nicole McKee, a safety instructor with Firearms Safety Specialists NZ, it is not uncommon for Māori living in

³⁰⁵ *Id.*

³⁰⁶ *Firearms Community Advisory Forum.*

³⁰⁷ *Firearms Community Advisory Forum.*

³⁰⁸ New Zealand Police. *Communication Plan: Firearms Community Advisory Forum.* Retrieved from <https://www.police.govt.nz/sites/default/files/publications/communications-plan-firearms-community-advisory-forum-dec-2015.pdf>.

³⁰⁹ Firearms Community Advisory Forum Ground Rules. Retrieved from <https://www.police.govt.nz/sites/default/files/publications/firearms-community-advisory-forum-ground-rules.pdf>; see also Firearms Community Advisory Forum, Notes from a Meeting at Police National Headquarters, 17 June 2014 at 2.

³¹⁰ Interview with John Howat, 8 August 2019.

³¹¹ *Id.*

³¹² Interview with Paul Gatland, 6 August 2019.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ Interview with Nicole McKee, 31 July 2019.

more remote areas to be in possession of firearms or to be using firearms without a licence.³¹⁶ The Whakatūpato Programme provides firearms education to Māori in rural communities, covering such topics as firearms safety, the Arms Act and regulations, firearms operations, firearms maintenance, and shooting technique.³¹⁷ Police officials are also on site to administer practical training, thereby enabling attendees to complete both the safety and practical training courses as part of the same programme.³¹⁸

The programme is notable for the manner in which Police engages with the Māori community in a non-enforcement posture. Māori are able to speak with Police and safety specialists about their handling and storage of guns without fear of adverse consequences for any failure to comply with statutory or regulatory requirements.³¹⁹ Participants in the training sessions are also able to consult with Police about their fitness for a firearms licence.³²⁰ This frank discussion, in turn, allows Police and the safety specialists present to advise attendees of whatever corrections are necessary in order to secure their compliance.³²¹ Police, moreover, is able to learn information from attendees or others in the community with whom it has contact that may be relevant to an individual's fitness to have a licence.³²²

C. Operational Reforms

Although certain features of Police's model for firearms operations – namely the amount of face-to-face interaction between Police and the firearms community – have proven to be successful over time, multiple problems with the programme emerged in recent years. One of these problems concerned inconsistency in the administration of the Arms Act. Under the decentralised system, each district developed its own informal processes and standards for licensing and other functions of the programme, leading to inconsistent advice being provided to members of the firearms community and administration of the Arms Act.³²³ This inconsistency existed across multiple areas of the programme, including the processes for issuing licences, revoking licences, and issuing import permits.³²⁴ Adding to the problem, district staff typically received little or no formal firearms training.³²⁵ The decentralised model also meant that Arms Officers and their staff were subject to the control of the District Commanders, who at times de-prioritised firearms operations in terms of both resourcing and manpower in order to address other non-firearms policing matters that were considered to be more urgent.³²⁶

³¹⁶ *Id.*

³¹⁷ Firearms Safety Specialists NZ Ltd. *Whatatūpato Programmes*. Retrieved from <https://fss.nz/whakatupato-programmes/>.

³¹⁸ Interview with Nicole McKee, 31 July 2019.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ A Brief History of the Firearms Administration Problem.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ Interview with Paul Gatland, 6 August 2019. The Thorp report identified this same problem and addressed it at length. District-level de-prioritisation of firearms stemmed from the fact that (1) firearms officials were at times called upon to assist with non-firearms matters that were deemed to be more urgent as part of an all-hands-on-deck effort and (2) licensing fees fell significantly short of covering the costs of the licensing part of the firearms programme, let alone other aspects of the programme. The difference between licensing fees recovered and the overall cost of the programme was covered by the general funds allocated to Police by Parliament. Because this fund was a finite amount, district management faced a choice between using those

The struggles of the firearms programme took their toll on the relationship between Police and the firearms community. Inconsistent application of standards and enforcement of the Arms Act caused distrust and frustration within the community.³²⁷ In 2014, the long-time National Manager for Arms Control stepped down from the position, leading to a series of short-term replacements, which contributed to the perception that Police was not prioritising its firearms programme.³²⁸ There also existed delays in processing licensing applications and importing permits.³²⁹ Members of the firearms community regularly voiced concerns to Police, with much of the feedback coming from a small but vocal group of firearms owners who maintain active social media presences and frequently submit Official Information Act requests.³³⁰ As a former National Manager from that time characterised it, the firearms programme was “in crisis”.³³¹

In 2014, Police undertook a review of its firearms programme, including the licensing and permitting processes.³³² That review identified nine major issues with the firearms programme:

- That the current processes – including licensing application forms, import permit application forms and vetting forms and guides – were entirely paper-based and required “extensive duplication and double handling”, both at Police National Headquarters and at the district level;
- That the fees charged for firearms licences and endorsements (1) had not increased since 1999 and (2) were likely not reflective of the full cost of the licensing programme and Police managing and administering the Arms Act, making it likely that district offices were subsidising the balance by tapping into the general funding stream for Police;
- That although Police received and processed a significant number³³³ of applications to import firearms every year, there was no budgetary allowance to cover the costs of processing such applications, nor were importers charged an application fee;
- That the Arms Amendment Act 1992 created a “bell curve”³³⁴ in processing applications by transitioning all licence holders to 10-year terms. This curve resulted in Police receiving approximately 13,000 applications annually for two years, followed by a three-year period of approximately 47,000 applications annually, followed by another two-year period of 13,000 applications per year. This periodic influx in licensing renewals strained Police staffing and resources;
- That there existed inconsistency among districts with respect to the application of firearms-related advice provided to the public and revocation of individual and dealer’s licences;

funds to cover firearms-related expenses or other Police business, with the latter most often prevailing. Interview with Michael McIlraith, 9 September 2019.

³²⁷ *Proposal to change the management and administration of Arms Act* at 3.

³²⁸ Interview with Roly Williams, 30 July 2019.

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Review of the New Zealand Police Management and Administration of Firearms* at 2.

³³³ The annual number of applications to import is disputed within Police. Although the memo states that Police receive and process in excess of 26,000 import applications, others have cited a figure as low as 5,000 applications per year. Email from Catherine Petrey to Nathan Swinton, 23 September 2019.

³³⁴ Although Police refer to the periodic increase in applications and renewals as a “bell curve,” it does not have the markings of a bell curve as that phrase is used in the statistical sense. Rather, it simply refers to a three year peak in licence and application renewals every ten years.

- That district arms staff lacked formal training, had limited performance oversight, and had no set standard of service that they were expected to meet;
- That vetters employed by the districts were retained on a “casual” basis and were compensated based on how many files they completed. Although the costs of retaining vetters had increased in recent years, the performance (as measured by the number of files completed) had decreased;
- That training for new firearms licence applicants was provided by the Mountain Safety Council, which was paid by an annual Police grant, though districts had been playing an increasing role in coordinating volunteers and providing input. The report further found that because the Council’s training was not formally reviewed, the quality of training by the Council was unknown; and
- That there were three “principal problems” with the Arms Act 1983, namely:
 - That there was no statutory prohibition on Category A licence holders from converting semi-automatic weapons to MSSAs without first obtaining a proper endorsement;
 - That there was no statutory prohibition on dealers converting semi-automatics into MSSAs; and
 - That there was no statutory prohibition on individuals or dealers from importing parts for Category A firearms and then using those parts to convert a Category A weapon into an MSSA.³³⁵

Notably, of these nine issues, only one required a legislative fix. The remaining eight could be addressed by operational reforms by Police.

The review went on to identify a number of problems stemming from the decentralised nature of the licensing and permitting processes. These problems included having limited management overview of the district staff and the training they received, as well as district offices failing to meet the performance targets set by Police.³³⁶ In 2012-13, for example, Police set a target of having 90 per cent of all licence applications processed within 30 days, but districts were taking on average twice that amount of time to hit the 90 per cent processing mark.³³⁷ Nationwide, fewer than half of all licences were issued within 30 days from the date the application process began.³³⁸ The review, moreover, noted that the paper-based system and corresponding lack of a nationwide electronic database limited the ability of district staff to share information and meant that they were relying solely on what information was able to be manually inputted into Police databases.³³⁹

To address these issues, the review made a number of recommendations. Most significantly, the review proposed establishing a centralised national Firearms Service Centre and making firearms applications available for electronic submission.³⁴⁰ This proposal would have considerable effects on the staffing of district offices, shifting some firearms licensing positions from district offices to Police National Headquarters and eliminating others altogether.³⁴¹ According to the review, the benefits of a centralised office would include more efficient use of staff and resources, decreasing the processing time for applications, having

³³⁵ *Review of the New Zealand Police Management and Administration of Firearms* at 2–4.

³³⁶ *Id.* at 5.

³³⁷ *Id.*

³³⁸ *Proposal to change the management and administration of Arms Act* at 2.

³³⁹ *Review of the New Zealand Police Management and Administration of Firearms* at 5.

³⁴⁰ *Id.* at 11.

³⁴¹ *Id.* at 11–12.

greater uniformity in application of vetting standards across districts, and reducing the amount of staff and resources devoted to processing applications.³⁴² The review also predicted that such a change would improve public satisfaction with Police, largely through reduction of processing times for applications and improved service, which would in turn enable Police to be proactive with respect to preventing firearms offending.³⁴³

To execute these proposed changes, Police formed the Arms Act Service Delivery Group (“AASDG”) in 2017. The AASDG has three main focuses:

1. Consistency in administering the Arms Act across districts, including through training and the development of national standards;
2. Having better and more frequent communication and engagement between Police and the firearms community;
3. Modernising Police’s administration of the Act by introducing digital and automatic process, while retaining paper-based options for those who cannot, or prefer not to, use digital options.³⁴⁴

As part of its review, the AASDG met with district staff, the firearms community, and iwi in all 12 districts across the country on multiple occasions.³⁴⁵ The goal of these meetings was to “identify and better understand the pain points and opportunities in current processes from an end user perspective”, and to develop strategies and ideas for improving the process.³⁴⁶

The AASDG has implemented certain changes to date and has proposed others. Chief among these were changes pertaining to safety training as part of the licensing process. Beginning in July 2018, Police required first-time applicants to undergo both a theory test and practical training.³⁴⁷ The theory test is administered with the same computer system used for driver’s licences, and applicants are able to take the test at New Zealand Automobile Association and vehicle-testing sites across the country.³⁴⁸ Following a trial period, Police in March 2019 made available the theory test and practical training in one three-and-a-half-hour session.³⁴⁹ One motivation for this change was to save applicants time by requiring them to be able to complete both types of training in one trip.³⁵⁰

In addition, the AASDG has proposed several changes to Police’s firearms programme. One key proposal concerns a major nationwide restructuring of firearms staff and establishing a centralised permitting hub.³⁵¹ As proposed, this restructuring would reduce the number of district-level firearms administrative positions from 76 to 36 field-based positions and eliminate 280 casual vetting positions.³⁵² The AASDG has further proposed changes to the

³⁴² *Id.* at 8.

³⁴³ *Id.* at 9.

³⁴⁴ New Zealand Police. (2019, January 29). Proposed change to Operating Model and Organisational Structure for Arms Act Service Delivery Group (AASDG) (Consultation Document) at 9–10.

³⁴⁵ *Id.* at 9.

³⁴⁶ *Id.*

³⁴⁷ New Zealand Police. (2018, August 7). *First experiences with the new firearms safety programme*. Retrieved from <https://www.police.govt.nz/advice/firearms-and-safety/news-and-updates>.

³⁴⁸ *Id.*

³⁴⁹ New Zealand Police. (2019, January 14). *Changes to the firearms safety programme*. Retrieved from <https://www.police.govt.nz/advice/firearms-and-safety/news-and-updates>.

³⁵⁰ *Id.*

³⁵¹ Woolf, A. (2019, January 31). Police firearms staff proposed restructure could affect more than 350 jobs. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

³⁵² *Id.*

application process for overseas visitors seeking firearms licences, namely by transitioning to an online system for applications.³⁵³ All steps in the process, including the submission of payment and uploading required documents, would be handled online via a new software system, with applicants creating a RealMe³⁵⁴ account to verify their identity.³⁵⁵ The timing for implementing these changes and any others is uncertain, as the group's work was paused following the Christchurch shooting, pending further legislative developments.

2. Christchurch Shootings and 2019 Legislative Reforms

Although the operational reforms to Police's firearms programme were well underway by the beginning of 2019, few had any reason to expect at that time that there would also be significant legislative reform that same year. Rather, gun legislation was not the focus of the Government until after the shootings at two mosques in Christchurch on 15 March. By the end of that day, 49 people were confirmed dead, with an additional 48 admitted to the hospital to treat injuries.³⁵⁶ Two more victims would die in the coming days and months, bringing the total death count to 51.³⁵⁷ By the end of May, the New Zealand Police had charged the gunman with 51 charges of murder, 40 charges of attempted murder, and one charge of engaging in a terrorist act in violation of the Terrorism Suppression Act 2002.³⁵⁸ The combined attacks on the two mosques were the worst mass killing in New Zealand history and rank in the top 10 of the world's deadliest mass shootings.³⁵⁹

Among the many things that stunned New Zealanders about the attacks was the type of firearms used: two semi-automatics, two shotguns, and a lever-action firearm.³⁶⁰ The gunman obtained a Category A licence in 2017 and legally purchased all five guns that same year.³⁶¹ Despite the fact that weapons purchased with a Category A licence would have come with low-capacity magazines, Police believes that the gunman legally purchased a high-capacity magazine and affixed it to an AR-15 rifle, thereby converting it to an MSSA without first obtaining a Category E licence to possess one.³⁶² The gunman was able to exploit the loophole that had long been known to New Zealand Police and many lawmakers: the ability to possess MSSAs without first obtaining a Category E licence by transforming Category A

³⁵³ New Zealand Police. (2019, February 1). *We're making some changes to the Visitor Firearms Licence process*. Retrieved from <https://www.police.govt.nz/advice/firearms-and-safety/news-and-updates>.

³⁵⁴ RealMe is an online account used for both identity verification and login purposes, and is used by both government agencies and the private sector. <https://www.govt.nz/browse/passports-citizenship-and-identity/proving-and-protecting-your-identity/what-is-realme/>.

³⁵⁵ New Zealand Police. (2019, February 1). *We're making some changes to the Visitor Firearms Licence process*. Retrieved from <https://www.police.govt.nz/advice/firearms-and-safety/news-and-updates>.

³⁵⁶ MacManus, J. (2019, March 16). Christchurch mosque terrorist shootings: What you need to know. *Stuff*. Retrieved from <https://www.stuff.co.nz/>; Livingston, T. (2019, March 16). Timeline of the Christchurch mosque shootings. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

³⁵⁷ (2019, March 17). Christchurch terror attack death toll rises to 50, dozens remain injured. *Stuff*. Retrieved from <https://www.stuff.co.nz/>; (2019, May 3). Turkish man wounded in Christchurch mosque shootings has died, bringing toll to 51. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

³⁵⁸ (2019, May 21). Accused mosque shooter now facing terrorism charge. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

³⁵⁹ (2019, March 16). A history of violence: Mass killings in New Zealand. *Radio NZ*. Retrieved from <https://www.rnz.co.nz/>.

³⁶⁰ (2019, March 21). Christchurch mosque shootings will spark New Zealand gun law changes, Jacinda Ardern says. *Australian Broadcasting Corporation*. Retrieved from <https://www.abc.net.au/>.

³⁶¹ *Id.*

³⁶² Savage, J. (2019, March 20). Christchurch mosque shootings: Briefing to Police Minister Stuart Nash shows gun law loophole also exploited by Northland siege killer Quinn Patterson. *New Zealand Herald*. Retrieved from <https://www.nzherald.co.nz/>.

firearms through the addition of legally purchased high-capacity magazines or other accessories.³⁶³ Though the transformed weapon would have been illegal under the existing Arms Act, Police Minister Stuart Nash has noted that the probability of the Government discovering the existence of such a weapon was “negligible”.³⁶⁴

The call to reform New Zealand’s gun laws in the wake of the shootings was swift. At a press conference the morning after the attack, Prime Minister Jacinda Ardern said that she would consider a ban on semi-automatic firearms, stating definitely that “Our gun laws will change ... Now is the time for change”.³⁶⁵ The reforms are contained in two separate tranches of legislation: the first tranche, designed primarily to outlaw MSSAs and most types of semi-automatic weapons, was enacted in April 2019, while the second tranche, containing a much broader array of reforms, was proposed in September 2019 in the hope of its passing in the early months of 2020.

A. Tranche 1: Banning MSSAs and Most Semi-Automatic Firearms

On 21 March 2019, Ardern announced the first set of gun law reforms to occur in the wake of the Christchurch attacks. The focus of the reforms was a ban on all military-style semi-automatic weapons and assault rifles, including all of the semi-automatic weapons that were used in the attacks, along with a ban on parts and accessories that could be used to convert semi-automatics and assault rifles into MSSAs and a ban on high-capacity magazines.³⁶⁶ Ardern also announced that there would be a period of amnesty for owners of the newly banned weapons to turn them in as well as a buy-back programme.³⁶⁷ Although the announced reforms would take effect following the enactment of legislation by Parliament, the restrictions on MSSAs and assault rifles were put into place immediately through use of an Order in Council as an interim measure.³⁶⁸ The effect of the measure was to reclassify a wide range of semi-automatic weapons as requiring a Category E endorsement, thereby preventing those with only Category A endorsements from being able to obtain – and potentially stockpile – weapons that would be prohibited by the forthcoming legislation.³⁶⁹

The legislative changes to the Arms Act were codified 26 days after the shooting.³⁷⁰ Addressing Parliament during the third reading of the bill, Ardern emphasised that legislation was supported with near-unanimity by the Opposition, who the Prime Minister said were

³⁶³ Adding insult to injury, some speculated that the gunman chose New Zealand precisely because of its relatively lax gun laws. See McDonald, L. (2019, March 19). Shooter chose New Zealand because of its softer gun laws, says security expert. *Stuff*. Retrieved from <https://www.stuff.co.nz/>.

³⁶⁴ Christchurch mosque shootings: Briefing to Police Minister Stuart Nash shows gun law loophole also exploited by Northland siege killer Quinn Patterson. *New Zealand Herald*.

³⁶⁵ Beehive.govt.nz. (2019, March 16). *Statement from Jacinda Ardern on Christchurch mass shooting – 9 am 16 March* [Press release]. Retrieved from <https://www.beehive.govt.nz/release/statement-jacinda-ardern-christchurch-mass-shooting-%E2%80%93-9am-16-march>.

³⁶⁶ Beehive.govt.nz. (2019, March 21). *New Zealand bans military style semi-automatics and assault weapons* [Press release]. Retrieved from <https://www.beehive.govt.nz/release/new-zealand-bans-military-style-semi-automatics-and-assault-rifles>.

³⁶⁷ *Id.*

³⁶⁸ *Id.* Section 74A(c) of the Arms Act permits the Governor-General, by Order in Council made on the recommendation of the Minister of Police, to declare any semi-automatic firearm, except a pistol, or any pump-action shotgun to be a prohibited firearm for the purposes of the Act. Section 74A(c) of the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act (replaced on 12 April 2019 by § 70).

³⁶⁹ *New Zealand bans military style semi-automatics and assault weapons*.

³⁷⁰ Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill – Third Reading, 10 April 2019, (Hansard).

“constructive” in their participation in the legislative process.³⁷¹ The Prime Minister framed the new prohibitions on MSSAs as a choice: do New Zealanders want to have MSSAs and assault rifles available in their country?³⁷² In the end, the legislative changes passed by a vote margin of 119–1, with only David Seymour, the lone member from ACT New Zealand, voting against it.³⁷³

The main feature of these legislative reforms was a prohibition on the ownership or possession of semi-automatic weapons – including MSSAs, which an individual could previously possess with a Category E endorsement – and most types of Category A semi-automatics, for which no special endorsement was needed. Specifically, the amendments modified the definition of “prohibited firearm” to include all semi-automatic weapons, other than pistols, except for (1) those capable of firing 0.22-calibre or less rimfire cartridges and that had a magazine capacity of less than 10 cartridges and (2) semi-automatic shotguns with a non-detachable tubular magazine that had a magazine capacity of five cartridges.³⁷⁴ Also included in the definition of “prohibited firearm” were pump-action shotguns capable of being used with detachable magazines or that had non-detachable magazines with a capacity of more than five cartridges.³⁷⁵ To “future proof” the legislation against changes in manufacturing that could evade the newly revised definition of prohibited firearms, the amendment authorised other firearms to be declared prohibited by Order in Council.³⁷⁶ By early September 2019, Police had placed 415 types of firearms and 47 parts on the list of guns and parts eligible for the buy-back programme.³⁷⁷

Only narrow exceptions to the general prohibition against using or possessing semi-automatics exist, and those seeking to be excepted must apply for a new category of endorsement, known as a Category P endorsement. These exceptions include using prohibited firearms as part of a theatrical performance or in a museum; for pest control purposes, whether as an employee of the Department of Conservation, a holder of a concession from the Department, an employee of a “management agency” under the Biosecurity Act, or a private employer whose business substantially relies on pest control; or as a licensed dealer, bona fide collector, or bona fide museum curator or director.³⁷⁸ Once an endorsement is obtained, an individual must then secure from Police a permit to possess a now-prohibited semi-automatic, which is valid for up to one month at a time.³⁷⁹ Private sales of prohibited weapons and parts are still technically possible under the new amendments, but only where a dealer has a licence and the buyer has both the requisite endorsement and permit to possess.³⁸⁰

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ Calling the new legislation “an exercise in political theatre”, Seymour stated that he did not oppose gun reforms in general but did oppose the urgent measures that were invoked to enact the legislation. *Id.*

³⁷⁴ Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, § 2A(a).

³⁷⁵ *Id.*

³⁷⁶ *Id.* § 2A(b).

³⁷⁷ Satherly, D., and Jacobsen, H. (2019, September 6). Gun owners unhappy more weapons are being banned. *Newshub*. Retrieved from <https://www.newshub.co.nz/>; New Zealand Police (2019, September 4). Prohibited Firearms and Parts Buy-Back Price List. Retrieved from

<https://www.police.govt.nz/sites/default/files/publications/prohibited-firearms-and-parts-buy-back-price-list.pdf>.

³⁷⁸ Arms Act 1983, § 4(A)(1).

³⁷⁹ *Id.* § 35A.

³⁸⁰ *Id.* §§ 44A–44B.

Along with firearms, the amendments to the Arms Act prohibit certain types of magazines, ammunition, and firearms parts.³⁸¹ Other legislative changes add or enhance penalties for certain firearms-related offences, such as converting a legal firearm into a prohibited firearm (as was done by the Christchurch shooter).³⁸² Police recommended these new or enhanced penalties in order to “reflect the seriousness of the prohibition[s]” as well as the fact “that more dangerous items are involved, meaning there is a greater risk to people’s safety associated with the prohibited conduct”.³⁸³

Having made illegal the possession of a firearm that thousands of New Zealanders owned, Parliament provided for an amnesty period for persons to turn in prohibited semi-automatic weapons to Police. The April 2019 amendments provided for an amnesty period beginning on 21 March 2019, the date that the proposed legislation was first announced, and ending on 20 December 2019.³⁸⁴ Those in legal possession of newly prohibited firearms who turned them into Police prior to the expiration of the amnesty period would receive compensation.³⁸⁵ Police began a series of buy-back events on 16 July 2019, and by September 19, more than 21,000 firearms had been turned in to Police.³⁸⁶

B. Tranche 2: Broad Array of Legislative Proposals

On 22 July 2019, the Government announced proposals for a second set of legislative reforms, which were considerably broader than the first tranche. Also unlike the first tranche, the reforms proposed for the second tranche extend well beyond the gaps in law purportedly exploited by the Christchurch shooter – principally, the ease with which Category A licence holders were able to convert their firearms to semi-automatics or MSSAs virtually undetected – and include reforms that have been discussed since the issuance of the Thorp report in 1997. As articulated by Prime Minister Ardern, the first tranche of legislation was designed “to take the most dangerous weapons out of circulation by prohibiting assault rifles and military style semi-automatics”, while the second set of reforms is targeted at controlling those weapons that are legally possessed and preventing them from “falling into the wrong hands”.³⁸⁷

To achieve this goal, the proposed reforms in the second tranche generally revolve around the issues of licences and information gathering. Rather than scrapping the law and starting anew, the Government has proposed keeping the fundamental structure of the Arms Act

³⁸¹ Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, § 2B(a)–(b).

³⁸² Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, § 2B(a)–(b).

³⁸³ New Zealand Police. (2019, 2 April). Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill, Initial Briefing for the Finance and Expenditure Committee at 11.

³⁸⁴ Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, Schedule 1, Part 1, § 1. Under the Act, the amnesty period runs until six months after the date that the regulations governing the buy-back process come into effect. *Id.* The regulations came into effect on 20 June 2019, so the amnesty period runs through 20 December 2019.

³⁸⁵ Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, Schedule 1, Part 1, §§ 6–7.

³⁸⁶ Strang, B. (2019, September 19). “Hundreds have applied for permits to keep banned firearms since Christchurch terrorist attack.” *TVNZ*. Retrieved from <https://www.tvnz.co.nz/one-news/new-zealand/hundreds-have-applied-permits-keep-banned-firearms-since-christchurch-terrorist-attack>. Police further reported that 425 license holders had applied for 835 endorsements to be able to possess prohibited weapons since the law change in April 2019. *Id.*

³⁸⁷ Beehive.govt.nz. (2019, July 22). *New emphasis on public safety for firearms* [Press release]. Retrieved from <https://www.beehive.govt.nz/release/new-emphasis-public-safety-firearms>.

intact and building additional provisions on top of it.³⁸⁸ The proposed bill retains the current licensing structure but would require individual firearm licences to be renewed every five years, rather than the current 10, and lists “positive behaviours” applicants can demonstrate to show that they are “fit and proper” as well as outlining potentially disqualifying behaviour.³⁸⁹ Relatedly, the reforms would further render individuals ineligible to hold a licence if they had been convicted of certain offences, such as serious offences involving the misuse of drugs or the use of a firearm, and set forth a list of more than one dozen criteria for Police to take into account when making a fit-and-proper assessment.³⁹⁰ Under the reforms, individual licensees would have the obligation to disclose material changes in their lives on an ongoing basis, including serious mental health changes and changes pertaining to the proscribed criteria, while health practitioners would be required to notify Police if they made a professional determination that a firearms licence holder should not be able to use a firearm.³⁹¹ Whereas currently only persons with pistols or restricted or prohibited weapons are subject to inspections, the reforms also envision giving Police the power to inspect the security arrangements for all gun owners, regardless of the type.³⁹² Licences would also be required for the purchase, importation, and possession of magazines, parts, and ammunition.³⁹³ Under the changes, visitors to New Zealand would no longer be able to buy guns.³⁹⁴

The proposed reforms pertain to other types of licences as well. If enacted, the proposed changes would extend the definition of “dealer”, expand the criteria for the “fit and proper” test applied to dealers, and require all such persons to obtain licences that would be valid for one year.³⁹⁵ Licensing regimes would be added for shooting clubs and ranges, which had previously been unregulated, and they would be required to establish monitoring, training, and reporting regimes.³⁹⁶

The reforms are further designed to increase the flow of information about firearms to Police. Most significantly, the Government has proposed creating a registry for firearms and firearms licensees in the next five years.³⁹⁷ Noting that there is “limited knowledge” in New Zealand about the number of firearms, their location, when they are sold, and how they are being stored, the Government has proposed creating a firearms registry that would contain the following information: details about the licence holder (full name, date of birth, and address); details about the individual’s licence; the make and model number for each firearm; “certain information” on parts, magazines, items, and ammunition; the address or location of firearms; and information about the sale or transfer of each firearm.³⁹⁸ Closely related to the registry would be a new system of “warning flags” that Police would use to become aware of a

³⁸⁸ The Arms Act has long been considered to be out of date, a point made in the Thorp report and echoed in various Police memos and briefings in the ensuing decades. Given the expansiveness of the proposed legislative changes, the current reform efforts would seem to be an ideal time to draft a new Arms Act from scratch, but the political desire to have legislation passed as quickly as possible is likely the reason that such an approach is not being taken.

³⁸⁹ Arms Legislation Bill, Explanatory Note, General Policy Statement at 3. Retrieved from <http://www.legislation.govt.nz/bill/government/2019/0125/latest/whole.html>.

³⁸⁹ *Id.* at 3.

³⁹⁰ *Id.* at 4.

³⁹¹ *Id.* at 4–5.

³⁹² *Id.* at 4, 19-20, 22-25.

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.* at 4–5.

³⁹⁷ *Id.* at 2.

³⁹⁸ *Id.* at 2.

licensee's behaviour and intervene where necessary.³⁹⁹ The reforms also contemplate providing Police with more information for its policy process by establishing a nine-member Commissioner's Firearms Advisory Group to provide advice to the Commissioner on the operations of firearms policy.⁴⁰⁰ Unlike the Firearms Community Advisory Forum, the new group would be made up of people from both within and outside of the gun-owning community and would be entitled to fees and expenses for their participation.⁴⁰¹

Additional proposed reforms are not directly related to either a firearms register or the licensing of gun owners. Among these provisions is a fundamental change to the Arms Act to enshrine in the statute that firearms possession and use "is a privilege" and that persons who have or use firearms "have a responsibility to act in the interests of personal and public safety".⁴⁰² The proposed modification would set forth a dual purpose for the Act: (1) to promote the safe possession and use of firearms and other weapons and (2) to impose controls on possession and use of firearms and other weapons.⁴⁰³

Also proposed to help "clarify and strengthen the [Arms] Act" is a provision to allow Police to recover costs for certain activities it conducted under the Act.⁴⁰⁴ Under this proposal, the Police Minister is authorised to recommend a pricing system for services to recover the direct or indirect costs for certain activities.⁴⁰⁵ Those activities eligible for cost recovery range more broadly than the administration of firearms user licences, including – but not limited to – issuing dealer and shooting club licences, issuing endorsements, registering firearms, and monitoring compliance with conditions imposed on licences, endorsements, and permits.⁴⁰⁶

A final set of reforms pertains to the manner by which Police is able to enforce the Act. Two in particular stand out. First, the proposals modify Police's compliance process to follow for revocation of individual licences by authorising Police to issue "Improvement Notices" that identify areas of non-compliance, remedial steps that should be taken, and a date by which compliance is expected.⁴⁰⁷ If the licensee fails to meet the terms set out in an Improvement Notice, the licence can be revoked, with suspension of the licence and seizure of any firearms immediate upon commencement of the revocation process.⁴⁰⁸ The temporary suspension of a licence and attendant surrender of firearms, moreover, applies in any instance in which Police believes there is reason to revoke the licence.⁴⁰⁹ Individuals who have had their licences revoked must first seek review of the decision from the Commissioner before bringing a challenge in the District Court.⁴¹⁰ Second, the proposed reforms authorise the Police Commissioner to issue guidance notices pertaining to various aspects of the firearms programme, such as the storage of firearms, certification of shooting clubs and ranges, behaviours that may be indicative of being a fit and proper person, and any other aspect of the Act or regulations where the Commissioner believes additional detail or guidance would be

³⁹⁹ *Id.* at 3.

⁴⁰⁰ *Id.* at 6.

⁴⁰¹ *Id.*

⁴⁰² *Id.* at 9.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.* at 7.

⁴⁰⁵ *Id.* at 64–66.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.* at 54.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.* at 55–56.

⁴¹⁰ *Id.* at 57.

“useful”.⁴¹¹ The Commissioner would be required to consult with the Commissioner’s Firearms Advisory Group before issuing any such guidance notices.⁴¹²

Asserting that New Zealand’s gun laws are “dangerously out of date”, the Government moved for a first reading of the bill on September 24, 2019.⁴¹³ At the time of this writing, the Government’s proposals have not received the same level of support in Parliament as did the amendments to the Arms Act that banned most types of assault weapons. Whereas the bill to ban most types of MSSAs and high-capacity magazines passed with only one vote against, the bill containing the second tranche of proposals cleared the first reading stage by a vote of 63-57.⁴¹⁴

⁴¹¹ *Id.* at 67–68.

⁴¹² *Id.* at 68.

⁴¹³ Arms Legislation Bill, First Reading, 24 September 2019 (Hansard). Retrieved from https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20190924_20190924_16.

⁴¹⁴ *Id.*

PART TWO: ANALYSIS OF KEY ISSUES FOLLOWING LEGISLATIVE AND OPERATIONAL REFORMS

The intersection between operational change and legislative reforms in 2019 was not expected: while the operational reforms have been an ongoing, multi-year undertaking by Police, few expected that there would be major statutory changes to the Arms Act at the beginning of 2019. Although both types of reforms are still in nascent stages – the bill containing the second tranche of legislative reforms was introduced in the House of Representatives only in mid-September 2019 – the fast rate of change provides ample opportunity to analyse issues that may come to define the firearms programme as reforms are implemented. The following sections identify those issues and examine them more closely.

I. The Relationship Between Police and the Regulated Sector

To begin, the ongoing operational and legislative reforms provide an opportunity for Police to examine its relationship with the regulated sector. Police has most recently invoked a customer-service model to describe this relationship, with members of the firearms community constituting the “customers”, and this model is referred to in multiple places throughout the programme. The working group overseeing operational changes to administration of the Arms Act, for instance, is called a “Service Delivery Group”, which has as one of its focuses “consistent and efficient service delivery” of firearms services.⁴¹⁵ Discussion documents that led to the formation of the group and the proposed restructure mention a commitment by Police to provide “a more customer-focused and efficient public service for firearms service” and identify being “customer centric” as one of its guiding principles, meaning that “customers and their insights will inform service design and delivery”.⁴¹⁶ This mentality stems at least in part from the twin goals set by the Minister of Police to (1) modernise and improve administration of the Arms Act and (2) improve Police’s relationship with the firearms community,⁴¹⁷ which suggest that improved administration of the Arms Act hinges at least in part on ensuring that the firearms community is satisfied. It is also generally consistent with the broad, service-oriented organisational goals of the New Zealand Police.⁴¹⁸ This focus on gun owners and dealers as customers persisted through the first round of legislative changes in 2019; in June 2019, Police discussed “the high expectations of [] customer service” that it had in conducting gun buy-back programmes pursuant to the first tranche of legislation,⁴¹⁹ and a recent memo identifies as one of the design principles for the programme the notion that “[t]he customer is at the centre of our activities and harm prevention”.⁴²⁰

⁴¹⁵ Arms Act Service Delivery Group. (2019, January 29). *Proposed change to Operating Model and Organisational Structure for Arms Act Service Delivery Group (AASDG)* at 1, 14. Retrieved from http://img.scoop.co.nz/media/pdfs/1901/Arms_Act_Service_Delivery_Firearms_Consultation_290119FINAL.pdf.

⁴¹⁶ New Zealand Police Firearms Licensing and Management Strategy and Action Plan, 2015–2018 (Draft) at 4, 6.

⁴¹⁷ *Proposed change to Operating Model and Organisational Structure for Arms Act Service Delivery Group (AASDG)*.

⁴¹⁸ On a webpage entitled “Our Business”, the New Zealand Police states that its purpose “is for everyone to be safe and feel safe” and asserts that to fulfil this purpose, “we need to provide the best possible service to our communities every day”. Retrieved from <https://tenone.police.govt.nz/page/our-business>.

⁴¹⁹ New Zealand Police. (2019, July 17). *Firearms collection events from Waipu to Dunedin this week*. Retrieved from <https://www.police.govt.nz/news/release/firearms-collection-events-waipu-dunedin-week>.

⁴²⁰ *A Brief History of the Firearms Administration Problem*.

These statements notwithstanding, there exists some difference of opinion among police officials who administer the Act about the appropriate framing device for the programme. Two Arms Officers consulted for this Report agreed that gun owners are Police customers, with one stating that once an individual “obtains a firearm, he becomes a customer ... a client ... a person of interest” and that “all [firearms] business” that the district office conducts “is about people legally entitled to possess firearms under the Arms Act”.⁴²¹ A second Arms Officer echoed this sentiment, noting that gun owners are obligated to apply for a licence and pay a fee for Police services.⁴²² Presenting a different view, a former National Manager of Arms Control allowed only that Police has a “limited customer service role” of processing firearms applications when it comes to administering the Arms Act.⁴²³ Police, he noted, has been tasked with administering the Arms Act, a job that requires it to “uphold the law”, not to ensure that customers are always happy.⁴²⁴

Academic and scholarly analysis tends to reject a strict customer-service model as a helpful framing device for compliance agencies. Unlike the relationship between a customer and a private organisation, which revolves around customers expressing preferences for particular goods or services by exercising their purchasing power in the private marketplace, a public sector organisation derives its service mandate through the collective choice of the citizenry, as filtered by representatives elected into government.⁴²⁵ According to this view, the value provided by the agency extends to the public writ large, not just to individual customers.⁴²⁶ A broader framing of the relationship between an agency and the regulated community is therefore needed to account for effects on the general public.⁴²⁷ Regulated individuals, furthermore, differ from customers because they often provide something other than (or in addition to) money to the regulator – such as information and conduct that comports with the agency’s policies – in exchange for the agency’s services.⁴²⁸ Such cooperation and compliance are particularly important when the goal of the agency is to encourage a certain set of behaviours.⁴²⁹

A guide for compliance agencies sponsored by the Department of Internal Affairs (“DIA”) echoes these concerns. According to the guide, the customer-service model is less helpful in evaluating an agency’s compliance functions, given that individuals who are subject to regulation are inherently less likely to be satisfied with the agency’s oversight and performance.⁴³⁰ The guide acknowledges that certain aspects of a customer-service model can be beneficial; among these are that a focus on customer satisfaction, including an emphasis on timeliness, technical competence, courtesy, and respect, can enhance an agency’s effectiveness as a regulator and its understanding of the regulated sector.⁴³¹ Regulated

⁴²¹ Interview with Kevin Plaisted, 18 July 2019.

⁴²² Interview with Jason Bruce, 5 August 2019.

⁴²³ Interview with Roly Williams, 30 July 2019.

⁴²⁴ *Id.*

⁴²⁵ Alford, J. (2002). Defining the Client in the Public Sector: A Social-Exchange Perspective. *Public Administration Review* 62(3) at 337–46.

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ Department of Internal Affairs. (2011, June). *Achieving Compliance: A Guide for Compliance Agencies in New Zealand* at 130–1. According to the Guide, “[c]ompliance agencies need to retain a focus on their regulatory objectives and their public responsibilities, and it will not be for the regulated sector to decide how effectively the agency is meeting those objectives and responsibilities”. *Id.* at 130.

⁴³¹ *Id.*

individuals who enjoy a positive relationship with the regulator may also be more willing to cooperate with the agency, whether it be through compliance, providing information, or a combination of both. Nonetheless, the guide encourages compliance agencies to “draw on a wider set of concepts and on a vocabulary that appropriately characterises the regulated sector and the agency’s relationships with it” and to place the regulated sector “within a framework of relationships” that recognises that other individuals and entities benefit from or have a stake in the outcome of the agency’s regulatory programme.⁴³² Compliance regulation, in other words, extends beyond tending to the satisfaction of those to whom policies apply.

An agency’s understanding of its role and its relationship with regulated parties is a foundational point that can have significant consequences for the agency’s effectiveness. A review of the New Zealand Transport Agency (“NZTA”), for example, concluded that the agency’s customer-centric focus undermined its enforcement powers to the detriment of the safety of New Zealand roadways.⁴³³ The agency’s practice of “putting the customer at the heart of everything” led NZTA to establish a mandatory practice of conducting multiple reviews before taking enforcement action, regardless of the severity of the infraction.⁴³⁴ Ultimately, NZTA’s practice of conducting informational and education campaigns and follow-up visits, rather than having a robust oversight and enforcement regime for infractions, clashed with its statutory objective of securing the safety of transport on behalf of the public.⁴³⁵

As part of the reforms to its firearms programme, Police should reconsider how it views its relationship with the regulated sector. In particular, the Government’s proposal to insert a purpose statement into the Arms Act should serve as a re-set for the programme by setting new parameters and directional guidance for gun policy. The proposed statement implicitly de-emphasises customer satisfaction and elevates public safety by making clear that gun ownership is a privilege, not a right; that those authorised to have and use firearms are responsible to do so in a manner that is safe for both individuals and the general public; and that the ultimate goal of the Act is to protect individual and public safety.⁴³⁶ Should such a purpose statement be added to the Act, it provides Police with a helpful vehicle to re-frame the firearms programme. Even in the absence of such an amendment, Police should still make clear as part of the programmatic changes undertaken by the AASDG that while it values efficient and helpful service to the regulated sector, public safety remains the core objective of the programme. Overemphasis on the interactions between Police and firearms owners ignores the consequences that firearms policy can have on the non-gun owning public.⁴³⁷

⁴³² *Id.*

⁴³³ McDonald, K. (2019, January 30). *Inquiry Into the Performance of the New Zealand Transport Agency in Relation to Dargaville Diesel Specialists* at 20–3. Retrieved from <https://www.nzta.govt.nz/assets/Vehicles/QC-report-NZTAs-performance-in-relation-to-DDS-30-01-2019.pdf>.

⁴³⁴ *Id.*

⁴³⁵ *Id.* at 22.

⁴³⁶ Arms Legislation Bill, Government Bill, Explanatory Note at 9. Retrieved from <http://www.legislation.govt.nz/bill/government/2019/0125/latest/whole.html>.

⁴³⁷ This point is underscored by a point underscored by the fact that some non-gun-owning New Zealanders have described themselves as feeling shut out and excluded from discussions about firearms policy in recent decades. Interview with Philippa Yasbek, 7 June 2019. Others who were consulted for this report shared this view.

Police need not wait for the addition of a purpose statement to the Arms Act to refocus the objective of the firearms programme.⁴³⁸

Clarifying the relationship between Police and the regulated sector should have multiple benefits. First, it will signal that owners and dealers are not the only beneficiaries of the programme.⁴³⁹ Under a customer-service mindset, Police may feel pressure to reach a favourable outcome for a licence applicant or reach a decision within a certain amount of time to avoid upsetting the applicant.⁴⁴⁰ By clarifying that its firearms programme operates to the benefit of the public as well as gun owners, Police can establish that the firearms programme is not driven solely by a desire to make the programme's users happy.⁴⁴¹ Such clarification should further enable Police to set expectations outside of the organisation. If gun owners construe themselves as customers of Police, for example, they may feel entitled to receive something – such as a licence or a particular endorsement – in exchange for fees paid to Police, and they may form the belief that only those who have guns or pay for Police's firearms services should be permitted to have input into what firearms policy should be. Avoiding the language of customer service may help the gun community understand that Police consider a broader range of factors than customer satisfaction when running the programme.

Second, a shift away from the customer-service model will help broaden the concept of the “payment” Police receives in exchange for operating its firearms programme. A customer-service mindset tends to focus on a transactional exchange: what does the customer of the agency receive in exchange for fees paid? But this focus overlooks the ways in which they may be contributing to the programme in other ways, such as by complying with applicable regulations, partnering with the Police to help disseminate information about firearms policy, and providing information to Police. The motivation for Police to run an efficient and functional firearms programme should arise from the desire to extract compliance from regulated parties, not simply to generate and collect fees.⁴⁴²

Third, and relatedly, construing more broadly the beneficiaries of the firearms programme might encourage greater participation from non-firearms owners. Such individuals may not have seen themselves as beneficiaries precisely because they do not own firearms and therefore do not pay any of the fees associated with the firearms programme. Police may

⁴³⁸ Moreover, any change to the focus of the firearms programme, moreover, can be accomplished in small ways, given that Police has typically refrained from using customer-service language in public-facing documents such as the Arms Manual, Arms Code, and forms available on its website.

⁴³⁹ See Alford, J. (2002). Defining the Client in the Public Sector: A Social-Exchange Perspective. *Public Administration Review* 62(3) at 337–46 (noting that “the typology can facilitate greater clarity about who is to be served by the public agency”).

⁴⁴⁰ The DIA report discusses tension that existed in the gambling industry between licensed providers of gambling activities outside of casinos and regulators that stemmed from a desire to have a timely decision-making process and the need to have sufficient and robust information in making a licensing decision. Following passage of the Gambling Act, timeliness was minimised as a factor to evaluating the efficiency and effectiveness of the programme. *Achieving Compliance: A Guide for Compliance Agencies in New Zealand* at 131–2.

⁴⁴¹ See Alford, J. (2002). Defining the Client in the Public Sector: A Social-Exchange Perspective. *Public Administration Review* 62(3) at 337–46 (achieving clarity about who is served by the agency programme “enables a recognition that sometimes what clients want may be at odds with what citizens want, and the latter's claims generally take priority”).

⁴⁴² See *id.* (noting that, because an agency's clients “can offer something of value to [the agency] even if they do not pay money for services[,] ... public agencies have an operational incentive to pay attention to clients' needs”).

likewise view these individuals to be outside the scope of the programme for the same reason. Shifting away from a customer-service model could both encourage Police to create opportunities for non-gun owners to provide their input about the programme and to encourage participation.

Notably, current efforts to add cost-recovery measures to the Arms Act have the potential to complicate a shift away from a customer-service model. Recent Police calculations show that licensing fees – the only cost-recovery mechanism that is currently part of the programme – are sufficient to cover less than one-third of the total expenditure on the programme,⁴⁴³ and this shortfall has resulted in firearms being de-emphasised as a priority in recent years, as discussed above. The proposals from the second tranche are estimated to increase Police’s operating costs for the programme by \$9 to \$10.9 million per year, and the Government has noted its belief that the cost of administering the Act should, as far as possible, be met through cost recovery, even if that involves a fee increase for users of the programme.⁴⁴⁴ Such a move would likely be welcomed by much of the public, some of whom have argued that under the current system, taxpayers heavily subsidise licensed firearms owners.⁴⁴⁵ But increasing fees may increase user expectations about the type of service that firearms owners will receive and a sense that Police’s accountability in administering the firearms programme is to users only, exclusive of individuals who do not pay any firearms-related fees. Police should be mindful of this potential consequence and develop strategies to manage it, as necessary.

Refining the model used to describe the relationship between Police and the regulated sector does not mean that Police should cease efforts to ensure that its firearms programme runs smoothly and efficiently. Police should be applauded for its commitment to administering the Act in a timely manner and with attention to the technical requirements of the statute and related regulations, even if this commitment has not been met to the satisfaction of every regulated individual. But a shift towards a broader understanding of the beneficiaries of proper administration of the Act and who Police is serving will help ensure that the programme’s priority is ensuring the public’s safety, not satisfying firearms owners.

II. Adding a Purpose Statement to the Act

Next, the legislative proposal to add a purpose statement to the Arms Act could significantly impact the firearms programme by codifying the principle that, in New Zealand, gun ownership is a privilege not a right. Although the Act currently lacks a specific purpose section, the long title of the statute describes its purpose as “promot[ing] both the safe use and the control of firearms and other weapons”.⁴⁴⁶ The Government proposes clarifying that the purpose of the Act is (1) to promote the safe possession and use of firearms and (2) to impose controls on that possession and use, further making clear that the principles underlying the regulatory regime are that firearms ownership is a privilege, not a right, and

⁴⁴³ *Strengthening the Framework for the Safe Use and Control of Firearms*, §§ 114–15.

⁴⁴⁴ *Id.* §§ 116–18.

⁴⁴⁵ Russell, M., Telfar-Barnard, L., and Cook, H. (2019, May). Fact Sheet: Taxpayer subsidies for licensed firearms owners. Retrieved from <https://www.otago.ac.nz/wellington/otago711631.pdf>. The authors of this piece assert that taxpayers subsidise firearms use not only by making up the difference in the cost of administering the programme but also by supporting the healthcare system and other social services that are called upon following firearms-related deaths and injuries. *Id.* They conclude that “[i]t seems only fair that those who own and use firearms should pay for the systems required by law to safely regulate their use”. *Id.*

⁴⁴⁶ Arms Act 1983, Public Act 1983 No 44, Title.

that individuals authorised to have or use firearms must do so responsibly.⁴⁴⁷ Whereas the idea of using firearms responsibly is consistent with the “safe use and control” phrasing currently found in the Act’s long title, an assertion that firearms ownership and use is a privilege and not a right would be a new principle for the Act, albeit one in which much of the population already concurs.

Adding a purpose statement could affect firearms administration in at least two ways. First, it could affect the way in which courts interpret the Act. Under the Interpretation Act 1999, the meaning of legislation “must be ascertained from its text and in light of its purpose”.⁴⁴⁸ With the addition of the proposed purpose statement, courts interpreting the Act would be obligated to do so in a manner consistent with the notion that firearms ownership is a privilege, that those allowed to have firearms must act in the interests of safety, and that ensuring safety is a communal obligation. The potential benefit in this regard may be limited, however. Courts currently look to the purpose of the Arms Act when considering legal challenges to firearms policy.⁴⁴⁹ The problems for Police in these cases stem not from devising policies that generally deviate from the purpose of the Act but rather the more specific problem of Police issuing policies or otherwise engaging in conduct that is found to be in excess of the powers authorized under the statute. Other statutory provisions expressly granting Police new powers under the Act, such as the power to issue tertiary legislation and the power to issue Improvement Notices, may thus be more helpful in defending against legal challenges than the addition of a purpose statement because they more clearly spell out what powers Police has to regulate firearms.

Second, and more importantly, the addition of a purpose statement to the Act could set parameters for public debate about firearms policy within New Zealand by making clear that there is no right to possess firearms. As noted above, rights-based rhetoric has been an increasing part of discussion about firearms regulation and policy in New Zealand in recent years, notwithstanding the pervasive view that no such right to firearms exists. Enacting a purpose statement that definitively states that firearms ownership is a privilege and not a right should help shape discussion about firearms policy and eliminate from debate any rights-based argument. A clear purpose statement, moreover, may prove to be of value within Police itself by serving as a directional compass to help guide future firearms policy and administration. It could also enable Police to push back against political pressure to move the programme in a direction inconsistent with the purpose of the Act.

III. Devising a Regulatory Strategy for the Firearms Programme

Police’s administration of its firearms programme in recent years has been marked by a general desire to provide quality service to the regulated sector but lacks any meaningful and coherent strategy. The combination of operational and statutory reforms thus gives Police the opportunity to develop and refine a strategy for firearms regulation.

⁴⁴⁷ Arms Legislation Bill, Government Bill, Explanatory Note at 9. Retrieved from <http://www.legislation.govt.nz/bill/government/2019/0125/latest/whole.html>.

⁴⁴⁸ Interpretation Act 1999, Public Act 1999 No 85, § 5(1). See also *Lincoln v New Zealand Police*, HC CIV-2009-454-473 at [91]–[96] (1 March 2010).

⁴⁴⁹ See *Practical Shooting Institute (NZ) Inc., et al. v. The Commissioner of Police* [1992] 1 NZLR 709 (HC) at [712] (“The long title to the Act should be noted” and the purposes of the Act “must be relevant considerations.”); *Lincoln v. Commissioner of Police*, [2013] NZHC 1813, at [8] (considering the long title of the Act as a starting point for the court’s analysis).

Generally speaking, two models for regulatory compliance exist in New Zealand: responsive regulation and risk-based regulation. The sections below discuss the extent to which Police currently incorporate aspects of each model into its firearms programme and how the proposed reforms can be expected to strengthen the programme under both. More often than not, these models can be complementary, so Police should consider ways to improve in both areas.

1. Proposed Legislative Reforms Add Helpful Tools Under the Responsive Regulation Model

Police's current firearms programme contains little in the way of responsive regulation. Under a responsive regulation model, a compliance agency focuses on the information levels of regulated parties and their willingness to comply with applicable laws and regulations. Premised on the notion that regulators need "a range of tools" to address the conduct of regulated individuals, the model takes a graduated approach with compliance measures, recognising that individuals who want to comply may just need assistance in order to do so while other more recalcitrant individuals will fall into line only in response to stronger measures, such as punishment.⁴⁵⁰ Responsive regulation recognises that an agency's expenditure of resources and costs will be greater the more forceful the compliance efforts are; prosecution, for example, will be more costly than education efforts.⁴⁵¹ Thus, the strategy encourages compliance agencies to find ways to engage with regulated individuals who exhibit a willingness to comply, based on the belief that most of the regulated sector wants to comply and that escalation of enforcement efforts will be necessary only in a small number of cases.⁴⁵² The strategy entrusts the regulating agency with a broad range of discretion, in terms of both what tools to deploy and when escalation is appropriate.⁴⁵³ In some instances, it may be necessary for a regulator to deploy stronger enforcement measures immediately rather than resorting to interim measures.⁴⁵⁴

The current firearms programme bears few characteristics of a graduated enforcement scheme: Police issues licences to firearms users and dealers and, generally speaking, has contact with licensees only at the time of renewal or where Police elects to pursue enforcement action. Perhaps the only example of responsive regulation currently part of firearms policy is the Whakatūpatō Programme, with its focus on educating unlicensed

⁴⁵⁰ New Zealand Productivity Commission. (2014, June 30). *Regulatory institutions and practices* at 55. Retrieved from <https://www.productivity.govt.nz/assets/Documents/d1d7d3ce31/Final-report-Regulatory-institutions-and-practices-v2.pdf>. This model can take the shape of a pyramid with the following levels:

- A broad base of people who want to comply; for them, the agency needs to make compliance as easy as possible;
- One layer up, people who try to comply but who fall short, often due to lack of information or education; for them, the agency needs to provide additional information and educational opportunities, such as in the form of guidance documents;
- Another layer up, people who do not want to comply; for them, the agency needs to deter their non-compliance by taking steps to detect non-compliance and issuing warnings and similar instruments; and
- At the top, people who have decided not to comply; for them, the agency needs to employ the full force of its regulatory power, such as through prosecution or issuing fines.

⁴⁵¹ *Regulatory institutions and practices* at 56–7.

⁴⁵² *Id.* at 57–8.

⁴⁵³ *Id.* at 58.

⁴⁵⁴ *Id.*

firearms owners who lack formal safety training. The target audience for the Whakatūpato Programme are individuals who are likely willing to comply with the law but who have not yet done so due to their inability to access Police resources, a lack of information, or a combination of both. Rather than penalising these individuals for possessing firearms without licences and without abiding by the relevant storage requirements, Police has chosen to assist them by bringing safety training sessions and information about the firearms programme to where they live. Although Whakatūpato comprises a small aspect of Police's overall firearms programme, Police are to be commended for its efforts to identify the needs of a particular segment of the regulated sector and tailor its regulatory response accordingly.

The proposed legislative amendments will provide Police with additional tools to develop a more sophisticated graduated enforcement approach. Specifically, the second tranche of legislation authorizes Police to issue Improvement Notices to non-compliant licence holders. Such notices function as formal warnings by identifying the nature of the infraction and prescribing a corrective course of action, along with an expected compliance date.⁴⁵⁵ Should the licensee fail to meet the terms of the Improvement Notice, Police may initiate revocation proceedings.⁴⁵⁶ The power to issue Improvement Notices thus gives Police an intermediary step between informal verbal warnings and pursuing revocation proceedings or initiating criminal charges. It should further assist with compliance across all types of licensees: for low-information licensees, the Notices give them information they need to comply, whereas for more recalcitrant licensees, the Notices serve as a warning that articulates the consequences if corrective action is not taken. This type of power is not uncommon among New Zealand compliance agencies,⁴⁵⁷ and it should prove to be one of the most valuable tools for Police from the second tranche of legislation.

Nonetheless, it would be a missed opportunity for Police to settle on Improvement Notices as the only means by which it strengthens the responsive regulation model within the firearms programme. Building off of the success of Whakatūpato, Police should consider identifying other sub-groups within the regulated sector and targeting education and compliance efforts towards these groups. WorkSafe, the agency tasked with regulating workplace health and safety, provides a helpful example of how such sub-division may occur. The agency has broken down its regulated sector in several ways: by industry (agriculture, manufacturing, petroleum, wine, etc), by type of individual (business leader, worker, consumer, etc), and by type of risk (hazardous substance, machinery, noise, asbestos, etc).⁴⁵⁸ The agency collates and makes available information specific to these sub-groups, including guidance documents, opportunities for compliance certifications, and descriptions about the relevant risk posed.⁴⁵⁹ Police should likewise explore creating sub-groups, such as by the type of endorsement held/firearms owned, or by the use of firearms (hunting, shooting club, collector, pest control, etc). These sub-groups could be used for targeted information campaigns as well as to target

⁴⁵⁵ Arms Legislation Bill, Government Bill, Explanatory Note at 6.

⁴⁵⁶ *Id* at 6-7.

⁴⁵⁷ For example, WorkSafe, New Zealand's chief regulator of workplace health and safety, issues Provisional Improvement Notices that identify a health and safety issue and a recommended course of action to be completed by a certain date. Interview with Kate Rockpool, 28 August 2019; WorkSafe. *Provisional improvement notice (PIN)*. Retrieved from <https://worksafe.govt.nz/managing-health-and-safety/health-and-safety-representatives/provisional-improvement-notices/>. The Ministry of Fisheries issues warnings and infringement notices, the latter of which are akin to a speeding ticket in that they consist of a monetary fine and do not become part of a recipient's criminal history. Interview with Steven Ham, 4 September 2019.

⁴⁵⁸ See generally WorkSafe Website, <https://worksafe.govt.nz/>.

⁴⁵⁹ See *id*.

enforcement efforts for high-risk groups, all of which would strengthen the programme under the responsive regulatory model.

In addition to breaking down the regulated sector into smaller components, Police should consider making clear to both Police officials and gun owners that Improvement Notices and other intermediary enforcement steps are not prerequisites to stronger enforcement measures. Where there is a more immediate risk of harm from non-compliance, or where an infraction is particularly egregious, there is no obligation on Police to escalate its compliance response along a graduated scale.⁴⁶⁰ As discussed above, one of the causes of NZTA's regulatory shortcomings was a practice of issuing warnings and taking other intermediate measures before initiating a full enforcement action. Police should not lose sight of the fact that it has the discretion to take an enforcement action in the first instance for more serious violations and develop guidelines for when such measures are warranted.

2. Police Should Build on the Existing Risk-Based Regulatory Framework

As with responsive regulation, the current firearms programme contains some features of a risk-based regulatory approach but still has much room for improvement. Risk-based regulation revolves around the goal of employing agency resources as efficiently as possible, with the focus on identifying high-risk sections of the regulated sector and targeting those sections specifically.⁴⁶¹ Agencies that adopt this strategy typically have a process or formula for scoring risk and target their resources towards those risks deemed to be higher priorities.⁴⁶² A compliance agency might focus on various types of risk, including the risks of non-compliance by all or part of the regulated sector, the possible harm that the regulatory framework is intended to address, and the increased risk to the regulated sector imposed by regulation (e.g., compliance costs).⁴⁶³

Responsive regulation and risk-based regulation are not mutually exclusive and can fulfil complementary purposes. The DIA Manual, for example, describes a risk-management analysis as a critical tool compliance agencies. According to the Manual, assessing risk is “central to a compliance agency’s functions” and thus must “be embedded in the agency’s management, culture[,] and practices, and tailored to the agency’s specific context and processes”.⁴⁶⁴ New Zealand’s Productivity Commission describes a “transcendent approach” to regulation that integrates responsive and risk-based strategies.⁴⁶⁵ Under this approach, a regulator’s strategy will depend on both the nature of the risk and the behaviour characteristics of the regulated individual or entity.⁴⁶⁶ Ideally, an agency will create a synergy between the two approaches and incorporate that synergy into its overarching regulatory strategy and purpose.⁴⁶⁷

In its present state, Police’s firearms programme has only a few characteristics of a risk-based approach. The Whakatūpatō programme is one such area, as Police have determined that non-compliance by rural Māori to be of a sufficiently low risk not to warrant immediate enforcement-based action. Police also currently engages in risk-based regulation by running a

⁴⁶⁰ *Regulatory institutions and practices* at 58.

⁴⁶¹ *Id.* at 62.

⁴⁶² *Id.* at 62–4.

⁴⁶³ *Achieving Compliance: A Guide for Compliance Agencies in New Zealand* at 56.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Regulatory institutions and practices* at 70.

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.* at 68.

weekly report of licensed firearm owners. These reports show which licensees had contact with Police during the reporting period as a perpetrator, victim, or witness.⁴⁶⁸ Police then prioritize the list based on the nature and frequency of the incidents and conducts follow-up visits as necessary to monitor for compliance.⁴⁶⁹ This process allows Police to target resources towards licensees whom it assesses to be a threat based on information about their involvement with Police.

But Police should take this opportunity to develop a more intentional and coherent strategy for identifying risks and channelling its resources to address those risks. The legislative reforms provide valuable assistance in this regard by supplying Police with multiple new sources of information. Under the proposal to renew firearms licenses every five years, Police will have more frequent contact with firearms licensees and their referees.⁴⁷⁰ Health practitioners will also have the responsibility to provide information to Police in the event they believe a patient is not fit to have firearms.⁴⁷¹ From establishing and maintaining a registry, Police will have information about the number and type of firearms and magazines that an individual owns, as well as information about when those items are bought and sold.⁴⁷² Licensing requirements for shooting clubs and ranges, moreover, will result in those organisations becoming sources of information about their members.⁴⁷³ Police may impose obligations on these organisations to report periodically information about their members, as pistol clubs currently do. Operationally speaking, the AASDG's plan to centralise administrative functions in order to free up time for District Arms Officers and other staff to engage with the firearms community⁴⁷⁴ is intended to increase the amount of face-to-face interaction that district staff have with firearms licensees, which should similarly result in the collection of additional information. Indeed, with a move towards centralising operations of the firearms programme, it will be critical for Police to ensure that shooting clubs and district staff are able to collect information licensees at the local level, since these entities and staff will serve as the programme's eyes and ears in the field.

Given that the legislative reforms make significant strides in filling the information gaps that currently exist in Police's firearms programme, it is incumbent upon Police to find a way to manage successfully this expected influx of information. As part of its effort to do so, Police may consider developing a system for scoring and assessing risk to identify which infractions pose real safety risks versus which infractions are merely instances of relatively benign non-compliance. This system, moreover, could provide guidance to Police officials as to what type of response might be appropriate for any given risk.

WorkSafe has developed an Enforcement Decision-making Model that could serve as a useful example for Police. The Model provides a pathway for inspectors to identify potential issues and guidance to the inspectors as they examine the appropriate course of action, which promotes consistency and proportionality in their enforcement actions.⁴⁷⁵ Inspectors are encouraged to first determine whether an issue constitutes a health and safety risk, as opposed

⁴⁶⁸ Interview with Michael McIlraith, 19 August 2019.

⁴⁶⁹ *Id.*

⁴⁷⁰ Arms Legislation Bill, Government Bill, Explanatory Note at 3.

⁴⁷¹ *Id.*

⁴⁷² *Id.* at 2.

⁴⁷³ See *id.* at 4–5.

⁴⁷⁴ Interview with Michael McIlraith, 30 July 2019.

⁴⁷⁵ WorkSafe New Zealand. (2018, May). Enforcement Decision-making Model: A Framework that Guides Inspectors Through the Thought Process to Decide on an Enforcement Response at 2. Retrieved from <https://worksafe.govt.nz/dmsdocument/1031-enforcement-decision-making-model>.

to a compliance-based issue (e.g., an administrative violation, such as a paperwork-related infraction) and are then guided to a recommended course of action.⁴⁷⁶ Though the recommendations of any such model should be non-binding so as to give the regulator sufficient flexibility in deciding how to respond to a given risk, having such a guidance framework would aid Police in starting to identify risks from firearms-related infractions and tailor its regulatory response to that risk.

IV. Ensuring That Firearms Remains a Police Priority

Along with the above considerations, the intersection of operational and legislative reforms in 2019 provides an opportunity to examine how well protected the firearms programme is in terms of remaining a priority within Police. This issue was of paramount importance in the Thorp report, which noted that “[t]ime and time again”, the need to respond to more pressing and urgent demands resulted in Police downgrading firearms policy as a priority and the programme becoming under-resourced.⁴⁷⁷ At the district level, Thorp found that there was reluctance to devote resources to monitoring compliance with the Act and regulations or even to detecting and prosecuting violations except in the most egregious cases.⁴⁷⁸

To address these issues, the Thorp report proposed a radical restructure of the firearms programme. Specifically, the report advocated for the creation of an independent Firearms Authority to oversee and manage implementations of the reforms proposed in the report.⁴⁷⁹ The report’s preference was that this independent body would either cease after a period of years to exist pursuant to a sunset clause, at which point administration and implementation of reforms would revert back to Police, or remain a permanent independent body operating under the auspices of Police.⁴⁸⁰ This drastic move was necessary, according to the report, in order to overcome the “ingrained attitudes” that had resulted in the downgrading of firearms policy as a priority matter and to muster the “energy, enthusiasm, and persistence” that a successful overhaul of the firearms programme would require.⁴⁸¹ Notably, the Thorp report considered the status quo – retaining control of all firearms administration and policy within Police without the creation and involvement of any independent body – to be “unacceptable”.⁴⁸²

At the same time, the Thorp report concluded that there were “strong reasons” for leaving vetting and enforcement functions within the purview of the agency.⁴⁸³ Enforcement activities, the report reasoned, generally involved the use of classic policing skills, and Police were both the government agency “most directly involved in issues arising from the misuse of firearms” and the agency best situated to investigate serious criminal offending, including

⁴⁷⁶ *Id.* at 4–6.

⁴⁷⁷ Thorp report at 120. Elsewhere, the report states that “the absence of adequate resourcing in combination with the pressures of front-line police work has led to arms work being down-graded and deferred until other responsibilities were met”. *Id.* at 225.

⁴⁷⁸ *Id.* at 120.

⁴⁷⁹ *Id.* at 227–8.

⁴⁸⁰ *Id.* at 227–30. The report considered the option of having the independent body be integrated into another government agency, but concluded that this was not a viable option given that “no other government agency is as well suited as the Police” to conduct the vetting and enforcement aspects of firearms policy or to otherwise “manage the arms business”. *Id.* at 227–8.

⁴⁸¹ *Id.* at 225.

⁴⁸² *Id.* at 227. The report continued that retaining the current system would be unacceptable even if all other proposed reforms were adopted. *Id.*

⁴⁸³ *Id.* at 224.

firearms-related crimes.⁴⁸⁴ With respect to vetting, the report observed that Police’s ability to collate information from local sources as well as national networks was something that could not be handled by another entity and thus constituted “a valuable resource” within the firearms programme.⁴⁸⁵

Two decades following the report’s emphasis on the need for independence of the firearms programme, the systems, processes, and structures developed for managing and administering the Arms Act have been (in Police’s own words) “relatively unchanged”.⁴⁸⁶ Operation of the firearms programme is fragmented, with a lack of central leadership and “district-specific interpretation” of the Arms Act.⁴⁸⁷ Police has further identified limited oversight of district arms staff and limited, inconsistent training being provided to this staff.⁴⁸⁸ Multiple people consulted for this report echoed the concerns from the Thorp report about firearms not being a priority within Police. One Advisor for Firearms Control described this issue persisting at the district level, despite Police having a National Firearms Coordinator overseeing the administration of firearms policy nationwide.⁴⁸⁹ Exacerbating the problem, the National Manager had a small number of staff, leaving much of the operational decision-making and prioritisation to district-level managers, who did not report to the National Manager.⁴⁹⁰ There also was no dedicated firearms official at the superintendent level, resulting in a lack of clout for firearms policy in national-level discussions.⁴⁹¹ The decision not to undertake any structural changes to the firearms programme thus resulted in firearms policy continuing to be a low priority throughout 20 years since the Thorp report was issued.

Certain proposed legislative reforms have the potential to address the problem of de-prioritisation, even if only indirectly. First, the proposed creation of a firearms registry collecting information about firearms, ammunition, magazines, and parts owned by individuals as well as containing the record of a sale will necessarily be a significant undertaking by Police that will require significant resources. Creating and maintaining a nationwide system is almost certain to ensure that firearms will remain a focus of Police in the coming years. Second, and relatedly, an increase in user fees may result in indirect systematic change to the extent prior reforms were not undertaken due to a lack of resources. Third, a proposed legislative change calling for a review of the Arms Act and “wider Arms regime” to be undertaken five years from the passage of amendments to the Act⁴⁹² may force the firearms policy to the forefront of the Police agenda and possibly to that of future governments, though much will depend on the nature and extent of these reviews.

The proposed changes from the AASDG, which are by design more closely focused on the systematic administration of the Arms Act, are closer in nature to the structural reforms proposed by the Thorp report. The AASDG proposed bringing all firearms activity and services under the leadership and stewardship of a strong central firearms group, a change that should result in not only more consistency among district staff in terms of how they discharge their responsibilities but also giving firearms regulation greater visibility and

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Proposed change to Operating Model and Organisational Structure for Arms Act Service Delivery Group (AASDG)* at 9.

⁴⁸⁷ *Id.*

⁴⁸⁸ *Review of the New Zealand Police Management and Administration of Firearms.*

⁴⁸⁹ Interview with Paul Gatland, 6 August 2019.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² Arms Legislation Bill, Government Bill at 72.

general awareness at the central levels within Police. The AASDG’s proposals, in turn, remove decision-making power from district offices, where much of the de-emphasis on firearms policy originated due to the competing demands of other Police business and the lack of emphasis on firearms policy from the national office. Having a centralised entity like the AASDG with a sole focus on firearms policy and with high-level backing at the national level is a positive step towards insulating firearms regulation within Police.

Importantly, one of the main causes of de-prioritising since the time of the Thorp report has been inadequate money dedicated to the firearms programme and the use of resources from Police’s general fund to cover the difference between licensing fees and the overall costs of the programme. Whereas the Thorp report’s recommendation of creating a separate Firearms Authority within or outside of Police focused on the independence of firearms *operations*, protecting the independence of the programme’s *funding* may achieve close to the same results. “Ring-fencing” the funding for Police’s programme would ensure that Police have a steady source of money devoted solely to firearms and that cannot be siphoned off for other purposes. Having a protected source of funds is not a new concept within Police; the road policing project, for example, receives a certain amount of hypothecated transport revenues every year, money that cannot be used for other Police purposes.⁴⁹³

The legislative reforms should be a helpful springboard to a hypothecated funding scheme for the firearms programme. As proposed, the revised Arms Act would allow Police to seek to recover costs for many facets of its firearms programme, so long as Police is able to demonstrate that the recover amount being sought is a true cost incurred, either directly or indirectly.⁴⁹⁴ Police may accordingly be able to justify a dedicated source of funding for the firearms programme that will cover all or most of the programme’s cost on the grounds that it is re-investing the user fees and thus creating a programme that is largely self-funding. By ensuring that Police have a dedicated and significant source of funding for firearms, this change to the legislation may prove to be key to securing the financial independence of firearms policy administration within Police, even without undertaking the structural reforms proposed by the Thorp report.

V. Police’s Use of Tertiary Legislation

The 2019 legislative reforms give Police the new power to issue tertiary legislation, a rule-making or law-making power that must be delegated from Parliament to a ministry or agency.⁴⁹⁵ Unlike regulations, which are cleared by Cabinet, formally issued by the Governor-General, and subject to various controls and procedural requirements, tertiary legislation is issued by a Minister or another official or body within the agency.⁴⁹⁶ The proposed legislation seeks to confer on Police broad “notice-making powers”, which the Cabinet Social Wellbeing Committee describes as “a useful mechanism in a regulatory toolkit”.⁴⁹⁷ Under the proposal, notices will be approved by the Commissioner of Police and are intended for Police to provide “further detail to the Act”, including on conditions that

⁴⁹³ See Ministry of Transport. (2014, November). *Future Funding: Uses of hypothecated revenue* at 4–6. Retrieved from <https://www.transport.govt.nz/assets/Uploads/Our-Work/Documents/94fb0c79ab/ff-uses-of-hypothecated-revenue.pdf>.

⁴⁹⁴ Arms Legislation Bill, Government Bill at 64–6.

⁴⁹⁵ Burrows, J. (2011). Legislation: Primary, Secondary, and Tertiary. *Victoria University of Wellington Law Review* 42(1) at 65, 70. Retrieved from <http://www.nzlii.org/nz/journals/VUWLawRw/2011/6.html>.

⁴⁹⁶ *Id.* at 68–71.

⁴⁹⁷ Arms Legislation Bill, Government Bill, Explanatory Note at 6; Government Bill at 67–68.

would be placed on licence holders, as well as “further detail to expand on regulations” about minimum standards or performance standards for storage requirements.⁴⁹⁸

The power to issue such notices could have significant consequences for the operation of Police’s firearms programme. The Arms Act is widely known to be out of date – a point made in the Thorp report more than 20 years ago⁴⁹⁹ – and Police may be able to use tertiary legislation to maintain a more nimble regulatory scheme that is able to keep current with the pace of technological developments. Such regulatory agility should prove particularly useful in regulating firearms, an endeavour that is commonly likened to playing a game of “whack-a-mole”, given the pace of technological innovation with firearms and related accessories. This will be particularly true to the extent that Police is able to dovetail any notice-making power with technical input from groups like FCAF and others in the firearms community. Moreover, the ability to enshrine certain policies and interpretations into notices should aid Police to achieve greater uniformity in its administration of the firearms programme because it will set a more consistent policy for Arms Officers to follow and put the public on notice of those interpretations and policies. This new authority should also complement other features of the legislative and operational reforms. Police, for example, should be able to issue detailed and up-to-date guidelines about issues such as storage requirements and then use Improvement Notices or other tools developed as part of a responsive regulatory model to ensure compliance with these requirements.

But the power to issue tertiary legislation carries with it some risks. Tertiary legislation has been criticised on the grounds that it lacks the controls and procedural requirements attendant to regulations and is not always well-publicised by the issuing ministry, thereby depriving the public of notice of its existence.⁵⁰⁰ Other criticisms of tertiary legislation concern a lack of checks and balances: an agency issuing tertiary legislation is not politically accountable for the policies in the same way that Parliament or the Government is for legislation and regulations.⁵⁰¹ In order to wield this new power prudently, Police may be best served by devising a guiding philosophy for when tertiary instruments will be issued rather than regulations or statutory changes.⁵⁰² Additionally, Police may take steps to ensure that any notices are made available to the public and in a manner that is easy to digest and understand.⁵⁰³ Feedback from advisory groups like FCAF and the Commissioner’s Firearms Advisory Group will likely be important to ensure that the notices are understandable by the greater public.

VI. The Future Role of FCAF

As a final matter, the proposed legislative reforms will likely change the role that FCAF, the advisory forum comprising various members of the firearms community, plays in the

⁴⁹⁸ *Id.*

⁴⁹⁹ The Thorp report commented on what it called the “complexity and awkwardness of the arms code”, describing the 1983 Act as “difficult to construe” with a statutory construction that is “not helped by the circumstances that the 1992 Amendment was clearly compiled in haste and relates uneasily to the principal Act”. Thorp report at 121. The report recommended that the Act be “rewritten in modern form”. *Id.* at 198.

⁵⁰⁰ Burrows, J. (2011). Legislation: Primary, Secondary, and Tertiary. *Victoria University of Wellington Law Review* 42(1) at 65, 73–5.

⁵⁰¹ *Id.* at 80.

⁵⁰² Burrows proposes a list of questions that he believes a lawmaker should ask before proceeding with tertiary legislation. These questions include whether such a regulatory instrument is needed, what checks and balances exist, and whether the document is accessible to members of the public. *Id.* at 80–1.

⁵⁰³ See *id.*

firearms programme. FCAF was created to provide multiple benefits to Police. To begin, it constitutes a formal mechanism for the firearms community to provide input to Police about policy issues arising under the Arms Act and the accompanying regulations as well as to review and make recommendations to Police about firearms-related matters.⁵⁰⁴ In addition, FCAF allows Police the opportunity to try to secure the firearms community’s “buy in” for policy changes,⁵⁰⁵ thereby potentially obtaining support from the community for those changes in the process. Moreover, FCAF can serve as a vehicle through which Police can disseminate information to the broader community. The group consists of representatives from different sectors of the community, including members who are arms dealers, collectors, and pistol shooters, and these individuals are typically leaders of firearms-related groups.⁵⁰⁶ Police is able to share information with FCAF members, who in turn can then share that information with the members of their organisations.⁵⁰⁷

The use of FCAF in its current form is not without downsides, however. First and foremost, the fact that the group is composed solely of members of the firearms community makes Police vulnerable to the charge that the group provides one-sided and biased information.⁵⁰⁸ The Productivity Commission has noted the importance of advisory committees being sufficiently representative of all stakeholders, including people “whose lives are made safer by regulation” but who are not directly regulated by the agency;⁵⁰⁹ FCAF does not meet this standard. Second, there exists a disconnect between Police and the group’s members with respect to the purpose of the group and the role its members play in formulating policy. Although multiple Police officials see FCAF as a means for obtaining technical information and gauging the firearms community’s response to proposed policy changes,⁵¹⁰ some members of FCAF expressed their belief that Police use the group to dictate instructions to the firearms community, and that FCAF had been less receptive to receiving meaningful input in recent years.⁵¹¹

The ongoing reform process thus presents Police with the opportunity to refine its use of FCAF. Most immediately, the legislative proposal to create a Commissioner’s advisory group may help address the concerns that only members of the firearms community are able to provide input to Police on policy matters. The proposed legislative change would create a stakeholder group of nine members, and it deliberately reserves certain seats for members of the wider non-firearms community.⁵¹² As contemplated by the Government, the purpose of the Commissioner’s advisory group will be “to undertake an advisory role”, “mak[e] recommendations” about firearms regulation, and provide “critical independent advice”

⁵⁰⁴ Firearms Community Advisory Forum. *Ground Rules*. Retrieved from

<https://www.police.govt.nz/sites/default/files/publications/firearms-community-advisory-forum-ground-rules.pdf>.

⁵⁰⁵ Interview with Michael McIlraith, 19 August 2019.

⁵⁰⁶ Indeed, one of the criterion for selection to FCAF is whether the individual is “a representative of an incorporated group” and who can “represent the views of the group rather than their individual view”. *Ground Rules*.

⁵⁰⁷ Interview with Michael McIlraith, 19 August 2019.

⁵⁰⁸ Email from Philippa Yasbek, Nik Green, Hera Cook, Gun Control NZ to Nathan Swinton, 13 August 2019.

⁵⁰⁹ *Regulatory institutions and practices* at 136–7, 140. The Commission quotes submissions from two compliance agencies that rely on advisory groups. These agencies warn that “[t]he regulator must consider the impact of its compliance decisions on all of its stakeholders, not just the regulated sector it oversees” and that the parties being regulated should not have “unbalanced access to or influence over the regulator”. *Id.* at 136–7.

⁵¹⁰ Interview with Michael McIlraith, 19 August 2019.

⁵¹¹ Interview with Nicole McKee, 31 July 2019.

⁵¹² Strengthening the Framework for the Safe Use and Control of Firearms, §§ 86–88.

pertaining to the operations of the programme,⁵¹³ which collectively bear a strong resemblance to the stated purpose of FCAF. To avoid duplication, as well as any ongoing perception that FCAF provides the firearms community with special, direct access to Police that other stakeholders lack, Police should use the opportunity to refine the purpose and role of FCAF. Specifically, Police will need to make clear that the purpose of FCAF is to provide technical advice about Police policies, as well as practical feedback about how Police policies will operate in practice. These are aspects of the firearms programme about which FCAF members have specialised knowledge and have a unique perspective that is not sufficiently covered by FCAF. Police's use of FCAF as a vehicle for communicating information to the broader firearms community will likely continue to be of value moving forward, as well.

As it clarifies the role of FCAF and the Commissioner's stakeholder group, Police will want to develop clear terms of reference for both groups. The strongest governing document for FCAF is a one-page Ground Rules document dating from 2017, which contains summary information about the purpose of the group, general requirements for membership, and stipulations about the Chatham House Rules and confidentiality.⁵¹⁴ Police should create a more comprehensive guidance document for FCAF and the Commissioner's advisory group. The Ministry of Primary Industries has created Terms of Reference for its advisory groups; these tend to be multiple-page documents with, among other things, clear definitions of terms, purpose statements, explanations of how the group is to function, membership rules (including removal and substitution of members), an explanation of how the group operates, and a section devoted to defining the scope of the group.⁵¹⁵ The addition of the Commissioner's advisory group makes it all the more important that Police ensure that it clearly defines the scope, role, and operation of each group to avoid unintentional overlap and to manage the expectations of members of each group.

⁵¹³ *Id.*

⁵¹⁴ *Ground Rules.*

⁵¹⁵ See, e.g., Ministry of Primary Industries. (2017, July 19). *Terms of Reference for Integrated Electronic Monitoring and Reporting System (IEMRS) Implementation Advisory Group*. Retrieved from <https://www.fisheries.govt.nz/dmsdocument/19256-revised-iag-tor>.

CONCLUSION

New Zealand is on the cusp of having its strongest firearms programme to date. Though much of the old regulatory structure from the Arms Act 1983 remains in place, the 2019 legislative proposals will modernise the legislation in key respects and provide Police with important tools to have a more sophisticated regulatory scheme. Complementing these legislative reforms, Police have set in motion plans for addressing deficiencies in its administration of the Arms Act in recent years.

The confluence of so many reforms will inevitably result in a period of considerable change for the firearms programme, and Police would be wise to pay close attention to certain issues. To begin, this period of reform gives Police the opportunity to reassess how it views its relationship with the regulated sector and to move away from a customer-service model that has come to define the programme in recent years. Providing assistance in this regard is the addition of a purpose statement to the Arms Act, which should have the added benefit of providing overarching directional guidance to courts interpreting the Act and to Police decision-makers, and by setting parameters for future debates in New Zealand about gun policy.

Critically, Police now has the opportunity to develop a clear regulatory strategy; Police can add to the tools from the proposed legislation to hone a graduated, responsive regulatory model and should find ways to build on the existing risk-based decision-making to make such calculations a more pronounced feature of its programme. Another key tool for Police to wield in the future is the power to issue tertiary legislation, which Police can use to set standards and be more nimble in responding to technological changes with firearms.

Finally, Police will inevitably need to adjust the role of FCAF and find ways to make productive use of the group while also incorporating the Commissioner's Firearms Advisory Group into the programme. Implementing these various changes is no easy task, but successful execution will ultimately assist Police in building a firearms programme that allows people to enjoy the privilege of using guns in a safe and responsible manner.

INTERVIEWS

In addition to the sources cited throughout the report, my discussion and analysis were informed by interviews with more than 50 people within and outside of the Government. I am very grateful to these individuals for sharing their knowledge and perspectives with me.

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- Gray, Morgan; New Zealand Police; July 31, 2019
- Ham, Steve; Fisheries Compliance, Ministry of Primary Industries; September 4, 2019
- Hamilton, Donald; New Zealand Police; July 16, 2019
- Hannon, Patrick “Paddy”; New Zealand Police; July 23, 2019
- Howat, John; Wellington Sporting Arms Company; August 8, 2019
- Hudson, Brett; National Party MP; July 15, 2019
- Kraft, Mark; Firearms Consulting & Training; July 27, 2019
- Mabbett, Margaret; State Services Commission; June 26, 2019
- MacIver, Kathryn; G-REG, Ministry of Business, Innovation, and Entre; August 28, 2019
- Mason, Ross; Chair, National Rifle Association of New Zealand; July 4, 2019
- McIlraith, Michael; New Zealand Police; multiple
- McKee, Nicole; Firearms Safety Specialist and Secretary, Council of Licensed Firearms Owners, Inc.; June 13, 2019 & July 30, 2019
- Mount, Simon; Bankside Chambers; August 9, 2019

- Newbold, Greg; College of Arts, University of Canterbury; June 14, 2019
- Nolan, Jack; New Zealand Police; July 31, 2019
- O'Connor, Greg; Labour Party MP; August 1, 2019
- Petrey, Catherine; New Zealand Police; September 10, 2019
- Plaisted, Kevin; New Zealand Police; July 18, 2019
- Powell, Austin; Crown Law; June 6, 2019
- Pullen, Trevor; New Zealand Police; August 6, 2019
- Quirke, Terry; New Zealand Police; August 5, 2019
- Rees, Eugene; Ministry of Primary Industries; August 8, 2019
- Rockpool, Kate; WorkSafe; August 28, 2019
- Russell, Marie; Department of Public Health, University of Otago Wellington; June 6, 2019
- Sablyak, Serge; Ministry of Primary Industries; August 14, 2019
- Stables, Philip; State Services Commission; June 26, 2019
- Stace, Rachael; Ministry of Justice; May 10, 2019
- Torres, John; University of California; July 16, 2019
- Wakker, Debbie; Pistol New Zealand; July 23, 2019
- Weir, Dana; New Zealand Police; July 15 & 17, 2019
- Williams, Alastair "Roly"; New Zealand Police; July 30, 2019
- Wood, Michael; Labour Party MP; August 1, 2019
- Yasbek, Philippa; Co-founder, Gun Control NZ; June 7, 2017;
- Young, Jane; New Zealand Police Association; July 1, 2019 & August 12, 2019
- Young, Warren; Independent Police Conduct Authority; multiple