

4 April 2019

Clerk of the Finance and Expenditure Committee
Office of the Clerk of the House of Representatives
Parliament Buildings
WELLINGTON

By Online Submission

Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill 125-1

The New Zealand Bar Association (the Association) is grateful for the opportunity to comment on the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill. Our submission is attached to this letter.

The Association would appreciate the opportunity to be heard on this submission. Please contact our Executive Director, Melissa Perkin on 09 303 4515 or email her at melissa.perkin@nzbar.org.nz if you have any questions or need further information about the representatives who would speak to Association's submission.

Yours sincerely



Kate Davenport QC
President

TO: The Finance and Expenditure Committee

**Submission on the
Arms (Prohibited Firearms, Magazines, And Parts) Amendment
Bill**

On Behalf of the New Zealand Bar Association

4 APRIL 2019

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About Our Submission

- A. The New Zealand Bar Association (the **Association**) is grateful for the opportunity to comment on the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill (the Bill).
- B. The Association represents members of the independent bar of New Zealand (barristers). One of the functions of the Association is to assist in and promote the reform of the law and legal procedure.
- C. This submission has been prepared by senior members of the legal profession, who are members of our Association, following consultation with our Law Reform and Criminal Committees.

Executive summary

1. Following the shooting of 50 New Zealand citizens, permanent residents, refugees and visitors from other countries on 15 March 2019 Christchurch, it is clear the Arms Act 1983 must now be amended. We also call to mind those who were killed in gun related murders in Aramoana and Northland. We must better protect people in our country.
2. The New Zealand Bar Association wholeheartedly supports changes to the Arms Act 1983 to prohibit semi-automatic assault rifles from civilian ownership, as well as prohibiting the ammunition and magazines employed by these weapons.
3. It is critical that the legislation that is now passed will be effective in banning the importing, sale and ownership of such weapons and magazines (other than for regulated activities such as Police and Defence Force purposes). We note that the time frame for passing this legislation has limited the ability to consider it in depth and we have therefore limited our comments to the matters outlined in paragraph 4.
4. We support the Arms (Prohibited Firearms, Magazines, And Parts) Amendment Bill, but submit that it contains flaws which must be addressed by the Committee. These include:
 - a. the definition of “semi-automatic” is not sufficiently precise;

- b. there is no clear definition of a “bona fide collector”, and guidelines for assessing what constitutes a bona fide collector;
 - c. there should be a limited exemption for farmers to use semi-automatics to cull animals on private land;
 - d. the surrender process in the Bill does not produce an amnesty from prosecution and is therefore unlikely to encourage surrender of assault rifles; and
 - e. the proposed s 54A offence should be removed and considered within the context of the Crimes Act 1961.
5. These submissions set out the historical background to assault rifles, before explaining how a 2013 Order-in-Council allowed assault rifles to become readily available, and then addressing the specific problems with the Bill summarised above.

A. Recommendations

Definition of Semi-automatic

6. The Bill should amend the definition of “semi-automatic” to cover any firearm, that with each pull of the trigger, will either:
- a. automatically eject the casing of the cartridge that has been fired; or
 - b. automatically chamber another cartridge; or
 - c. both fire a cartridge and eject its case, and (unless all cartridges loaded have been fired) chamber another cartridge. [para 118 – 120]

Removal of all semi-automatic centrefire hunting rifles from civilian ownership

7. The Committee should consider carefully whether it thinks there is a genuine need to remove all semi-automatic centrefire hunting rifles from civilian ownership, given the likely costs of this exercise, or whether this money would be better spent targeting just semi-automatic assault rifles, which employ distinct calibres of ammunition and have no legitimate civilian usage in a civilised society. [para 121 - 124]

Definition of “bona fide collector”

8. There is no utility in retaining bona fide collectors of weapons as a class of people who are exempt from the general prohibition from owning prohibited weapons. It will be difficult for the Police to apply the necessity test in s 30B(1)(b) as the Police will be required to assess whether a person is a “bona fide collector of firearms”, and then whether the possession of prohibited weapons is “necessary” for that person in that capacity. It is unlikely that it will ever be strictly “necessary” for a collector of firearms to have a prohibited weapon, which makes the test largely redundant for this class of people.
9. In that event, this category of exemption is likely to be pointless, but may lead to judicial review proceedings as to its application by the Police.
10. There should be an outright ban of operable prohibited weapons for all except those identified as having the legitimate wild animal culling interest reflected in the new ss4A and 30B(3); and only retaining Museum Directors and Curators, and those in the film industry as being able to possess inoperable prohibited weapons. [para 145 - 151]

Wild animal culling exemption

11. The exemptions in paragraphs (e), (f), and (g) will not cover, for example, the owner of a high-country station who may need to cull tahr and deer on their own property in order to maintain the high-country environment. The landowner would not be employed or engaged by the Department of Conservation (**DOC**). They would not be the holder of a concession granted by the Minister because concessions only relate to the conservation estate. Nor would they be employed or engaged by a management agency.
12. There should be an addition to the proposed s4A covering such people. This would not unnecessarily expand the limited legitimate use exemption nor create a loophole. [para 152- 154]

Amnesty

13. For the wholesale surrender of prohibited weapons to be successful, it is submitted that an express statutory guarantee of immunity from prosecution is required if such firearms are to be purged from general circulation in our community. It is undesirable that this be left as a matter of prosecutorial discretion as this will not encourage the surrender of the weapons.
14. The Association recommends the consideration of an amnesty the same or similar to that enacted in Tasmania, which does not rely on prosecutorial discretion. [para 155 – 165]

Offences

15. Section 50 of the Act includes defences and directs where the burden of proof lies: s 50(3). There is no corresponding provision in the proposed s 50A-50D. This should be corrected.
16. The proposed s 54A, introduced by c 55, introduces a new offence for carrying prohibited weapons “with intent to commit a crime”. This new provision extends to a person carrying a prohibited firearm with an intent to commit an offence, but for which no actual steps towards the commission of the offence have been taken.
17. Under the present law it is arguable that such actions can be captured by the law of attempts or potentially conspiracy, where there are established requirements to demonstrate proximity or commitment to the commission of an offence with a weapon before criminal liability will arise.
18. The Association considers that the proposed s 54A offence is framed too broadly and is vague and imprecise. Given the very serious sanction imposed by it, the Association recommends that this provision be removed and reconsidered more carefully and in conjunction with the Crimes Act 1961. [para 166 – 174]

Orders in Council to declare weapons to be prohibited

19. Parliament should retain responsibility for determining what firearms ought to be restricted, and that the laws should only be amended following the usual select

committee processes. The use of Orders in Council has in the past proved to be unsatisfactory. [para 175 – 177]

B. Introduction

20. Past legislative attempts to curtail possession of assault rifles in New Zealand have a sorry history. Contrary to current public and media perceptions, it was a significant change to the Arms Act in 2012 that enabled the then Government to pass new regulations on 25 November 2013, allowing the sale of semi-automatic assault rifles to Category A firearms licensees, provided minor cosmetic modifications were made to their grips.
21. This about-face in the law in 2013, passed by Order-in-Council with no public consultation, was at odds with several earlier reports urging stronger regulation of military specification assault rifles, for well-documented reasons.
22. Under the 2013 changes, earlier restrictions on assault rifles were effectively abandoned. This inevitably led to increased promotion and sale of semi-automatic assault rifles to the New Zealand public, from 2014 and following. The minor modifications to the trigger grips on these weapons had no effect on the rifles' status as semi-automatic assault rifles.
23. It is for this reason that the Association submits that effective legislation must focus on the underlying functionality of these weapons, rather than just their aesthetic appearance.
24. As well as using different "intermediate" ammunition, assault rifles look quite different from [sporting rifles](#) designed for hunting. Assault rifles usually have some type of "pistol" grip so that the trigger hand is orientated vertically for more accurate rapid-fire shooting, using one hand if necessary. They also use large, detachable, magazines.
25. In the 1980s, large numbers of Chinese-made semi-automatic assault rifles were imported and sold in New Zealand. They could be purchased by any civilian holding a firearms licence. A Chinese replica AK-47, the [Norinco Type 56 assault rifle](#), was used by the murderer in the Aramoana killings.

26. Following Aramoana, amendments to the Arms Act 1983 were urgently passed to restrict ownership of these “military style semi-automatics” (**MSSAs**) to firearms licensees with a specific endorsement (a “Category E” licence, as opposed to the standard “Category A”).¹
27. These new restrictions focussed on how MSSAs looked, rather than how they functioned or what ammunition they used. If a semi-automatic rifle had, for instance, a “military pattern free-standing grip”, it was deemed under the new legislation to be an MSSA and would require a special endorsement before a licensee could buy or possess one.
28. In response to this new legislation, which paralleled overseas efforts to restrict sales of these “military-styled” weapons,² weapons manufacturers and local gunsmiths began to modify the appearance of these assault rifles, by changing the rifle “furniture”³. The aim was to subtly modify the external appearance of the rifles to ensure they could not be categorised as MSSAs, even though underneath they had exactly the same functionality and fired the same military specification ammunition.
29. These furniture changes were cosmetic and focused on modifying the appearance of a “pistol grip” or “free standing grip” under the action of the rifle. Nothing else changed. But by modifying the appearance of these grips, New Zealand gun lobbyists argued that their assault rifles were no longer MSSAs and should not be subject to any greater restrictions than a bolt action .22 rifle used for pest control.
30. In response to growing concerns about criminal use of these weapons, the Police determined that assault rifles with these modified pistol grips were still MSSAs and could not be owned by Category A licensees. A Police [statement](#) to that effect was issued in June 2009.

¹ [Arms Amendment Act 1992](#).

² See for instance California’s Assault Weapons Control Act of 1989, which prohibits possession of semiautomatic, centrefire rifles, with pistol grips or thumbhole stocks, as well as numerous makes and models of assault rifles.

³ “Furniture” refers to the items surrounding the rifle’s barrelled action and firing mechanism. It includes the design of the stock and any attachments, such as additional grips, bipods, slings, handguards, bayonets, and recoil pads. The rifle’s “furniture” changes its appearance but will not alter the core functionality of the barrelled action and firing mechanism.

31. This prompted a High Court judicial review proceeding, pursuant to which the Court determined that a “thumbhole” stock attached to an assault rifle meant that the rifle was not an MSSA. The Court suggested legislative change.
32. Unsurprisingly, and appropriately, the Police lobbied the then Government for change, with the result that the Arms Act was amended in 2012 to allow the Government to define “free standing grip” by Order-in-Council. The New Zealand Law Society protested at the time that this definition should be legislated by Parliament, rather than left to the executive. That submission was not adopted.
33. The ensuing Order-in-Council, the [Arms \(Military Style Semi-Automatic Firearms—Pistol Grips\) Order 2013](#), provided that semi-automatic rifles with modified pistol grips or thumbhole grips would not be MSSAs.
34. From 11 December 2013, New Zealand gun shops were able to sell semi-automatic assault rifles to anyone with a firearms licence, provided the rifles had a modified pistol grip, per the definition in the regulations.
35. It therefore appears that there was acceptance of the arguments that the physical appearance of these weapons was their defining characteristic, and that consequently some minor modifications to the appearance of the pistol grip would place these combat assault rifles in the same category as a .22 bolt action rifle.
36. As a result, since 2014 numerous gun shops throughout New Zealand have been actively promoting and selling semi-automatic assault rifles. The ease with which these weapons can be legally purchased in New Zealand has doubtless become a well-known fact amongst certain online communities.
37. As has been well recognised throughout the Commonwealth, including New Zealand, there is no legitimate reason for civilians to own assault rifles. And yet successive Governments have failed to implement legislation that effectively curtails their ownership, to the extent that they have become as easy to acquire as a .22 bolt action rifle.

38. A failure to inform legislators properly and fully of the technical features of modern assault rifles has led to a misapprehension that it is their “military look” that regulators should be concerned with, rather than the specific innovations that have led to their success as a combat weapon, including in particular their use of intermediate cartridges to enhance their effectiveness for short range rapid fire engagements with enemy troops.

C. Assault rifle origins

39. Modern “rifles” were developed at some point in the mid-18th century. The name refers to the “rifling” inside the barrel which spins an elongated bullet, making it more accurate at longer ranges than the smooth bore muskets firing a lead ball that had been used to that point.

40. Rifles fire cartridges, also known as “rounds”. The cartridge is pre-assembled and contains a projectile (the bullet) and a propellant (gunpowder), wrapped within a metal case. Bullets and gun barrels come in different diameters, known as calibres.

41. By the late 19th century, rifles were able to fire very accurately at long distances, and were lethal out to 2 km. Rifle designers were focussed on extending the ranges of these “battle rifles” and developing higher velocity bullets. These long distance rifles were full powered and full length, and in widespread use in various armed forces. Their “actions” (being the mechanism used to reload each cartridge) were usually manual bolt actions, with integral or detached magazines.⁴

42. An example of an early “battle rifle” is the Lee-Enfield bolt action rifle, which was used by the British Army in the first half of the 20th century. This fired a .303 rimmed high powered round, comprising a long, heavy bullet and cartridge. It used “open” or “iron” sights, being alignment markers on the barrel formed by two metal blades.

⁴ A magazine is a storage and feeding device, allowing rapid reloading. It can be detachable, meaning multiple magazine can be carried and a new one inserted once one has been emptied. They can also be integrated with the rifle, such as a tubular magazine. Integrated magazines are not suitable for combat, as they are too slow to reload.

43. These battle rifles had significant limitations. They would recoil significantly, because of the size of the cartridge, and their open sights were not effective for long distance shots, even though they were a long range weapon. This meant that they were often fired in salvos by units of riflemen all shooting together.
44. The advent of the modern machine gun displaced the use of salvos by groups of riflemen. Machine guns were able to fire over long ranges and used the power of the gun's recoil to automatically reload. They were heavy and often fired from a semi-fixed or mounted position, because of the significant recoil and weight of the ammunition. They could be used to lay down suppressive fire against advancing enemy troops, over long ranges.
45. At the other end of the spectrum from the heavy machine guns were "sub-machine guns". These were automatic, meaning they fired continuously once the trigger was depressed. However, they were really just automatic pistols, using pistol calibre cartridges, which lacked accuracy and range. They were effective only at close quarters. The [Thompson submachine gun](#) is an example.
46. Between the machine guns and the sub-machine guns sat the standard battle rifle. This was the predominant infantry weapon in WWII and was not much different from hunting rifles still in use today. Most infantry platoons were equipped with a mixture of bolt-action battle rifles and some form of light, medium or general-purpose machine guns.
47. The Soviet Red Army, however, used a large number of machine guns and sub-machine guns to repel the invading Germans. German commanders sought answers to the automatic fire they were encountering from the Soviets. Their studies had determined that most enemy engagements were occurring within a 200m range, and that the full power rifle cartridges in battle rifles were excessive and slow for most uses.
48. A smaller, shorter, and less powerful full calibre cartridge would save materials, allow soldiers to carry more ammunition, and increase firepower. Less recoil from the shortened "intermediate" cartridges would enable semi-automatic or even fully automatic select-fire rifles, which would be much more effective than sub-machine guns.

49. An ensuing weapons programme led to the Nazi German army's development of the "StG44". Online material suggests that Adolf Hitler was closely involved in this programme and personally named the new rifle the *Sturmgewehr 44*, meaning "assault rifle, model 1944". Hitler's nomenclature stuck, and this new breed of lower-powered rifles became known as "assault rifles".
50. The signature feature of the StG44 was that its use of intermediate cartridges reduced recoil, so that it could be fired rapidly in either semi-automatic or automatic mode. Its immediate success in the field had a wide-ranging and long-lasting effect on combat rifle design.

D. The development of the modern assault rifle

51. Following the successful introduction of the StG44, a number of weapons manufacturers introduced their own assault rifle designs. The most well-known of these is perhaps the *AK-47*, developed in the Soviet Union by Mikhail Kalashnikov in about 1945. This is still one of the most popular and widely used assault rifles in the world, because of its substantial reliability under harsh conditions, low production costs compared to contemporary Western weapons, availability in virtually every geographic region, and ease of use.
52. The AK-47 fires a 7.62 x 39mm cartridge with a muzzle velocity of 715 m/s (2,350 ft/s). This is an intermediate cartridge, characteristic of modern assault rifles.
53. Other well-known assault rifles include the American M-16, firing a 5.56 x 45 mm intermediate cartridge, or the German Heckler & Koch G36, also firing a 5.56 x 45 mm intermediate cartridge.
54. These assault rifles share some common features:
 - a. an operating mechanism that automatically reloads the weapon;
 - b. selective fire, meaning the user can select full automatic or semi-automatic modes;

- c. a pistol grip, enabling vertical orientation of the hand operating the trigger, which assists accuracy in rapid-fire scenarios; and
- d. use of lower-powered intermediate cartridges to reduce recoil, thus enabling more accurate rapid firing.

E. Automatic vs semi-automatic use

- 55. In semi-automatic mode, the weapon automatically reloads the chamber after each fired round, but requires the trigger be released and pulled again before firing the next round.
- 56. In automatic mode, the weapon will keep firing rounds as long as the trigger is depressed.
- 57. In practice, full automatic fire is rarely necessary and rarely used by infantry soldiers, due to its inaccuracy, its rapid use of ammunition, and overheating. It is only used when engaging multiple targets at short range, or for emergency suppressive fire (e.g. when ambushed).⁵
- 58. Suppressive fire is not intended to be accurate; as its name suggests it is designed to suppress a hostile force from making further attacks on a position.⁶
- 59. An assault rifle in semi-automatic mode can still fire rapidly. See:
 - a. <https://www.youtube.com/watch?v=br2FO2HmUhk> (“HOW FAST CAN A KID SHOOT AN AR15?”) at the 1.58 minute mark.
 - b. <https://www.youtube.com/watch?v=tyuTXRzvsIA> (“How fast can a semi-automatic fire?”).
 - c. <https://www.youtube.com/watch?v=JYLRe4sfaHs> (“AK47 VS. AR15 - SPEED SHOOT”)
 - d. https://www.youtube.com/watch?v=v3gf_5MR4tE (“AR-15 5 shots in 1 second with fastest shooter ever”)

⁵ <https://www.quora.com/In-what-situation-would-a-modern-soldier-fire-an-assault-rifle-on-full-auto-What-about-on-burst-What-about-on-semi-automatic>

⁶ https://en.wikipedia.org/wiki/Suppressive_fire#cite_note-1

- e. https://www.youtube.com/watch?v=eQTFOWZnero_ (“Shooting an AR-15 semi-auto rifle”)

F. Sporting rifles

60. Sporting rifles (which do not include shotguns) use one of two types of ammunition: centrefire or rimfire.
61. Rimfire ammunition is available in New Zealand in .22 and .17 calibre cartridges. These are self-contained cartridges with a bead of primer around the base of the cartridge. When the rim is struck by the firing pin in the action, it explodes. The bullets fired by these cartridges are small and really only suitable for small-game hunting and pest control (eg rabbits, possums, small goats), although they have featured in several mass shooting, the most notorious being the murder of the Bain family in 1994.
62. Centre fire ammunition has a self-contained primer inserted in the rear of the round. It is suitable for powering much larger bullets than rimfire cartridges, as it allows for thicker cartridges and more powder. However, they have much greater recoil as a consequence.⁷
63. Popular centrefire calibres in New Zealand include the .243 Win, .270 Win, 7mm-08 Rem, and .308, but there are many others. These rifles are usually sold with a bolt action and a small magazine (three to five rounds) and are designed to kill large animals such as deer, tahr, goats, pigs, and chamois.
64. Hunters stalking and shooting large game for sport (as opposed to culling operations) are rarely if ever interested in acquiring multiple animals per outing, as once an animal is shot, it then needs to be gutted and carried out, usually on someone’s back. Three or four deer are usually too heavy to be packed out in one outing.
65. For that reason, hunting rifles for large game in New Zealand are mostly bolt-action centrefire rifles, that allow a single shot to be taken, usually at long range using a telescopic sight, with the hunter manually re-loading if necessary, for another shot, if

⁷ https://www.chuckhawks.com/recoil_table.htm

they miss. There is very little, if any, need for a semi-automatic rifle when hunting these animals, as the hunter is not seeking to hit multiple targets.

66. These hunting rifles have significant recoil because they use large bullets and cartridges, designed to kill animals at long ranges. These rifles have not been favoured by the military for general infantry use since WWII, because they are not suitable for accurate rapid-fire in close quarter combat.
67. Sporting rifles are readily distinguishable from assault rifles:
 - a. they use full powered cartridges designed for long range use with precision telescopic sights;
 - b. they are not suitable for accurate rapid fire, because their recoil makes them too hard to control; and
 - c. they have different furniture, such as standard or “upland” stocks rather than pistol grips, requiring the shooter’s trigger hand to be in a horizontal or diagonal angle.
68. Many centrefire sporting rifles are available with semi-automatic actions. However, the extent to which big game hunters actually buy these semi-automatic centrefire rifles for sporting use is unclear, as there is no obvious need to have them, unless engaged in culling a herd of animals such as tahr or goats.

G. Shotguns

69. Shotguns use a centrefire cartridge to fire “shot” (small lead or steel pellets). They have significant recoil and are not usually available in automatic configuration (although these do exist). They are available in New Zealand with a semi-automatic action, which can be useful for shooting fowl or small game such as rabbits.
70. Shotguns are not designed for warfare or inflicting mass casualties.

H. Civilian use of assault rifles

71. As noted above, assault rifles use lower-powered intermediate cartridges, to enable rapid, accurate, firing at closer ranges, with soldiers able to carry more ammunition.
72. It cannot seriously be maintained that these intermediate cartridges are genuinely suitable for hunting large game such as deer, which are usually shot at longer ranges and which require heavy bullets to ensure the animal is killed quickly and humanely. An exception is culling multiple animals from a helicopter at close range.
73. The gun lobby vigorously resists these “non-sporting” claims, however, arguing that low recoil intermediate cartridges have legitimate sporting and recreational uses.⁸ They argue, provided these assault rifles are sold only in a semi-automatic configuration, they are not truly a military grade weapon, as this does not enable “selective fire”.
74. Those claims are dubious, at best, and yet are widespread on the internet.⁹ They seem to attract a degree of political support both in New Zealand and overseas, largely out of ignorance as to the limitations of intermediate cartridges for shooting large game at any distance. While military assault rifles do enable automatic fire, that functionality is only used in extreme circumstances such as an ambush, as detailed above, where suppressive fire is required.
75. For that reason, the “military” appearance of these weapons is of little relevance to their core functionality. Assault rifles are not defined by their appearance. Rather, they are rifles specifically designed for military use by virtue of their intermediate, low recoil, low-powered cartridges combined with rapid-fire semi-automatic and automatic capability.
76. Civilian use of these semi-automatic assault rifles is characterised by numerous examples of mass shootings. For example, the Colt AR-15 (a civilian version of the M-16) was used in the Port Arthur Massacre in 1996, in Sandy Hook in 2012 in Florida in February 2017, and in October 2017 in Las Vegas.

⁸ See <https://i.stuff.co.nz/national/105882611/the-battle-over-semiautomatics-police-frustrated-by-the-law-firearm-owners-frustrated-by-police> and also the comments at the bottom of the article.

⁹ See for example <https://www.nssf.org/msr/> which terms these assault rifles “modern sporting rifles” and argues that they are popular for varmint and big game hunting.

I. Form over function – the post-Aramoana focus on “military styled” rifles

77. Following the shootings at Aramoana in 1990, the Arms Act 1983 was amended to change the manner in which firearms licences were offered, and to better recognise and control ownership of MSSAs.
78. The amended Arms Act adopted the new definition “Military Style Semi-Automatic”. This terminology suggested that semi-automatic assault rifles were problematic because of their appearance, in that their style would appeal to para-military organisations or individuals who want to appear “tough” or emulate “Rambo”.¹⁰
79. Because these semi-automatic weapons lack the full automatic functionality of an assault rifle, there is a misapprehension that they are down scale “replicas” of the real thing, but which nevertheless required some regulation because they were the preferred weapon for mass shootings, given their aesthetic appeal to “wannabe Rambos”. The gun lobby, in particular, vigorously promote the notion that a semi-automatic assault rifle is not a “true” assault rifle and requires less regulation.
80. As John Banks said at the time:¹¹

In 1983 when the Arms Act was enacted it was hailed as a world leader in sound, sensible, and workable arms legislation. Rambo-style weapons were not a problem in New Zealand at that time. However, in 1985 Chinese manufacturers began flooding the world market with AK47 look-alikes in semi-automatic form that were able to be freely exported to the Western World. Many of the world's mass shootings have been committed with this type of weapon, and the United States, England, and Australia have since banned further importation of these tools of mass destruction.

...

I want to make it very clear that this first purpose of applying stricter controls to semi-automatic firearms applies only to military-style Rambo-type guns.

¹⁰ John Rambo, a fictional Vietnam war veteran who favoured the AK-47 in the movies bearing his name.

¹¹ (28 November 1991) 521 NZPD 5717.

81. That was the approach taken in the legislation, which defined a MSSA in the negative; it was one which was not in a “sporting configuration”. A weapon in a “sporting configuration” was again defined in the negative. It did not have:¹²
- a. a folding or telescopic butt;
 - b. a magazine that was capable of holding, or that, by its appearance, indicated that it was capable of holding —
 - (i) In the case of a magazine designed to hold .22 inch rimfire cartridges, more than 15 cartridges; or
 - (ii) In any other case, more than 7 cartridges:
 - c. bayonet lugs:
 - d. a military pattern free-standing pistol grip:
 - e. a flash suppressor:
82. This definition of a “military style semi-automatic firearm” was thus focussed on the aesthetic appearance of the firearm, with reference to five factors. The word “military” of course refers to armed forces or soldiers. Therefore, the legislation was directed at regulating the acquisition of weapons that looked like those used by the armed forces, or which had large magazines. Given the many and varying designs of modern assault rifles, and the availability of large capacity magazines on the black market or overseas, that was always going to be a fraught exercise.¹³
83. The legislation did not grapple with, or appear to understand, the core functionality and attraction of a modern assault rifle, namely its capacity to fire rapidly and accurately due to the low recoil of its intermediate cartridges, which are not suitable for hunting and are not used by hunters.

¹² Arms Amendment Act 1992, s 2.

¹³ There is no prohibition under the Arms Act per se on purchasing large format magazines for assault rifles capable of holding, for example, 30 rounds.

84. This was a serious oversight. Semi-automatic assault rifles using intermediate cartridges are not “military style”. They are not second rate replicas. They are assault rifles, no more and no less, designed solely for the purpose of inflicting maximum casualties when engaging enemy troops at close ranges.

J. That normal rifles have been “modified” to make them “assault rifles”

85. Various media organisations have been [reporting](#) that the 15 March attack involved weapons that had been “illegally modified” with higher capacity magazines, to convert them into MSSAs.

86. This reflects a misunderstanding of what in fact constitutes an assault rifle. Assault rifles with detachable magazines, whether high or low capacity, are still assault rifles. They fire the same ammunition. As discussed further below, many of the assault rifles that have been imported into New Zealand over the last five years are capable of accepting larger capacity magazines, which can be independently, and lawfully, sourced. And licensees are still able to buy and own multiple magazines, which can be rapidly changed once one magazine runs out of ammunition. That is how assault rifles are designed.

87. Modifications to upgrade or “pimp” assault rifle furniture are extremely popular. For example this website <https://gunnewsdaily.com/ar-15-furniture/> offers a number of suggestions on how to improve the AR-15 assault rifle, including the “Magpul Magazine Coupler” which “lets you bind two magazines together so you can add an extra 30 rounds to your AR”.

88. It is thus a misapprehension to suppose that normal hunting rifles can be somehow upgraded to make them into an assault rifle, by adding a larger magazine. Hunting rifles do not use assault rifle ammunition and are not suitable for combat, as they are too powerful and slow, even in semi-automatic mode.

89. Conversely, assault rifles are assault rifles. Their furniture and appearances can be modified, but they will still be assault rifles.

K. Gun manufacturers start changing the appearance of “civilian” assault rifles

90. In response to New Zealand legislative changes in 1992, which paralleled restrictions or prohibitions on these weapons in other jurisdictions, some gun manufacturers began modifying the external furniture of their assault rifles, for what they termed “civilian use”.

91. The [Heckler & Koch SL8](#) is one example. It has been described as a “civilian market” version of the Heckler & Koch G36, an assault rifle used by the German Bundeswehr. The SL8 fires the same round as the G36, being a 5.56×45mm NATO cartridge (an intermediate cartridge).

92. The Heckler & Koch G36 “military” version looks like this:



93. The Heckler & Koch “civilian” SL8 is pictured below. This has a “thumbhole” stock to ensure it does not have a freestanding pistol grip, and offers a smaller magazine and semi-automatic fire only:



94. The SL8 can be readily modified to accept a G36 30 round magazine.¹⁴
95. Whether available with a smaller magazine or not, with a thumbhole stock or pistol grip (which are arguably the same thing), or with automatic firing or not, these two rifles have the same purpose. Both rifle models are military grade assault rifles, firing the same lower powered cartridges with low recoil, to enable accurate short range rapid fire. Neither are designed for hunting.

L. *Lincoln v Police*

96. The Arms Act restrictions on MSSAs did not neatly capture these new “civilian market” assault rifles, which were specifically configured to avoid the aesthetic criteria under the Act, even though they used the same ammunition as their “military” counterparts and had the same purpose.
97. By the late 2000s, the police were starting to take a harder line on what they considered a MSSA, culminating in their [decision](#) in June 2009 to categorise all pistol grip semi-automatic rifles as MSSAs, irrespective of how that pistol grip connected to the stock.
98. The legality of this changed approach was the focus of a decision of the New Zealand High Court, *Lincoln v Police*.¹⁵ In *Lincoln v Police*, a Mr Richard Lincoln sought judicial review of the Police’s new policy on MSSAs.
99. Mr Lincoln protested that his “civilian” Heckler & Koch SL8 (as pictured above at 93), with a thumb hole grip, was not captured by the MSSA definition in the Act.
100. After consideration of the relevant legislative background, the High Court agreed with Mr Lincoln, noting that Parliamentary intervention would be required if the Heckler & Koch SL8 was to be considered an MSSA. That view was reached on the basis that the “thumb hole” grip was not truly a “military pattern free-standing pistol grip”, even though it orientated the trigger hand vertically, and even though the SL8 was just a “civilian” version of a military assault rifle manufactured by a well-known German armaments company.

¹⁴ https://en.wikipedia.org/wiki/Heckler_%26_Koch_SL8

¹⁵ *Lincoln v Police* HC Palmerston North, CIV-2009-454-473, 1 March 2010.

M. The 2013 amendments

101. Following the decision in *Lincoln v Police*, the Police took their concerns up with relevant Government officials and sought clarity concerning the legislative definition of MSSAs.

102. Once again, the focus was on the aesthetics of the assault rifle, rather than its core functionality, and the changing appearance of these weapons. Again, there appeared to be a presumption that limiting the availability of weapons that had a “military look” was the correct approach to regulation, rather than focussing on their core functionality and calibre types.

103. Following a report from a Select Committee into the issue, the Arms Act was amended again in 2012, so that “free-standing grips” would now be defined by Order in Council, and to give the Government power to declare certain types of rifles to be MSSAs for the purposes of the Act.¹⁶

104. Online discussions about these impending law changes indicated that weapons enthusiasts were well aware that they could not claim to the Police that they needed an MSSA for hunting purposes, in order to obtain a Cat E licence.¹⁷

105. Again, the approach was to try to tighten the definition of the “look” or “style” that would be caught by the MSSA definition.

106. The Arms (Military Style Semi-automatic Firearms—Pistol Grips) Order 2013 defined free-standing grips in the following way:

free-standing grip, in relation to a firearm, means a grip that,—

- (a) is designed to be gripped by the whole or most of the trigger hand of a person firing the firearm; and

¹⁶ Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Act 2012, s 4.

¹⁷ See <https://www.nzhuntingandshooting.co.nz/f15/e-cat-endorsement-requirements-8078/> accessed 25 March 2019. There are 12 pages of discussion about how to obtain a Cat E licence, including repeated discussion of the need to avoid suggesting it is required for hunting purposes. Presumably the authors were well aware that the Police would never accept such an explanation, as it was untrue. See also the discussion about acquiring ARs “in parts” (page 6).

- (b) is (if any trigger guard is disregarded) structurally connected to the firearm at only one point; and
- (c) when deployed, protrudes from the firearm in a direction that is closer to being perpendicular to the barrel than to being parallel to it; and
- (d) is neither—
 - (i) a thumb-hole stock; nor
 - (ii) a stock of the type commonly described as a Dragunov stock or Dragunov-style stock

107. Rather than providing clarity as to what was or was not an MSSA, the new definition effectively meant that minor changes could be made to a free-standing grip (such as connecting it to another part of the rifle structure) to remove it altogether from the MSSA category.

108. This was a conscious decision to allow assault rifles to be sold to anyone with a firearms licence, provided the pistol grip was either a thumbhole or “Dragunov” stock or had some second structural connection to the body of the weapon, and it did not have any of the other features noted in the regulations.

109. A Dragunov stock looks something like this:



110. Under the new 2013 definition, the following types of firearms could be and were sold to Category A licensees, and were still being sold in the week following 15 March 2019:

- a. The Bushmaster .223 assault rifle, used by Adam Lanza to kill 20 children and seven adults at a Connecticut elementary school in 2012, pictured below with a Dragunov stock, with the trigger grip modification indicated in red;¹⁸



- b. The Colt AR 15, used in numerous mass shootings, pictured below in a New Zealand advertisement offering to “pimp” its furniture (including with “easy reloading” magazines and rapid fire triggers), and which did not even bother to show it with the required modified pistol grip:¹⁹

PIMP YOUR AR15

<p>LEUPOLD MARK AR 3-9x40MM PURPOSE BUILT FOR THE AR15 WITH A MIL-DOT RETICLE DESIGNED FOR 55GR AMMO</p> <p>\$899 HOT PRICE</p>	<p>TORCH/LASER MOUNT PERFECT FOR NIGHT SHOOTING (TORCH NOT INCL.)</p> <p>\$79.99 HOT PRICE</p>	<p>QUAD RAIL FOREND ESSENTIAL FOR HANDLING ALL THE TACTICAL ADD ONS</p> <p>\$299 HOT PRICE</p>
<p>TIMNEY TRIGGER STEP UP THAT ACCURACY</p> <p>\$449 HOT PRICE</p>	<p>MAGAZINE 5RD STEEL FOR EASY RELOADING</p> <p>\$149 HOT PRICE</p>	<p>TACTICAL FOLDING GRIP A NECESSITY FOR THE EXTRA SUPPORT</p> <p>\$129 HOT PRICE</p>
<p>OVER BARREL SILENCER TAKES AWAY THE LOUD CRACK AND HELPS PROTECT YOUR EARS FROM PERMANENT HEARING LOSS</p> <p>\$499 HOT PRICE</p>		

¹⁸ Offered for sale on the GunCity website www.guncity.co.nz accessed 19 March 2019.

¹⁹ Offered for sale on the GunCity website www.guncity.co.nz accessed 19 March 2019. GunCity have not shown the version with the modified stock.

- c. The Stag 15 .224 Valkyrie, pictured below with the second structural attachment from the pistol grip to the stock of the rifle indicated in red:²⁰



- d. The PSA AR 47 7.62 x 39mm (similar to an AR15 but using AK-47 ammunition), pictured with the second structural attachment from the pistol grip to the stock of the rifle indicated in red:²¹



111. "Category E" was thus rendered a complete farce by these 2013 regulations. As noted on a New Zealand website forum in 2017:²²

i cant warrant applying for a E cat with my current shooting activities and the costs to do so but that doesnt stop me from owning exactly the same semi auto firearm with a smaller capacity magazine and storing it in a safe which wouldnt meet the standards of an E cat license holder makes me wonder if it is just a money gathering scheme cause it makes no difference what so ever to the functionality of the firearm.

[Emphasis added]

²⁰ Offered for sale on the GunCity website www.guncity.co.nz accessed 19 March 2019.

²¹ Offered for sale on the GunWorks website www.gunworks.co.nz accessed 19 March 2019.

²² <https://www.nzhuntingandshooting.co.nz/f15/e-cat-endorsement-requirements-8078/index9.html> accessed 25 March 2019.

N. The need for change

112. As has been recognised since 1990, almost thirty years ago, the weapons pictured above have no place in New Zealand. They are all assault rifles, designed for killing people. None of them have legitimate sporting uses, despite the many claims to the contrary. There are many types of legitimate hunting rifles available, in a variety of different “sporting configurations” and calibres, for recreational hunters and pest controllers to use.

113. Assault rifles of the kind that have been sold in New Zealand since 2013 are routinely used in mass shootings. There have been warnings, time and again, of the dangers posed to its civilians by these weapons. There were positive steps to restrict their availability after Aramoana and yet these were effectively revoked those restrictions in 2013.

114. The New Zealand Bill of Rights Act 1990 provides that no one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice. Commensurate with that principle, the state has a primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions.

115. The state must now do all that it can to prevent its citizens lives from being avoidably put at risk. Because of the law changes in 2013, there are now thousands of assault rifles throughout New Zealand, in the possession of firearms licensees.

116. It is now incumbent on Parliament to introduce effective legislation to ensure that these weapons are removed from civilian ownership.

O. The Arms (Prohibited Firearms, Magazines, And Parts) Amendment Bill

117. The Association supports immediate change. But it has some concerns with certain provisions of the Bill. These are described below.

The definition of “semi-automatic”

118. The Bill relies on the Act’s existing definition of “semi-automatic” as meaning a firearm that (if it is loaded), with each pull of the trigger, fires a cartridge and ejects its case, and (unless all cartridges loaded have been fired) chambers another cartridge.

119. Auto-loading rifles have been developed to avoid this definition. For example, the CSA VZ.58 MARS “Action Target Rifle” requires a second pull of the trigger to chamber a new cartridge. See: <https://www.youtube.com/watch?v=vRZmSsPRAN4> (“VZ 58 MARS Gun Review”) discussing a “non-semi-automatic semi-automatic rifle”. Note that this is effectively a custom AK-47 assault rifle, but with a much better build quality.

120. The Bill should amend the definition of “semi-automatic” to cover any firearm, that with each pull of the trigger, will either:

- a. automatically eject the casing of the cartridge that has been fired; or
- b. automatically chamber another cartridge; or
- c. both fire a cartridge and eject its case, and (unless all cartridges loaded have been fired) chamber another cartridge.

A ban on all semi-automatic centrefire rifles

121. The new bill bans all semi-automatic centrefire rifles, subject to very limited exceptions. The Association supports this. As discussed above, there is no need for these rifles for hunting or recreational use. A bolt action is the preferred action for most hunters.

122. However, there will be many semi-automatic centrefire hunting rifles in circulation, such as this Browning 243:



123. Prohibiting these hunting rifles will potentially greatly increase the costs of any “buy back”, with no obvious benefit in terms of removing assault rifles from civilian ownership.

124. The Committee should consider carefully whether it thinks there is a genuine need to remove all semi-automatic centrefire hunting rifles from civilian ownership, given the likely costs of this exercise, or whether this money would be better spent targeting just semi-automatic assault rifles, which employ distinct calibres of ammunition and have no legitimate civilian usage in a civilised society.

“Prohibited” versus “restricted”

125. The Bill replaces the MSSA descriptor with a new definition of “prohibited firearm”, and other associated prohibited items.

126. The Bill’s intent is that possession of prohibited firearms will then be significantly restricted, but nevertheless governed in a similar manner to the endorsement approach that already exists in the Act, but subject to a more stringent test, and further limitations.

127. It is questioned whether that objective is achieved with the operative parts of the Bill, and whether the test created under the Bill is workable and practical for the Police who will be required to apply it. As discussed below, the Association also questions the need for some classes of exempt people to possess a prohibited weapon.

The existing regime under the Arms Act

128. Section 20 of the Act imposes a general restriction on the possession of any firearm subject to the provisions of the Act, coupled with a statement that holding a firearms licence does not of itself entitle any person to have an MSSA.
129. While the possession of “normal” firearms such as shot guns and bolt action rifles is governed by standard firearms licenses, the Act imposes arguably more stringent regimes in respect to “restricted weapons” and MSSAs.
130. Section 29 of the Act provides for the application for an endorsement for a restricted weapon. A restricted weapon is any weapon classified as such by an Order in Council made under s4.
131. Section 30A(1) established the endorsement regime for the possession of MSSAs, but the minimum requirement was that the applicant be 18, and either hold or be in the process of applying for a firearms licence. Then, under s30B, the Police need only be satisfied that the applicant was a fit and proper person to be in possession of an MSSA.
132. In light of the way that the Bill intends to restrict the possession of prohibited weapons it is worthwhile comparing ss29, 30A, and 30B of the Act.
133. Under s29, endorsements to possess a pistol or a restricted weapon can be sought by a person applying for, or holding a firearms licence, “in his [or her] capacity as”: a member of a pistol shooting club; a “bona fide collector of firearms”; a person for whom the pistol or restricted weapon had sentimental value; the Director or Curator of a bona fide museum etc. The person must then satisfy the fit and proper person test in s30(a), as well as satisfying the police that they should possess the weapon “in a capacity” described in s29(1). Accordingly, presently there needs to be some nexus between person’s membership to firearms organizations, or a particular role with pistols or restricted weapons, in order for them to obtain the endorsement.
134. Unlike s29, s30A and s30B required an applicant for an endorsement to be over 18 and satisfy a fit and proper person test for the possession of MSSA’s. They do not need have

any particular affiliation with firearms or organisations where weapons are possessed and/or used.

The Bill

135. After defining prohibited items in ss2A to 2D, through c8 the Bill introduces s4A, a new provision defining the people who may apply to sell, supply, and possess prohibited items in accordance with the provisions of the Act, as amended by the Bill. This list in s4A(1) is also the definition of the new term “exempt person” in s2, as amended by c4 of the Bill. They are exempt from the general prohibition in s20 of the Act.

136. The s4A list is similar to, but more restricted than, the list of people who can apply for a restricted weapon endorsement under s29 of the Act. Of note is that s4A(1) includes “a bona fide collector of firearms”. That term is not defined in the Act, and nor is it defined in the Bill. For reasons developed below, the Association considers this could be problematic.

137. Under the Bill, s29 of the Act remains unchanged. The range of people listed in s29(2) may apply for an endorsement for a restricted weapon “in their capacity” as a collector etc. Section 30 imposes a new requirement for the endorsement holder to have a permit to bring in a pistol or restricted weapon.

138. Under c26, s30A of the Act will now apply to prohibited firearms and prohibited magazines and only the exempt people described in the new s4A are able to apply for this endorsement “in their capacity as an exempt person”. Therefore, s30A imports the nexus requirement between the applicant and their affiliation with firearms and/or firearms organisations, that was previously lacking in the Act. This is a positive amendment and resolves a discrepancy that presently exists.

139. A new s30B is introduced by c27 and is intended to place a higher burden on an applicant than that which presently exists. The new s30B(1)(b) imposes both the fit and proper person test but introduces a necessity requirement.

140. The Police may make the endorsement if the Police are satisfied that:

(b) it is necessary for the applicant, in their capacity as an exempt person, to possess a prohibited firearm or prohibited magazine.

141. However, for the exempt people listed in the new s4A(1)(a)(b)(c), the endorsement to possess a prohibited weapon is a relatively hollow privilege. Under the new s33A, introduced by c31, the endorsement will only permit those exempt people to possess a firearm which is inoperable and for which they are prohibited from using live ammunition.

Submissions

142. The Association is concerned about whether these new provisions will achieve the intended aim or, will in turn create ambiguity and problems of interpretation and application. Further given the very limited permission given to some exempt people, the Association questions whether these complications could not be resolved by an outright ban of prohibited weapons for any class of person other than those with an unequivocal legitimate need.

143. On the assumption that people engaged in animal culling, for example tahr and deer, have a legitimate need to use MSSAs to humanely destroy larger animals known to damage the environment, subject to some comment below, their inclusion as exempt people strikes an acceptable balance. The Bill bans these weapons from possession by the general population while maintaining a very tight and limited scope for possession by people who have legitimate need.

144. The application of the statutory tests in s30B (fit and proper and necessity) to this class of people should not pose any difficulty for the Police.

145. The inclusion of a “bona fide collector of firearms” as an exempt person, may cause difficulties, particularly when the practical application of the new provisions will only enable such people to possess an inoperable firearm by virtue of the new c33A.

146. As noted, the term “bona fide collector of firearms” is not defined. It is submitted that in the absence of any express definition, it will be difficult for the Police to distinguish between a person with a legitimate interest in collecting and possessing prohibited, albeit inoperable, weapons, and those who do not have a legitimate interest. While the Police will be able to apply the fit and proper person test to such applicants, it is submitted that it will be difficult for the Police to apply the necessity test in s30B(1)(b). In effect the Police will be required to assess whether a person is a “bona fide collector of firearms”, and then whether the possession of prohibited weapons is “necessary” for that person in that capacity. In reality, it is unlikely that it will ever be strictly “necessary” for a collector of firearms to have a prohibited weapon, which makes the test largely redundant for this class of people. In that event, this category of exemption is likely to be pointless, but will need to further agitation and litigation concerning how the Police apply it.

147. Applying the new s33A conditions to this matrix, there is no utility in retaining bona fide collectors of weapons as a class of people who are exempt from the general prohibition from owning prohibited weapons. It has the potential to put the Police in a difficult position applying the law as framed in the Bill, to little end.

148. Further, while the new s33A requires firearms to be rendered inoperable for some exempt people to possess them. There is a residual risk of those prohibited weapons being rendered operable again and, contrary to the prohibition, live ammunition being used. It is submitted that this risk outweighs any public benefit in bona fide collectors of firearms retaining some residual ability to apply for an endorsement to possess firearms, even rendered inoperable, of the kind used with such lethal and tragic consequences in Christchurch.

149. Similar arguments can be made for licenced dealers.

150. The exemption of Museum Directors and Curators, and those in the film industry are likely to be workable as presumably these classes of people have no interest in operable prohibited weapons, and so the risk identified above is not likely to arise with these classes of exempt people.

151. For these reasons there should be an outright ban of operable prohibited weapons for all except those identified as having the legitimate wild animal culling interest reflected in the new ss4A and 30B(3); and only retaining Museum Directors and Curators, and those in the film industry as being able to possess inoperable prohibited weapons.

152. In regard to the wild animal culling exemption, a small number of legitimate users of prohibited weapons falling outside of this class. Paragraphs (e), (f), and (g) are quite prescriptive but would not cover, for example, the owner of a high-country station who may need to cull tahr and deer on their own property in order to maintain the high-country environment. The landowner would not be employed or engaged by the Department of Conservation (**DOC**). They would not be the holder of a concession granted by the Minister because concessions only relate to the conservation estate. Nor would they be employed or engaged by a management agency.

153. Some land owners, and lease holders, have placed tracts of the high country into conservation covenant and cull their own properties to preserve these environments. It would be unfortunate if such people who have made a commitment to protecting these environments were unable to have access to the same firearms that DOC would use in the conservation estate.

154. Although likely to be limited, there would be some people in this category. While needing to be tightly framed, an addition to the proposed s4A covering such people, coupled with s30B(1) and (3), would not unnecessarily expand the limited legitimate use exemption nor create a loophole. Other provisions in the Bill like the proposed s16 and s35 would ensure the necessary registration of prohibited weapons owned by these people.

Surrender and amnesty

155. When the Rt Honourable Minister Stuart Nash introduced the Bill earlier this week, The Minister described an amnesty for firearm owners “who now inadvertently possess a prohibited weapon ... [who can] hand it over to Police or a licensed dealer without fear of being penalized.”

156. The Association does not consider that an amnesty of this nature is properly captured by the Bill's provisions.
157. The Association is conscious of the considerable support for the intent and spirit of this legislation, including from gun owners who will be required to surrender prohibited weapons as a consequence of it. While Parliament can outlaw prohibited weapons and impose criminal sanction for those who fail to surrender prohibited weapons, the success of the proposed legislation, in terms of the removal of assault rifles from circulation within the New Zealand community, is nevertheless going to be dependent on cooperation and goodwill between gun owners who have previously lawfully held assault rifles, and the Police.
158. An amnesty will engender goodwill and promote the new legislation's objectives. But the provisions in the Bill dealing with surrender do not establish an amnesty and will not promote the goodwill needed.
159. Once enacted, it will be an offence to possess or carry a prohibited firearm or item which will attract increased terms of imprisonment of five years and seven years respectively.
160. Rather than an amnesty from the application of these new offences, under the proposed s59A and s59B, introduced by c58, the application of the new laws is going to be left to the prosecutorial discretion of the Police and their assessment of the public interest. This is not an amnesty.
161. An amnesty is a prescribed period in which a person will be immune from the application of the criminal law if they surrender their prohibited weapons. An immunity should be conferred by statute and not subject to the exercise of a discretion.
162. The Bill as currently framed does not guarantee that a person surrendering a prohibited weapon will not be penalised by doing so, because the Police may consider that it is nevertheless in the public interest for that person to be prosecuted.
163. To demonstrate, there may be people who possess prohibited weapons with marginal relationships with the Police who could be reluctant to surrender them if their liability to criminal prosecution is dependent on Police discretion. There may be people who

possess prohibited weapons who have never held the appropriate license and endorsement to do so. Such people will be reluctant to surrender prohibited weapons without an express guarantee.

164. For the wholesale surrender of prohibited weapons to be successful, it is submitted that an express statutory guarantee of immunity from prosecution, for a specified period, is required if such firearms are to be purged from general circulation in our community.

165. The Association considers that proper legislative effect be given to the amnesty by enacting a provision the same or similar to that enacted in Tasmania which does not rely on prosecutorial discretion. This provision reads:

Firearms Act 1996 (Tasmania)

129. Amnesty

Where any person—

(a) who is not authorised under this Act to have possession of a firearm has possession of a firearm; or

(b) has possession of a firearm which that person is not authorised to possess under this Act—

and that person voluntarily brings the firearm to a police station and surrenders it to the Commissioner, no action is to be taken against that person in respect of the unauthorised possession of the firearm by that person.

Offences

166. The introduction of new offences with heightened maximum penalties are of concern

167. The proposed ss 50A – 50D removes prohibited weapons/MSSAs from s 50 and establishes new possession offences for prohibited weapons similar to those in s 50 of the Act.

168. However, s 50 of the Act includes defences and directs where the burden of proof lies: s 50(3). There is no corresponding provision in the proposed s 50A-50D which tends to indicate that these aspects of s 50 have overlooked when the new provisions were framed.

169. The proposed s 54A, introduced by c55, introduces a new offence for carrying prohibited weapons “with intent to commit a crime” that has no parallel in the Act. The Association considers that this offence is framed too broadly and is vague and imprecise.

170. There is an existing crime in the Crimes Act 1961 which deals with the use of firearms in the commission of offences: s 198B. Under that provision it is an offence to use a firearm while committing an imprisonable offence; or have a firearm in the commission of an imprisonable offence, in circumstances that *prima facie* show an intention to use it in connection with that imprisonable offence.

171. This new provision extends to a person carrying a prohibited firearm with an intent to commit an offence, but for which no actual steps towards the commission of the offence have been taken.

172. Under the present law such actions can be captured by the law of attempts or potentially conspiracy, where there are established requirements to demonstrate proximity or commitment to the commission of an offence with a weapon before criminal liability will arise.

173. The charge anticipated by the new s54A is capable of being applied very broadly and runs a tangible risk of being overbroad in its application.

174. Given the very serious sanction imposed by it, the Association recommends that this provision be removed and reconsidered more carefully and in conjunction with the Crimes Act 1961.

The use of Orders-in-Council

175. Finally, the Bill suggests that prohibited firearms can be declared to be such by Order-in-Council.

176. The Association queries whether that is appropriate. History suggests that previous governments have not always understood the ramifications of their changes to firearms legislation, which is a technical area, with many differing perspectives.

177. The Association submits that Parliament should retain responsibility for determining what firearms ought to be restricted, and that the laws should only be amended following the usual select committee processes.

The Association would like to speak in support of this submission.

4 April 2019

A handwritten signature in blue ink, appearing to read 'Kate Davenport'.

Kate Davenport QC

President

New Zealand Bar Association