



# **Review of Firearms Control in New Zealand**

*Report of an Independent Inquiry  
Commissioned by the Minister of Police*

*June 1997*

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## LETTER OF TRANSMITTAL

Friday, 20 June 1997

The Honourable J R Elder  
Minister of Police  
Parliament Buildings  
WELLINGTON

Dear Minister

On 22 August 1996 you appointed me to conduct “an Independent Review of Firearms Control”, on terms of reference then defined, and to report back by 28 February 1997.

That reporting date was later extended to 30 June 1997.

There has been widespread public interest in the Review. For that reason I submit, together with the Review you requested, a summary of its principal findings and recommendations which I am hopeful the Government will be willing to make available to interested persons without charge.

Yours sincerely

T M Thorp



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*Abbreviations*

*Acknowledgments*

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## ABBREVIATIONS

APMC	Australasian Police Ministers' Council
COLFO	Council of Licensed Firearms Owners
DAO	District Arms Office or District Arms Officer
DOC	Department of Conservation
IPRU	Injury Prevention Research Unit
MHC	Mental Health Commission
MSSA	Military style semi-automatic
NZMSC	New Zealand Mountain Safety Council
NZPA	New Zealand Pistol Association
PCA	Police Complaints Authority
PNHQ	Police National Headquarters
SLR	Self-loading rifle
SSAA	Sporting Shooters Association of Australia
SSANZ	Sporting Shooters Association of New Zealand Inc



## ACKNOWLEDGEMENTS

I owe a considerable debt of gratitude to all members of the small team which was assembled in Auckland to gather and analyse the available information on firearms controls.

Special thanks are due to Simon Mount, who accepted the position of Research Counsel. His broad and persistent intelligence provided invaluable support to all of us.

Others who played essential parts were Jane Beasley and Claire Campbell as research assistants; Alison Cleal, Melissa Geary, Prue Meister, Kathy Mitchell and Penny Shelton as secretaries and word processors; Kate Stone as editor and Katrina Duncan as typesetter.

I must also acknowledge the assistance provided by Police National Headquarters, and in particular by Superintendent Lindsay Hunter, who accepted appointment as Police Liaison Officer to the Review, and by the people who worked most directly with him in obtaining and supplying information to it, Tracey Anderson, Clare Aubrey and Mary Schollum and also by Inspector John Coote and Mr Doug Agnew of the Firearms Section.

Many others made contributions to the work of the Review. The names and positions of most are set out in appendix 8. Their willingness to assist must speak both to the extent of interest in arms control generally, and to the desire of so many shooters that their commitment to safe firearm use should not be overlooked.

To all my thanks.





# 1

## Introduction

### 1.1 Origins and Terms of Reference of Review

In July 1996 the then Minister of Police requested that I undertake an independent review of firearms control in New Zealand. The immediate catalysts for that request were two recommendations made by the Police Complaints Authority following police shootings in September and November 1995 in Invercargill and Whangarei. In its March 1996 report on the Gellatly incident at Invercargill, the Authority recommended:<sup>1</sup>

[T]hat there be instituted as soon as possible a complete review of the statutory regulations and police guidelines on the control and storage of guns, ammunition, weapons and explosives, particularly in places to which the public have access.

A little over a month later the Authority reported on the Radcliffe incident at Whangarei.<sup>2</sup> In the intervening period since the Gellatly Report a tragedy of considerable magnitude had occurred in Dunblane, Scotland. The Authority drew attention to the fact that the United Kingdom Government had appointed Lord Cullen to carry out an Inquiry into the shootings in Dunblane, and recommended:

[T]hat the Minister of Police secure Government's agreement to establish an independent inquiry of firearms control in New Zealand. This is intended to replace and widen the Gellatly recommendation. This recommendation would enable a

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complete review to be conducted of all existing legislation and that public hearings be held so that all persons and organisations with an interest in gun control could make their submissions. It is a matter for Government how it sets the exact terms of reference for such an inquiry and other related issues such as reporting times but I envisage by this recommendation no aspect of gun availability and control be excluded.<sup>3</sup>

The police response was to conduct its own internal review. On 28 May 1996 the Police Executive Conference at Police National Headquarters approved a report entitled *A Review of Firearms Control in New Zealand*.<sup>4</sup> While stating that it “should not be considered an in-depth study of the issues” the report’s opening paragraph declared that “New Zealand has in place an effective system of firearms licensing and arms control”, and suggested a series of relatively minor reforms “to ensure the system maintains its high level of integrity”.<sup>5</sup>

Having considered that report, the Minister decided to seek an independent review, and on 22 August 1996 published its terms of reference as follows:

REPORT TO THE MINISTER OF POLICE ON  
AN INDEPENDENT REVIEW OF ISSUES RELATING TO  
FIREARMS CONTROL IN NEW ZEALAND

TERMS OF REFERENCE

1. To consider the effectiveness of the Arms Act, and its subsequent amendments to control the use of firearms in New Zealand, and to report on, in particular:
  - a) whether the 1992 Amendment has met with general compliance by the public;
  - b) whether the Police have been able to adequately enforce compliance;
2. Arising from consideration of the issues raised in paragraph 1, outline the need for any amendment or further recommendations which should be included in the Report.

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The Review will encompass an audit of the recommendations contained in the Police Review as well as submissions from interested parties. It is not anticipated public hearings will be held or oral submissions taken apart from where the Reviewer considers that oral submissions are needed to enable proper assessment of written submissions. Written submissions are to be invited by public advertisement closing by 31 October 1996.

This Review is to be completed by 28 February 1997.

In December 1996 the Minister approved an extension of the reporting deadline to 30 June 1997.

### **1.2 Procedure Adopted**

The Review has been conducted over a period of nine months, much of which has been spent in fact-gathering and consultation. Assistance with research and logistical support has been provided by the New Zealand Police. As for at least 80 years the Police have had sole responsibility for the administration and enforcement of arms control in this country, their records contain by far the greatest part of the information relevant to this Review. Since this Review is critical both of the extent and the standard of police record-keeping and of the low priority given by the Police to arms business, it must in fairness be put on record that none of my many requests for information was ignored, and that documents were made available from the police files even when they plainly did not support positions taken in the May 1996 Review.

Assistance was also sought and received from sources outside the Police. Almost without exception this information was made available without reservation, and this whether the request was to a protagonist in the "gun debate" or to a governmental or other independent organisation. Notable assistance was received from those managing the Australian reforms and from the Canadian Firearms Centre and officials engaged in arms control research and reforms in Canada. Both jurisdictions have made plain their willingness to share with

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New Zealand the results of their research and their experience, and that must be a valuable resource for the future.

The paucity of primary evidence made it necessary to seek information, by surveys, sampling exercises and other means, to fill in some of the gaps. Those endeavours included: empirical research projects, public submissions, a visit to Australia, and consultation with informed groups.

### *Empirical Research Projects*

These took such forms as:

- a survey of 1,000 firearms licensees to determine the types and ages of firearms held by them;
- the inclusion of questions regarding firearms ownership and use in an AGB McNair survey of 1,000 households;
- analysis of police files to discover information about
  - the types and source of firearms used in crime
  - the basis for police revocation action and for the refusal of applications for firearms licences
  - the vetting of firearms applicants;
- a study of prison inmates to discover more about the source and types of firearms used in crime;
- a study of firearm security including rural and urban licensees and dealers; and
- enquiries to estimate the accuracy of current police firearms records and to gauge the ease of purchase of firearms without a licence.

### *Receipt of Public Submissions*

The Review received input from the public in two principal forms: written submissions and oral hearings. A total of 2,884 written submissions were received by the Review, ranging from letters from concerned individuals to detailed submissions on behalf of clubs and organisations. The submissions were signed by over 3,500 people and endorsed by an even larger number once membership of clubs and organisations is taken

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into account. A discussion of the submissions is contained in part 2.7 of the report.

Hearings were conducted in Auckland, Wellington and Christchurch in January 1997. These provided an opportunity for 32 individuals and groups to clarify or expand on matters of particular significance to the Review. All those who requested a hearing were given the opportunity to be heard.

### *Visit to Australia*

In March 1997 I visited five Australian States and the ACT in an attempt to learn about the Australian systems of firearms control before Port Arthur, and the progress, problems and successes of the substantial reforms agreed to in May 1996 by the Australasian Police Ministers' Council in response to the tragedy at Port Arthur. The visit to Australia was delayed in order to see as much as possible the effect of their reforms. However, many of the new systems were still being introduced, and further visits should be made by those charged with implementing any reforms in this country.

### *Consultation with Informed Parties*

It has been necessary to consult with a number of people on issues relating to firearms and firearms regulation throughout the course of the Review. A list of the principal individuals and organisations consulted appears as appendix 8.

## **1.3 Significance of Weak Information Base**

From early on it became apparent that informed decision-making about firearms law and policy in New Zealand had been hampered by a lack of sound information on a number of principal issues. Reliable information was unavailable on issues as basic as:

- the number and types of firearms owned in New Zealand;
- the number of firearms owners and users;
- the rate of compliance with the Relicensing Project, including the number of licences surrendered and revoked;

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- the number of firearms stolen, traded or destroyed annually;
- the number and nature of crimes committed with firearms;
- the number of refusals of firearms licence applications annually, the reasons for these, and the reasons for revocation action;
- the number of military style semi-automatic firearms, pistols and restricted weapons in the country, legal and illegal; and
- the number of firearms sold to civilians by the Army.

The extent of uncertainties in all of these areas was considerable. Taking the first of these by way of example, apparently informed opinion of the numbers of firearms ranged from 600,000 to 1.25 million. Cost estimates were even more disparate. Police estimated the cost of the current arms control work at \$7M per annum, and listed costs for the enhancements proposed by the May 1996 Review totaling another \$500,000. Coopers & Lybrand's costings, now accepted by the Police to be "more reliable than any other source", put present actual costs at over \$11M per annum, and the cost of the proposed enhancements at \$7.4M to \$7.6M.

Although the first seven months of this Review were spent trying to reduce the levels of uncertainty, those endeavours produced mixed results. The cause of the police failure to maintain proper arms records seems to have been in part the belief that they were not really necessary and in part the lack of resources. The fact remained that information which in any commercial enterprise would have been considered basic to informed management was absent. This circumstance ensured that attempts to secure an adequate factual basis for recommendations dominated the course of the Review.

We now know more about firearms in New Zealand society than we did previously, but the picture is by no means complete. In turn, the combination of a weak factual base and the inherent difficulties in much firearms research has meant that many of the conclusions in this report have had to be qualified. In some areas tentative conclusions have been

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expressed based on “best available” information. In others it has been concluded that the areas of uncertainty are too large to allow conclusions to be reached, and that further research must first be carried out. The process of developing a sounder and more accurate basis for policy formation is one which must continue well into the future.

### **1.4 Form of Report**

The report is in eight main parts. Part 2 sets out some basic information about the use and control of firearms in New Zealand, including: the history of firearms controls; the numbers of firearms, licensees, owners and users; the various uses of firearms in New Zealand; and public attitudes to firearms and firearms control. Part 3 discusses the misuse of firearms in crime, suicide and accidents. Part 4 discusses the purpose of firearms legislation, the available strategies for gun control and their inter-relationship, and the bedrock arguments which underlie most debate about gun control; and describes recent movements in public opinion overseas. Part 5 assesses the effectiveness of the present system of firearm controls, either with or without the enhancements proposed by the Police in the May 1996 Review. Part 6 discusses a number of possible reforms, and considers the most appropriate administrative regimes for firearms control in New Zealand. Part 7 outlines a staged programme of reforms, drawing together the conclusions reached in the previous sections of the report. Part 8 answers the questions put in the Terms Of Reference.

At around 300 pages this report is likely to be too long for those who simply wish to know its conclusions, and who may want to know the principal reasons which led to them, but have no interest in the details behind those reasons and conclusions. For this reason a 15-page summary accompanies the report, and attempts to present the central findings in a more digestible form. Those who doubt the validity of any of the conclusions appearing in the summary can, if they wish, pursue the topic to its place in the report, references to which are identified in square brackets throughout the summary.

In providing a summary it is not my intention to perpetuate the practice, which has long hampered resolution of the

principal issues arising in the debate on firearms control, of presenting argument in over-simplified terms. Firearms control is a complex business in which changing society's attitudes towards guns—its “gun culture”—will play an important, perhaps as important a part as changing the gun laws. Black and white arguments and simple solutions, though sometimes appealing, are most unlikely to provide the answers.

### **1.5 Police Use of Firearms**

Very few submissions were received on the issue of police use of firearms. That fact and the circumstance that the Arms Act does not govern the use of firearms by the police “in the course of their duties”,<sup>6</sup> so that the issue was probably not within my terms of reference, persuaded me that the topic should be left for some other occasion or Inquiry.



## 2

# Uses and Control of Firearms in New Zealand

## 2.1 The First 120 Years

### *1845 to 1885*

Firearms control began in New Zealand with the Arms Importation Ordinance of 1845. Its preamble reported concern that “certain tribes of the Native race of New Zealand have taken up arms against the Queen’s sovereign authority”,<sup>7</sup> probably a reference to Hone Heke’s activities at Kororareka the previous year. Certainly its objective was to prevent the acquisition of firearms by Maori, through controls over imports and changes of ownership, rather than to regulate the ownership or possession of firearms by European settlers.

The Ordinance proved difficult to enforce and not very effective. Aside from the problem of smuggling, there was difficulty establishing the ownership of particular firearms. The Arms Act of 1860 attempted to remedy this. It introduced a rudimentary system of registration and licensing, and required all firearms imported into the colony to be stamped with a serial number. Details of each firearm were to be recorded by arms dealers, who were required to obtain a licence. Upon its introduction in the House, it was stated that the Bill would enable “the government by the machinery of registration, to identify all the firearms in the country, and to render the present holders responsible for their disposal”.<sup>8</sup>

While said to be “not against Maoris so much as against dealers”, the impetus for its introduction was the ongoing conflict with the Maori in the Waikato and Taranaki during the late 1850s and 1860s. Then, as the threat of armed conflict receded, the Act was suspended in respect of the South Island in 1882, and many of its provisions were suspended in the North Island in 1885.

*1885 to 1912*

By the turn of the century, the arms code had largely become a dead letter. The issue of access to firearms was unimportant to Maori, and non-existent as between Europeans. Settlers could in effect obtain and possess whatever arms they wished, and there was no way of knowing who had what.

In 1908 another Arms Act was passed by Parliament, but this was largely a consolidation of what had gone before. In what was still predominantly a rural society, supplied with large resources of game which were available to all those who had guns and could use them, firearms were familiar and useful tools, which might be needed to protect the far-flung bounds of Empire, but did not pose a social problem calling for active control.

*1912 to 1945*

The change which brought firearms control back into the limelight was an increasing level of industrial unrest. This climaxed in 1912 and 1913 with violent clashes between police and striking workers. The possession and occasional discharge of revolvers by some strikers caused alarm, particularly after a policeman was shot in the stomach during the miners' strike at Waihi. Although there were few other reported injuries, the Police, who knew that the Pistols Act 1903 had introduced controls over pistols in the United Kingdom, sought similar legislation here, initially without success. However some controls over the acquisition of firearms and ammunition were later obtained through regulations issued under the War Regulations Act 1914.

After World War I the Police resumed their attempts to obtain statutory controls, particularly in respect of handguns, numbers of which had been brought back by returning soldiers as war souvenirs and were being sold by dealers. In addition to those police concerns, politicians saw the possible spread of socialist revolutionary ideas in the wake of the 1917 revolution in Russia as a threat to public order. It was probably those political concerns which played the greater part in the enactment of the first detailed arms statute, the Arms Act 1920: "an Act to make better provision for the public safety by regulating the possession of arms, ammunition and explosives".

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This set in place the system of permits to procure rifles, shotguns, pistols and unlawful weapons, and the obligation to register individual weapons, which with some variations was to be the basis of arms control for the next 60 years.

In response to the police concerns about pistols the Act declared automatic pistols to be unlawful weapons, and required that a licence be obtained to possess other handguns. These could be carried only pursuant to a permit, and for “proper and sufficient purpose”, a provision intended to discourage the carrying of concealed handguns.

The politicians’ concerns, which were not as to crime but as to riot and revolution, were the rationale for the controls on rifles, shotguns and explosives, and explain Sir Francis Bell’s statement in the House that this was “a bill intended to prevent factions being armed against each other in New Zealand”.<sup>9</sup>

By 1932, the Police had compiled records for about 200,000 firearms, and the registration work was said to be placing a strain on their resources.<sup>10</sup> There had also been growing discontent among farmers and sporting shooters who considered registration to be irksome and unnecessary. In 1929, the Government had introduced a Bill to dispense with the need to register either rifles or shotguns, but this was defeated in the Legislative Council, primarily due to Bell’s continuing concern about civil disorder and revolution.<sup>11</sup> The farming and sporting organisations continued to campaign for relaxation of the registration requirements, and in 1930 a compromise was reached whereby the requirement to obtain a permit to procure and to register shotguns was dispensed with. The requirement to obtain a permit to procure a shotgun was reintroduced in 1968, although for those over the age of 20 a single permit allowed the purchase of more than one gun.

A 1934 Amendment addressed problems arising from the importation of cheap firearms during the depression and sought to reduce accidental death and injury from inferior weapons. It also gave the Police a discretionary power to refuse or revoke licences according to their assessment of a person’s fitness to have firearms, although that power related only to a small number of licensees.

Throughout the inter-war period defence interests in maintaining competent marksmen featured largely in debates. It

was a period when secondary schools generally had cadet corps, the Army its territorial forces, and when rifles and shotguns were familiar items in most communities.

World War II ensured that from 1939 to 1945 firearms remained a familiar sight both in urban and rural New Zealand. At the end of the first century of “firearms control” it was still not uncommon on Friday nights to see young men with packs and rifles in inner city streets, heading out of town on weekend hunting expeditions. Armed bank robberies were still a rarity, save in the movie theatres.

### *1945 to 1965*

The immediate post-war period in New Zealand gave no particular occasion to review arms control. The absence of interest in guns on the part of New Zealand politicians and criminologists during this period is exemplified in the absence from the Justice Department’s major survey of criminal behaviour in New Zealand as at 1965<sup>12</sup> of any discussion of the use of firearms in crime.

The period was however marked by an increased interest in hunting and other firearm sports.<sup>13</sup> This in due course led to the government-sponsored New Zealand Mountain Safety Council being formed (in 1965) with a view to making outdoor recreation, including the recreational use of firearms, as safe as possible.

This, the second period of peaceful enjoyment, ended with the spread to this country of the increase in the level of violent crime already apparent in other parts of the Western World, and with it a corresponding increase in firearm crime. The extent of those trends is examined in some detail in part 3.

Similar trends resulted in further firearms controls being legislated in England and Wales, and in unsuccessful attempts in the United States to halt massive increases in their gun numbers and gun crime. In New Zealand, regulatory powers intensified controls somewhat, but the essential basis of firearms control remained that settled in 1920: the registration of individual firearms with only very limited licensing of shooters. That approach was to be reversed in the Arms Act of 1983.

## **2.2 How We Got The Present System: The Origins and Nature of the 1983 Act and the 1992 Amendment**

The increasing level of gun crime in the late 1960s caused the New Zealand Police to make more frequent reference to the “arms register”. This consisted of the shotgun permits index in Wellington, and 16 separate indices throughout the country containing paper copies of the registration of rifles, pistols and restricted weapons. Such a decentralised system required considerable manual investigation to pinpoint a firearm’s owner or location and was of limited effect in locating armed offenders.<sup>14</sup> Moreover, the “register” was both incomplete and inaccurate, a major cause of inaccuracy being the slight attention paid by shooters to notifying their changes of address.<sup>15</sup>

As a result of police concerns about the state of the register a study was commenced in 1967 to assess its accuracy. This was to involve a personal check of every firearms owner to ensure that each rifle listed in the various indices existed, that it still belonged to the registered owner, and that the address given was still correct. While this study was expected to take up to two years, it was assigned a low priority, to be undertaken when other duties permitted.

In 1973 it was calculated that, if checking were to proceed with the same resources as were then available, it would take 11 years to complete, and that the record would then be so out of date that it would be time to start the process over again. The checks carried out to that date revealed that 66 percent of the entries were inaccurate in some respect, and that a large number of rifles which had been registered could not be located.<sup>16</sup> Again failure to notify changes of address as required by law was the most common cause of inaccuracy.

The project was abandoned and the Police commenced a search for some better system. Those enquiries assumed that it would be politically unacceptable either to call upon government to provide greater resources, or to require greater financial contributions from shooters. Indeed, throughout the decade of deliberations which followed, there was a clear determination to find some formula which would have shooter

support (without which it was believed the system would fail), but would not involve further expenditure.

Quite early in that search it was concluded that a closer control of users was desirable to try to reduce access to firearms by unsuitable persons. In 1974, at a New Zealand Mountain Safety Council Firearms Seminar in Wellington, this concept of owner licensing was aired and received general support.<sup>17</sup> At the NZ Deerstalkers Association's Annual Conference in Napier in 1976, the then Minister of Police invited consideration of a mixed system including:

- greater emphasis on an individual's fitness to obtain a firearm;
- regular checks on gun owners to verify their need for continued ownership;
- constraints against the lending of weapons other than to a person holding the necessary police approval;
- checks to ensure firearms were in good order and condition; and
- the registration of shotguns.<sup>18</sup>

Throughout 1980 and 1981 draft bills were distributed to District Arms Officers and firearms users with a view to receiving input from those who would be most directly affected by the legislation. A 1980 version was discussed at an International Shooting Sports Symposium in Wellington organised by the New Zealand Mountain Safety Council. This version continued to promote a mixed system of shooter licensing and firearm registration. In his presentation to the conference, Inspector Neville Cook of the Police Firearms Section advised that:<sup>19</sup>

The major change proposed in the legislation will be to provide for a system of licensing the firearm owner instead of the present emphasis on the registration of individual firearms, although we still say that there is a requirement to keep records of the firearms held by individual licence holders. Such a system would place the emphasis on the owner, the suitability and the ability of the owner to use firearms.

He also indicated that:

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Each licence would be renewable at pre-determined intervals, probably 3 yearly. This would enable a check to be kept on the firearms in the possession of each individual and place him in the position of re-examining his need to have them. It is felt that there are many firearm owners who have had their weapons stored away for many years, but have never got around to doing anything about disposing of them, even though they never use them.

The proposals also included increased penalties for the criminal misuse of firearms, and the registration of shotguns, which were noted as becoming frequently used in firearms crime, in addition to the existing registration of rifles and pistols. Airguns were to be included within the definition of firearms.

Later that day the Symposium was addressed by Mr Colin Greenwood, whose 1972 publication *Firearms Control in England and Wales* had argued strongly for the recognition of a “right to bear arms”, and against the efficacy of legislated arms control.<sup>20</sup> He contended that there was no evidence in England and Wales that the detection and prevention of crime had been assisted by registration records. In his view, strict firearms controls merely forced otherwise respectable individuals to become criminals because of their unwillingness to surrender firearms which had sentimental or monetary value. He questioned the existence of any relationship between the availability of firearms and the levels of firearm crime.

The record of the Symposium’s proceedings notes that following his address Mr Greenwood was accorded a standing ovation, and that later speakers from firearms user groups supported his minimalist approach to firearms control.<sup>21</sup>

In September 1982 that approach received support in an internal police report entitled *Firearms Registration in New Zealand*,<sup>22</sup> which reviewed the various police proposals to that date and took a new and entirely different position.

The Report was particularly critical of the recent proposals for the registration of firearms, and claimed that there was no relationship between the registration of firearms and their control. It did acknowledge that the registration of firearms would provide police with “an invaluable investigative aid” if the details of every firearm and owner were recorded. However, validation of existing firearms records was seen as

an enormous and expensive task, there was no reason to believe that firearm owners would be any more compliant in advising changes in address than they had been previously, and the money could be spent to better advantage on other police work. It warned that if registration were retained “the failure of the Police to cope with registration in 1920 may be repeated”. An appendix advised that the Police should be careful “not to be placed in the embarrassing situation of having legislation passed without the staff, equipment or forms to service it”.<sup>23</sup> The police report concluded that:<sup>24</sup>

[T]o reach any degree of accuracy in the registration index will be difficult if not impossible and as mentioned previously the introduction of a new system is not on its own going to change attitudes.

The paper foresaw considerable savings if the registration of shotguns and rifles were dispensed with in favour of a tighter licensing system, and that this would “place the responsibility of safe firearms use squarely on the shoulders of the user”.<sup>25</sup> Persons wishing to possess firearms would be required to obtain a licence, with the exception of those under direct supervision or on a properly constructed firing range. Prospective firearm owners would also be required to attend lectures in firearm safety and sit a written test.

These arguments gained parliamentary acceptance in the Arms Act 1983.

### *The Arms Act 1983*

This came into force (along with the 1984 Arms Regulations) on 1 June 1984. Its stated intention was “to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons”.<sup>26</sup> Its two principal reforms were the abandonment of registration of individual firearms, and the creation of “lifetime” firearms licences.

Under the new Act only those persons who held a licence were entitled to be in possession of a firearm, except under supervision.<sup>27</sup> Possession of a firearm without a licence,<sup>28</sup> or



selling a firearm to an unlicensed person,<sup>29</sup> incurred a fine of up to \$1,000, or up to three months' imprisonment.

A licence could be obtained by any person over the age of 16 years who could satisfy police that he or she was a "fit and proper" person to be in possession of a firearm.<sup>30</sup> The statute was silent as to the criteria to be applied in assessing whether an applicant was "fit and proper" to possess a firearm. A licence could be revoked at any time by the Police if the holder was no longer considered to be a fit and proper person.<sup>31</sup>

Once an individual had been granted a firearms licence, he or she was permitted to hold as many firearms of the appropriate class as desired. Records of individual firearms were to be kept by police only in respect of pistols and restricted weapons, which made up a very small proportion of the total firearms population.

The prospective licensee had to nominate two referees, attend a lecture on firearms safety and sit a test based on the *Arms Code* supervised by Mountain Safety Council instructors, and be assessed by a police officer for suitability to possess firearms. In practice however "Project Foresight", as the process of licensing shooters under the new Act was called, required the personal vetting only of applicants who did not already own firearms. The only vetting of the great majority who already possessed a certificate of registration for a rifle or a "permit to procure" a shotgun under the 1958 Act was a computer check to see whether they had any convictions or prohibitions recorded against their name. Vetting went further only if that check produced a positive result.

Licences were to be for life, requiring no later checks on an individual's suitability to possess firearms. This somewhat controversial decision was justified on the basis that the administrative burden of renewing licences every three or even five years would exceed the benefits which it would provide in terms of crime control.<sup>32</sup>

The costs of licensing varied. Existing owners of registration certificates and permits, which had cost \$9.50 under the 1958 Act, could purchase a new licence for \$11. New applicants had to pay \$27 for a licence, while owners of pistols and restricted weapons paid \$50. Dealers had to pay \$65 for their licences, which were to be renewed annually.<sup>33</sup>

Existing firearm owners were given until 31 January 1985 to obtain a licence, while dealers and pistol owners had until 31 March 1985. For those who did not wish to obtain a licence and were willing instead to surrender their firearms, an amnesty was declared from 1 June 1984 to 31 January 1985.

Pistols and other restricted weapons remained registered and recorded on the computer. A special endorsement was required to possess these weapons. In practice an applicant had to be a member of a pistol club, a dealer or a collector. The Police had a discretion<sup>34</sup> to issue an endorsement once satisfied that the applicant was a “fit and proper person to be in possession of [a] pistol or restricted weapon”. Such persons then had to acquire a permit to procure these weapons, which was to be used within one month of its issuance.<sup>35</sup>

The definition of “firearm” under the new Act included rifles, shotguns and pistols, as well as cannons, rocket launchers and other miscellaneous weapons capable of discharging a projectile.<sup>36</sup> The Act focused on the potential capability of the object rather than its present capability. This broadened the scope of items included, as weapons were still considered firearms even though unloaded, dismantled, damaged or disabled.

Airguns were not included within the definition of firearms unless declared to be “specially dangerous airguns” under s 4. Any person over 18 years could possess and use an airgun without a licence.<sup>37</sup> Antique firearms, while still defined as firearms, could also be held by non-licensees.<sup>38</sup>

By changing to a system which sought to control users rather than the firearms themselves, the Act marked a new era in firearms control in New Zealand, adding to the concept that it was the user and not the firearm which posed a potential danger to society the assumption that a preliminary vetting of applicants could eliminate the prospect of firearms getting into the wrong hands. Its concentration on users was intended to reduce the administrative burden on police, and allow recreational shooters to pursue their lawful activities without undue restrictions. The system was intended to be self-regulating in as much as the licensed community could sell among themselves, rather than going through the State permit and registration system.

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In general, it seemed that New Zealand shooters supported the Act which made the purchase and sale of firearms much less complicated. They also welcomed the lifetime licences, which were seen to remove the prospect of increasingly expensive renewals. The regime was as little restrictive of legitimate users as any arms control system in a like society, and much less restrictive than most. In England, Greenwood, in an article entitled “Some Do It Right”, described the Act as representing “the optimum in firearms legislation”,<sup>39</sup> a statement which has since led some user groups in New Zealand to assert that our gun control system is not only effective, but that this is well recognised overseas.

By the end of 1985 approximately 290,000 new licences had been issued under the new Act. Of these, 30,000 were issued to new applicants who had not previously had any part in the arms system. No attempt was made to cross-check to ascertain what proportion of owners who had registration papers under the old system had applied for new licences. The Police believed that the people who re-licensed represented about 90 percent of the potential licensees, but there was no basis for more than an informed guess. The fact that a significant number of existing owners had not re-licensed was indicated by applications received after 1985 from persons still holding certificates under the old system. In addition, there were an estimated 20,000 lost or stolen firearms outside the system in 1983, and insufficient grounds for assuming that their owners would have elected to apply for licences.

### *The 1992 Amendment*

On 13 November 1990, David Gray shot and killed 13 people using two “military style semi-automatic” weapons (MSSAs).<sup>40</sup> This massacre, of unprecedented magnitude in New Zealand, highlighted the destructive power of MSSAs, such as the Russian AK47 or American M16, which are designed for military use. Concern had been growing in the 1980s over the increasing numbers of these weapons in private ownership, and such concerns were fuelled by an upsurge in the use of MSSAs in mass killings overseas.<sup>41</sup> An attempt was made by Commissioner of Police Jamieson to ban their importation.<sup>42</sup>

Aramoana raised questions about the adequacy of the 1983 Act's procedures. Gray had been issued with a new licence in 1984 during Operation Foresight after limited vetting, as he had previously been registered as the owner of a single .22 bolt-action rifle. At the time of the massacre he owned six rifles, four of which were semi-automatic, including two MSSAs. The effect of his 1983-style licence was that he could legally own as many firearms as he liked, so long as they were not pistols or restricted weapons. Thus the firearms he held were within the bounds of his licence.

The response to this incident was, not surprisingly, a call for tighter firearm controls. Within a short time the then Minister of Police outlined plans for legislation that would see the importation of MSSA rifles banned, annual renewal of licences, and a requirement that all owners of semi-automatics be subject to compulsory club membership.<sup>43</sup> Questions were raised regarding the wisdom of deregistration, and allegations made that the Police had "lost track" of the number and type of firearms within New Zealand. Underlying these claims was the suggestion that, had registration been maintained, the tragedy at Aramoana would never have happened.

The Arms Amendment Bill which followed was not preceded by a similar consultative process to that which underlay the 1983 legislation, although quite substantial representations were received by a Select Committee.

The eventual form of the Amendment stopped short of the restrictions initially signalled. A total ban on MSSAs was rejected in the face of opposition from user groups and the estimated cost of such a measure in terms of providing adequate compensation to current owners. Instead, these weapons were treated in the same way as pistols and other "restricted weapons". A new E endorsement was required to possess such a weapon, upon satisfaction of the "fit and proper" criteria.<sup>44</sup> Furthermore, as in the case of pistols and restricted weapons, a permit was required to procure this style of weapon.<sup>45</sup>

For the purposes of the new amendment, a military style semi-automatic was a semi-automatic or self-loading firearm other than a pistol, which had one or more of:<sup>46</sup>

- a folding or telescopic butt;

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- a magazine capable of holding more than fifteen .22 rimfire cartridges, or more than seven cartridges of any other calibre;
- bayonet lugs;
- a military pattern free-standing pistol grip; or
- a flash suppressor.

Owners who did not wish to obtain an E endorsement had the option of surrendering the weapon to the police or converting it to a “sporting configuration”, which entailed removing the features listed above. There was some resistance to conversion from shooters due to the cost of removing the offensive features and the lower resale value of such “hybrid” weapons.<sup>47</sup>

The Amendment also introduced tighter security provisions. Firearms were to be kept in a lockable cabinet or receptacle, steel and concrete strongroom, or a display cabinet or rack in which firearms were immobilised and locked at all times, except when under the direct control of the owner.<sup>48</sup> Pistols, MSSAs and restricted weapons were to be kept in:<sup>49</sup>

- a steel and concrete strongroom;
- a steel box, safe or cabinet, securely fixed to the building; or
- a room of sufficiently stout and secure construction.

Dealers were also made subject to new security requirements.<sup>50</sup> Failure to comply with these requirements was not made an offence, but potentially gave grounds for the revocation of a licence or endorsement.<sup>51</sup>

In furtherance of the objective of preventing unsuitable people from obtaining access to weapons, it became an offence under the Act to sell ammunition to an unlicensed person,<sup>52</sup> and the purchase of firearms or ammunition by mail order was made subject to an endorsement.<sup>53</sup>

The Amendment also included provisions dealing with firearms and domestic violence. In cases of domestic violence, police were given powers to search persons and to seize firearms.<sup>54</sup> Protection orders made under the Domestic Protection Act 1982 could provide sufficient cause for the revocation of licences.<sup>55</sup>

One of the most controversial aspects of the 1992 Amendment was its revocation of lifetime licences, which were to be replaced by licences renewable every ten years.<sup>56</sup> Although the police recommendation was for an even shorter term, the ten-year period was seen as a breach of faith by many shooters.

The new Amendment also saw a significant increase in fees, to pay for the introduction and administration of the new system. The renewal fee was increased to \$65 for existing licensees, and \$75 for new licensees. The fee for B, C and E endorsements was \$200, and the fee for dealers, who were still required to renew their licences annually,<sup>57</sup> was increased to \$200. The user-pays rationale for these increases was that shooters could not expect the taxpayers of New Zealand to pay for these measures if they did not own or use firearms.<sup>58</sup>

The old passport-style licences were to be replaced by plastic identification cards containing a photograph of the licence holder. This was to prevent the fraudulent use of licences to obtain firearms. Furthermore, existing licence holders were to be re-vetted. This was to involve a full application by all prospective licensees, in contrast to the almost automatic acceptance of existing licensees that had occurred under the 1983 Act.

It was estimated that the Relicensing Project would be completed by 1997, and that 90 percent of the old lifetime licences would be replaced by new licences or surrenders within six months of the sending out of call-in notices. By late 1994 it was apparent that the project was lagging behind timetable, that costs far exceeded income, and that barely 70 percent of the 1983 licensees were applying for new licences or surrendering their old licences. Police attempts to obtain greater compliance had some success, but overall approximately 70 percent remained the norm. This suggested that a further 100,000 firearms remained outside the system, and that without substantially greater effort and resources the project would not produce a reasonably comprehensive register of gun owners. There was also evidence of widespread disregard of the conditions of licences which required firearms to be secured and changes of address to be notified. In 1994, 1995 and again in April 1996, the Firearms Co-ordinator reported problems of

these kinds, and declared that, unless substantial further resources were provided, none of the initial objectives of the 1992 Relicensing Project would be met.

Then followed the police shootings of Eric Gellatly in Invercargill and Barry Radcliffe in Whangarei, the PCA reports, the May 1996 Review and the Minister's call for the present Review.

## **2.3 The Number of Firearms**

### *The Limits on Estimation*

Part 1.3 of this report examined the difficulties which the absence of basic firearms data creates for anyone endeavouring to settle a firearms control policy suited to this country's particular needs and circumstances. In no other sphere of the Review was this more significant than in its consideration of the size and state of the country's armoury. There is no sound base from which to deduce the numbers of firearms in this country, let alone the numbers which lie respectively within and without the provisions of our arms legislation.

When this first became apparent it was necessary to consider whether the Review should be halted until further basic and carefully structured research had remedied the position. However, study showed that even in those jurisdictions which had devoted substantial resources to the definition of their civilian armouries none had made progress rapidly, and that those with the best estimates had obtained these from the long-term collection of relevant information from populations which had become accustomed to providing it. Further, it became clear that our problems in this regard were far from unique and that, for example, a similar paucity of data had not prevented the UK, Canadian or Australian governments from taking steps to improve their arms control systems.

However, acceptance of the unavailability of proceeding without a satisfactory definition of the size and nature of the country's armoury did not reduce the need to do whatever could be done in the time available to identify reasonable parameters.

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For that purpose a series of “sampling” exercises and other inquiries was undertaken. It was anticipated that individually none of these would have more than limited value, and that together they were unlikely to do more than indicate likely limits. Now they have been carried out, it is clear that large areas of uncertainty still exist. However, some clarification of parameters has been achieved. Moreover, it is in my view unlikely that satisfactory definition will be achieved save by setting up systems which ensure the systematic collection of information about the ownership and use of firearms, and accumulating that information over a period of years.

For the purposes of considering the state of our armoury it is convenient to divide the total gun population into three categories:

1. “legal” guns—those firearms held lawfully and in compliance with the firearms code;
2. “grey” guns—those not held in compliance with the firearms code, due to apathy, lack of conviction or antipathy as to the importance of firearms regulation, but not for criminal purposes; and
3. “illegal” guns—firearms held specifically for criminal purposes.

The nature of the last two categories, and the consequent blurring of the two, would suffice to prevent precise assessment of total gun numbers.

Further, impediments to the assessment of gun numbers in this country arise from the lack of registration of individual firearms save in the case of handguns, MSSAs and restricted weapons (less than 4 percent of the total armoury) and from the fact that the abandonment in 1983 of registration in favour of owner licensing was seen by the Police as removing any purpose for keeping records of other weapons.

*Past and Present Estimates*

Of the various estimates made over the last 15 years of the numbers of firearms in New Zealand the more informed have been:

Year	Source	Number of guns
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1982	Donnelly <sup>59</sup>	460,000 rifles
1982	McCallum <sup>60</sup>	460,000 rifles 96,500 shotgun permits <sup>61</sup>
1985	Forsyth <sup>62</sup>	460,000 rifles 300,000 shotguns <u>10,000 handguns</u> 770,000 total
1988	Nugent <sup>63</sup>	750,000 total
1992	Coote <sup>64</sup>	1,000,000 total
1996	PNHQ <sup>65</sup>	1,200,000 total

Of these estimates, those by Donnelly and Nugent proceeded from the strongest supporting evidence.

As there has not been any significant manufacture of firearms in this country, some assistance can be obtained from a consideration of the volume of firearm imports. Customs records are available back to 1880, and a schedule prepared from those records appears as appendix 2. This indicates that some 1,064,000 firearms were imported for civilian use between 1880 and 1996.

To that total should be added some allowance for the firearms released by the Army for civilian use.

Army records are available only in a limited way before 1988, and are virtually non-existent before 1955, due to loss or destruction. Those records which are available show sales since 1955 to New Zealand purchasers of under 12,000 rifles, and 40 machine guns—the latter sold to people with collectors' licences. A larger number of surplus weapons were sold offshore.

Inquiries from numbers of former Army officers produced hearsay evidence of earlier sales of .303 rifles, and of informal recoveries of weapons by soldiers returning from the major overseas conflicts. The largest estimate of pre-1955 sales was 20,000, and of the total numbers of enemy weapons brought back by returning soldiers, 5,000.

For the purpose of trying to fix an upper limit to our armoury it is appropriate to add something to the known increments to that collection from the Army, and the following calculations assume that they may have reached a maximum of 50,000. Of course a significant proportion of the rifles sold before 1950 will have worn out or been lost. Sales of .303 ammunition have shown continuing decreases over recent years.

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Besides the legal imports, some weapons have been brought into the country illegally. The illegal importation of firearms is a major problem in many overseas jurisdictions. The collapse of the Soviet Union has led to large-scale smuggling of former Russian Army weapons into bordering countries. This activity has spread to New Zealand, but so far as can be ascertained it is on a relatively small scale. There is now anecdotal evidence, though from several different sources, of the bartering of weapons (particularly handguns) by sailors from visiting fishing vessels.<sup>66</sup> Both Customs and the Police believe that illegal imports into New Zealand have at least until recently been at a low volume, and that large-scale imports would have become apparent were they occurring, but the matter deserves continuing attention.

From all these inputs some deduction has to be made for firearms which have been lost or have worn out. The Review's postal survey endeavoured to ascertain the age of our firearms and from this to derive a "depreciation rate". In the result the information obtained did not provide a sufficient basis for the calculation of a depreciation or loss rate. It did however suggest a low loss rate for firearms manufactured after 1980, and a survival rate of not more than 70 percent for firearms manufactured before 1950. That estimate can be compared with another estimate received to the effect that firearms would depreciate by around 50 percent over 50 years.

Applying a loss rate of 30 percent for firearms manufactured before 1950, and 10 percent for all later importations, the estimated number of firearms would be as follows:

Imports 1880–1996	1,064,000
(Less) loss/depreciation	<u>(190,000)</u>
	874,000
Add Ex-Army (say)	50,000
Add Illegal imports (say)	36,000
<b>Total</b>	<b><u>960,000</u> or say 1,000,000</b>

This figure is believed to be a realistic estimate of the maximum number of firearms within New Zealand.

Somewhat lower totals would be suggested by the Donnelly and Nugent figures.

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The telephone survey carried out for the Review by AGB McNair<sup>67</sup> estimated the total number of firearms at 600,000. That figure was produced by multiplying the average number of firearms reported for each household by the total number of New Zealand households. However, as the survey noted, it is likely that some of those surveyed would have under-reported the number of firearms in their households, so the figure should be regarded as conservative.

Acknowledging the margins of error which each of those estimates involve, in my judgment the most likely parameters for the present New Zealand civilian armoury are **between 700,000 and 1,000,000 firearms.**

### *Types of Guns*

**Rifles and shotguns:** The best informed estimates of the numbers of rifles and shotguns are those of Forsyth and Nugent. These estimates together put the preponderance of rifles over shotguns in the mid-1980s as being somewhere between 2:1 and 3:2.<sup>68</sup> Trends over the ensuing decade, particularly the reduction in the number of game licences,<sup>69</sup> suggest a declining proportion of shotguns, and that their present share would be near the lower of the earlier estimates. However, the AGB McNair survey produced an estimated “household” proportion of 3 to 2, in line with the estimate made by Forsyth in the 1980s.

**Handguns:** A starting point in ascertaining the number of handguns is the police register, which gives the number as approximately 25,000. To this figure must be added estimated numbers for antique handguns and for illegally-held handguns. The former group has never been counted. As a significant proportion may not be operable, a total of 2,000 should be generous. As to the second group, there is clear evidence that pistols are available on the black market for cash, and that some pistols are being smuggled illegally,<sup>70</sup> but the total numbers are unlikely to be more than a few thousand (see the discussion on “Grey and illegal guns” later in this section). On that basis an approximate estimate of handgun numbers is:

Registered handguns	25,000
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Antiques (say)	2,000
Grey and illegal handguns (say)	3,000

**Total** 30,000

That total is a little below the estimate provided by AGB McNair's research, which estimated handgun numbers at around 35,000. However, as that estimate was arrived at by multiplying the average number of handguns in the households surveyed by the total number of New Zealand households, and involved extrapolating from a very small base figure (0.03 handguns per household), it does not give sufficient cause to move from the above estimate.

**MSSAs:** Estimation of the number of MSSAs within New Zealand is complicated by the "sporterising" provisions of the 1992 Amendment, which allowed owners of MSSAs to remove their military characteristics and avoid any obligation to register them.<sup>71</sup> The Wanganui computer records 6,919 registered MSSAs.<sup>72</sup> The police review of May 1996 estimated a total of around 15,000 MSSAs, including those sporterised.<sup>73</sup>

District Arms Officers (DAOs) estimated that between 33 percent and 44 percent of MSSAs are registered as such. This would make the total of both registered and sporterised MSSAs between 16,000 and 21,000 MSSAs. However an examination of their estimates, and discussions with the officers concerned, showed that the estimates of the numbers of sporterised guns were more informed guesses than firmly based estimates. The general DAO view was that there would be "at least as many sporterised as registered".

A reasonably conservative estimate, therefore, of the total number of MSSAs, including sporterised MSSAs, is 20,000, with a likely upper limit of 25,000, and a possible limit of 30,000.

*Trends in Total Gun Numbers*

Imports of firearms presently average between 10,000 and 15,000 per annum.<sup>74</sup> These are unlikely to increase the total number of firearms in the country, as the loss rate is unlikely to be less than 1.5 percent per annum.

The one area in which an increase appears to have occurred is the handgun population. That increase has followed the

relaxation of restrictions on pistol shooting in 1983, and the success of the New Zealand Pistol Association (NZPA) and pistol clubs in promoting pistol shooting as a sport. Total membership of NZPA-affiliated shooters has grown from 1,646 in 1989 to 2,427 at 31 March 1997. Each member has a average of 3.5 pistols, rather more than the average for members of pistol clubs which participate in international competitions.<sup>75</sup> While the New Zealand handgun proportion of the national armoury remains far less than that of the United States and very modest compared with the English situation prior to the Dunblane reforms, there are good reasons for seeking to halt continuing increases. This topic is addressed in Part 6.1.1.

*Grey and illegal guns:* As no firearms are manufactured in New Zealand on a commercial scale, and the volume of illegal imports is believed to be relatively insignificant, whatever the numbers of grey and illegal guns may be, they should come within the estimated maximum of 1,000,000 firearms, as this is based on import figures.

The number of *grey guns* must be substantial, and could be as high as 100,000. That estimate is based on the number of licensees under the 1983 Act who for one reason or another have not re-licensed under the 1992 Amendment, and are thus outside the system.<sup>76</sup>

In the nature of things the numbers of *illegal guns* cannot be measured precisely, but it was important to get as much information about them as possible, and several enquiries were undertaken.

In the first, a survey of 51 prison inmates who had been convicted of firearms offences in New Zealand was undertaken for the Review by Dr Greg Newbold.<sup>77</sup> The aim was to gather information about criminal patterns of firearm purchase and usage in New Zealand. This exercise confirmed:

- that there is a pool of illegally-owned firearms in the hands of criminals in New Zealand, of a sufficient size to supply criminal needs for a considerable period even were it possible to prevent addition to the pool (the number of incidents in which firearms are used for criminal purposes is around 4,000 per annum); and

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- that persons with criminal contacts have little difficulty getting access to weapons and ammunition.<sup>78</sup>

Other findings were:

- that only nine of the 51 had ever applied for a firearms licence, and only two had a licence when arrested—the reasons given for not getting a licence being that they had not thought about it, or that they knew they would not get one;
- that the weapons most commonly used were shotguns, followed by handguns;
- that the most favoured weapon for robberies was the sawn-off shotgun, because of its ease of concealment, usefulness as a club, good firepower, high intimidation potential and cheapness;
- that the cheapest guns are shotguns, which have an average price of around \$100;
- that pistols sell for around \$1,000 to \$1,250 and their high price is a major reason why they are only used in a minority of gun crimes;
- that 28 percent of the guns used had been stolen by the offenders themselves; most of the others had been acquired from acquaintances or friends, and were thought probably to have been stolen; only four guns had been purchased legally; gangs provided a common source of guns;
- that illegal guns are not held for long periods—offenders had seldom held their guns more than a few months before committing the crimes for which they had been convicted; and
- that about a third said they sometimes carried a gun for self-protection and a similar number that they sometimes carried a gun for security in their criminal activities—a second source confirmed an apparent increase in the carriage of handguns for self-protection or security.

A second study was undertaken by an undercover police officer who responded to advertisements in the *Trade & Exchange* for the sale of firearms, and attempted to purchase firearms

without providing evidence of a firearms licence.<sup>79</sup> Three out of the 14 vendors approached were prepared to effect the sale without the production of a licence, further proving the relative ease of acquiring firearms illegally. The same officer, and a second undercover officer, reported on the availability of illegal guns and their present market prices in terms which closely matched the information obtained by the Newbold study.

Another study, by Mr Reece Walters of the Institute of Criminology, Victoria University, endeavoured to determine the types and sources of firearms used in crime. This study involved the collection and analysis of data from the police files for all Crimes Act firearm offences over a 12-month period. Difficulties in obtaining and in analysing the base data meant his report had to be delayed. The draft received does however serve to confirm some matters already indicated by other enquiries, the two presently relevant being:

- that handguns are being used in crime, or at least in robbery, to a greater extent than their proportion of the national armoury; and
- that thefts and burglaries are a significant source of firearms used in crime.

Police statistics of lost and stolen weapons are sometimes used to help assess the size of illegal weapons pools, but there are no useable statistics about such weapons in New Zealand. Despite lengthy investigation of possible secondary sources, estimates of gun thefts in the end had to be based on a number of assumptions the accuracy of which cannot be guaranteed. With that qualification, the “best fit” estimate of the current level of reported firearms theft is 1,000 to 1,500 per annum. This leaves to one side any allowance for under-reporting, which is almost certainly occurring, but difficult to quantify.

A recent spate of burglaries of dealers’ and collectors’ premises further emphasises the need for proper records. In a period of just under three weeks leading up to 13 April 1997, burglaries of two firearms dealers, a collector and a gun club resulted in the theft of 125 firearms. Less than a week later police disturbed yet another raid on a dealer’s premises.

Until recently, it was rare to locate any substantial cache of illegal guns. The tendency had been for criminals to conceal

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these where they were unlikely to be located and seized, and for illegal guns to be turned over frequently.<sup>80</sup> However, also in April this year, four automatic weapons and two MSSAs were discovered during a raid on a cannabis plot in Wanganui. The discovery of such a substantial arsenal matches recent experience in Australia, and is a matter for concern. National records of such findings should be maintained.

Another possible source of information as to illegally-held guns is the police record of firearms recovered during amnesties. The New Zealand Police have held eight arms amnesties since 1972. These have usually been held in conjunction with changes to firearms legislation or some other specific concern. For instance an amnesty held in 1979 was specifically directed at the unlawful possession of firearms by gangs. The results of arms amnesties in New Zealand are set out in the following schedule:<sup>81</sup>

	<b>Rifles</b>	<b>Shotguns</b>	<b>Pistols</b>	<b>MSSAs</b>	<b>Restricted</b>
1972	969	110	372	N/A	N/A
1974	1,042	140	411	N/A	14
1978	1,378	215	308	N/A	41
1979	155	25	43	N/A	5
1979	5	2	0	N/A	0
1983	1,767	352	326	N/A	42
1984	838	177	146	N/A	18
1993	1,377	375	174	159	5

*Source:* New Zealand Police

These are relatively modest recoveries compared, for example, with those achieved in the United Kingdom.<sup>82</sup>

It may also be helpful to consider the percentage of unregistered firearms recovered during the current Australian buy-back of semi-automatic weapons in those States already operating registration systems. Prices for the buy-back were set at a reasonably generous level to encourage compliance. In Victoria, which historically had a reputation of low compliance with the firearm code, the percentage of unregistered firearms recovered was approximately 15 percent. In Western Australia, which has a long-established and reasonably well-accepted code, the proportion of unregistered weapons so far recovered is under 5 percent. In both cases “unregistered” guns would be predominantly of the grey category, but would include some



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illegal guns, as firearms were bought on a “no questions asked” basis. Those figures, from States not greatly different to our own, point against the accuracy of high estimates of grey and illegal gun numbers which were made before the reforms by those opposing them.

Both the current prices for handguns on the black market, equally as high as new shop prices,<sup>83</sup> and the limited numbers which have come to hand from ordinary police activity or in amnesties, suggest that there is only a limited supply of handguns on the black market. On the other hand, the availability of rifles and shotguns at quite modest prices indicates a more plentiful supply of those types of firearm.<sup>84</sup>

Taken together, the information available suggests parameters for the numbers of illegal guns of between 10,000 and 25,000, although the possibility exists of numbers in excess of the latter figure.

#### *International Comparisons*

It is frequently reported that firearm ownership in New Zealand is high in comparison with similar countries.<sup>85</sup> It is hard to obtain sound figures for comparison because most countries have difficulties measuring their armouries. For example, in the United Kingdom, where considerable quantities of handguns are illegally brought in from overseas, it has frequently been asserted that the numbers of unregistered firearms exceed the numbers of those registered.<sup>86</sup> However, Lord Cullen in his report questioned whether there was any sufficient factual basis for that view.<sup>87</sup> In Canada, which is affected by an influx of guns across its lengthy border with the United States, the substantial and expensive reforms now under way proceeded on the basis of widely varying estimates of firearm numbers. The most recent estimate made by police was of 12 million firearms, arrived at principally by taking the middle ground between opposing lobby groups.<sup>88</sup> By contrast Canadian Justice Department estimates prior to the introduction of the new reforms were of around 7 million firearms.<sup>89</sup>

A 1995 “Review of Firearm Statistics and Regulations in Selected Countries” undertaken by the Canadian Department of Justice<sup>90</sup> included the following table:

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**Rates and Numbers of Suicides, Homicides, Accidents  
and Firearm Ownership in Selected Countries**

Country	Suicide rate/ 100,000 (N)	Suicide with firearm rate (N)	Homicide rate/ 100,000 (N)	Homicide with firearm rate/ 100,000(N)	Accidents with firearms (N)	Firearms ownership rate/ 100,000 (N)
Canada	12.8 (3,709)	3.6 (1,048)	2.2 (630)	0.67 (193)	63	24,138 (7M)
Australia	11.6 (2,081)	2.5 (435)	1.8 (326)	0.36 (64)	18	19,444 (3.5M)
New Zealand	14.5 (493)	2.5 (86)	2.6 (90)	0.49 (18)	4	29,412 (1M)
Japan	19.3 (23,742)	0.14 (175)	1.2 (1,500)	0.06 (74)	57	414 (517,675)
Switzerland	20.4 (1,416)	5.8 (407)	1.5 (105)	1.4 (96)	84	42,857 (3M)
Britain	8.6 (4,284)	0.4 (191)	1.3 (675)	0.14 (74)	8	3,307 (1.7M)
France	20 (11,403)	4.9 (2,793)	4.94 (2,818)	2.32 (1,324)	N/A	22.6% of households
United States	12 (30,810)	7.1 (18,526)	9.3 (24,273)	6.4 (16,704)	1,441	85,385 (222M)

*Source:* Department of Justice (Canada)

That table has been subject to attacks not only on the underlying methodology, but also on the accuracy of its base data. It does however show plainly the unique position of the United States, both as to its level of firearm ownership and its level of violent crime, the latter clearly being related to the high proportion of handguns in its armoury. Well over 30 percent of the nation's firearms are handguns,<sup>91</sup> compared with around 3 percent in New Zealand. This alone would indicate that the important issues for firearms control in the United States are likely to be different from those important to New Zealand.

The table also shows that Canada, Australia and New Zealand all have much lower gun ownership per capita than the United States, and significantly higher gun ownership than Britain.

It has similarly been widely reported that New Zealand's rate of firearm ownership per capita is 60 percent higher than that of Australia.<sup>92</sup> The Canadian table gives some support for that contention by suggesting, on its face, that the New Zealand rate of ownership is 50 percent higher than Australia's. However it assesses the Australian armoury at 3.5 million firearms, whereas estimates made by the Australian Police last year

suggested a total of 5 million.<sup>93</sup> Adoption of the latter figure would give the two countries very similar rates of ownership.

Other data received from Australia suggests that its rate of gun ownership, even before recent buy-backs, was somewhat less than that of New Zealand, but that the difference between the two countries, if indeed there was one, would have been marginal. Certainly the difference would be less than 60 percent, and insufficient to provide a basis for different firearms policies.

## **2.4 The Number of Shooters**

### *Number of Licensees*

As with the numbers of guns, though in this instance for less obvious reasons, available records proved incapable of providing accurate information.

So far as the records go they state that re-licensing pursuant to the 1992 Act had produced 116,019 licences by 11 December 1996.<sup>94</sup>

In order to calculate the likely final number of persons relicensing under the 1992 Amendment it was necessary to project present estimates of compliance figures forward to the end of 1998, when re-licensing will be completed. A generous estimate of 60 percent compliance (in the sense of relicensing) was adopted, based on the present rate of compliance after three years from call-in.

As at 1991, there were thought to be 355,000 shooters holding lifetime licences under the 1983 Act. However, upon examination many duplications were found and the correct figure appears to have been approximately 327,000. Applying the 60 percent compliance rate to the 327,000 potential licensees, 196,000 shooters will have applied for new licences by 1998.

To this figure must be added an allowance for new applicants. From 1993 to 1996, 21,000 new licences were issued. New applications have been numbering approximately 5,500 per annum, giving a further 11,000 for 1997 and 1998, and a total of 32,000 new licensees.

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Account must also be taken of licensee deaths, for which purpose the rate of 1.5 percent per annum was adopted. A further deduction was then made for revocations, based on the average number of 218 revocations per annum since the inception of Project Foresight in 1984.<sup>95</sup> The result was:

60% of 327,000		196,200
Add New licensees	1993–1996	21,000
	1997–1998	<u>11,000</u>
		228,200
(Less) Deaths @ 1.5 % p.a. (over 18)		
	1993–1998 = 9%	(20,538)
(Less) Surrenders and revocations		(3,052)
<b>Total:</b>		<u><b>204,610</b></u>

If that calculation is approximately correct, and only 204,000 licensees have applied for new licences under the 1992 Amendment by 1998, around 120,000 of the original licensees will not have re-licensed.

The Police believe that approximately 10 percent of the licensees notified have indicated the desire to surrender their licences but, until 1994, the records of such licensees were simply cleared off the computers. This figure cannot be checked as no records have been kept as to the fact of or reason for such clearances.<sup>96</sup> The Police also contended that de facto surrenders had occurred upon failure to re-licence, but accept that virtually no revocation action has been taken on that ground. On a best fit basis an allowance of 10 percent for both actual and de facto surrenders would seem warranted.

This would reduce the number of “outstanding” licensees from 120,000 to 90,000. Some of the 90,000 may not have received call-in notices, due to change of address for example. Others may have passed their weapons on to a licence holder or dealer, but it can hardly be assumed that more than 50 percent are in this category. Proceeding on the (probably generous) assumption that 50 percent may have done so, that would still leave approximately 45,000 firearms holders, with approximately 90,000 to 100,000 weapons, outside the system. This estimate is supported by the May 1996 Review:<sup>97</sup>

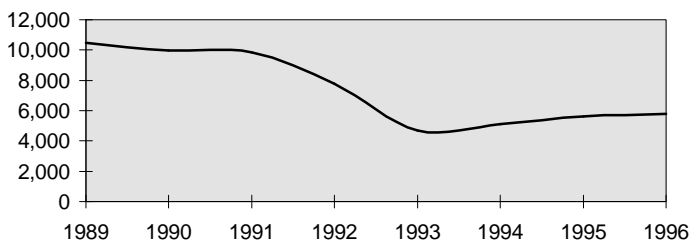
## *Uses and Control of Firearms in New Zealand*

A result of the relicensing process is that a large number of surplus firearms have been generated. It is estimated that 100,000 firearms will be surplus by the end of the project.

A police estimate made in 1982 put the then number of firearm owners at around 300,000.<sup>98</sup> And as stated above, the number of licensees as at 1991 was around 327,000. On the basis of the estimated 206,000 licensees at the beginning of 1999, there would then have been a decline of over one-third in the number of licensees over 14 years. Such a decline would only in part be the result of non-compliance with the 1992 re-licensing. It also represents a significant decline in the number of applications for new licences, which have declined from 10,483 in 1989, to 5,801 in 1996.

In 1985 Forsyth estimated an annual increase in the numbers of firearms licensees of around 3.6 percent.<sup>99</sup> It is doubtful whether there is any increase today. If there is, it will not exceed the rate of increase in population. The result is likely to be a gradually aging gun-user population, which will not increase in the future unless there is a reversal of the present trends.

### **Number of Applications for New Licenses**



*Source:* New Zealand Mountain Safety Council

### *Number of Owners*

A survey conducted in 1989 revealed that 9 percent of firearm licensees did not own any firearms.<sup>100</sup> If that situation still subsists in 1999, only 185,000 of the expected 206,000 licensees will be owners of firearms.<sup>101</sup>

### *Number of Users*

The survey conducted by AGB McNair for the purposes of this Review<sup>102</sup> reported that 20 percent of New Zealand's 1.17 million households have at least one firearm, and that on average there are 1.8 users of the firearms in each household. That translates into approximately 350,000 to 400,000 users of firearms, and suggests that more consideration should be given to multiple use, and ensuring that all users have an understanding of the responsibilities attached to gun use.

## **2.5 Firearms Organisations**

### *Gun User Groups*

Shooters and others interested in firearms have organised themselves into a large variety of different societies, clubs and associations, many of which continue to develop particular interests in firearms in an active way.

In 1985 Forsyth set out the history, particular objectives and then size of 15 of the principal organisations.<sup>103</sup> Nearly all continue to operate, though some amalgamations and rearrangements have since occurred.

At this time the four organisations which warrant particular mention are as follows.

**New Zealand Mountain Safety Council (NZMSC):** Concern over the increasing number of accidents in the bush and mountains led to the formation of the NZMSC in 1965. Its principal objective is to promote safety in outdoor adventure activities. Its Firearms Advisory Committee is broadly based and includes representatives of governmental and non-governmental agencies and individuals with special expertise and interest in the use of firearms. Through its full-time manager it organises a team of 500 volunteers who administer the firearms safety training course and test settled by NZMSC with the Police in over 128 locations throughout New Zealand. As is noted in part 5.1, its contribution to improved firearms safety is a major strength in the existing system.

**New Zealand Council of Licensed Firearms Owners (COLFO):** The New Zealand Council of Licensed Firearms Owners was formed in 1996 with the intention of establishing an organisation which could bring together and represent in a collective way the views and interests of New Zealand shooters. Its members include the National Rifle Association of NZ, NZ Ammunition Co Ltd, NZ Antique Arms Association, NZ Black Powder Shooters Federation, NZ Deerstalkers Association, NZ Pistol Association, NZ Shooting Federation, Sporting Shooters Association of NZ, Wellington Service Rifle Association, and the International Military Arms Society. In that manner, the Council represents the collective interests of around 10,500 licensed firearm owners who collect, hunt or shoot competitively or for recreation.

**New Zealand Pistol Association (NZPA):** The NZPA is responsible for the control and management of pistol shooting in New Zealand and the participation of pistol shooters in international competitions. It has a supervisory relationship with over 80 affiliated pistol clubs, with a total membership in excess of 2,400. A survey conducted in April 1997 by NZPA (of one-third of its members) suggests that they hold approximately 8,500 of the 25,400 registered pistols, an average of 3.5 pistols per member. The nature and extent of NZPA control of pistol shooting in New Zealand is discussed later.

**Sporting Shooters Association of New Zealand Inc (SSANZ):** This Association represents the interests of over 5,000 listed members. It is a successor of NZ Shooters Rights Inc. and is the organisation which has most energetically opposed controls over the civilian use of firearms, which it believes are counter-productive.

**Other Firearms Organisations:** Of the other shooting organisations, NZ Deerstalkers Association, formed in 1937, is probably the oldest of the organisations representing hunting interests. A considerable number of the others represent those interested in different forms of target shooting, and there is also

a relatively small but enthusiastic group representing collectors of firearms and ammunition.

### *Gun Control Supporters*

The principal flag-bearer for these interests in New Zealand has been the lobby group Gunsafe, which was started by Mr Philip Alpers, and is supported by groups with a particular concern about violence within society. It says that its active membership is “in the hundreds”, but it has a wider influence than those numbers would suggest through its contacts with other anti-violence groups. It has an association with similar groups overseas, such as the National Coalition for Gun Control in Australia, and the Coalition for Gun Control in Canada, which were promoters of the recent reforms of gun control in their respective countries.

In 1994 Mr Alpers left Gunsafe to engage full-time in gun policy research. He remains a determined advocate of closer control of firearms. He has probably the largest collection of literature on firearms use and misuse in New Zealand, and he offered to make this available to the Review. He maintains close contacts with overseas organisations with similar views to his own.

All those discussed above from time to time assisted the Review by providing written material and by providing information derived from their particular experience and expertise.

## **2.6 Types of Use**

### *Hunting, Farming and Pest Control*

**Hunting:** A survey by Nugent in 1991 concluded: that hunters and former hunters were still the predominant owners of firearms in New Zealand; that 77 percent of all firearms had been used for hunting at some stage; but that only about half were owned by individuals who remained interested in hunting.<sup>104</sup> He expressed the belief that a substantial number of weapons, although originally purchased for hunting, were unused or were used for other purposes such as target shooting.



## *Uses and Control of Firearms in New Zealand*

The trend since 1991 appears to have been some reduction in hunting, as evidenced by the decline in the number of game licences issued over recent years,<sup>105</sup> and the comment from the NZ Deerstalkers Association that its membership seems to be getting older. This trend has been variously attributed to the reducing availability of game, and to competing recreational pursuits and lifestyle changes.<sup>106</sup>

By contrast there appears to be a growing interest in target shooting, which is more accessible and convenient to our increasingly urbanised population. Pistol shooting in particular has become increasingly popular, and will be discussed in more depth later.

**Farming uses:** The special value of firearms to the farming community persists, as is indicated by the AGB McNair survey summarised in appendix 6. It reported that households in “small towns/rural” areas had just under three times as many firearms as those in “metropolitan” areas, a result which matches those obtained in similar studies in Australia. The factors which underlie the special situation of rural gun users are unlikely to change. Firearms will continue to be useful and used tools around the farm, for the humane killing of animals which have to be put down, for pest control, to enjoy the hunting opportunities which rural life commonly provides, and for a variety of other purposes. That being said, security checks continue to show a lower recognition in rural areas of the need for firearms security. Moreover, as the percentage of our population living on farms continues to fall, so too does acceptance of the firearm as a familiar and useful tool.

**Pest control:** Discussions with the Animal Health Board, the Department of Conservation and Land Care Research confirm that firearms also remain an important part of animal pest control.

Their relative importance varies according to the species of pest. Firearms are the principal method of controlling deer, the populations of which are being controlled at a reasonable level by a combination of commercial helicopter shooting and ground shooting. The pig population is controlled by the use of dogs, knives and rifles, the last being considered a necessary part of

the overall control. Goat control is generally dealt with in an “on farm” situation with dogs and rifles. Opossum and rabbit control cannot be achieved with firearms, but all three organisations consulted considered it necessary to have continued availability of firearms to limit the proliferation of these pests until better forms of control are available. Certainly those involved in animal pest control, while generally wishing to avoid involvement in such controversial issues as the availability of MSSAs, were firmly of the view that any new controls should allow appropriate exemptions to avoid prejudice to pest control programmes.

### *Pistol Shooting*

From very modest numbers in 1970 the number of pistol shooters grew to 1,646 in 1989, 2,261 in 1991, 2,327 in 1996, and 2,427 at 31 March 1997, assisted by the relaxation in 1983 of previously stringent controls on the use of pistols.

**The history of pistol controls:** Effective controls over handguns were introduced in 1920, when the Police and the Government had concerns about the number of pistols which had entered the country and their possible use to promote civil disorder. Those controls permitted and resulted in only very restricted use of pistols until 1960, when approval was granted for a trial with .22 target pistols. The absence of any resulting problem persuaded the Police in 1970 to allow larger calibre shooting both with single-shot revolvers and self-loading pistols, though still under strict controls. This led to New Zealand becoming involved in international competition, with considerable success.

From 1980 the NZPA endeavoured to get police approval of a reduction of the remaining restrictions. The Police approved service pistol matches and metallic silhouette shooting in 1982, and largely adopted NZPA submissions in the pistol sections of the 1983 Act which further relaxed the restrictions on pistol shooting.

In 1988 action and silhouette competitions were approved. It was from about this time that multi-weapon shoots (pistols, shotguns and long guns) became a common part of NZPA

competitions. Commissioner Jamieson in 1989 expressed his approval of the manner in which the NZPA governed its members. He said that they were conducting over 50 different competitions, and that an active shooter might require 12 pistols (the number which the Police had at that point fixed as a maximum number without special approval) to meet the needs of the different competitions.

The 1992 Amendment reduced lifetime licences to ten years, but did not otherwise substantially limit the arrangements for pistol shooters settled in 1983.

**NZPA control of pistol shooting:** The NZPA supervises a considerable number of pistol clubs which together have about 2,400 members. Three clubs, having a combined membership of less than 100 members, operate outside its auspices. The NZPA says that those clubs were unhappy with the strict controls and the requirement of regular and active participation in club activities which are central features of NZPA activity. It accepts that no notable misconduct or other difficulty has arisen from the activities of the breakaway clubs, but would prefer to have total control vested in the one organisation.

The NZPA constitution is carefully drawn and unusually detailed. So far it has succeeded in avoiding any injury arising in the course of club activities.

Members must complete a six-month probationary period before they are given full membership and before the club will consider supplying a certificate approving the grant of a B endorsement and a permit to buy a handgun. During the probationary period the probationer uses club guns on the club's range in order to become familiar with different types of handguns and to decide whether or not to become a full member. If and when club approval to membership is given, further vetting by the NZPA and the Police means that it is at least another three months before a pistol can be purchased.

If a B endorsee does not maintain regular attendances (12 times a year) the club notifies the Police, who can and generally do require the surrender of the licence and handguns, the former member being given three months to find a purchaser.

Members are required to obtain club approval of subsequent purchases of pistols, that approval form being a prerequisite to

obtaining a permit to acquire from the Police, although the Police are said to have granted some permits to persons they know and believe to be in good standing without requiring production of club approval.

The NZPA and club controls result in a more disciplined environment than any other sports organisation of which I am aware. Disciplinary action is initiated for all apart from truly trivial breaches of any of the rules and regulations of the NZPA or the club concerned, and is not only restricted to cases where the breach involves danger or the potential for danger. That discipline has repeatedly been the subject of favourable comment in police reviews of pistol club operations and has been maintained notwithstanding the fact that B endorsements have almost doubled over the past decade.

## **2.7 Attitudes to Firearms and Firearms Control**

### *Public Attitudes*

Few public submissions were received by the Statutes Revision Committee in the hearings preceding the 1983 Act. This may in part have been due to the extensive consultations between police and interested groups prior to a Bill being drafted. The results of a Heylen poll conducted in 1982 suggested there was some concern amongst the general populace as to the proposed lifetime licences and the unlimited number of weapons able to be obtained by any one licensee.<sup>107</sup> However, there was no indication in the recorded submissions of any concern about the overall level of gun ownership.

By 1991 there had been a significant shift in public attitudes to firearms control, no doubt in part stemming from the 1990 massacre at Aramoana, which aroused public fears about firearms and, in particular, the availability of semi-automatic weapons. The Justice and Law Reform Select Committee received from a variety of interested groups numbers of submissions on the Arms Amendment Bill which expressed broad concerns about the numbers of firearms within the community. The National Council of Women, which had made brief submissions on specific aspects of the 1983 legislation, reported:<sup>108</sup>

### *Uses and Control of Firearms in New Zealand*

A re-occurring theme from our members has been a concern about the large number of firearms already in New Zealand of which no specific record or registration is kept. ... We wish the Police and the Minister well as they proceed with the proposed changes, but we do ask that further restrictions be placed on the supply and possession of all firearms.

In order to ascertain the current attitude of the public towards guns and gun control, submissions were invited by the Minister at the commencement of this Review. In all 2,884 submissions were received, with a substantially larger number of signatories.

It is necessary to keep in mind that those submissions represent the views of that small minority of New Zealanders who chose to respond to the Minister's invitation, not the views of the nation as a whole. In particular, as was only natural, the proportion of submissions from shooters (56.8 percent) far exceeded their proportion of the total population (12 percent). Of the remaining submissions, 24 percent came from people who did not specify whether they were shooters or non-shooters, and 11 percent were from individuals who specified that they were non-shooters. Others came from government agencies, clubs and organisations.

There were considerable numbers of "common form" submissions. 954 submissions were made by signing and addressing a printed card, available at gun shows, which urged the retention of the present system but with better enforcement. As over two-thirds of the submitters who declared their shooter/non-shooter status were shooters, it is not surprising that the same proportion of submitters generally supported the status quo, and opposed further controls and any increase in licence fees.

The 1996 submissions can usefully be compared with those received in 1982 and 1991, which were less in number but also numerically weighted towards shooters.

That comparison shows an intensification of the concern first expressed in 1991 about the number and availability of guns in society. That concern is again being expressed most strongly by women and women's organisations, but has a substantial support base: 34 percent of all submissions.

It also shows that there are still strong feelings on both sides of the argument. Most gun users want to retain the simplicity, limited restrictions and inexpensiveness of the present system. Non-shooters, on the other hand, express concerns about the level of violence within society and, perceiving firearms to be instrumental in this trend, argue for tighter gun controls as part of overall measures to reduce violence. However there was in the 1996 submissions a significant measure of acceptance by gun users, particularly those who made individual as distinct from common form submissions, of the need to consider further controls. Thus, although 270 gun users opposed banning MSSAs, 85 supported that step, and a similar number supported a return to the registration of firearms.

During the consultative process which proceeded the introduction of the 1983 Act, the shooting community generally supported the Greenwood view that conventional controls simply hampered law-abiding gun users without affecting the criminal usage of firearms. The licensing and no registration system introduced by Project Foresight was seen as sensibly reducing unnecessary and ineffective controls, thus making the sale and purchase of firearms within New Zealand much less complicated.<sup>109</sup> Moreover, the adoption of lifetime licences provided indefinite authorisation for shooters to acquire as many firearms as they wanted for a relatively nominal expenditure of time and money.

By contrast the 1992 Amendment was not well received by user groups, who saw it as a knee-jerk reaction to Aramoana, adopted without consideration of shooters' interests. The cancellation of lifetime licences, which had been one of the major selling points of the 1983 Act, and the imposition of increased licence fees were perceived as gross breaches of good faith. Those views explain in part the mediocre response to the 1992 re-licensing scheme.

The 1996 submissions reveal that some part of the 1992 angst remains. This probably underlay the common and emphatic objections to any increase in fees for "yet another system of arms control", notwithstanding that firearms licence fees are substantially lower than for other similar licences. And as noted in the preceding section, the shooters' submissions by an overwhelming majority supported the status quo, and by a

large majority (76 percent) opposed the registration of firearms and a ban on MSSAs, though a significant minority favoured those moves.

*Police Attitudes*

The Police were by no means of one mind over the 1983 Act. While the 1982 report already mentioned argued firmly in favour of deregistration and user licensing, numbers of police now claim to have opposed the abandonment of registration at the time, and there is no doubt that registration in some form was incorporated in all police proposals on file from 1977 through to 1982.

After 1983, and well before Aramoana, Commissioner Jamieson and others within the police ranks became concerned about the influx of military assault rifles into New Zealand. In 1990, having had no success with an appeal to Parliament, Jamieson used his powers as Commissioner to limit the importation of MSSAs. His action met with vehement opposition from shooting groups and was overturned upon judicial review.<sup>110</sup> This struggle was overtaken by legislation when the furore over Aramoana prompted swift political response in the form of the 1992 Amendment.

Notwithstanding a series of reports from the Firearms Co-ordinator about increasing problems with the 1992 Relicensing Project, the May 1996 Review did not support significant changes to the current system. It was content that the problems with the administration of the Relicensing Project had been identified, and that “strategies” would be put in place to ensure the project was completed in a timely fashion. The amendments it suggested generally had merit but were of less than major significance to the system as a whole. Major change was not favoured, as being likely to raise user opposition and be counter-productive.

By contrast the numerous submissions made to the Review by individual police officers were less supportive of the present system. Almost without exception they maintained that arms work was under-resourced and accorded a very low priority both at PNHQ and district levels. Most reported that shooters could not understand the decision to abandon registration.

Several took the view that this step had “given away any prospect of control over firearms”.

Similar views about under-funding and inadequate recognition of arms control work were expressed by a DAO’s meeting called to inform the Review of the views of those involved in arms control at the grass roots level. The DAOs also saw a need for better information from HQ; for a manual related to the current legislation and regulations; and for better training and liaison between HQ and the arms officers and between the different arms offices themselves.

Submissions by the Police Association, the industrial wing of the Police, sought the provision of substantially greater resources to arms control and a number of broad changes, including registration. The Association also supported a ban on MSSAs, whether sporterised or not, in conjunction with the introduction of a government buy-back scheme, and an amnesty period to encourage surrender by unlicensed persons. It recommended that some aspects of re-licensing, such as administration, be outsourced, subject to retaining the personal vetting of applicants and the ultimate decisions on licensing in the hands of the Police.

Notwithstanding the view expressed by police in their May 1996 Review, a perusal of police records persuaded me that the present system was plainly defective, that its main deficiencies and their causes could be reasonably defined, but that identifying appropriate alternatives would be more difficult. In November 1996 I so advised the Minister of Police.

In April 1997 the Police advised by letter that a conference of senior officers held to settle a police submission to the Review had decided that there was a case for radical reform of the current system, and that:

[T]he political and public climate is such that radical change is acceptable and desirable, led by the Police. We do not however have the resources to implement a programme such as individual firearm registration. It was considered that police must play a major role in the registration of firearm owners, but firearms registration could well be out-sourced.



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As this was in sharp contrast to the position taken in the May 1996 Report, I responded, asking whether their position paper amounted to an acceptance of the view which I had previously formed, that:<sup>111</sup>

[A] principal reason for present inadequacies has been that over the past three or four decades, during which period I accept that the demands on the Police to meet other commitments increased greatly, they accorded arms control a progressively lower priority in their overall planning.

The letter then set out that in my view the consequences of this low priority were:

1. A preference for persuasion and consensus rather than the enforcement of arms laws, and a reluctance at district level to prosecute except for gross breaches of them;
2. The 1983 decision to abandon registration of individual firearms, a change contrary to trends in similar jurisdictions;
3. The failures both in 1983 and 1992, despite recognition by senior offices of the dangers of taking responsibility for new systems without securing appropriate resources to establish and maintain them, to access and obtain the resources necessary for the new systems;
4. The gradual abandonment after 1983 of systems collecting data about firearms, so that it is now at best difficult and sometimes impossible to get accurate information about quite basic firearms issues; and
5. The failure in May 1996 to recognise the deficiencies in the current system and the likely cost of correcting them.

I also asked, if indeed that position were accepted, for police consideration of alternative methods of administering arms control ranging from the addition of a broadly based consultative committee to a totally independent arms authority. This led to my receipt on 2 May of a letter from the Commissioner forwarding a ten-page "Police Response".

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The letter confirmed a “considerable change in the police position from that which has existed in past years”. The reason was “[q]uite simply, your review and our associated work has caused us to re-evaluate police firearms strategies and in particular international trends in arms compliance”.

The Response reported police support for a broad range of new controls, for active steps to reduce the number of firearms in New Zealand, and for contracting out some of the administrative labour of registration, while keeping effective control in police hands:

Police propose that they continue with and complete the present system of licensing of firearm owners required by the 1992 Amendment to the Arms Act 1983 but with the necessary enhancements to achieve an acceptable compliance rate ...

Police advocate and support measures to reduce the numbers of firearms available for use in New Zealand ...

Police support the view that all firearms of every type should be registered in a central database for tracking and control of use and ownership ...

Police support the overall reduction in the number of firearms in the community by purchasing as many firearms offered for sale as can be negotiated. Those weapons would be destroyed in all cases ...

Police propose conducting public education programs to further change public attitudes towards the safe possession and use of firearms ...

Police consider that some of the activities related to the registration of firearms be out-sourced to a contractor but that Police retain control as its lead customer and its most dependent user ...

The proposals in this submission require changes in Arms legislation and related statutes to enable firearms registration, control and storage to be enforced ...

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Police believe there is an urgent need to develop working protocols with other agencies to promote a free flow of essential information for the determination of Firearms Licence holders' ability to meet the criteria to be regarded as "fit and proper" to have control of firearms ...

That police data gathering and analysis must be substantially improved in order to enable better decision-making in relation to firearms and violent offending.

It is of course entirely appropriate, and indeed helpful, for the Police to change their position when they see grounds for doing so. Further, as their work for myself and Review staff will have told them, most of the reforms now supported by them fit my own inclinations.

However, the extent of those changes seems to me more than the information presently available would justify. They would effect a dramatic movement from a very low to a very high level of control. Such a movement would be similar in magnitude, though opposite in direction, to the shift in police policy in 1982 which produced the "licensing but no registration" system which bedevils us today.

The issue of gun control is a complex one. It is commonly much easier to identify deficiencies in gun control systems than to design better alternatives. That is the case in New Zealand today. My judgment is that the determination of a system of controls suitable to our circumstances will require staged and careful development, taking advantage of better information as it comes to hand, rather than a single leap. The approach which is followed in this report is to consider the merits of each of the areas of reform suggested by the Police and any other submissions which warrant serious consideration. It will endeavour to determine which can sensibly proceed at this time, which are unlikely to produce overall benefit, and which require further investigation or research.





## 3

# **The Misuse of Firearms in New Zealand**

There are three principal forms of firearm misuse in New Zealand: criminal; suicidal; and accidental. Part 3 attempts to quantify each of these in turn. The question of what can be done to reduce the risk of misuse is considered later in parts 4 and 6.

### **3.1 Criminal Misuse**

#### **3.1.1 Introduction**

The submissions to this Review made it clear that for most people firearms control is essentially about reducing or preventing the criminal misuse of firearms. For non-shooters (an increasingly large section of the New Zealand public) firearms are now generally associated with crime or violence and only slightly with any legitimate use. Those in urban society are unlikely to encounter firearms as part of their normal lives, and their impressions of firearms are more influenced by news reports and drama than by first-hand experience of their use on the farm, in the hills, or on the shooting range. Equally, most shooters are deeply concerned about the level of firearm crime, not least because they see it directly affecting their lawful use of firearms in work, sport or recreation. Thus concerns about the level of firearm crime ran

through the whole range of submissions, and provided the one common thread in this debate.

This section of the report attempts:

- to identify the principal forms of criminal misuse of firearms;
- to quantify, as much as possible, the size of the risks and to place them in context; and
- to identify the trends in criminal misuse of firearms.

The principal sources of information used in the preparation of this section have been police statistics. It is important to keep in mind that such statistics tell only part of the story. A recent Ministry of Justice publication observes that:<sup>112</sup>

[F]luctuations in crime rates may be as much affected by changes in reporting by the public and recording by the police, as by changes in the actual level of offending.

Similar observations about the limited value of police statistics in assessing crime levels have frequently been expressed overseas.<sup>113</sup>

In New Zealand the importance of reporting rates has most recently been recognised in the findings in the Report by Young and others to the Victimisation Survey Committee<sup>114</sup> that less than 13 percent of the offences disclosed in the survey had been reported to the police, and in the Ministry of Justice paper, that:

The 1992–95 increase [in recorded violent offending] was so rapid that changes affecting the reporting of violence seem a more likely explanation than changes influencing the actual level of offending. Increased reporting could be due to the strong focus on violence by the Police and other agencies in recent years, and the increasing awareness of violence as an issue following intense publicity on domestic violence.

Deficiencies in police recording of reported offences may not have had as much an influence on the statistics as variations in reporting, but cannot be disregarded. For example, a survey of 453 police files for the purposes of this Review found that 29

## *The Misuse of Firearms in New Zealand*

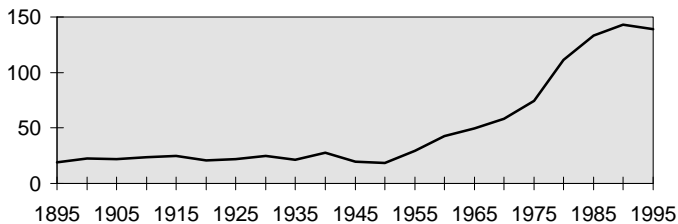
percent of the cases appearing in the official offence statistics were miscodes or non-offence situations.

Despite these limitations, there is no option but to use police statistics, as the best information available, if any progress is to be made. The sections that follow endeavour to limit conclusions to those which are justified on the basis of the information available, taking into consideration its inherent limitations.

### **3.1.2 Overall levels of crime—and violent crime**

Any consideration of firearm crime must have regard to the broader context of current and historical trends in offending and violent offending in New Zealand. The starting point is the graph which shows the total number of reported offences per 1,000 people between 1895 and 1995.<sup>115</sup>

**Total Reported Offences per 1,000  
1895-1995**



*Source:* Statistics New Zealand, *New Zealand Now Crime Tables* (1996)

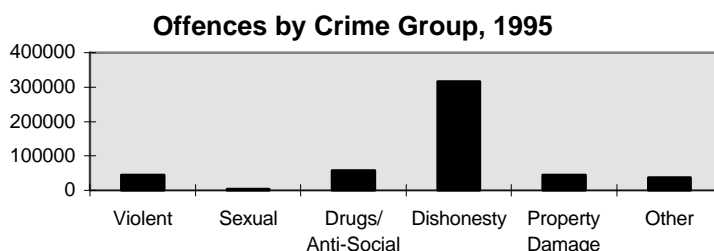
This shows a stable rate of crime per head of population between 1895 and 1950, a steady rise over the next 40 years to a peak of 145 offences per 1,000 people in 1992, and a slightly reduced level of 141 offences per 1,000 people in 1995. It is widely believed that changed reporting, charging and recording practices are the cause of part of the rise, but if these are excluded the fact of a major increase from 1960 to 1990 remains. Statistics New Zealand has recently postulated a wide variety of reasons for the escalation, including:<sup>116</sup>

... increased urbanisation and population density, changing social attitudes, the increasing opportunities for crime in a consumer society, changes to the age structure of the

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population, changes in reporting and recording practice, and the gradual introduction of new categories of offence.

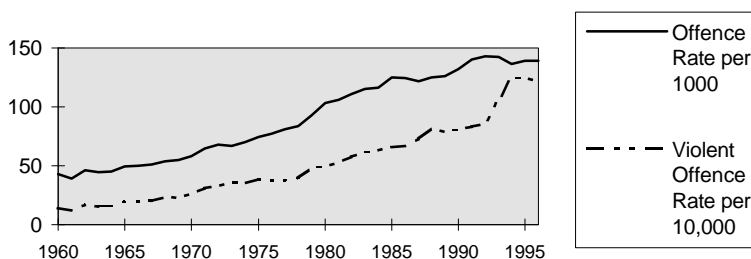
By a significant margin, it is the “dishonesty” offences which make up the bulk of current reported offences. These offences include theft, burglary and vehicle offences.



Source: Statistics New Zealand, *New Zealand Now Crime Tables* (1996)

In contrast, sexual and other violent offences make up less than 10 percent of the total. Nonetheless these offences have more than doubled in the last decade and a half including the period when total offending levelled off. Since then, the number of violent offences appears to have plateaued, although it is too soon to tell whether this plateau will last.<sup>117</sup>

**Total Reported Offences and Reported Violent Offences, 1960-1996**



Source: New Zealand Police



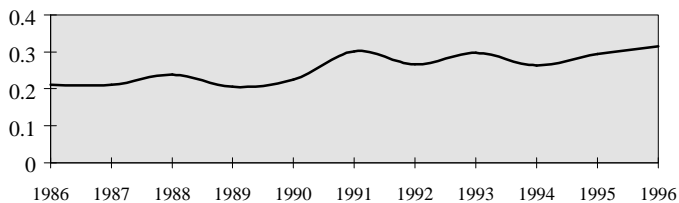
## *The Misuse of Firearms in New Zealand*

Within the trend to higher levels of violence the largest increase has been in serious assaults, which have become the most common form of violent offending, taking the place of minor assaults.<sup>118</sup> Much of the increase may be attributable to family violence, which has become both more widely reported and more seriously dealt with by police during the period.<sup>119</sup> This is indicated by the level of reported Male Assaults Female offences which increased by over 500 percent between 1985 and 1995—from 1,548 offences to 9,573 offences. However, the increase in family violence is not the only explanation—over the period there have been significant increases in grievous assaults, robbery, intimidation and other violent offences.<sup>120</sup>

### *Aggravated Robbery*

In 1996, there was the highest number of aggravated robberies in any year over the past decade—1,171, up from 942 in 1994. When put on a population basis this shows a relatively steady increase totalling 50 percent over the past ten years.

**Aggravated Robbery per 1,000**



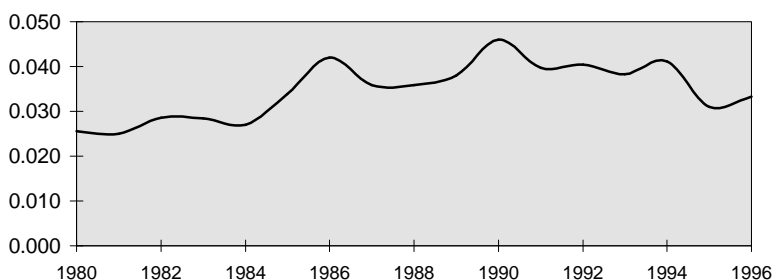
Source: New Zealand Police

### *Murder*

In the case of the highest profile violent offence, murder, the rate has been relatively steady over the last decade.<sup>121</sup> In 1995 there was the lowest number of murders in any year during the previous decade—45, down from 72 in 1994. This number increased to 59 in 1996, but remained at less than the average number of murders—67—over the past ten years. The

inclusion of manslaughter in the following graph does little to alter the overall trend.

### **Homicides per 1,000, 1980-1996**



*Source: New Zealand Police*

### *Summary*

This brief survey of crime levels shows principally that:

- the level of total offending rose steadily from 1960, peaked in or around 1992, and has fallen slightly since then;
- recorded levels of violence have increased throughout most of the last two decades, even when total offending slowed; and
- even though some of the apparent growth in violent offending is attributable to changes in reporting practices or police policy, and the rate of homicide has levelled or fallen over the last decade, current levels of violence are historically high, and appearing to be increasing still in some classes of offence.

It follows that, although the picture is not all of a piece, public concerns about the level of violence, and in particular serious violence, are not without justification.

### **3.1.3 Levels of firearm crime**

Firearm crime is recorded by the police in three categories:<sup>122</sup>

- Crime Act offences;

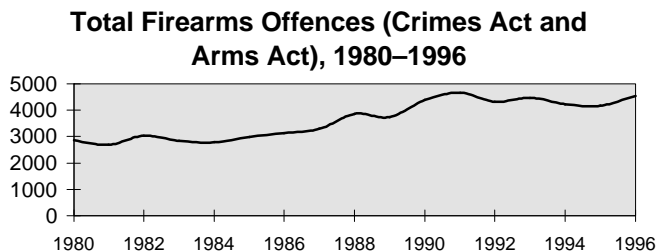
### *The Misuse of Firearms in New Zealand*

- Arms Act offences (danger to life); and
- Arms Act offences (administrative).

Crimes Act offences are the most serious and include such offences as homicide, robbery, serious assaults and threats to kill. The Arms Act danger to life category includes offences such as reckless use of a firearm, presenting a firearm at a person, and discharging a firearm near a place or dwelling. For statistical purposes all such offences are included in the total whether or not a life was actually endangered. Arms Act administrative offences include such matters as being in possession of a firearm without a licence, unlawfully carrying a firearm and failing to notify a change of address.

#### *Trends*

In all three categories there was a rise in the level of reported offences from 1980 to 1991, since when there has been little change. The following combined graph is typical of all categories.



*Source:* New Zealand Police

In absolute numbers, Crimes Act firearms offences and Arms Act danger to life offences are currently running at approximately 2,500 per annum. The total, including administrative offences, is 4,000 to 4,500 per annum.

The trend over this more recent period has been reasonably steady—if anything downwards if population increases are taken into account.

One area which has shown a substantial recent increase is the number of Armed Offenders Squad call-outs. These have increased substantially over the past ten years. However,

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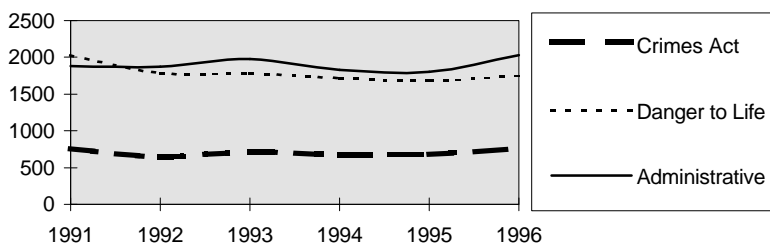
inquiries from the Armed Offenders Squads produced advice that they have changed their role from that of a reactive force to that of a proactive force and have taken on new duties, such as payroll and witness protection. They confirm that in fact the number of incidents involving the use of firearms has either been static or reducing over recent years.

**Firearms Offences, 1991–1996**

<b>Category</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>
Crimes Act	754	647	714	675	680	758
Danger to life	2,026	1,790	1,779	1718	1,684	1,748
Administrative	1,881	1,875	1,977	1,833	1,801	2,030
<b>Total</b>	<b>4,661</b>	<b>4,312</b>	<b>4,470</b>	<b>4,226</b>	<b>4,165</b>	<b>4,536</b>

Source: New Zealand Police

**Firearms Offences by Category, 1991-1996**



Source: New Zealand Police

The current level of reported firearms offending is around 63 percent higher than in 1983.

The most common forms of reported firearms offending in New Zealand are as shown in the following tables.

**Crimes Act Offences**

<b>Offence</b>	<b>Average annual total (last five years)</b>
Aggravated robbery	232

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Threatening to kill	181
Assaults	65
Murder/attempted murder	22
Possession of offensive weapon	21
Threatening behaviour	25

Source: New Zealand Police

**Arms Act (Danger to Life) Offences**

<b>Offence</b>	<b>Average annual total (last five years)</b>
Discharging a firearm near a dwelling	796
Presenting firearm	258
Reckless discharge of a firearm	210
“Other offence re firearm use”	149
Use of a firearm	60
Intoxicated in charge of a firearm	73
Presenting object like a firearm	94
Careless use of firearm causing death	34
Use of firearm in crime	41

Source: New Zealand Police

**Arms Act (Administrative) Offences**

<b>Offence</b>	<b>Average annual total (last five years)</b>
Unlawfully carrying a firearm	550
Possession of firearm without a licence	316
Unlawfully possessing a pistol/restricted weapon	227
Unlawful possession of a firearm in a public place	174
Possession of airgun without a licence	106
Unlawfully carrying an imitation firearm	93

Source: New Zealand Police

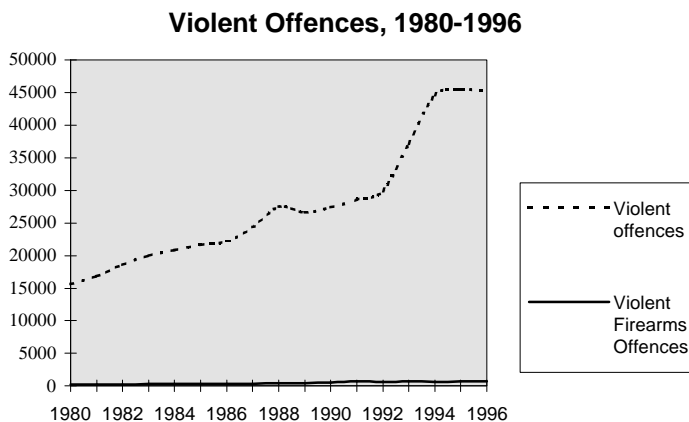
The results of the National Survey of Crime Victims suggest that firearms are more frequently used in “threat offences” than in actual assaults or robberies. Of the offences disclosed in that

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survey, firearms were involved in: 30.1 percent of threats; 3.9 percent of robberies; and 0.5 percent of assaults.<sup>123</sup> The use of firearms to threaten is a subject returned to below in the consideration of family violence.

*Firearms as a Proportion of Violence*

In overall terms firearms are not by any means a dominant feature of violence in New Zealand. Police statistics show firearm crime to be only a very small proportion of violent crime, in the region of 1.7 percent, barely visible on a graphic representation.



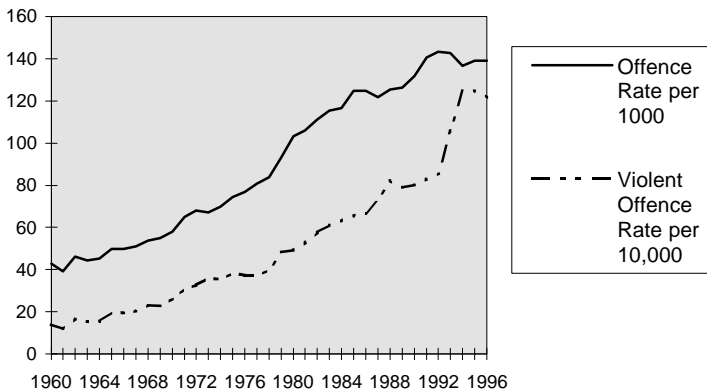
Source: New Zealand Police

The proportion increased to over 2.5 percent in 1991, but appears since to have returned to around the 1.7 percent level.

The recent National Survey of Crime Victims reported that firearms were used in 3 percent of violent offences. The difference most probably represents offences disclosed by victims which were not reported to the Police.<sup>124</sup>

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**Total Reported Offences and Reported Violent Offences, 1960-1996**



Source: New Zealand Police

The above data indicate that over the 15 years the violent firearms offence rate and the rate of all violent offending rose by similar proportions, the actual rises on the statistics being 180 percent and 189 percent respectively.

When the focus switches to the most serious violent offence, homicide, the proportion of cases involving firearms increases. During the period 1978 to 1987 the proportion was 18.4 percent.<sup>125</sup> This proportion had increased to 23 percent over the period 1988 to 1995.<sup>126</sup> Over the same period, the proportion of murders involving firearms was even greater, at 26 percent.<sup>127</sup>

Of course the fact that firearms violence is less frequent than some other forms of violence does not mean that it is unimportant. The importance of any risk must be related both to the likelihood of it occurring, and the seriousness of the consequence if it does. Although compared to many other risks firearms offending remains reasonably rare, the current level of around 2,500 danger to life and Crimes Act offences a year is by no means inconsiderable. And as to consequences, firearms offending can and not infrequently does cause grave consequences for its victims.

The relative rarity of firearms offending should not cause the public, the Police or the Government to treat it otherwise than seriously, nor to fail to investigate reasonable strategies to reduce firearm crime. But such strategies must commence with

a realistic understanding of the size of the problem which requires control.

*Summary*

1. Reported firearms offending increased in absolute numbers by about 67 percent from 1984 to 1991, since when there has been little change.
2. Increases in firearm crime have been less than in all violent crime but have followed the trend of the latter sufficiently closely to make it probable:
  - a) that firearm crime is a sub-set of violent crime rather than a separate phenomenon; and
  - b) that violence is leading firearm crime, not the reverse.
3. Even if less than those of violent crime in general, the current levels of firearms offending are sufficiently high to give reasonable grounds for public concern.

**3.1.4 Mass killings**

Mass killings, involving the murder of several people in the same general area at roughly the same time, have become an occurrence of worrying frequency over recent decades in many countries of the world, including New Zealand. There have been a number of these incidents involving firearms in Australia and New Zealand during the past ten years, including:<sup>128</sup>

- Raurimu—1997
- Port Arthur (Bryant)—1996
- Hillcrest, Queensland (May)—1996
- Dunedin (Bain)—1995
- Cangai, NSW (Leabeater)—1993
- Terrigal, NSW (Baker)—1992
- Paerata, near Auckland (Schlaepfer)—1992
- Strathfield, NSW (Frankum)—1991
- Aramoana (Gray)—1990
- Surrey Hills, NSW (Evers)—1990
- Oenpelli, NT (Rostron)—1988
- Queen St, Victoria (Vitkovic)—1987



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- Canley Vale, NSW (Tran)—1987
- Hoddle St, Victoria (Knight)—1987
- Top End, NT/ WA (Schwab)—1987

To this list may be added the shootings by Hamilton in Dunblane, Scotland, in 1996.

While the frequency of these incidents is worrying—they were virtually unheard of in the first half of the century—they remain a minority of firearms homicides, and an even smaller proportion of all homicides.<sup>129</sup> Those killed in the Aramoana, Bain and Schlaepfer shootings represented 26 percent of total firearm homicides over the same period.<sup>130</sup> Rather like aeroplane crashes, the social impact of these incidents derives less from their frequency than from their magnitude.

The magnitude of such incidents over the past decade, together with their apparently increasing frequency, the often indiscriminate choice of victims and the intense media attention which they attract, have combined to cause public concern throughout the Commonwealth.<sup>131</sup> In the United Kingdom, Australia and Canada that concern has been translated into legislative amendments of sizeable proportions; see part 4.4.

While the deeply felt public abhorrence of mass killings has led to a great desire to do something about them, nowhere has there been a clear consensus as to their causes, nor as to measures which are likely to prevent them.

There has been a conspicuous lack of agreement on two issues: the role of “mental health” and the role of firearms, especially military style firearms. By way of example, the submission to this review of the Sporting Shooters Association of New Zealand addresses six major incidents, including Port Arthur and Dunblane, and declares that “each of these people, as we have come to expect, has had a long history of mental health problems and violent behaviour.” By contrast, the conclusion of Reece Walters writing in the newsletter of the Institute of Criminology in Wellington is that:<sup>132</sup>

In reality, the majority of mass murderers are not registered as mental patients at the time of their killings, are not taking prescription drugs for mental illnesses and, indeed, have never been treated for mental illness. They are not psychotic or

psychopathic and generally do not exhibit characteristics capable of forewarning their actions. Up until the point of their offences they demonstrate ‘ordinary’ characteristics. They may have a predisposition to bad temper, moodiness and sporadic bouts of depression—but there is nothing particularly unusual about that.

The significance of mental health problems needs to be looked at in the round, rather than simply in relation to mass killings, and is addressed in part 6.1.5, “Reducing the risk of misuse by the mentally disordered”. It is sufficient to note at this point that the brief summaries of “Principal Firearms Incidents” which are attached as appendix 3 are much more supportive of the Walters view than that of the SSANZ.

As to the second issue which has attracted some controversy, the role of firearms in mass killings, Walters says:

Mass murders in Western countries almost always involve firearms (although there are cases involving bombs, poisons and knives). In many instances, the perpetrators are current or past licensed gun owners, often with a liking for military-type paraphernalia or ‘powerful’ weaponry such as military-style semi-automatic firearms. Research shows that the gun is the weapon of choice because of its capacity to kill rapidly. ... It is not, however, military-style semi-automatic or automatic firearms that are most frequently used in mass killings. It is shotguns and rifles (most often semi-automatic).

Although the emphasis is somewhat different, that view is not entirely at odds with that put forward by SSANZ:

SSANZ has stated all along that the type of gun used at mass murders is a red herring and that the preoccupation of the 1992 Arms Act Amendment on restricting types of guns according to their appearance, is an absurdity.

Of the incidents listed above, those at Port Arthur and Aramoana involved the use of military style semi-automatic firearms.<sup>133</sup> At Dunblane, Hamilton used two semi-automatic centrefire pistols, which in terms of functionality are broadly comparable to MSSAs. Bain used a .22 calibre semi-automatic

rifle fitted with a silencer, and Schlaepfer used a double-barrelled 12-gauge shotgun at Paerata.

Clearly mass killings are not exclusively carried out with MSSAs. However equally such firearms have been a significant feature of many of the incidents in this part of the world, and their suitability for such a purpose cannot be ignored. SSANZ is correct to observe that it is not only the functional capability of the MSSA which has led to its restriction, but also its appearance. As to functionality, it is the capacity for uninterrupted and high-speed discharge which makes the firearm useful to the military and objectionable to many others. As to appearance, some of the features of the MSSA which might be considered cosmetic—for example the pistol grip—do in fact have some functional relevance. A pistol grip enables the firearm to be operated “from the hip.” Bayonet lugs, although harmless in themselves, allow the affixing of potentially lethal capability. More importantly the combination of its cosmetic features tends to make the firearm more attractive to those who have an unhealthy fascination with violence or killing. As to the merits of further restricting such firearms there is further discussion in part 6.

At the same time the role of non-military style firearms in mass killings cannot be ignored. While MSSAs have featured in 43 percent of such killings, a proportion far higher than their proportion of the total armoury, it still remains that other rifles, or shotguns, have been the weapons of choice in the remaining 57 percent. On present information it appears that non-military style firearms have been used more often in domestic mass killings than in those where the victims have been strangers. This is a further matter which points to a need for some control over the whole armoury.

### **3.1.5 Firearms and family violence**

#### *The Use of Firearms in Family Violence*

Family violence makes up a significant proportion of some forms of firearm crime—particularly the more serious offences. In 1996 over half reported “serious assaults” with firearms were in the family violence category, and over the period 1992–1994 around half of firearms homicides were domestic-

related.<sup>134</sup> A lower but still significant proportion was shown by a study of 123 “Threats to kill/do GBH (firearms) offences” in 1994, which found that 22 (18 percent) were domestic-related.<sup>135</sup>

When the relationship is looked at the other way around the patterns are broadly similar. As a proportion of all family violence incidents, those involving firearms are quite rare,<sup>136</sup> but family homicides and some other forms of family violence do involve a higher proportion of firearm incidents.<sup>137</sup> This somewhat mirrors the situation in relation to violence overall, where firearm incidents are only around 2 percent of total violence, but some violent offences, for example homicide, show a much higher involvement of firearms.

An important remaining area of uncertainty is the use of firearms to threaten in situations which do not result in reported offences. In his submission to this Review, Neville Robertson of the University of Waikato expressed the view that:

... [T]he use of firearms in killings is only the tip of the iceberg. The extent of using firearms in domestic violence is largely hidden because in the vast majority of cases, the weapons are not used to kill but to intimidate and terrorise. Such incidents are rarely reported to the Police.

This view was supported by research into breaches of domestic protection orders.<sup>138</sup> Of 20 case studies, eight involved threats using firearms. Examples given included:

- a) One woman who reported systematic verbal abuse, intimidation and standover tactics. On several occasions her husband poked her in the stomach with a gun and threatened to “blow her away”, because she was “useless”. ...
- b) One woman who shared her husband’s interest in sports shooting reported that weapons were often around the house and that her husband often made threats to shoot her. She felt that he was capable of this. So too, did his own brothers and sisters. On one of the occasions she attempted to leave, her husband coaxed her to return “just to talk”. She did and had to discuss reconciliation with his shotgun, cocked, on the table. He

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told her he would “blow her away” if she did not come back to him.

c) Another woman reported that after an argument with her husband, he sat in the lounge cleaning his three guns. She felt that he did this in order to intimidate her.

d) One woman reported regular use of a firearm to intimidate. The first occasion followed an argument which saw her spending the night in another bedroom. In the morning, while she was in the bath, her partner brought a rifle into the bathroom and told her that if she left him, she would not get out of the area alive. A frequent terrorising tactic was to discharge the rifle by the bedroom window while she was asleep. She commented that he seemed pleased to see the fear this evoked as she awoke startled.

Mr Robertson commented that “[s]uch incidents are not uncommon in the experience of women’s refuge workers. Even in my own experience of working with abusers, it is not uncommon for men to volunteer the information that they have used firearms to intimidate their partners”. In 1993 the Women’s Refuge Foundation reported that of 7,779 children who had stayed in refuges in 1992, 23 percent had been threatened with guns. While this lends support to the proposition that such threats do occur, there is no research in New Zealand which estimates the overall amount of threatened use of firearms in family violence. For present purposes it is clearly appropriate to acknowledge that firearms are used in domestic situations to threaten, but there is insufficient information available to allow comment on the frequency with which that occurs. Of course the fact that this behaviour cannot be quantified does not mean that it does not exist, nor that reasonable strategies should not be investigated to try to reduce it.

#### *The Licence Status of Those Involved in Family Violence*

Three separate studies in New Zealand support the proposition that the majority of those who use firearms in family violence are licensed shooters.<sup>139</sup> Although each tends to support that conclusion, none of the studies has proceeded from a

comprehensive empirical basis, and further more detailed research is desirable.

### *The Domestic Violence Act 1995*

Domestic violence legislation in New Zealand now includes quite strict provisions dealing with firearms. Under the 1995 Domestic Violence Act it is a standard condition of every protection order that the respondent must not possess or control any weapon (including firearms) for the duration of the order.<sup>140</sup> In the case of temporary protection orders any firearms licence held by the respondent is deemed to be suspended for the period of the order,<sup>141</sup> and the respondent is required to surrender the licence plus all weapons in his or her possession to the Police on demand.<sup>142</sup> In the case of final protection orders, the respondent's firearms licence is deemed to be revoked.<sup>143</sup> Although the Act provides for discretionary seizure of firearms, police policy goes further and institutes de facto mandatory seizure.<sup>144</sup> Respondents who fail to surrender on demand all firearms in their possession, or their firearms licence, may be arrested for breach of the protection order.

The information which is available shows that around 8 to 10 percent of protection orders currently involve firearms held by either licensed or unlicensed owners. This proportion is lower than the average number of households containing firearms, possibly because of the largely urban nature of protection orders.<sup>145</sup>

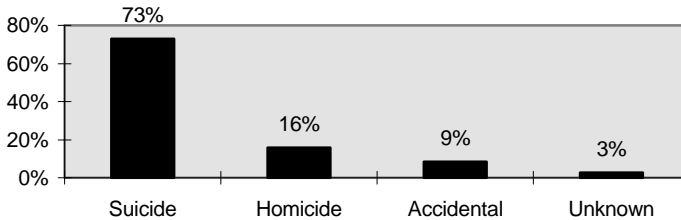
In the time available for this Review it has not been possible to conclude what the effect of the new provisions in relation to firearms will be. Those enquiries which have been made have shown no evidence that the firearms provisions are causing undue hardship or striking practical difficulties.<sup>146</sup> There has been no call for stricter provisions, and at this time further reform would very likely be premature, in the absence of reliable information as to the effect of the new Act.

## **3.2 Suicide**

## The Misuse of Firearms in New Zealand

The greatest proportion of deaths from firearms are suicides. They make up 73 percent of firearms deaths, while homicide accounts for 16 percent and accidental death 9 percent.

### Causes of Firearm Deaths, 1980-1993

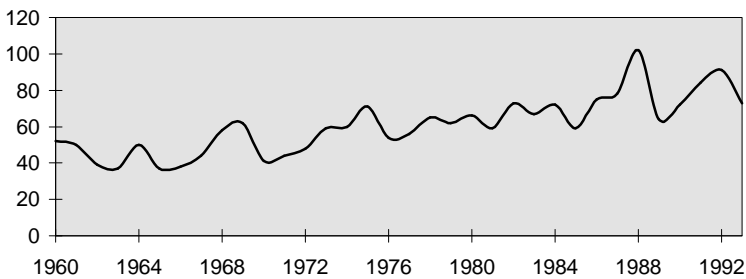


Sources: IPRU and New Zealand Police<sup>147</sup>

The most recent information available suggests that there is an average of 74 firearm suicides each year.<sup>148</sup> In addition to that figure, approximately 13 people are admitted to hospital each year with non-fatal injuries from suicide attempts made with firearms.<sup>149</sup>

Over the past three decades there has been an increase in the number of firearm suicides, as the graph below demonstrates. Numbers have increased by 40 percent over the period, from 52 in 1960, to 73 in 1993.<sup>150</sup>

### Suicides Involving Firearms, 1960-1993



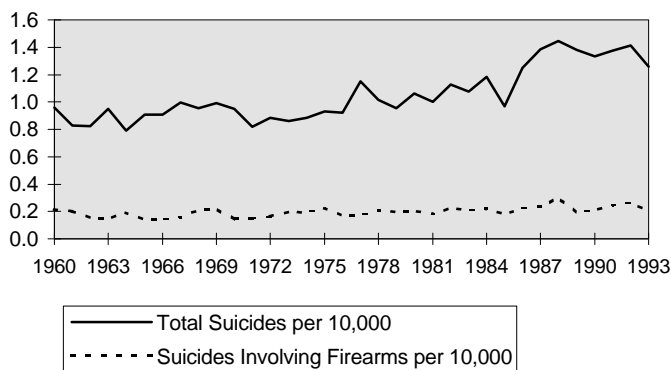
Sources: Forsyth and IPRU

Over the same period the total number of suicides has almost doubled, from 230 in 1960,<sup>151</sup> to 443 in 1993.<sup>152</sup> (Unofficial reports suggest that such increases have continued, if not

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accelerated.) In comparison, the number of firearm suicides appears relatively stable.

**Suicide Deaths per 10,000, 1960–1993**



Sources: Forsyth and IPRU

One possibility is that the declining rural population has reduced the numbers of those with the easiest access to firearms, but there is no solid evidence to explain the trends.

*Means of Suicide*

While suicides make up a large proportion of the total deaths from firearms, firearm suicides are not the most prevalent method of suicide. Firearm suicides currently account for approximately 18 percent of the total suicides each year.

**Means of Suicide, 1980–1993**

Means	Percentage of total
Hanging/suffocation	30.5
Gases and vapours	23.0
Firearms (incl explosives)	18.3
Poisoning (solid/liquid substance)	14.1
Jumping from high place	4.3
Drowning	4.2
Other (incl late effects)	3.4



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Cutting and piercing instrument	2.2
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Source: IPRU

Firearms are the third most lethal method of suicide, after explosives, and hanging/suffocation.

**Relative Lethality of Means of Suicide, 1980–1993**

Means	Attempts	Deaths	Total	Fatality rate (%)
Explosives	2	22	24	91.70
Hanging/suffocation	245	1,758	2,003	87.80
Firearms	176	1,035	1,211	85.50
Drowning	61	241	302	79.80
Other gases and vapours	549	1310	1859	70.50
Jumping from high place	208	250	458	54.60
Poisoning (gases in domestic use)	43	18	61	29.50
Other/unspecified	498	198	696	28.40
Cutting and piercing instrument	1,858	126	2,066	6.10
Poisoning (solid/liquid substance)	30,456	814	31,270	2.60
Late effects of self-inflicted injury	78	1	79	1.30

Source: IPRU

The lethality of firearms as compared with other means of suicide is reflected in the relatively small proportion of unsuccessful suicide attempts by firearms. While 18 percent of suicides between 1980 and 1993 were caused by firearms, firearms were involved in only 0.51 percent of attempted suicides over the same period.<sup>153</sup>

A study undertaken by Beautrais *et al* in 1996, as part of the Canterbury Suicide Project, also considered the prevalence and lethality of different methods of suicide.<sup>154</sup> This study included a sample group of successful and non-successful but medically serious<sup>155</sup> attempts at suicide. Of this group, the most common method of suicide was carbon monoxide poisoning, accounting for 37.3 percent of deaths amongst the group. 13.3 percent of the deaths were attributable to firearms.

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These results show a smaller percentage of firearm suicide deaths than the IPRU figures, but a greater proportion of carbon monoxide deaths. However, the Beautrais study also found a very small percentage of unsuccessful suicide attempts by firearms, due to their high lethality rate.

<b>Method</b>	<b>Suicide, using method (%)</b>	<b>Attempts, using method (%)</b>	<b>Total fatal (%)</b>
Carbon monoxide poisoning	37.3	9.3	66.7
Hanging	28.0	3.0	82.4
Gunshot	13.3	1.3	83.3
Overdose/poisoning	13.3	76.8	7.9
Other methods <sup>156</sup>	8.0	9.6	29.3
<b>Total</b>	<b>100</b>	<b>100</b>	<b>42.6</b>

*Source:* IRPU

As the table above shows, firearms were found to be the most lethal method of suicide, with a 83.3 percent fatality rate. Hanging was found to be almost as lethal, with a fatality rate of 82.4 percent. Carbon monoxide had a 66.7 percent fatality rate, while attempts by poisoning had a fatality rate of 7.9 percent. These results accord roughly with the IPRU figures as to relative lethality, although the Beautrais study found firearms to be slightly more lethal than hanging, whereas the IPRU figures suggest the opposite.

This study also found that a clear majority (91.7 percent) of those who attempted suicide were male, and 66.7 percent were aged 25 years or older.<sup>157</sup>

### *Risk Factors*

The literature obtained for the purposes of this Review makes it plain that there is a complex and inter-related set of risk factors involved in suicide and attempted suicide. These factors, and the possibility of taking any steps which may influence the likelihood of firearm suicide, are dealt with in parts 4.3 and 6.1.5.

### **3.3 Accidental Death And Injury**

Firearms accidents are and always have been an inevitable corollary of firearm usage, a point made in typically picturesque prose by Forsyth:<sup>158</sup>

Arms accidents have been with us longer than firearms. Swords probably slipped, slings surely “let go” at the wrong moment and it is inconceivable that arrows went the right way all the time.

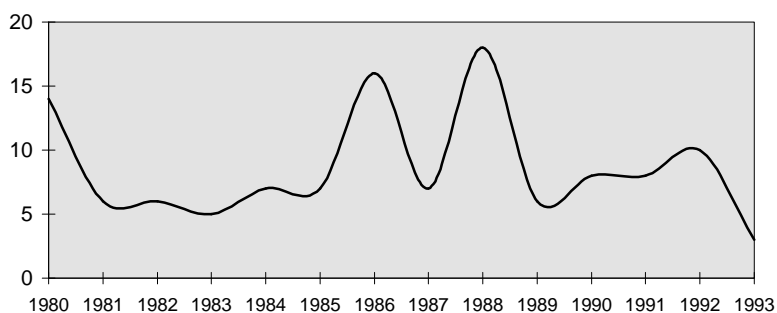
Figures from the IPRU indicate that between 1980 and 1993, 121 people were killed and 873 people were admitted to hospital with injuries as a result of firearms accidents.<sup>159</sup> Over the period this is an average of around nine deaths and 62 hospital admissions a year—approximately 9 percent of firearms deaths and 65 percent of firearms hospital admissions.

The other main basis for estimating the level of firearm accidents is data from ACC which shows the number of claims for compensation. These figures show an average of nine deaths and 53 injuries per year from 1992 to 1996. The true level of injuries is likely to be higher than these figures.

#### *Accidental Deaths*

Over the period 1980 to 1993 the number of accidental deaths per year showed no consistent increase or decrease.

**Accidental Deaths by Firearms, 1980-1993**



Source: IPRU

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ACC figures are available from 1993 to 1995, and these indicate a three-year average of 12 deaths a year.<sup>160</sup>

**Accidental Deaths, 1980–1993**

<b>Cause of Death</b>	<b>Number of deaths</b>	<b>Proportion of total (%)</b>
Motor vehicle traffic	9,723	50.40
Falls	3,806	19.70
Submersion	1,022	5.30
Water transportation	614	3.20
Suffocation and respiratory obstruction	544	2.80
Air transportation	487	2.50
Fire and flames	447	2.30
Machinery	331	1.70
Motor vehicle non-traffic	292	1.50
Late effects of injury	243	1.30
Falling object	214	1.10
Environmental	194	1.00
Railway	164	0.85
Poisoning non-medical source	151	0.78
Electric current	136	0.70
Poisoning	135	0.69
Medical misadventure	132	0.68
<b>Firearm missile</b>	<b>121</b>	<b>0.63</b>

*Source:* IPRU

Firearms are a relatively infrequent cause of accidental death, making up only 0.63 percent of such deaths over the period 1980 to 1993. By far the greatest proportion of accidental deaths is caused by motor vehicle accidents—these made up 50 percent of accidental deaths during the period.

Simple comparisons between firearms deaths and other types of death are however potentially misleading.<sup>161</sup> Motor vehicles are more frequently used by a greater number of people in closer proximity to each other than is the case with firearms, making a higher number of deaths in motor vehicle crashes unsurprising. Furthermore, as in all other areas, the absolute size of the problem must be considered, not just the

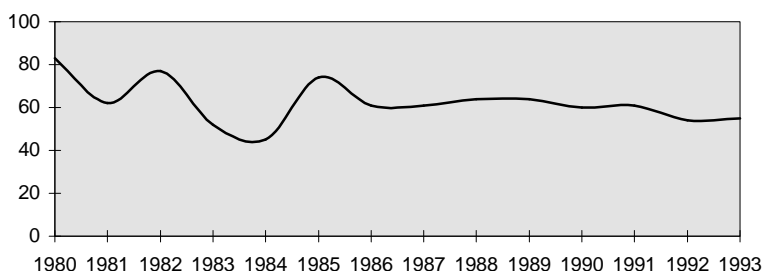
### *The Misuse of Firearms in New Zealand*

comparative size. The facts remain that an average of nine people per annum are killed in firearms accidents, and this average has not noticeably declined in the past decade and a half.

#### *Accidental Injuries*

Over the period 1980 to 1993 the number of admissions to hospital for accidental firearms injuries remained reasonably stable.

**Admissions to Hospital: Firearms Accidents  
1980-1993**



Source: IPRU

While there is a significantly greater number of accidental injuries than deaths caused by firearms, these make up an even smaller percentage of the total number of accidental injuries—0.13 percent over the period 1980 to 1993.

#### **Accidental Injuries, 1980–1993**

Cause of injury	Admissions to hospital	Proportion of total (%)
Falls	187,747	31.70
Motor vehicle traffic	119,232	20.10
Cutting or piercing instrument	44,739	7.60
Struck by person or object	43,366	7.30
Other road vehicles	27,865	4.70
Medical complication NEC	26,912	4.50
Late effects of injury	21,066	3.60

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Over-exertion and strenuous movements	15,026	2.50
Machinery	13,970	2.40
Foreign body	9,587	1.60
Environmental	9,529	1.60
Poisoning medical source	9,437	1.60
Poisoning non-medical source	7,825	1.30
Caught in/between object(s)	6,949	1.20
Falling object	6,535	1.10
Fire and flames	3,771	0.64
Other environmental	2,967	0.50
Water transportation	2,558	0.43
Suffocation and respiratory obstruction	2,268	0.38
Adverse effects of medication	2,245	0.38
Air transportation	1,234	0.21
Submersion	1,224	0.21
Explosive material	1,039	0.18
Electric current	885	0.15
<b>Firearm missile</b>	<b>873</b>	<b>0.13</b>

Source: IPRU

However, as with deaths, simplistic comparisons should be avoided because of the different nature of the activities involved. The important point is that no fewer than one person a week is injured in a firearms accident, again without significant reduction in the last decade and a half.

#### *Causes of Firearms Accidents*

As to the causes of firearms accidents in New Zealand, the most thorough study remains that completed by Forsyth for the Mountain Safety Council in 1985. In the time available it has not been possible to update Forsyth's work. Although no longer contemporary, the main conclusions from *Firearms in New Zealand* deserve reiteration. As at 1985:

1. While approximately 15 percent of the population was between 16 and 30 years of age, more than 45 percent of the accidents were caused by people in this age bracket.

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2. Almost half of all firearms accidents occurred at home.
3. 45 percent of accidents involved experienced shooters and 55 percent inexperienced shooters (suggesting that experience alone is insufficient to promote safe practice).
4. Apparent causes of firearms accidents included:<sup>162</sup>

<b>Apparent cause of accident</b>	<b>Total</b>	<b>Percentage</b>
Leaving firearm loaded	61	26.5
Other causes (excluding suicide)	35	15.2
Liquor involved	20	8.7
Firing at movement	16	7.0
Defective firearm	13	5.7
Victim not visible to shooter	13	5.7
Crossing ditch or fence	9	3.9
Dropping or throwing firearm	8	3.5
Pulling firearm towards self by muzzle	8	3.5
Riding in vehicle with loaded firearm	8	3.5
Victim moved into line of fire	7	3.0
Removing firearm from vehicle	7	3.0
Loading	7	3.0
Unloading	7	3.0
Placing firearm in vehicle	5	2.2
Ricochet	5	2.2
Firing at sound	1	0.4

*Source: Forsyth, Firearms in New Zealand*

The causes of accidents so determined provided the basis for the “5 basic rules of firearms safety”, the forerunner to the MSC “Firearms Safety Code”. Unfortunately data are not available in New Zealand to place firearm accident victims into separate classes for urban and rural dwellers, or males and females. There is however no reason to believe that New Zealand is any different from Australia, where rural males make up the majority of accidental death and injury victims.

It is not in any way a criticism of the excellent firearms safety training work done by the Mountain Safety Council to

observe that there appears to be room for improvement in New Zealand's rates of accidental death and injury from firearms.

For most of the last 25 years New Zealand has matched the Australian record in respect of firearm accidental death and injury. Indeed the Council's programmes have been highly regarded, and adopted, by different Australian States. Recent Australian figures suggest that our neighbours have now overtaken us. Over the period 1992 to 1995 the rate of accidental death per 100,000 persons in this country was 2½ times that of Australia.<sup>163</sup> Looking just at 1995, New Zealand's rate per 100,000 persons was four times higher than Australia's. In that year, 12 people died in firearms accidents in New Zealand, compared to 15 such deaths in Australia. Of at least equal significance is the fact that Australia's accidental death rate is showing obvious and consistent signs of decrease, as opposed to New Zealand's which shows a much smaller decrease.<sup>164</sup> One possible initiative—the practical training of shooters—is addressed in part 6.2.2.

### **3.4 Conclusions**

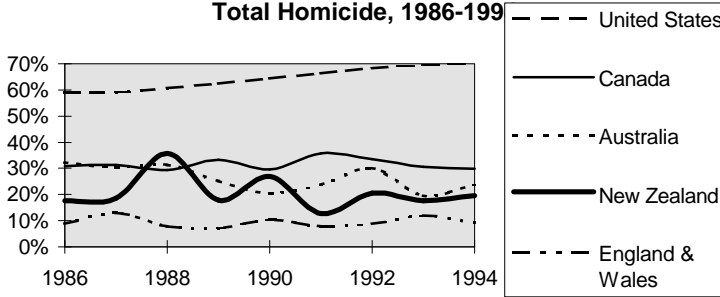
The evidence gives no indication that New Zealand faces some new crisis of firearm misuse, but rather that the major increases which occurred in all violent offending from the 1960s have been replicated in firearm crime, the level of which is relatively stable, but at an unacceptably high level.

International comparisons of firearms statistics should be treated with some caution. However it is comforting to see that New Zealand's firearm homicide ratio appears to be lower than that in Australia and Canada—and less than one-third of that in the United States.



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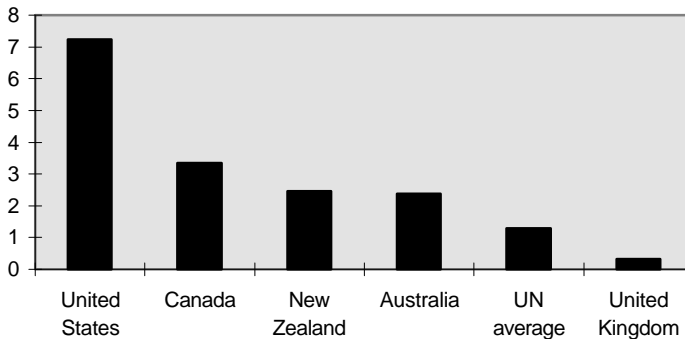
**Firearm-Related Homicide as a Percentage of Total Homicide, 1986-1994**



Source: NZ and Australian Institute of Criminology

Our rate of firearms suicide does not compare so favourably internationally, as the graph below demonstrates. While substantially less than the United States, our firearm suicide rate is nearly twice as high as the average rate amongst United Nations Member States, and over seven times higher than the United Kingdom:

**Firearms Suicide Rate per 100,000**



Source: Draft United Nations International Study on Firearms Regulation (1997)

In broad terms the problem of firearm misuse in this country is neither as bad as many believe, nor as insignificant as others claim. In proportional terms there are many risks in New Zealand of greater magnitude than the risk of firearms misuse. However the level of such misuse is higher than should be tolerated, and many of the reforms in part 6 are directed towards reducing that risk.





## 4

# **The Purpose and Principles of Firearms Legislation and “The Firearms Debate”**

### **4.1 The Purpose of Firearms Legislation**

The purpose underlying all firearms legislation is the need, in the public interest, to reduce damage from the misuse of firearms.

An ideal firearms regime would prevent misuse without interfering with legitimate use. But in practice some interference with legitimate use may be unavoidable if one is to meet the public interest in limiting misuse. It follows that the only realistic policy is to seek the maximum reduction of the risk of misuse with the minimum restriction of legitimate use. That approach necessarily involves balancing public and private interests.

There are sound reasons for the widely held view that firearms control systems must relate to the needs and circumstances of the society to which they are to apply. What works in one country may not work in another.

The same reasons require that attention be given to changes in gun usage and other relevant circumstances within a particular society over the passage of time. What was appropriate in 1939 may not be so in 1999. Determining the

appropriate balance is accordingly not a single finite step, but calls for periodic re-assessment.

## **4.2 Conventional Methods of Control, and Their Inter-Relationship**

In Western countries conventional strategies for effecting gun control fall under four broad categories:

- banning high-risk firearms;
- reducing the availability of firearms to high-risk users;
- banning or restricting high-risk uses; and
- promoting acceptance of responsibility for the ownership and use of firearms.

### *Banning High-Risk Firearms*

Some types of firearms have more potential for harm than others, either because they are more likely to be used in crime and violence or because they are more likely to cause serious harm if so used. In most countries automatics and hand-guns have for those reasons been the first targets of bans or special controls. In other countries, for example Canada and Australia, semi-automatics have been included in this category.

The principal limitations to the effectiveness of such controls are that:

- where considerable numbers of such firearms are already available to criminals, it is hard to recover them;
- if a ban is successful, other firearms may be substituted; and
- depending upon the geographic situation of the country, there may be difficulty preventing illegal imports.

### *Reducing Availability to High-Risk Users*

Almost without exception firearms control systems seek to limit the availability of firearms to criminals, children and incompetents. This is effected by such means as licensing,

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restricting access to those who are unsuitable to have possession of firearms by controls on purchases, requiring firearms to be secured against unauthorised users, and providing penalties for criminal misuse.

The limitations of such controls are:

- again the significance of any substantial existing stock of “grey” or “illegal” firearms;
- the difficulty of effectively identifying in advance those who are or may become incompetent; and
- the limited deterrent effect of increased penalties.

### *Banning or Restricting High-Risk Uses*

Common examples are prohibitions on discharging firearms in populated areas, carrying loaded firearms in vehicles, and carrying concealed weapons; and the provision of penalties for using or possessing firearms for criminal purposes.

The limitations of such controls are:

- the first three rely on police being able to discover and arrest offenders before the event, and thus prevent breaches, which is difficult to achieve; and
- in many cases, for example the use of firearms in armed robbery or assault, the offender will already be subject to heavy penalties for robbery or assault, and the likelihood of additional penalties having a deterrent effect is particularly low.

### *Promoting Acceptance of Responsibility for Ownership and Use of Firearms*

Common methods are:

- security requirements;
- systems of registration of individual firearms;
- controls over dispositions of firearms;
- training programmes both in the theory and practice of firearm use;

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- encouraging club membership; and
- public programmes emphasising the risks and responsibilities attaching to firearm use and ownership.

The limitations of such strategies include the difficulties historically associated with registration programmes, which require skills in the establishment and maintenance of registers and high levels of compliance if they are to be effective, the difficulty of reaching those who use firearms for criminal purposes, and of persuading those who are reached of the need to adopt a more responsible attitude.

The first three strategies are generally effected by legislated controls. Although legislation may also play a part in the fourth group (for example security conditions and registration requirements) other forms of encouragement are at least as significant.

Most forms of control are more effective if combined with others. Controls over high-risk uses are more effective if combined with the screening of users. An integrated firearm-specific licensing and registration system has more potential than either licensing or registration on its own. Registration has little value unless combined with controls over subsequent dispositions of the registered firearms.

As will appear later, I believe that appropriate firearms control will require a combination of controls which pays regard to current New Zealand views, and that such a combination could have a beneficial effect.

Three factors will, however, prevent any quick and dramatic improvement in the levels of misuse of firearms by that means. The first is the need to obtain better basic information. The second is the limitations inherent in nearly all conventional control measures, as indicated in the preceding pages. The third is the fact that in the long term substantial advances are likely to depend as much on changing social attitudes towards guns, and achieving a culture which recognises appropriately the responsibilities which attach to gun use and ownership, as on changes in legislated controls. And changes in social attitudes cannot be achieved overnight.

### **4.3 The Arguments Against Further Controls— “The Gun Debate”**

To date, few countries have succeeded in establishing suitable protocols for determining and reviewing the appropriate balance between public and private interests in the use and control of firearms. Attempts to do so have often foundered on the circumstance that firearm control has become a controversial subject, with protagonists on both sides taking up entrenched positions which they then defend with almost religious zeal.

It was not always so. Until the 1960s public and academic interest in gun control was at a low level, save only in the United States where a large accumulation of firearms, and in particular handguns, was causing concern by the 1930s. Elsewhere firearms control legislation imposed quite limited controls, similar in kind to those imposed on other kinds of “dangerous goods”, and concentrated on handguns, which were seen as having the highest potential for misuse.

That relatively relaxed attitude changed with the advent throughout the Western World in the early 1960s of increased levels of violent crime, which carried with them increases in the levels of gun crime (see part 3.1). Concerns about those trends led to greatly increased public and academic interest in firearms control.

One of the earliest American commentators on gun control was Professor Franklin Zimring, who from 1968 to 1969 was Director of Research for a “Task Force on Firearms” as part of the Eisenhower Commission on the Causes and Prevention of Violence. In a series of papers from that period Zimring compared the relative lethality of guns and other common weapons. One of his findings was that assaults with firearms were five times as likely to cause death as assaults with knives, a factor which he described as the “instrumentality effect” of firearms. From that and related research Zimring concluded that there was a positive relationship between gun availability and gun deaths, and that if increases in the US gun armoury were not halted they were likely to increase deaths from violent crime.<sup>165</sup>

Directly contrary opinions about the relationship of firearm availability to crime levels, and the justification for and effectiveness of firearm controls, were expressed in 1972 by Mr Colin Greenwood in *Firearms Control*,<sup>166</sup> the most detailed study, then or since, of the nature and apparent consequences of gun controls in the United Kingdom. Greenwood argued that a fundamental Common Law right to have and use arms for self-defence had been wrongly ignored by the UK Parliament in 1920.<sup>167</sup> He accepted that in 1972 “it would be entirely unsafe to assert that a Common Law right to be armed exists in this country”, but clearly believed that the case for such a right was still a meritorious one. However, his principal argument was that in any event the substantial controls which had been enacted in Britain over the preceding 50 years were ineffective. He claimed that despite the long-standing requirement of registration of rifles and handguns, more than 50 percent of those weapons were unregistered, and that the restrictions controlled only the law-abiding shooters, who did not need control. He also asserted that a comparison of numbers of registered firearms with rates of gun crime since the beginning of the century showed no relationship between the two from which it could be inferred that restriction of the availability of legal guns would reduce the level of gun crime, gun suicides or accidents.

Since those early studies there has been a massive increase overseas in academic and popular studies of gun control issues. While this has provided additional information, it has achieved only slight progress towards reconciliation of the principal opponents. Rather, the “gun control debate” has continued to foster partisanship and high emotions. Those who support controls have been seen by their opponents as part of a conspiracy to deprive gun-owners of fundamental rights and to leave them at the mercy of criminals and dictatorial political forces. In turn those opposing control have been seen as the dupes of the arms manufacturers. As was said in 1991:<sup>168</sup>

Neither supporters nor opponents of gun-control laws have felt any great need to cite facts. Strong emotions have kept the conflicting parties at each other’s throats.



### *Firearms Legislation and the “Firearms Debate”*

The discussion of the submissions to this Review in part 2.7 shows that in 1996 many people in New Zealand took less extreme positions. However a significant minority argued strongly against any form of controls, claiming they were wrong in principle and would in any event be ineffectual.

Whatever the merits of those opinions I have no doubt that they were sincerely held and important to those who declared them. It is also proper to record that, almost without exception, strong opinions were not accompanied by personal attacks, but were combined with a willingness to supply further information, to explain the bases of the stated opinions, sometimes at considerable expense of time and effort. For all those reasons those arguments which were advanced in any significant number of submissions require examination.

The arguments were essentially based on five propositions:

1. that there is no positive link between the availability of legal guns and levels of gun crime or suicide (**the “Link” argument**);
2. that legislated regulation of the use of guns is ineffective to control gun crime (**the “Effectiveness” argument**);
3. that possession of firearms for self-defence should be recognised, and indeed encouraged, as a proper and sufficient reason for possession (**the “Self-defence” argument**);
4. that the only substantial defect in the existing regime is a failure to enforce the existing gun laws by imposing appropriate penalties; and
5. that “the problem is not so much a gun control problem as a mental health problem”.

The last two propositions are best considered as parts of broader questions. However, it is useful to consider and express views on the three others at this point, before proceeding to consider issues which would not need examination if such “root and branch” arguments were accepted.

#### *The “Link” and “Effectiveness” Arguments*

Both arguments received close consideration in the run-up to the recent reforms of their gun control systems by Canada, Australia and the United Kingdom, and were not accepted in any of those countries.

Their most detailed consideration was made in the course of the Inquiry by the senior Scottish judge, Lord Cullen, into the killing at Dunblane on 13 March 1996 of 16 children and their teacher by a gunman using a semi-automatic pistol. That Inquiry was seen by supporters and opponents of gun control laws in the United Kingdom as an appropriate forum to obtain determination of their basic differences, which had been much argued over the preceding decades, but left largely unresolved. Although Lord Cullen saw his brief as being limited to examining the Dunblane incident and making recommendations on matters arising from it, that task did require that he consider the “central issues”, on which he received voluminous advice.

During the Inquiry the Home Office argued for the existence of a strong and direct relationship between the level of legally-held firearms and the rates of gun homicide and suicide. It placed considerable reliance on the opinions of Professor Killias, of the University of Lausanne, and Professor Gabor, Professor of Criminology at the University of Ottawa. Evidence the other way was submitted for the gun user groups by Mr Greenwood and by Messrs Munday, Stevenson and Yardley, all of whom had previously taken active parts in supporting the interests of gun users. Their original evidence examined the Home Office evidence and the papers on which it relied critically and at length. Then, when the Home Office sought to add to its original submissions, a full opportunity was given, and used, to reply to the additional evidence. There could hardly have been a more careful and comprehensive debate.

The issues of the existence of a link between the availability of firearms and the level of gun crime and gun suicide and the effectiveness of legislated controls over firearms were both considered by Lord Cullen in chapter 9 of his report.

On “availability”, while accepting that there were weaknesses in the opinions of Killias and Gabor, Lord Cullen concluded that on balance the evidence supported a finding that there was in the United Kingdom a positive relationship between levels of gun ownership and crime.

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On the question of the effectiveness of legislated gun controls his Lordship first addressed the theory of "weapon substitution" (that if guns were not used, other weapons would be substituted to like effect) but found it unpersuasive. He next considered the theory of "net benefit", and American research<sup>169</sup> which had found that in parts of the United States in which there was high usage of handguns, their possession for the purpose of defence against criminals could discourage crime.<sup>170</sup> On this Lord Cullen commented:

Different countries may require to tackle their problems in different ways. In Great Britain the level of firearm ownership is relatively low. I do not see anything in the net benefit argument which is relevant to this country.

In the result he found against the contention that gun controls were incompetent to affect the level of gun crime.

Finally, as to the link between gun availability and gun suicide, Lord Cullen accepted the opinion of Professor Gabor, and the studies to which he referred, that "higher levels of firearm ownership tended to have higher rates of firearm suicide", a position which Lord Cullen attributed to "the transitory nature of suicidal motivation".<sup>171</sup>

I can see no differences between the New Zealand situation and that in the United Kingdom which would require a different conclusion from that in the Cullen Report on the nature of the link between gun availability and the levels of gun crime and suicide, or on the claimed inutility of gun controls.

One difference points rather the other way. Greenwood noted that in England handguns had been recovered in amnesties at the rate of 25 percent per annum of total registered handguns, and inferred that unregistered handguns probably exceeded those on the register. Whether or not that inference is considered compelling, it is at least persuasive: though Lord Cullen did not see a "definite factual basis" for a similar inference to be drawn as to the total British armoury.<sup>172</sup> But at least with handguns it was logical to argue that in Britain the recovery of a large proportion of unregistered guns would still leave many for use by those wanting them for criminal purposes. The Cullen Report nevertheless concluded that the

claim that availability had no relevance proceeded from a fallacy, namely that if any foreseeable reduction in the volume of guns did not *totally* prevent criminal use, a reduction in availability could not have *any* effect on such use. That conclusion applies equally in New Zealand. But while the evidence shows that there is in this country a considerable store of illegal firearms, nobody has suggested that there are (as in Britain) as many unregistered handguns as registered handguns.<sup>173</sup> Such a claim would be difficult to reconcile with the facts that the last eight amnesties in New Zealand, covering a period of 12 years, recovered in total less than 2 percent of the registered total, and that the price of handguns on the New Zealand black market is as high as ordinary market prices and considerably higher than those of other guns.

In 1996 the Northwestern University in Chicago held a Symposium to examine recent developments in the study of “Guns and Violence in America”. Thirteen of the papers presented were published in the *Journal of Criminal Law and Criminology*.<sup>174</sup> The lead paper, by Zimring, contended that while research over the previous two decades did not satisfy all critics, most current studies were now premised on the theory “that gun use in robbery and assault elevates the rate of injury from that which would result if the same assailants had used other weapons”. However, he warned against expectations of quick and final results from the introduction of closer gun controls in two passages which deserve quotation:<sup>175</sup>

There are so many different reasons why existing data do not point unambiguously to particular firearms control policies that it is almost comforting to list them: important data are not yet available or the facts are in dispute; the value to be assigned to unrestricted gun ownership is a key variable in assessing the desirability of gun policies and is not an empirical question; and the impact of particular control strategies on violence is not known. The determination of proper firearms policy never was simply a matter of processing data and never will be ...

Only a few years ago, a short article on gun control would typically take the form of a “tour de horizon” that came to general conclusions about gun control as a unitary concept. Arguments that sweep so broadly were probably never

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appropriate to the subject. But the research and analysis reported in these pages rubs our noses in the complex reality of firearms control.

The pragmatism central to both those passages is in my view the only safe approach. The studies in gun control to date which deserve respect claim no more than to establish presumptive rules which fall to be applied having regard to local conditions.

The only New Zealand study of either the “link” or “effectiveness” issues has arisen from research into the nature and causes of suicide. Both the IPRU<sup>176</sup> and the MHC have recently taken the position that availability of firearms within the home is a factor which bears on the level of suicide, but that it would be wrong to regard it as a dominant factor. Two paragraphs in particular of the Commission’s submission deserve publication:

[L]egislative and public policy around firearms use is only one component of a comprehensive policy to reduce firearms related suicide deaths. Restricting the means of suicide is one component that needs to work alongside more effective identification of those at risk, increased responsiveness to the needs of high-risk groups and better understanding of suicide risk and warning factors. The area of firearms control as a means of reducing suicide is controversial. What is often not understood is that the controls often do not have a direct relationship but need to be seen in a wider arena of policy and service provision that leads to an overall environment where firearms and their inappropriate use is reduced. The data from Australia does provide some indication that young men are more vulnerable where there is high firearm availability and where there is a culture of gun use (probably linked also to a “macho” culture).

It is not reasonable to argue that increased gun control would greatly reduce the New Zealand suicide rate. However, if one is adopting a conservative approach, it is likely that increased gun control would save some lives. In addition, wider acknowledgement and therefore responsiveness, by those who own and use firearms, of the risk that is posed to themselves and others who have access to their firearms through suicide cannot and should not be ignored. Looking ahead, it is also

likely that ensuring that New Zealand does not become a country where a gun culture is more acceptable will reduce suicide deaths from firearms in the future. We currently do not have such a culture. However, with the increasing impact of media and international movements on our communities, it is not difficult to see that violence including models of self harm could be influenced by the models available through greater global communications.

Standing rather against that acceptance of a link is the 1996 paper by Beautrais *et al*<sup>177</sup> which studied records of suicides in Canterbury. That study doubts the existence in New Zealand of any such relationship between availability and suicide as has been found overseas. The limited area from which its sample was taken, the fact that that area had a lower suicidal tendency than the national average (as calculated both by the IPRU and the MHC) and the difficulty on available information of assessing some of its assumptions and weightings, militate against treating the Beautrais paper as superseding the other opinions. In any event its final conclusion is that:

Whilst it is open to debate whether further regulation and control of firearm access would lead to a reduction in the number of suicides by gunshot, it is our belief that such limitations may prevent a small number of impulsive suicide attempts made in situations of extreme anger or distress.

The absence of other New Zealand research into the “link” and “effectiveness” issues left no alternative but to look for further overseas research, and then endeavour to apply an appropriate adjustment for differences in social conditions. And as the nearest jurisdiction to ours in terms of social conditions is Australia, it is proper to give particular consideration to Australian research and experience.

The most detailed Australasian study of the “link” and “effectiveness” issues was made by Professor Harding of the University of Western Australia in 1981.<sup>178</sup> Harding had the Greenwood and Zimring studies, and endeavoured to relate them to the statistics about firearm use and ownership in Australia which were available to him. On the link between gun ownership and crime he favoured the Zimring position, both

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because of its inherent merit (as Harding saw the position) and also because it appeared to fit the Australian data. His conclusion was that:<sup>179</sup>

The greater the number of guns which are available in a community, the more frequently they will be used in personal violence situations. Opinions may differ on whether cause and effect have been satisfactorily established, on whether dangerousness can be adequately measured, on whether the variables present in diverse and dynamic human situations can be satisfactorily controlled for the purposes of analysis. But the stark fact remains that, for societies deriving from the British tradition and at about the same stage of civilisation and development, gun availability seems to be associated with gun violence. It would be a brave person who denies that there is a link; and the onus is certainly upon such a person to prove his point. In my view, no one has yet done so.

Harding was uncertain about the link between gun availability and gun suicide, stating that on the information he then had he regarded the position as unproved for Australia. A later study by Dudley, Cantor and de Moore<sup>180</sup> reviewed available data, as well as the literature to that date, and concluded that:

Beyond reasonable doubt, a causal relationship exists between gun ownership and firearm suicides and homicides. The role of method substitution is controversial, but is probably less important among the young.

This is a view now shared by Professor Harding.

In relation to the suicide/gun suicide linkage, I agree with the MHC’s finding that there is a significant relationship between availability in the home and the rate of gun suicide, and also the Commission’s rider to the effect that a reduction of such availability is unlikely to produce a major reduction in suicide rates unless it is part of a broader programme directed to that end.

Harding further developed his views on the link between availability of firearms and crime in “Gun Use in Crime, Rational Choice, and Social Learning Theory”.<sup>181</sup> This argued that the much discussed combination of high gun ownership

and relatively low gun crime rates in Israel and Switzerland stemmed from the fact that in both countries:<sup>182</sup>

[T]he citizen predominantly owns firearms as an aspect of his obligation to the state rather than as a means of expressing his own desires and values. *The social meaning of gun ownership is anchored in civic responsibility.*

He compared this with the position in the United States, where Zimring and Hawkins<sup>183</sup> saw “personal gratification” as “the overwhelming motive for private gun ownership”.

Harding found additional support for culture, as “a key variable between current social conditions and behaviour” affecting the extent of misuse of guns, from his examination of the patterns of intra-group violence of Western Australia Aborigines. His research found that, while the homicide rate for Aborigines was between six and 15 times the national homicide rate, they were less likely to use guns as murder weapons. Once the young Aborigine had sufficient stamina he was permitted to join the adults in hunting expeditions and came to regard the firearm as an essential tool for that purpose. As one Aborigine said:<sup>184</sup>

Guns are for shooting tucker ... not people.

Two other Australian studies support a positive linkage. The first, a 1988 article by Marsden,<sup>185</sup> argued that the much higher rural than urban ownership of guns in Australia was the reason for higher numbers of firearm assaults and firearm suicides in rural than in urban areas. The second, a 1990 article by Wallace,<sup>186</sup> revisited the same topic in a consideration of NSW homicides. This studied the nature of the weapons used and the localities of the offences. It showed a 60 percent higher proportion of gun homicide in rural than in urban areas. Wallace commented “[i]t is tempting to believe the relationship between gun ownership and the greater proportion of gun homicides is more than coincidental”.

Support for the view that gun controls can be effective also appears to be given by a comparison of the rates of homicide and gun homicide in the different Australian States. Because



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the numbers of homicides in the three smaller States or Territories (Tasmania, Northern Territory and ACT) are so few that any major incident skews their results completely, the comparison was limited to the five larger States.

Historically the extent of gun control in Queensland and New South Wales has been relatively slight, and that in Victoria, South Australia and Western Australia more substantial. Registration of individual firearms has been negligible in the two first named States, present in an incomplete form in Victoria, and present in more extensive forms in South and Western Australia. Of all five States Western Australia has the longest history of gun controls, these having been built up progressively over the past 50 years. It was the only State where the recent reforms did not call for a major alteration of its procedures.

The statistics published by the Australian Institute of Criminology in the volume *Violent Deaths & Firearms in Australia: Data & Trends* to 1994, and the statistics provided by the Australian Bureau of Statistics for 1995, produced comparative rates per 100,000 population for firearm homicide for the five years 1991 to 1995 as follows:

Western Australia	0.28 (registration)
Victoria	0.36 (registration)
South Australia	0.42 (registration)
New South Wales	0.49 (no registration)
Queensland	0.51 (no registration)

Because homicide rates vary between States, another relevant ratio appeared to be that between firearm homicide and all homicide. This produced the following percentages:

Western Australia	13.3 (registration)
Victoria	16.8 (registration)
South Australia	19.0 (registration)
Queensland	26.2 (no registration)
New South Wales	27.2 (no registration)

In 1981 Harding endeavoured to relate data about robberies and gun robberies in Australia to studies of that topic in the United Kingdom and United States and noted that sufficient

data were not available for that purpose.<sup>187</sup> He saw research in this area as being required as a matter of urgency. Attempts this year to obtain Australian statistics of robbery and armed robbery to complete a similar comparison to that made in relation to homicide were equally unsuccessful.<sup>188</sup>

As robbery is generally thought to be a more reliable basis for comparative study than homicide, the above comparison cannot have compelling significance. At the same time the extent of the match between the levels of firearm control in the different States and their levels of firearm homicide does warrant consideration.

### *The “Self-Defence” Argument*

All countries whose criminal codes stem from the English Common Law include some provision which excuses or reduces criminal liability for action necessary to the accused person’s self-defence. The present New Zealand provision is s 48 of the Crimes Act 1961, which closely defines the limits of that necessary principle.

The self-defence proposals promoted as part of the “gun debate” go beyond such remedial provisions and seek recognition of a right to obtain and “bear” arms for the purpose of warding off possible attackers.

The assertion of a right to bear arms may be a live issue in the United States by reason of that country’s constitutional provisions and of the evidence available there that a reduction in gun crime may result from increasing concealed gun ownership in districts which have high levels of gun crime and where the possession of firearms, and especially handguns, is the rule rather than the exception.

Lord Cullen concluded that it was not a live issue in the United Kingdom in 1996. In my view it is equally not a live issue in New Zealand in 1997, and has not been for many years. Ever since 1920 our legislature has proceeded on the assumption that it is desirable to control firearms in accordance with their potential for misuse. That is also the position taken by a clear majority of those people who made submissions to this Review, and in that regard was the position taken not only by a majority of non-users, but also by a majority of shooters. Indeed only a handful of the 2,800 submissions argued that

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self-defence should be recognised as a sufficient reason for possession of a firearm in this country, and a far greater number specifically disapproved that situation.

It should nevertheless be noted that since this Review was commissioned there have been public statements by two senior police officers supporting consideration of arming security personnel, such as bank guards. Those comments produced immediate and adverse comment, generally based on the argument, which in this society must be unanswerable, that the principal result of the arming of guards would be to raise the level of violence. Thus the Chief Executive of the Bankers Association, having recalled that there was a time when bank officers customarily carried firearms, added that: “[f]ortunately somebody was wise enough to put an end to that practice”.<sup>189</sup>

In my view there is no sound argument for the recognition of a general right to obtain and possess arms for self-defence, and clear argument against the desirability of doing so.

Similarly, the question of whether the possession of firearms should be deemed a “right” or “privilege” is a barren argument in this country, where the issue is not whether there should be controls over firearms, but what controls are appropriate in the public interest.

*Summary*

To sum up on the first three basic issues:

**The link or relationship between firearms availability and misuse of firearms:** It is appropriate to consider this separately in relation to each of the three types of misuse: criminal misuse; suicide; and accident.

*Criminal misuse:* The material previously considered supports a similar conclusion to that which Lord Cullen reached in relation to the United Kingdom, namely that there is a positive relationship or link between availability and the level of gun crime. At the same time the availability of a substantial pool of “illegal” guns in New Zealand prevents the conclusion that this is such a strong and direct link that a particular reduction in legal gun availability would produce a proportionate reduction

in gun criminality. Put another way, a 20 percent reduction in the number of legal firearms could not reasonably be expected to achieve anything approaching a similar reduction in the level of firearm crime. That circumstance makes it necessary to consider the relative costs and benefits likely to flow from the recovery of particular classes and quantities of firearms, which factor must be important in deciding the scope of any banning and buy-back programmes.

*Suicide:* This issue was also fully argued before Lord Cullen. He concluded that the link between gun availability and gun suicide was somewhat clearer than that he had already found between gun availability and gun crime. Informed Australian opinion now takes the same view. The majority of New Zealand opinion is to similar effect, while cautioning that reducing the availability of firearms should be associated with other initiatives. While still further research must be appropriate, a positive link of the kind recognised in the MHC submission is in my opinion reasonably well established.

*Accidental misuse:* There is no evidence to suggest that availability has any less an effect on the level of accidental misuse than on criminal or suicidal misuse.

Legislative controls of the minimum age for users, and providing that firearms should be secured from children and others not capable of using them properly, are standard and sensible measures to reduce the risk of accidental misuse.

**The argument that legislative controls over the use of firearms are ineffective to control gun crime:** The reasons which led Lord Cullen to find against this argument seem to me equally valid in the New Zealand situation. Further support for that conclusion is given by the circumstance that after considerable debate the Canadian Government supported additional gun controls in 1991, and that after yet further and very intense debate it supported yet further controls in 1995. In Australia support for gun controls was articulated at some length in Harding's 1981 study. More recently such support was inherent in the decisions to proceed with broad reforms approved countrywide in 1996. Some additional support can be

found in the evidence of a relationship between the extent of controls and the rates of gun homicide in the different States.

While there are limits to the effectiveness of legislated controls, there is no sufficient case for the contention that they are ineffective, and a clear preponderance of evidence and opinion the other way.

**The self-defence argument:** The arguments are overwhelmingly against the recognition of a general “right to bear arms” in this country. Indeed it would be timely to include in any new legislation a declaration that self-defence is not a legitimate purpose for the acquisition of firearms in this country.

■ RECOMMENDATION

- 1 That the new Firearms Act specifically provide that self-defence is not a legitimate purpose for the acquisition of firearms.**

#### **4.4 Recent Movements in Overseas Opinion**

While the reasons for worldwide increases in the attention being given to gun control over the past four or five years are not clear, there can be no doubt either that such increases have occurred or that the trend shows no signs of abating.

One reason suggested for the new wave of interest is that it originates from the application of new methods of analysis by social scientists examining the causes and patterns of violence, and the fact that these tend to highlight the role of firearms by throwing up “the statistical patterns that public health researchers favour”.<sup>190</sup> Certainly it is from public health organisations rather than the criminologists or criminal justice organisations that the call for reforms has chiefly come. Other causes may have been the emphasis given by the media to gun violence as one of the most dramatic forms of violence, and the concern felt by an increasingly urbanised society which has become increasingly unfamiliar with firearms and the legitimate uses to which they can be put. Other particular concerns of

countries bordering the former USSR have been the emergence from the area of large quantities of former military hardware, and evidence of international trafficking in arms, and of links between organised crime and drug and gun trafficking.

In addition, mass killings have triggered political responses in several countries. Such events preceded the reforms made in Canada in 1991 and 1995. The Australian reforms of 1996 to 1997 followed the killings at Port Arthur. The English reforms of 1996 to 1997 followed the killings at Dunblane.

In all three countries, the reforms created controversy, but gained parliamentary approval after active public and political debate. In Canada, opposition to the new reforms continues to subsist at a relatively high volume. In Australia, where spokesmen for gun users warned of a shooter backlash and massive non-compliance, public opinion appears to be overwhelmingly in favour of the reforms. In all three countries, Canada, Australia and the United Kingdom, the balance of public opinion appears to have moved towards tighter controls.

#### *Canada*

The recent Canadian reforms are a considerable extension of controls introduced in 1991. They limit the use of certain classes of firearms and provide for the establishment of closer licensing and the registration of firearms countrywide.

#### *Australia*

In Australia the immediate catalyst for the reforms was the massacre of 35 people at Port Arthur in April 1996 by a gunman wielding two semi-automatic weapons. The following month the Federal Government urged the enactment by the States of stricter and uniform gun laws, and provided \$A500M to the State Governments to implement a ban and buy-back of semi-automatic weapons, the weapons used in the massacre, and to establish uniform systems of firearms control including licensing and registration of firearms.

#### *United Kingdom*

In the United Kingdom, the massacre of 16 children and their teacher at a primary school in Dunblane, Scotland, by a gunman using semi-automatic pistols, prompted the banning

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and buy-back of pistols, but did not seek to control semi-automatic rifles.

*United Nations*

Still wider movements for closer gun controls are now appearing in international councils. In 1995 a United Nations Congress at Cairo called for consideration of “Firearms Regulation for the Purposes of Crime Prevention and Public Safety”. This became the responsibility of the Economic and Social Council, and its agency the Commission on Crime Prevention and Criminal Justice. The latter set up a project committee to obtain details of the present systems of firearms control of UN member states. Questionnaires sent out late in 1996 to 49 member states, including New Zealand, produced 46 replies by 5 March 1997, a result the committee considered “indicative of the strong interest of the international community in the question of firearm regulation”.

The following month the committee brought out a draft report advising progress to date, with an analysis of the answers to the questionnaires which is to be further developed with the intention of publication in final form at the end of 1997.

The committee’s draft report was considered at a meeting of the Commission in Vienna on 9 May 1997. This endorsed the conclusions and proposals of an expert group working with the committee which had: (a) reported that trans-national illicit trafficking in firearms had become a matter of serious concern and that there were established links between such trafficking, serious crime and trans-national organised criminal networks; and (b) asked member states to recognise as appropriate common elements, and where they did not already exist to include in their arms control codes, provisions:

- regulating the safe use and storage of firearms;
- providing appropriate penalties for serious offences involving the misuse of firearms;
- for amnesty or similar programmes to encourage citizens to surrender illegal, unsafe or unnecessary firearms;

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- for a licensing system to ensure that persons who are at high risk of misusing firearms are prevented from possessing and using firearms; and
- for a record-keeping system for firearms, including a requirement for the appropriate marking of firearms at manufacture and at import to assist criminal investigations, discourage theft and ensure the accountability of owners.

One resolution of the project committee, which has been endorsed by the Commission, was to hold four regional workshops later this year, including one for Asia and the Pacific to consider the exchange of information and the endorsement of the five stated principles for arms control.

The present draft report contains a series of tables. Table 1, concerning general regulation of ownership, shows New Zealand as towards the centre of the international scale of control. Table 4, on ownership and regulation of firearms, shows New Zealand second only to Finland in numbers of firearms per 1,000 persons, New Zealand at 308.90 being markedly higher than Canada at 241.48 and Australia at 195.90. Table 6 shows deaths involving firearms per 100,000 persons and lists statistics for homicide/firearm homicide, suicide/firearm suicide and accidental death involving firearms. On the firearm homicide table New Zealand was markedly lower than either Australia or Canada, (New Zealand 0.22, Australia 0.56, Canada 0.60), while for accidental death it was higher (New Zealand 0.29, Australia 0.11, Canada 0.13).

However these statistics need to be interpreted carefully. In each case the tables are footnoted:

The data are “as reported” in the survey. There are often differences in the way in which states compile statistics. International comparisons should therefore be made with caution.

That comment is reinforced by para 62 in the section “Conclusions Drawn from the Study”. This advises that existing sources of information, including the study itself, “still



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could not be used to evaluate the comparative effectiveness of current levels of firearm regulation in reducing harm”.

The need for care in interpreting the questionnaire material can be illustrated by considering Table 4, the table which considered ownership per 1,000 persons and has been the subject of newspaper commentary in recent weeks. Table 4 attributes to New Zealand totals of 1.1 million firearms and 250,000 licensees. The estimates in part 2 of this report are materially lower—700,000 to 1 million firearms and 206,000 licensees. Table 4 similarly attributes to Australia a total of 3.5 million firearms, whereas estimates of the Australian armoury made prior to the estimate of the current buy-back ranged from 3.5 million as a lower limit up to 5 million.

The 1994 study by Gabor in Canada<sup>191</sup> concluded that the per capita number of firearms in Canada was “much lower than in the United States, about the same as Australia and far in excess of most European countries”. Nothing in the material provided to this Review suggests that Gabor’s equation of Australian and Canadian rates of ownership was at fault. The same material does suggest that, if indeed firearm ownership in New Zealand is higher than that in Australia, the difference is marginal and certainly insufficient in itself to call for different gun control policies.

The appropriate use of the table is as a guide, to be considered along with any other information available. If a particular comparison is made of rates of firearm ownership in Canada, Australia and New Zealand, using Table 4 and such other information as is available, it is a fair inference:

- that apart from the special difficulties experienced by Canada because of its long and relatively open boundary with the United States, and a consequently high population of handguns, the rates of firearm ownership in all three countries are of a similar order;
- that all three have relatively high rates in the international scale; and
- that those rates are much lower than that in the United States, but much higher than in the majority of European countries—this is understandable having regard to the predominantly

rural beginnings of all three countries, their wide open spaces and the greater opportunities for hunting and game shooting which each has provided, and still does provide, than do the European states.

In the absence of direct New Zealand representation in the Commission's or the committee's proceedings, I asked the Australian delegate, Mr Daryl Smeaton, Director of the Australian Commonwealth Law Enforcement Board, if he would supply copies of the decisions of both bodies and keep me informed of their progress. I am indebted to him for his prompt assistance in those regards. Apart from providing copies of the relevant record, he advises that the reform proposals summarised above met opposition from the National Rifle Association of the United States, but otherwise received widespread support. He considers it likely that when the Commission's recommendations are put before the Economic and Social Council they will be approved, and that funds will be found to proceed with the suggested programme. He sees the next objective for the Commission as seeking approval of common basic principles for firearms control. This he thinks will be the principal task for the regional workshops, which he believes could be set up this year, as the Commission has proposed. He saw the ultimate aim, "harmonising" gun control systems, as a more complex and longer-term objective. He advised that of the four regional groups the Asia and Pacific region, into which New Zealand would come, is probably the most committed to the proposed reforms, regional support being led by Japan, and strongly supported by Australia, with other regional states supporting and none opposing.

In terms of the five basic principles of which approval will be sought, the New Zealand code already recognises the first four. It is the fifth, the establishment of a "record-keeping system for firearms", which is absent from our current "licensing but no registration" arrangements.

The different needs of individual countries may well slow progress beyond the consideration of "basic principles" to the settlement of uniform gun controls. However, the degree of support for reform to this point must make the likelihood of

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achieving the next goal of the Commission more than a remote possibility.

Approval of those "basic principles" by regions, and later by the Commission, would not bind this country to their acceptance and implementation, at least until and unless New Zealand became a signatory to a Convention or Treaty at General Assembly level. But it would be unrealistic to consider deferring the reform of New Zealand controls until those processes may be completed.

However, it would be equally unrealistic for a country reviewing its arms controls to disregard overseas developments and fail to keep in touch with international and regional views on those issues. This must particularly be the case when it is appreciated that our nearest neighbour, Australia, is taking a leading part in the United Nations reform programme.

Further, the geographical remoteness of New Zealand from those areas from which are emerging the weapons causing concern at United Nations level, and from most of the movements which have given rise to international terrorism, should not be seen as a sufficient guarantee that these will not affect us in the future.

New Zealand should consider joining in any further consideration by the United Nations' councils of firearms control issues.



## 5

# The Effectiveness of the Present System of Firearms Control

### 5.1 Strengths of the Present System

#### *Vetting for Personal Fitness*

The 1983 Act proceeded from the premise that it should be possible, by careful investigation of applicants' suitability to possess firearms, to avoid, or at least much reduce, the likelihood that firearms would fall into the wrong hands, and accordingly that systems which sought to link particular weapons to particular individuals could be abandoned.

The reliance which that policy placed on personal vetting required the development of new and stricter vetting procedures. In addition to computer tests conducted to ascertain whether the police records contained anything unfavourable to an applicant, the applicant was required to give detailed personal information and to provide the names of referees with whom the Police could check the correctness of the information given and the possible existence of known unfavourable characteristics.

However, the full extent of these procedures applied only to new applicants, and applicants for 1983-style licences who had licences or certificates of registration or a permit to buy a firearm issued under the previous legislation were subjected only to computer checks. If these checks did not show any matter of concern, no other vetting took place. In the result by the far greater majority of those who received lifetime licences

in the 1983 to 1985 Project Foresight licensing were subjected only to relatively casual investigation.

The 1992 Amendment was in large part a response to the Aramoana tragedy. David Gray, of Aramoana, had at the time a current firearms licence, and it was thought by many people (though not by the Police Complaints Authority) that had he undergone a complete vetting the tragedy might have been avoided. The 1992 Amendment was accordingly designed to provide for the regular vetting of all licensees, commencing with a re-vetting of the existing licensees over the period 1993 to 1997. Those seeking special endorsements were to be the most intensively investigated and were to provide additional referees. A new national standard checklist provided “a guide to the bare minimum requirements”. Vettors were advised that visits to applicants’ addresses would be “invariably mandatory” for all endorsement seekers, and “usually mandatory” for A licence applicants.<sup>192</sup>

By mid-1994 it was apparent that the Relicensing Project was more expensive and resource-intensive than had been estimated and that a very low level of compliance was being achieved. After a conference held to consider how to “streamline” the re-licensing process, a more discretionary vetting procedure was settled. While it was still to be obligatory to check with the first referee (a spouse, partner or next of kin), this might be conducted by telephone. It would then be within the discretion of the vetter whether a second referee were spoken to or some other check made on the applicant’s suitability.<sup>193</sup> Those procedures applied to a large majority of the applicants.

In 1995 a new system was introduced which enabled a record (or “flag”) to be kept on the Wanganui computer of persons who appeared to a police officer to be unsuitable to hold firearms. Its purpose was to ensure that if an application for a licence were made subsequently, the opinion recorded and the reasons stated for the opinion would come to the attention of the officer required to consider the application.

#### *Analysis of Police Files*

In order to get some idea of the quality of the vetting process, and the significance both of the discretionary jurisdiction to

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refuse or revoke licences and of the practice of “flagging” people as unsuitable for the receipt of licences, three sets of files were obtained from the Police. These comprised: 89 revocation files, randomly selected from a variety of districts, from the period 1993 to 1996, which represented 5 percent of the files recorded as revocations in the Wanganui system over that period; 72 refusal files randomly selected from as far back as 1992 and representing 3.5 percent of the refusals recorded over that period; and 67 files relating to persons flagged as “unsuitable”, again randomly selected from a variety of districts from 1995 and 1996, which represented 22.6 percent of the total files flagged over that period.

The two matters arising from the examination of those files which are significant at this stage are:

- that the analysis of the 228 files disclosed a generally conscientious and cautious approach by the Police to their duty—if anything the officers appeared to lean towards the “better safe than sorry” approach, both when considering applications and revocations and when creating an “unsuitable flag”; and
- that while some of those who were refused licences or had their licences revoked may have had a case for the reconsideration of such decisions (and of course, could have sought a reconsideration by the Courts if they had thought fit to do so), a reading of the files left no doubt that the majority of the decisions made were thoroughly justified.

While it is impossible to know how many crimes were averted or tragedies avoided by those decisions, while the vetting system may be amenable to further refinement, and while either in its present form or with such refinement as can be devised the system cannot be wholly effective in eliminating the unsuitable, it would be plainly wrong to discontinue the personal vetting process. It is outstandingly the most useful feature of the present system.

It is appropriate to compare our vetting system with those operating in the United Kingdom and Australia. The English system is discussed at length in the Cullen Report.<sup>194</sup> That report describes a careful but less detailed examination of

applicants than ours, but at least as close a re-vetting on renewals, when English licensees are expected to justify the continuance of their licences and to prove continuing use. In Australia the latest reforms propose closer examination of applicants for licences, but as yet the procedures remain unsettled. To this point, save possibly in Western Australia, the New Zealand vetting process appears to have provided a closer and more effective examination than those which have operated across the Tasman.

### *Safety Training*

There can be little doubt that the work of the Mountain Safety Council team has played a significant part in reducing the incidence of firearms accidents in New Zealand. Part 6.2.2 of the report considers whether the training courses presently run could be extended to incorporate practical training and refers to recent Australian experience of a similar development. Whether or not that development is approved, the size and value of the commitment of the Mountain Safety Council team, and the value of requiring training as a pre-condition of the grant of licences, should be seen as a strength of the present system.

### *Use of Club Disciplines*

The only formal incorporation of club structures into arms control is in relation to pistol shooting (as described in part 2.6). Only those who are members of pistol clubs recognised by the Police may be issued with a pistol endorsement, and pistol shooters are required to take part in club activities at least 12 times a year.

Possible reforms of the pistol provisions are considered in part 6.1.1 of the report. At this point it is appropriate to record that the Police's control of handguns in New Zealand is very much supported by the disciplines imposed on their members by pistol clubs, acting under the supervision of the New Zealand Pistol Association. Those disciplines have achieved a truly commendable record of safety in the use of handguns in club situations. Since this is a real strength in the present system, consideration should be given to the practicability of enlisting other clubs' support. This would depend upon their acceptance of the appropriateness of rules imposing similar



standards of discipline upon their members, and of reporting to the Police any fall from those standards.

## **5.2 Weaknesses of the Present System**

The principal systemic weaknesses are described in this section; weaknesses in the administration of the system are considered in part 6.4.

### **5.2.1 Absence of control over firearms, as distinct from shooters**

The present system registers particulars only of restricted weapons, handguns and MSSAs, which together comprise no more than 4 percent of the total armoury. The consequences of that situation are:

- that the “arms controllers” have no idea of the numbers of firearms within the country or within the control of any particular individual, or where those firearms are;
- that they have no effective control over dispositions of firearms, either by sales, transfer or other dispositions between living persons, or over the manner in which firearms are dealt with upon the death of a licensee;
- that the fact that particular firearms cannot be traced to their owners gives no encouragement to owners of firearms to secure their firearms properly, or to report the theft of guns, which might cause an inquiry as to the security under which they had been held;
- that the system cannot generate enough information to inform and develop firearms policy; and
- that some evidence which would be useful for crime prevention and detection is lost—less frequently than many would expect, but in cases where it could be of major importance to the solution of a serious offence.

Details of the arguments for and against the registration of firearms are set out in part 6.2.1 of this report, and will not be reviewed here. For present purposes it is sufficient to note the adverse consequences which flow from its absence.

### **5.2.2 Ten-year licences**

The stated police preference in 1980, before their belated turn away from a combined licensing/registration system to one which depended wholly on licensing and the vetting of licensees, was for a combined system with licences to be renewed every three years.<sup>195</sup> Instead the 1983 Act moved to lifetime licences.

In 1992 the police preference was for three- or five-year licences. They were advised that political considerations required that licences be for a ten-year period, notwithstanding that it was understood by Government that the rationale for abandoning lifetime licences was to ensure sufficiently frequent reviews to avoid the risks involved in a long period without re-vetting licensees. The same record also shows that the particular problems likely to arise from changes of address over any lengthy licence term were canvassed at that time.

Subsequent experience has shown that the ten-year period has caused major problems in maintaining accuracy of the licence register. Various calculations have been made of the size and significance of the address problem. In the report *Policing Gun Laws* prepared for the New Zealand Police Association,<sup>196</sup> Mr Philip Alpers reported police estimates of errors in addresses ranging from 30 to 50 percent. A December 1995 draft review prepared by PNHQ<sup>197</sup> calculated that 19.66 percent of the call-in letters sent to licensees with the initials C to J were being returned. In a review of this topic prepared on 9 December 1996 for this Review by the Firearms Licensing and Vetting Co-ordinator, he estimated that for every call-in an average of 20 percent of letters were returned to the Police, but said that the Police considered 25 percent to 30 percent “the most likely” overall error rate.

Because one of the key questions which must be considered before proposing the introduction of new methods of administration must be whether or not existing police records are accurate, the Review commissioned Mr Reece Walters of

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the Institute of Criminology to make an independent examination of police records and estimate the error rates in respect of:

- address information contained on PNHQ licensing records; and
- details in the MSSA and pistol registers.

His research was based on an analysis of 159 licence files in respect of both first licensing and renewal applications, randomly selected from the years 1993 to 1996.

The name and address details were first checked against TESSA (Telecom Emergency Services Support Application) data and the 1996 Electoral Roll. Follow-up letters and telephone calls were made to those licensees whose details were not established by the TESSA and Electoral Roll search. This disclosed 85 percent correct addresses, a somewhat better result than police personnel within firearm licensing had predicted, and markedly better than that which had been suggested in *Policing Gun Laws*. Some of the difference arises from the more recent material he was considering. At the same time, the nature of the errors in the address details for the 15 percent not cleared was considered to indicate that two-thirds were “effectively untraceable”.

The inquiry then proceeded to consider the accuracy rate for name, address and date of birth, all data important for tracing and endeavouring to correct irregularities or non-compliance. The additional factor reduced the number of correct recordings to 80 percent.

Mr Walters then obtained from the Land Transport Safety Authority, the Ministry of Fisheries, the Fish and Game Council of New Zealand and the Maritime Safety Authority advice about the accuracy of their records and the effect of longer or shorter licence periods. That advice showed rates of accuracy in roughly inverse ratio to the length of the licence period, ranging from 50 percent accuracy for lifetime licences to over 90 percent accuracy with annual licences. Details provided in the report appear to justify the conclusion that:<sup>198</sup>

Information systems which are regularly accessed and updated are more likely to increase accuracy and hence efficiency than data which remains “inactive” for long periods of time.

A further problem arising from the ten-year licence period is necessarily the accumulating effect of deaths of licensees. Part 6.2.1 of the report recommends protocols to deal with that problem, but clearly a shorter licence period would prevent the accumulation of such defects, which would accrue at the rate of 1.5 percent per annum if licensees are affected by the national mortality rate for persons over 18.

### **5.2.3 The competition of arms business with all other police business**

Time and time again I was advised by police officers or former police officers with experience of the Arms Office business that pressures on the Police to respond to other more dramatic and urgent needs had resulted over recent decades in the arms business being given a progressively lower priority, and becoming under-resourced. Other common concerns were that there was a reluctance at district or regional level to devote resources to monitoring compliance with the arms code or to devote resources to the detection and prosecution of other than the most blatant breaches of it.

It is impossible for me to make any satisfactory measurement of the extent of the support allocated to different aspects of police work, let alone trace the trends in such allocations.

It is, however, appropriate to note:

- that this view was expressed not only by those presently working in arms offices, but also by others who had moved out of such positions and are now back in the main stream of police work, but are aware of the strains there;
- that it would not be difficult, if faced with the responsibility of apportioning resources across the whole gamut of police responsibilities, to see arms control business as less urgent than some other police duties; and
- that the history of recurring underestimation of the needs of arms control is hard to understand

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unless that work has indeed come to be seen as a residual obligation, rather than an area with its own particular needs which have to be provided if it is to function properly.

It is accordingly a matter of some importance that, whatever variation on the current arrangements is selected, it incorporates some means of ensuring that competition with other work does not in the future result in a similar suppression of the development and maintenance of an efficient arms control system.

#### **5.2.4 Complexity and awkwardness of the arms code**

The arms code is contained in the Arms Act 1983 (a 44-page statute with 78 sections), the 1992 Amendment (a 21-page statute with 39 sections) and the Arms Regulations 1992.

The 1983 Act is in itself difficult to construe, and its construction is certainly not helped by the circumstance that the 1992 Amendment was clearly compiled in haste and relates uneasily to the principal Act.

Harding's 1981 review of the Australian gun legislation criticised its structure:<sup>199</sup>

As in so many other areas of law, most jurisdictions have allowed a situation to develop where the sources are so numerous or so obscure that the ordinary citizen cannot reasonably be expected to be able to ascertain what the operative law actually is.

Since that was written several States have amended their gun laws. It is a sad commentary on the state of the New Zealand code that, by comparison, most Australian legislation is markedly more user-friendly and comprehensible. If there are to be major reforms it is important that time be taken to rewrite the legislation in modern form, and that another layer of complexity is not simply added to what is already complex and obscure legislation. This is recommended in part 6.2.5.

### **5.3 Viability of the Present System**

It will be apparent from the content of parts 5.1 and 5.2 that in my view the weaknesses of the present system far exceed its strengths.

The recent acceptance by the Police that their earlier support of the present system is no longer appropriate and that the system is in need of radical reform, reduces the need to justify my assessment. However, it is sufficiently important to call for some additional justification. That can be found in the facts:

- That the present 1992 Relicensing Project is not meeting its stated principal objectives. This was recognised in a series of reports by the Firearms Co-ordinator, most plainly in a report dated 21 March 1996 which advised that the intended compliance rate was unachievable, that instead of being self-funding costs were exceeding revenue by 80 percent, and that the project was generating a large number of surplus firearms and there was no strategy to deal with that problem.
- That the reassessment of costings made by Coopers & Lybrand for the purposes of this Review found that actual costs of the licensing project considerably exceed police estimates.
- That in its present form the system cannot provide sufficient information to allow its administrators, or the government, to recognise and take account of changes in gun use and ownership.

The question is not whether the present scheme should be sustained, but the extent and timing of necessary change.

#### **5.4 Effect and Costs of the Enhancements Proposed in the May 1996 Review**

The cost estimates in the May 1996 Review were not easy to construe. Estimates of the cost of operating the existing system appeared to be net both of income and of some allowance for “ordinary” arms work, but the amounts of the offset in each

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case were not stated. Similarly the cost of the proposed enhancements was not clearly spelt out, the largest cost figure given being a sum of \$400,000. When further particulars were sought I was advised that the Police had decided to ask Coopers & Lybrand to cost both the present scheme and the suggested enhancements, and that that firm had been asked to confer with me about any particular costing issues arising in the course of the Review.

That finally resulted in my receiving from Coopers & Lybrand two reports. The first, dated March 1997, estimated the cost of:

1. the present scheme; and
2. the enhancements to that scheme proposed by the May 1996 Review.

The second, dated May 1997, estimated the cost of:

3. a range of possible "buy-back" options; and
4. a combined licensing and registration system, with three-year licences.

I requested that the estimate of the cost of the present scheme include the cost of issuing the final batch of call-in notices and of taking steps to complete the call-in programme, so far as that can be achieved, by 30 June 1998, as I agreed with the police view that it would be wrong to stop the programme at this time. That work apart, the first estimate looked at an existing situation. Accordingly, although it must have been affected to a degree by the state of the arms records, there is no unusual factor which would call for particular caution in receiving and applying that estimate.

In summary Coopers & Lybrand estimated the current cost of firearms control to be \$11.1M per annum, made up of \$7.5M for licensing activities and \$3.6M for monitoring and enforcement activities. The main reason for the increase from the May 1996 police estimate of \$7.2M was said to be "the different costing methods used, ie. the somewhat disparate nature of previous costing exercises".

The other three costing exercises were all affected, in one degree or another, by the circumstances that on a number of central factual issues there was insufficient reliable information

to permit precise assessment, and that I found it impossible to signify in advance of the completion of the inquiries being made for the Review what my recommendations were going to be. A perusal of the two reports shows a commendable professionalism in their endeavour to overcome those difficulties and provide helpful guidance on the principal cost issues. In my view the reports will do that provided their readers note and keep in mind the advice that:<sup>200</sup>

Given the high number of assumptions and the broad level of process definition, costs indicated in the report should be regarded as broadly indicative of the level of expected expenditure.

I return then to look directly at the subject of this part of the report, the effect and cost of the enhancements proposed in the May 1996 Review. While that Review recommended a large number of changes, as befitted a report which declared the current system to be effective and to have a high level of integrity, the amendments or “enhancements” it proposed were preceded by advice that “none of these matters are major”.<sup>201</sup> I would agree with that assessment of the enhancements so far as it relates to their effect on the system. For the greater part they are sensible proposals which could be expected to have some beneficial effect on the existing system, but their overall effect on its inadequacies would be slight.

Some dealt with technical or drafting questions and do not need consideration here. Those which have more general significance can be grouped and considered under the following headings.

#### *Military Style Semi-Automatics*

Recommendations 3, 4, 5, 6 and 7 concern the importation and purchase of MSSAs and parts and a requirement that those obtaining replacement parts surrender the worn parts to the police without compensation. They proceed from the stated assumption that the decisions made in 1992 to allow MSSAs to be licensed as such, or to be “sporterised” by removing military characteristics and thus attaining a “sporting configuration”,



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mean that “the arguments about MSSAs having any use in New Zealand are largely irrelevant”.

As the discussion of public and shooters’ attitudes in part 2.7 indicates, that is not the view of a significant part of the general public, nor even the view of a majority of shooters. In part 6.1.1 it is concluded that the balance of public interest is in favour of a ban, which supersedes the need for full examination of the May 1996 recommendations about MSSAs.

#### *Security*

Recommendations 8 and 17 propose that it be an offence to fail to comply with security conditions. The only sanction currently available for non-compliance is revocation. As is pointed out in part 5.2, that penalty is inappropriate for minor breaches, and is very seldom invoked. Both recommendations are clearly appropriate and are dealt with in part 6.2.3. It may be an area in which instant fines would be an appropriate procedure.

Recommendations 9, 10, 11, 12 and 13 proposed higher levels of security for dealers’ premises and that the current guide to “minimum security requirements” for dealers be rewritten to provide a more informative and user-friendly publication. Recommendations 14 and 15 propose more rigorous inspection of dealers’ premises, and recommendation 16 proposes that districts liaise with medical occupational and health inspectors regarding inspection of dealers’ premises.

Apart from the last of those recommendations, which seems likely to raise as many difficulties as it would solve and to move away from the objective of having arms control officers adequately trained in assessing security requirements, those recommendations would all assist in improving security. However, in my view the need for better security goes beyond the area of dealers’ security and calls for a restructuring of the security provisions of the code to ensure that levels of security relate to the degrees of hazard involved in the numbers and types of firearms being secured. Proposals to this end are discussed and developed in part 6.1.3.

#### *Continuation and Implementation of the 1992 Relicensing Project*

Recommendations 19, 20, 21 and 22 follow a brief description of the state of the Relicensing Project in May 1996. Recommendation 19 suggests a further review to establish the adequacy of current fees and make recommendations on any fee increases required. Recommendation 20 suggests a public campaign aimed at increasing licensing compliance which it estimates would cost in the vicinity of \$400,000. Recommendation 22 proposes that Firearms Licensing develop a strategy to assist districts in following up on sporterised MSSAs, and Recommendation 23 proposes that districts develop and improve follow up procedures “subject to additional finance being available”.

Leaving aside the question of underestimation of the cost of those proposals, it is my view that they underestimated the difficulty of achieving appropriate response levels at this time. Examination of the results obtained by the few districts which were able to apply significant resources to following up non-responders soon after call-in dates showed differing rates of success, and the belief that even with adequate resources being made available to carry out all further lines of inquiry which can now be followed, 10 to 15 percent of former licensees will be untraceable. The figure may be larger, for inevitably the proportion must increase with the passage of time by reason of deaths, people moving overseas and changing addresses within New Zealand, and others making dispositions of their firearms in the informal manner which has become a common occurrence in this country. The study already reported which assessed the rate of error in the current licensing records found at least 10 percent of those licensees to be effectively untraceable. The basic record for the purposes of the relicensing programme is the record made during Project Foresight, at least ten years earlier.

As to the likely cost of the enhancements the Coopers & Lybrand estimate is that the initial programmes would cost \$7.4M, thereby adding 70 percent to 80 percent to the overall cost of the present system, over the next two to three years. In addition the ongoing cost of maintaining the enhancements is estimated to be \$1.8M annually, adding 15 to 16 percent to the annual cost of the present system. Again those estimates far exceed those indicated in the May 1996 Review.

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While it must be appropriate to try to wind up the Relicensing Project by seeking responses from the 13 percent of licensees who have not yet been sent call-in notices, when that work had been done and after all the proposed enhancements had been added the end result would remain a system with the basic flaws noted in part 5.2. Unless more radical reform than was proposed in May 1996 is made, the system must continue to fall short of achieving reasonable control of firearms and continue to provide inadequate information to develop better controls. That conclusion, which was provisionally reached in November last, has been progressively strengthened by the further information obtained since then and is, of course, supported by the recent Police Response.

The question then becomes what forms of improvement can be sufficiently devised on the basis of the information now available—which is the topic of the next part of this Review.

## 6

# Improving the Present System— Options for Reform

### 6.1 Limiting the Availability of Firearms for Misuse

#### 6.1.1 Restricting the availability of high-risk firearms

Some classes of firearm present a greater risk to public safety than others. As a matter of principle, legal restrictions should be proportionate to that risk, and balanced against potential benefits from legitimate use.

The risk created by a particular type of firearm is derived principally from its usefulness for criminal purposes, and its dangerousness or lethality if misused, which in turn is related to:

- magazine capacity;
- rate of discharge; and
- the size and speed of its projectiles.

Applying these criteria it is possible to devise a general ranking of lethality for firearms, with restricted weapons, MSSAs and pistols at the top of the list, and single-shot .22s and air rifles at the bottom of the list. Such a ranking falls well short of any mathematical progression, but is nonetheless a useful tool to aid thinking and policy-making.

The relevant question in this section of the report is whether further restrictions are warranted for any additional class of firearm. That question is best addressed by considering in turn

those classes of firearm which rank most highly in dangerousness or lethality.

*Restricted Weapons*

The class of weapons with the highest lethality in New Zealand is restricted weapons. These include automatic guns (“machine guns”), automatic pistols, rocket launchers, grenades and grenade launchers, anti-tank projectors, and various other similar weapons.<sup>202</sup> Under present law restricted weapons may be possessed only by a bona fide collector, the director of a bona fide museum, approved employees of a broadcaster, theatre, film or television production company, those to whom the restricted weapon has special significance as an heirloom or memento, or licensed dealers. Live ammunition must not be used in any restricted weapon,<sup>203</sup> and a vital part must be removed to render the weapon inoperable.<sup>204</sup>

In the case of machine guns their lethality flows primarily from the capacity for uninterrupted high-powered fire. Most other forms of restricted weapons are essentially military armaments, with obvious potential lethality. This is balanced against only slight social utility—it is hard to imagine any legitimate civilian use for anti-tank projectors or grenades.

There is currently no evidence of the widespread illegal use of restricted weapons in crime in New Zealand, but the potential for misuse is real. The most frequent prosecutions relating to restricted weapons appear to involve Molotov cocktails rather than firearms, but there is increasing evidence that other forms of restricted weapons are coming into the hands of criminals. A police raid on a cannabis plot in Wanganui this year located four automatic firearms and two MSSAs. This sort of firepower in the hands of criminals was unheard of until quite recently, and is disturbing.

As for the possession of restricted weapons by collectors, the principal danger flows from the fact that no matter what security measures are put in place, it is impossible to guarantee that the weapons will not be stolen. A recent reminder of this fact occurred in Waverley when armed men broke into the home of a collector and then demanded and were given access to the collection of approximately 70 firearms. Other similar incidents have occurred, and no citizen can be expected to deny access to firearms at the cost of his or her own safety or that of

his or her family. This means that as long as such weapons remain in private ownership there will be a risk of their theft. There has also been anecdotal evidence from a number of people that collectors do on occasion operate restricted weapons illegally. While this is simply anecdotal evidence, I do not doubt that such use occurs.

In my view the lethality and potential for misuse of restricted weapons combine to make a powerful case for the banning of their private ownership—as is the case in Western Australia.<sup>205</sup> The one factor which could make private ownership potentially viable is the fact that these weapons can be made permanently inoperable.

The need to ensure that restricted weapons are rendered inoperable is currently recognised in New Zealand legislation. Section 32 of the Arms Act requires that restricted weapons are “... maintained ... in an inoperable condition” by the removal of a vital part. However, disabling is hardly more than academic if the vital part is stored with the firearm, so allowing quick reassembly, and enquiries made of six District Arms Officers showed no consistent practice in relation to the storage of the vital part. While some were of the view that the law is observed faithfully, others indicated widespread ignorance or non-compliance.

The New Zealand position may be contrasted with that in Australia, where the APMC resolved on 17 July 1996 that “Category D firearms, be permitted in a firearms collection provided they have been rendered permanently inoperable”. The Queensland Act and regulations provide an example of the way in which this is achieved.<sup>206</sup>

- (2) If the firing pin can be removed as a separate item, the pin must be removed and the end of the pin hole nearest the chamber must be closed with weld.
- (3) If the firing pin cannot be removed as a separate item, the pin must be ground or cut so it can not strike a round of ammunition in the chamber.
- (4) The chamber must be made incapable of taking a round of ammunition by welding a steel insert into the end of the chamber or welding a steel rod vertically across the chamber.

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- (5) The firing mechanism must be immobilised by welding its internal components together and to the trigger.

The Queensland Act also requires that restricted weapons which are not firearms be rendered “inert”.

In Australia it is arguable that after such procedures are carried out the weapon is no longer technically a firearm since it is incapable of discharging a projectile. In New Zealand even a permanently disabled firearm is likely to come within the definition of a firearm in s 2 of the Arms Act, which includes:

Anything which is not for the time being capable of discharging any shot, bullet, missile, or other projectile but which, by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be a firearm within the meaning of paragraph (a) of this definition or subparagraph (i) of this paragraph.

The only two alternatives which would give the necessary assurance that restricted weapons are inoperable are:

- banning private ownership outright; and
- allowing limited ownership of weapons that have been permanently disabled.

Both alternatives recognise that the aim of the law is, and must be, to prevent such weapons becoming available for misuse.

The first alternative has the advantage of simplicity and, by removing any market for such weapons, might long term further reduce the chances of restricted firearms becoming available for misuse.

By contrast, the second alternative would allow collectors to continue to hold restricted weapons, something which clearly offers them pleasure and may offer monetary gain; it would also allow them to acquire firearms which are illegally held, thus reducing the number of illegal firearms in society; and would not raise the question of compensation, which would at least need to be considered if there were an outright ban.

On balance I believe that the second alternative would provide an effective and sufficient means of preventing misuse.

No doubt for many collectors even that option will be not merely inconvenient, but distasteful. However, it is the only realistic alternative to banning these weapons, and many thousands of collectors around the world currently comply with similar requirements.

The permanent deactivation requirement should apply equally to collectors, museums and those falling within the “heirloom or memento” provisions. There may be a case for a different regime for military museums, which are probably presently exempted by s 3(2) of the Arms Act 1983 which excuses possession of restricted weapons:

By any person in the course of that person’s duties as ... [a] member of the New Zealand Defence Force ...

If that exemption is to be continued in new legislation, that should follow the receipt of assurances from the Army that it will adopt suitably stringent measures to secure any restricted weapons and other firearms in army museums against theft.

■ RECOMMENDATION

**2 That all restricted weapons be permanently disabled.**

*Handguns*

The particular risk arising from handguns is that their portability and ease of concealment make them useful for a variety of criminal uses, particularly armed robbery.

As against this, pistol shooting in New Zealand has several thousand adherents, is well organised, well disciplined and has an exemplary safety record which few sporting bodies could match. There is no record of any firearm injury occurring on a range under an NZPA affiliated club’s control.

As to the use of handguns in crime, the conclusion reached in part 4.3 (namely that there is a positive link between the availability of firearms and the level of gun crime) applies in relation to handguns, which have historically, and correctly,



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been seen as potentially the most dangerous of all firearms (leaving aside restricted weapons). In those countries where handguns are easily available, notably the United States but to a lesser extent Canada and the United Kingdom, they are the weapon of choice of criminals because of their ease of concealment and portability. These factors operate in this country also, where handguns are used in robberies in numbers significantly more than proportionate to their share of the total national armoury.<sup>207</sup>

In addition, there is the evidence summarised in part 2.3 suggesting an increasing tendency for criminals to carry handguns for security or self-protection during their criminal activities. If this development is not contained, it will bring with it the risk of armed gang warfare and similar conflicts which are endemic in the United States.

The problem would be aggravated if handguns became freely available at a competitive price. At the moment handguns can be bought on the black market without difficulty, but only by those with sufficient money to pay for them. A common alternative for the armed robber is the shotgun, which is either purchased “sawn off,” or is sawn off by the criminal purchaser. These are available for a small fraction of the price of a handgun—\$100 to \$200 for a shotgun, compared to \$750 to \$2,000 for a handgun. The more handguns there are in the country the greater must be the likelihood of the numbers reaching the black market increasing and their price on the black market reducing. It would clearly be undesirable to have the present total handgun population of 25,000 to 30,000 continuing the past rate of increase over the next decade.

A further matter to be kept in mind is that while the process of vetting applicants for pistol endorsements (which involves both club and police input) is of a reasonably high standard, it cannot guarantee that no unsuitable person will slip through the net, nor that a person who was suitable may not become unsuitable. For those reasons the risk of a Hamilton/Dunblane type disaster incident can never be totally discounted.

Those factors point to the desirability of avoiding a proliferation of handguns, of eliminating surplus handguns, and of seeking to improve the security of the others.

**Surplus Handguns:** Some of the increase in handgun numbers has been traced back to the substantial increase in the number and types of competitions conducted by NZPA and its affiliated clubs. The argument which persuaded the then Commissioner in 1989 to approve a maximum of 12 handguns was that this number might be needed to achieve a high level of competence in different competitions. It is difficult to accept that the size of the handgun armoury should be governed by the number of different competitions available to pistol shooters. That view and the general desirability of endeavouring to control increases in total pistol numbers was conveyed to the NZPA during hearings with its officers. The Association was invited to consider whether lower limits per endorsee could be determined which would still permit reasonable enjoyment of its members' sport.

This resulted in a supplementary submission advising that the NZPA had considered the practicability of changes and believed that it would be appropriate that a B endorsee "own up to six handguns before a dispensation from a club committee is required, which could only be for competitors who can justify the need for more". It asked that muzzle-loading handguns not be counted in the proposed total, and pointed out that the limit on handgun use imposed by the UK Parliament after Dunblane specifically excluded such guns from its provisions.

With that advice the Association forwarded a paper explaining the extent of the need for numbers of pistols for different types of NZPA activities. This explained that:

The most basic pistols you can have are a .22 lr semi-automatic pistol, and a .38 Special revolver. The .22 lr semi-automatic is the proper pistol to use for UIT Standard and Sport Pistol matches, and the .38 revolver is a basic Centrefire handgun with which many matches can be shot. With these you can shoot a large number of matches at basic level. We generally encourage people to start with a low cost model of each of these, and try a variety of matches. When they find which matches they enjoy most, or are best at, they can buy specialised pistols for those matches.

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The same paper explained the particular needs of top shooters in the different disciplines if they are to compete at the top levels of the sport, advised that most club members like to shoot in more than one discipline, and added:

As a generalisation, one might expect anyone who has been shooting long enough to regard it as a permanent interest would probably shoot one discipline (ie group of matches) seriously and have several specialised pistols for this discipline. They would also probably shoot another as a less serious event, and either use one of their existing pistols or acquire less than the optimum number or models. The longer you stay in the sport, the more matches you are likely to want to shoot either regularly or occasionally, and so the more pistols you are likely to want.

The NZPA is to be congratulated on its endeavour to achieve a voluntary limitation of the number of handguns used by its members. Further, I accept that the suggested basic limit of six handguns is a significant reduction from the maximum which has stood now for a considerable number of years. At the same time it would in my view further assist the avoidance of any proliferation of handguns, and not significantly affect members' sporting activities, if the number of handguns owned by any endorsee were limited to two for a period of one year after the granting of a B endorsement.

#### ■ RECOMMENDATION

### **3 That no handgun endorsee be permitted:**

- a) **to own more than two handguns during the first 12 months after gaining his or her endorsement; or**
- b) **to own more than six handguns (not including muzzle-loading handguns) at any time unless his or her club and the NZPA certify that the standard of performance attained by that endorsee and the nature of the competition(s) in which he or she has attained that standard warrant**

**approval of the purchase of additional handguns up to a maximum of 12.**

The intention of the second recommendation is that a maximum of six shall operate, except for the shooter of outstanding ability who can show a need for additional firearms.

*Military Style Semi-Automatics*

The suggestion that MSSAs should be banned was raised many times in submissions to the Review. Support for this course of action came from a broad range of people, including both shooters and firearms dealers. On 23 January 1997 the Firearm Advisory Committee of the Mountain Safety Council confirmed a resolution of May 1996 that “large magazines and semi-automatic guns are not welcome in New Zealand”.

The principal risks in relation to MSSAs are their capacity for repeated and high-powered fire and their attractiveness to those with an unhealthy fascination for violence (as to which see part 3.1.4). They have a high potential for harm if misused.

As with restricted weapons, the concern with MSSAs is not that they are used frequently in crime, but that when they are the consequences are disastrous. MSSAs were used in the mass killings at Port Arthur, Aramoana, Strathfield, Queen Street (Melbourne), Hoddle Street (Melbourne), Hungerford, Montreal and Top End (Northern Territory)—in which a total of 104 victims were killed. This list is not exhaustive; MSSAs have been used in many more mass killings in the United States and in other countries. Australian government figures show that over the last decade MSSAs killed 74 percent of the victims in mass killings in Australia and New Zealand. Another relevant attribute of MSSAs is that a considerable number can be converted to fully automatic fire. Many of these firearms were originally designed to be fired in fully automatic mode and the civilian models are essentially the same gun modified to semi-automatic status.

The value of MSSAs for target shooting was very much in contest. I met with representatives of the Wellington Service Rifle Association and the International Military Arms Society, two groups who represent many MSSA users. The members of both organisations clearly have a significant commitment to and

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involvement in their hobbies and a sincere desire to continue in their chosen form of target shooting. However MSSAs have been used for target shooting only reasonably recently, and this is not a purpose for which they are designed, or particularly suited. Others can take their place. As to their use for hunting, submissions from a sizeable number of shooters have contended that MSSAs have no place in the collection of the sporting shooter, and Nugent's 1989 study showed that MSSAs "comprised only about one percent of all the centrefires listed, suggesting they are not widely used as hunting weapons".<sup>208</sup> The one exception to that view was advice from those engaged in helicopter deer recovery and animal pest control work that in some circumstances the convenience and destructive power of the MSSA made it a valuable tool for their purposes. That contention was supported by DOC and by the Forest Research Institute, and would support an exemption for such business. That issue apart, I am satisfied that the potential consequences of MSSA misuse clearly outweigh any benefit to society in permitting their ownership.

The next question is whether the current distinction between MSSAs and sporting configuration ("sporterised") MSSAs should continue. On this I am of the view that MSSAs and sporterised MSSAs must stand or fall together and that it is not a viable option to attempt to ban one without the other. The distinction has proved to be problematic at best since 1992, and the potential for evasion of the law is too great. Accordingly I would support any ban on MSSAs extending to sporterised MSSAs.

Considering next the form of any ban, the view which prevailed in both Australia and the United Kingdom that justice requires that the banning of property previously lawfully acquired should be accompanied by a buy-back to compensate owners for their loss, seems equally valid in New Zealand. To enable this option to be considered on an informed basis Coopers & Lybrand were asked to provide cost estimates in relation to a buy-back of various classes of firearm. Based on an estimated 25,000 to 30,000 MSSAs and sporterised MSSAs, Coopers & Lybrand estimated the cost of their buy-back at between \$16.4M and \$19.8M for the firearms, and a total of \$21M including administration costs. The estimate of

administration costs cannot be regarded as final,<sup>209</sup> but in any event the sum of nearly \$21M must be seen as considerable, particularly in the context of past government expenditure on firearms control. In comparative terms, it is very close to the estimated total cost of firearms administration for 1997/98 under the “enhanced” system proposed in May 1996.<sup>210</sup>

No simple cost-benefit analysis is possible, and there can be no guarantee that banning MSSAs will prevent further mass killings. However there is enough of a possibility that a ban may inhibit the frequency and consequences of such events, with minimal interference with the legitimate interests of shooters, to persuade me that a ban should be recommended.

The next question is whether, and to whom, exemptions should be granted. There is a meritorious claim for an exemption from the ban for those professionally engaged in animal pest control who are able to establish that no other type of weapon would be equally effective for their particular business and who are prepared to provide security for their weapons of a sufficiently high standard. In terms of the four grades of security suggested in appendix 7, security should not be less than Grade 3. Similar exemptions were provided by the Australian reforms following strong submissions by rural interests. To date very few applications have been received in Australia for those exemptions. Provided it is known that exemptions will be granted only when good and sufficient reason is established the number of exemptions here can also be expected to be quite small.

There remains an issue of definition. Because MSSAs are defined by exclusion rather than inclusion in the Act,<sup>211</sup> the only satisfactory method of definition will be to produce a list of banned weapons by make and model. The starting point would be the list of MSSAs produced for the Select Committee in 1992.

## ■ RECOMMENDATIONS

### **4.1 That MSSAs, including those in sporting configuration (as defined by a list of makes and models), be banned and made the subject of a buy-back.**

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- 4.2 That an exemption be extended to those professionally engaged in animal pest control who can establish that no other firearm would be equally effective for their particular business.**
- 4.3 That a technical committee be formed to settle the list of makes and models of firearm within the MSSA class.**

*Sporting Centrefire Semi-Automatic Rifles*

The next two classes of weapons on a lethality ranking would be (i) sporting centrefire semi-automatics and (ii) semi-automatic and pump-action shotguns. Both were included in the Australian ban and buy-back, as were semi-automatic .22s.

As to the first of those groups, these are semi-automatics which have been designed purely for sporting purposes and which are not produced with the features of an MSSA. There is no known instance of a semi-automatic sporting centrefire rifle featuring in a mass killing in New Zealand, a fact which supports putting MSSAs in a separate class. To this date the sporting semi-automatics have been subject to a magazine limitation of seven shots. There is no reason to lift that requirement. Provided it remains, there is not a clear or strong case for a ban and buy-back of these weapons, a step estimated by Coopers & Lybrand to cost in the order of \$13M.

■ RECOMMENDATION

- 5 That all other centrefire semi-automatics be limited to a magazine capacity of seven cartridges.**

*Semi-Automatic and Pump-Action Shotguns*

While there is evidence of the use of shotguns in domestic homicide and of sawn-off shotguns in robbery, there is currently no evidence of any large-scale use of semi-automatic

or pump-action shotguns (which for simplicity are called “semi-automatic” in this section) in crime. No such weapon has been used in a mass killing in New Zealand.

Semi-automatic shotguns with magazine capacities of more than two cartridges do, however, present a risk which is greater than that of other shotguns, primarily because of their capacity for sustained and rapid fire. At close range these weapons have very high lethality, and a random killing involving a large-capacity semi-automatic shotgun could be catastrophic.

As for legitimate use, shotguns have been used in hunting and recreation for well over a century, though semi-automatics are a development of this century. Game-bird hunters are the largest single group of shotgun users in New Zealand, and Forsyth notes that the Acclimatisation Society movement “was a central and influential feature of this country’s colonisation and development”.<sup>212</sup> More recently clay bird and skeet shooting have become popular sports with several thousand adherents. Semi-automatics have the advantages of some attenuation of recoil and a particular suitability for target shooting. Although accurate figures are not available to estimate the total number of semi-automatic shotguns, it is quite clear that they are popular and make up a significant proportion of the total number of shotguns in this country.

Most shooters assert that there is seldom a need for a magazine capacity greater than two cartridges in the sport of game shooting. Indeed the Wildlife Act 1953 prohibits the use of any shotgun with a magazine holding more than one cartridge for game shooting, although very recently quite broad exemptions from that restriction have been announced, purportedly under a special exemption provision.<sup>213</sup>

In Australia the issue of restrictions on semi-automatic shotguns was hotly debated prior to the APMC resolutions of 10 May 1996. In the result the APMC resolved to allow only single-shot and double-barrel shotguns for ordinary shooters. Semi-automatic shotguns with a magazine capacity of up to five cartridges may be permitted on a category C licence, available only to primary producers with a genuine need for the firearm. Clay target shooters affiliated to the Australian Clay Target Association may also gain an exemption allowing the



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use of a semi-automatic or pump-action shotgun loaded with no more than two shots at a time.

The Australian position resulted from advice from the Australian Army Technology & Engineering Agency that crimping of shotgun magazines could be reversed in a “relatively easy” manner, contradicting earlier advice from the Australian Federal Police that such crimping was “technically irreversible”. In New Zealand advice was sought from an ad hoc committee comprising: Mr Robert Ngamoki, the Chief Armourer of the New Zealand Police; Mr John Howat, a firearms dealer and consultant; and Warrant Officer John Berry, Senior Armourer Instructor, New Zealand Army. It advised that while it is always possible, given the will and sufficient time and money, to reverse any alteration to a firearm, means are available to limit the capacity of the magazines of semi-automatic shotguns which would be irreversible for all practical purposes.

Given that advice, and the past practice of limiting the number of cartridges used in shotguns for a number of their more common uses, it is difficult to see the cost-benefit equation supporting a ban and buy-back of semi-automatic shotguns in New Zealand. The cost of a buy-back of these guns is estimated by Coopers & Lybrand to be \$35M. When the minimal use of semi-automatics in crime is compared with the legitimate use of these firearms it is hard to justify spending the State’s money on a blanket ban and buy-back. This is particularly so given the availability of the option of magazine limitation, which appears to provide a sensible balance between the interests of shotgun shooters in continuing to enjoy their sport and the public interest in avoiding the severe consequences which could flow from the criminal misuse of high-capacity semi-automatic shotguns.

I was advised by several people that allowing the magazine to contain two cartridges is a safer option than permitting only one, because in the latter case some shooters would carry a second cartridge in the breech.

I do not favour remaining with the status quo. When the option of magazine limitation can be achieved with such little impact on the legitimate shooter there is little justification for continuing to accept the risk created by larger magazines.

In order to avoid penalising those who have purchased semi-automatic shotguns legally, it would be reasonable for the State to meet the costs of reducing the magazine capacity of semi-automatic shotguns. This step would no doubt also increase compliance with the law.

■ RECOMMENDATIONS

- 6.1 That semi-automatic and pump-action shotguns be limited to a magazine capacity of two cartridges.**
- 6.2 That the cost of limiting their magazine capacity be met by Government.**
- 6.3 That a technical committee settle an approved method or methods of magazine limitation.**

*Other Semi-Automatic Firearms*

Next in the order of lethality is the remaining class of semi-automatic firearms: the .22 rimfire semi-automatics. These make up around half of all .22s, which are the largest single class of firearm in New Zealand. They feature significantly in all forms of firearm misuse, simply because they are present in the community in such large numbers, a point made by Forsyth in relation to accidents in 1985:<sup>214</sup>

The .22 calibre rimfire rifle is probably involved in more incidents each year than any other firearm type. The main reasons for this are that it is the most popular first firearm, and that more .22 rifles are in circulation than any other firearm.

In similar vein Philip Alpers has observed that the .22 is “the gun most commonly used in suicide, homicide and accidental shootings”. While neither of these comments is specifically related to semi-automatics it is a safe assumption that those firearms figure in a significant number of the incidents of misuse in this country. Unlike MSSAs and handguns however, there is nothing about the semi-automatic .22 which makes it more attractive to criminals, or more likely to be misused, than any other firearm.

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As against those risks, semi-automatic .22 rifles are widely used for target shooting, killing pests such as rabbits and possums, and many other general purposes. A large proportion of the good work done with firearms in New Zealand is done with these firearms, and much would be lost if they were banned.

Currently .22 semi-automatics in New Zealand are subject to a restriction on magazine capacity. Those with a capacity above 15 cartridges are treated as MSSAs and must be held on an E licence. All others may be held on an ordinary A licence.

Australia and the United States have both restricted these firearms to a greater extent than New Zealand. In Australia they are treated as category C weapons which may be held only by primary producers with a genuine need for the firearm. For all other shooters they are banned. In the United States the Federal Crime Control Law, enacted in 1994, prohibits the transfer or possession of all magazines above ten rounds, and all new .22s sold must have a magazine capacity of no greater than ten.

To adopt the Australian position would require a ban and buy-back subject to quite substantial exemptions to meet the needs of rural gun owners. Coopers & Lybrand costed a buy-back of these firearms at \$41M.

Such a ban could not be relied on to produce a substantial reduction in the levels of firearm crime, suicide, or accidents. While there is some relationship between the general availability of firearms and crime and suicide, this is not a direct and strong relationship such that removal of say 150,000 or 200,000 semi-automatics (around 15 to 20 percent of the total armoury) would reduce levels of misuse by 15 to 20 percent or anything approaching those figures.<sup>215</sup> Balancing the significant benefits currently derived from the use of these firearms against the high cost and dubious benefit of banning them, I would recommend against that action, and do not see any sufficient reason to alter their present magazine capacity limitation.

#### *Details of Proposed Buy-Back*

To this point the report has recommended a ban and buy-back of MSSAs, has recommended against similar action in the case

of .22 semi-automatics, and has expressed doubts about the justification for banning sporting semi-automatics and semi-automatic shotguns provided magazine limitations are imposed in both cases.

It will, of course, be for Government to decide how far it desires to travel down the scale of lethality with any programme of bans or purchases of firearms. That being acknowledged, it seems not inappropriate to re-iterate that in my view more value is likely to be obtained from setting up a system capable of responding to the country's needs on the basis of adequate information than by buying in weapons, with the sole exception of the MSSAs, which have little legitimate use.

In relation to any buy-back, New Zealand should be able to learn from the Australian experience which suggests:

- That the duration and administrative process of the buy-back must be related to the number of firearms banned. For a limited buy-back it may be possible to use police stations as collection points, with an independent contractor to oversee destruction, and a duration of approximately six months.
- That an expert panel should be set up to determine the compensation to be paid for each banned firearm, based on current market value.
- That a process similar to that used in Australia should be adopted to deal with non-list or "reserve list" firearms and with appeals.
- That an amnesty should accompany the buy-back to enable illegally-held firearms to be surrendered without fear of prosecution. (The role of an amnesty is discussed further in the next section.) Compensation should be paid for illegally-held firearms of the banned varieties since on balance the benefit in taking these firearms out of circulation outweighs the consequences of paying for them.

Also accompanying the buy-back should be a publicity campaign targeted principally at the owners of the types of firearm which are called in. An advertising campaign also presents an opportunity to place appropriate messages about

firearm reform before the public. In the United States the publicity that accompanies a buy-back has been identified as a considerable collateral benefit.<sup>216</sup>

■ RECOMMENDATIONS

- 7.1 That the duration of the buy-back of MSSAs be approximately six months.**
- 7.2 That compensation be paid at market value for banned firearms and accessories which can be used only with banned firearms.**
- 7.3 That compensation be paid to firearms dealers for any proven loss of profits.**
- 7.4 That a procedure be settled for assessing, paying and dealing with disputes over compensation.**

**6.1.2 Recovering surplus guns**

It was a common assertion by those who appeared to support their written submissions that a considerable number of guns are presently held by people who no longer have a use, or a regular use, for them.

The same view is indicated by the police support for amnesties to “recover unused firearms”.<sup>217</sup> Similarly the Police Response advised that:

The Australian experience suggests ... many owners have limited reason for retaining their firearms and the offer of a cash payment attracts a considerable number of unused arms.

There has not been any sufficiently large-scale survey of gun owners and their use of firearms to enable a sound estimate to be made of the size of the New Zealand pool of unused or under-used guns. This is an area where a properly conducted study, which would necessarily involve personal interviews with the owners, should be carried out.

Meantime anecdotal evidence and the downward trend in firearms and game-bird licences all point to the existence of such a pool, even though they provide little help in estimating its size.

To date the standard procedure in this country for recovering any surplus weapons has been an amnesty. The relevant table in part 2.3 sets out the results of amnesties over the past 21 years. The May 1996 Review supports a further general amnesty. That must be appropriate, particularly having regard to the time since the last amnesty and the present heightened public interest in gun safety. Indeed there is no obvious reason for the decision only to hold one amnesty in the past 13 years, and sound arguments for much more regular use of amnesties.

*Section 10(2) "Amnesties"*

In addition to these "formal" amnesties, dealers have for many years operated "informal" amnesties by giving a generous interpretation to s 10(2) of the principal Act. This provides that dealers may take possession of pistols or restricted weapons without ensuring that they come from an authorised person:

[I]f, on obtaining possession of any pistol or restricted weapon from any person, the licensed dealer immediately surrenders the pistol or restricted weapon to the nearest Arms Office for inspection and inquiries.

Section 10 plainly relates only to restricted weapons and pistols. It was not extended to cover MSSAs in 1992, although that may have been a legislative oversight. It has never extended to ordinary firearms for which no special endorsement is needed. Its principal purpose must have been to permit those who for any reason did not wish to surrender a weapon to the Police to hand it to a dealer. Unless it were a stolen weapon recorded as such by the Police, it could then be sold by and re-enter the system through the dealer.

In practice many dealers accept all types of weapons (ie. not just restricted weapons and pistols) without requiring particulars of the deliverer's entitlement, advise the Police of their receipt of the weapons, and ask whether the Police have any interest in them. In the absence of any comprehensive register of lost and stolen weapons, the answer is almost always "No". That answer is then treated by the dealer as sufficient authority to sell the weapon to a qualified purchaser.

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Provided the registration system is re-introduced and prevents the process from developing into a trouble-free method for converting stolen weapons into cash, the overall interests of society should benefit from extending the s 10(2) procedure to cover all types of weapons.

#### *Buy-Back of Unwanted Firearms*

The next question is whether or not it is desirable to pursue the suggestion in the Police Response of some kind of general purchase of weapons, presumably at their market value. On this point the Response says that:

The Australian strategy extends to buying back all those weapons that become surplus to their owners following the tightening of security standards, and the further reductions on the type of guns permitted in the various locations and occupations. There are of course major cost implications.

By contrast my enquiries in Australia found only one State (Victoria) which was buying firearms other than those which were banned, and the numbers which it was buying were small, as was the consideration being paid to the owners of those weapons.

Part 6.1.1 concludes that buy-backs should be focused upon those firearms which constitute the greatest threat to public safety.

Part 6.2.1 expresses the view that more benefit is likely to come from establishing a system which will offer a real prospect of obtaining more effective overall control of firearms than in spending money buying a relatively small part of the existing armoury. The costs involved in maintaining an appropriate standard of security for firearms and meeting periodic licensing/registration fees will in any event encourage the owners of unused or under-used firearms to put these up for sale or surrender them.

In my view no sufficient case has been shown for entering into any general purchase of firearms.

#### *Public Armouries*

One other arrangement directed at limiting the availability of surplus firearms may, however, deserve consideration. A number of submissions suggested that owners be required to keep their firearms in public armouries. While that proposition has obvious attractions, upon examination it can be seen to have considerable limitations, particularly for rural firearms owners and most particularly for those rural firearms owners who have regular need of a firearm. Armouries would need to be built to a very high standard of security, at least as high as that to be required of dealers. If they are to contain substantial numbers of firearms they will need to be staffed 24 hours a day. In New Zealand most ranges are situated at a distance from security firms, and so providing an effective response to alarms would be difficult.

All in all, the proposal that all firearms should be held in armouries is in my view unsustainable, both on cost and convenience grounds, save for those who have only limited use for their weapons. For those people there could well be a case for adopting the Western Australian practice of providing safe custody for firearms at police stations for a moderate fee. As an alternative it would be worth considering establishing two armouries, one in each of two metropolitan centres, into which those persons with only occasional use for their firearms, and those others who by reasons of holidays or other circumstances, such as have caused the Western Australian system to become popular, could remove their firearms. Experience of the actual use of such facilities over a period of say two years would indicate whether they should be made more widely available.

## ■ RECOMMENDATIONS

- 8.1 That a general amnesty be declared for a period of 12 months commencing at the earliest convenient date.**
- 8.2 That the authority presently given to dealers by s 10(2) of the Arms Act be extended to cover all types of firearm.**
- 8.3 That consideration be given:**
  - a) to police providing firearm storage facilities for a moderate fee; and**



- b) to the establishment of prototype armouries in two metropolitan centres for a trial period of up to two years.**

### **6.1.3 Improved security**

A principal reason for setting up this Review was the concern of the PCA, arising from its examination of the Gellatly and Radcliffe shootings, about dealers' security. The justice of that concern was recognised in the May 1996 Review, which proposed nine amendments either to the current dealers' security conditions or to the manner in which they are monitored. Its most significant proposals were that dealers' premises be alarmed, that ammunition be secured, and that all firearms on display either have a vital part removed or a breech plug or trigger lock inserted.

Other defects in current security arrangements were noted in the submissions to this Review. The most common complaints were that the security rules were not interpreted uniformly and that they were inadequately monitored and enforced.

In *Locking Up Guns*<sup>218</sup> Mr Philip Alpers reported a series of statements by police officers and others which suggested widespread disregard of security requirements, especially in rural areas. These led to his investigating 88 cases of gun theft which had been reported in the press, and finding evidence that in 46 (52 percent) the firearms had not been stored in compliance with the Arms Regulations.

In the nature of things, those cases reported in the press are the more newsworthy incidents. To try to find whether the average licensee was similarly remiss, two separate series of spot checks were conducted by the Police at my request, three in February 1997, two in the following month. All checks were made without prior notice. Each set of inspections was carried out within the one day. Some telephone communication to other licensees may have been made by those first inspected, but the officers carrying out the checks were of the view that their visits were not expected.

The overall results appear in the following table:

Licence class	Attempted checks <sup>219</sup>	Completed checks	Compliance with security	Compliance rate (%)
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*Review of Firearms Control in New Zealand*

			<b>regulations</b>	
Urban A	123	84	73	86.9
Rural A	126	83	64	77.1
C Class	29	21	19	90.5
D Class	20	15	13	87
E Class	27	16	16	100
<b>Totals</b>	<b>325</b>	<b>219</b>	<b>185</b>	<b>88.3</b>

The second series of checks was undertaken because there were marked differences between the rates of compliance by the Rural A licensees in the three districts first checked. In the result the further checks, made in different districts from those first checked, gave compliance rates similar to the average of the first three, and went some way towards confirming the general reliability of the results being obtained.

Consideration was given to the circumstance that these checks produced significantly better results than those examined by Mr Alpers. The most likely reasons are:

- that the vetting process involved in the still continuing 1992 Relicensing Programme has increased licensees' awareness of security obligations—this was a view expressed by DAOs at a meeting held in December 1996; and
- that that increased awareness may have been accentuated by the publicity arising from the Review itself and from the Raurimu shootings, which shortly preceded the first series of tests.

One unexpected dividend from the spot checks was that, far from expressing displeasure at being subjected to unannounced inspections, most of those tested considered the spot checks a good idea, and probably overdue.

Given that the extent of non-compliance proved to be less than had been expected, and that there is evidence of a more careful attitude towards security requirements than in the past, it remains the case that far too many breaches of security conditions are occurring. In particular the extent of non-compliance by collectors and dealers, whose collections make them the first targets of criminals, must cause concern.

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I asked a small ad hoc committee of police and security experts for help in determining the appropriate course from that point. The result of our collaboration was agreement:

- that the present security provisions (in s 32 of the Arms Act 1983 and regs 8, 19 and 28 of the Arms Regulations 1992, augmented by PNHQ instructions to DAOs on uncertain authority) are undesirably complex, are not based on principle, and should be rewritten;
- that any new code should determine levels of security proportionate to the hazard requiring reduction;
- that the principal factors in assessing hazard are
  - the attractiveness of the weapons in question to criminals
  - the number of weapons, and
  - the degree of public access to the weapons;
- that while levels of security for A, B and C licensees and endorsees are relatively easy to settle, appropriate arrangements for dealers, which raise quite complex technical issues, are not; and
- that further progress would best be made by establishing a standing committee, including representatives of the Police, the NZ Security Industry Association and the NZ Insurance Council, initially to advise, after discussion with the relevant user groups or their representatives, on the form of new firearms security regulations, and later to review those regulations from time to time and recommend such alterations as it considers necessary to take advantage of changes in technology and keep abreast, if not ahead, of criminal intelligence.

Although remaining of the view that the final redrafting of new security provisions should be done by a suitably qualified committee, the ad hoc committee proceeded to agree in principle that there should be four grades of security, graduated in relation to the degree of hazard in each case, namely:

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- Grade 1: for licensees with not more than ten class A firearms;
- Grade 2: for B endorsees with not more than ten pistols;
- Grade 3: for any licensee with more than ten firearms of any type; and
- Grade 4: for dealers with premises open to the public.

Again, while leaving final redrafting to the special committee, the ad hoc committee reached agreement about its present preferences for the nature of the security appropriate to each grade. These preferences are set out in appendix 7.

The four grades of security specify minimum standards for each class. It would be open to a licensee to use a higher grade of security than the minimum specified for the particular class and number of firearms. For example a strongroom or safe could be used in lieu of a steel box.

The likely effect upon licensees of such conditions would vary considerably. For a considerable proportion of Class A licensees, who constitute well over 95 percent of the total licensee population, the new Grade 1 standard would involve purchasing a steel box in lieu of an existing wooden cupboard or similar structure, and the expenditure of some hundreds of dollars. However, those who have worked in arms offices are generally of the view that most present Class A security would not withstand a reasonably determined attack by a person of average strength.

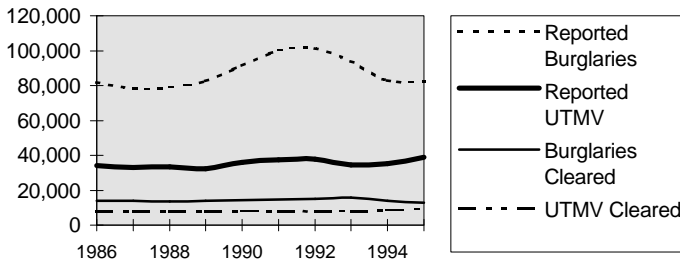
The NZPA representatives thought it unlikely that a large proportion of pistol shooters would be greatly affected by the new requirements, which are thought already to be observed by a considerable number. To the extent that others will have to upgrade their security, that is considered only appropriate in view of the attractiveness of these weapons to criminals and the need to avoid augmenting the pool of illegal handguns.

The suggested conditions for licensees with more than ten firearms, requiring appropriate monitored alarms, and even more the proposed security conditions for dealers, will in many cases involve significant expenditure. However it was considered that anything less would be inadequate to prevent

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continuing augmentation of the pool of illegal guns. Even though the absence of records of the number of stolen guns prevents direct proof of the importance of this factor, there is no doubt either of the high levels of burglary and car theft, or of the low rate of clearance of those offences, as demonstrated by the graph below:<sup>220</sup>

**Burglaries and Vehicle Thefts, 1986-1995**



Source: NZ Police

Firearms owners and dealers may have to be prepared to accept change in the methods of dealing with firearms to counter such threats. The banking industry has succeeded in reducing its handling of cash both by electronic funds transfers and the use of Automatic Teller Machines. One member of the ad hoc committee, who had experience of security arrangements in Singapore, advised that its firearms retailers do not have firearms on display, and customers select from a brochure in the first instance to reduce the risk of unauthorised possession. The suggestions made above are clearly less radical, and are intended to respond to existing risks.

However carefully new security conditions may be drawn, they will be of limited value unless they are more frequently and consistently monitored than in the past. Consideration should be given to monitoring dealers' premises by means of a small group of people with specialist qualifications or training. The complexity of dealers' security requires a higher level of expertise than is required for other security monitoring and than could realistically be expected of most DAOs.

There must also be a new provision making it an offence to breach the security conditions of licences—on which see part 6.2.3.

Because of the pressure upon DAOs to endeavour to keep up with their re-licensing and other obligations, and because of recognition that the re-licensing project was falling into arrears, authority was given to DAOs to accept declarations that an applicant for a licence would comply with security requirements instead of requiring an inspection of security before granting a licence. The original intention was that physical checks would follow within a reasonably short period. A survey conducted for the Review showed that 21.1 percent of new licensees in the four districts selected had obtained licences on this basis and without physical inspection of their security. There is no record of the extent to which licences granted on this basis were followed up by physical inspection of security, but there was no suggestion that this had occurred in a substantial number of cases. That is plainly an unsatisfactory procedure. It should be discontinued.

#### ■ RECOMMENDATIONS

- 9.1 That the present security regulations be replaced by provisions which fix levels of security proportionate to levels of hazard.**
- 9.2 That a standing committee, including representatives of the Police, the security industry, the NZ Insurance Council, firearms users and firearms dealers, be set up to recommend new security standards, review these annually and recommend appropriate amendments.**
- 9.3 That adequate provision be made in any new firearms control system for regular and consistent monitoring of security conditions.**
- 9.4 That the practice of granting licences on the basis of assurances of compliance with security conditions without inspection of security be discontinued.**

#### **6.1.4 Ensuring the suitability of firearms licensees**

There are currently two main processes by which the Police attempt to exclude those who are unsuitable from holding firearms licences: the vetting of applicants and the revocation of licences. This section considers four possible methods of improving these processes:

- setting out in statutory form those characteristics: (a) which are necessary to obtain a firearms licence; and (b) which make a person unsuitable to possess a firearms licence;
- setting out characteristics which disqualify a person from possessing a firearms licence for a minimum period of time;
- improving the information flow to ensure police are aware of people who may be unsuitable to possess firearms; and
- requiring a minimum delay period to prevent impulse purchases.

#### *Statutory Criteria for Assessing Suitability*

A frequent criticism of the current system is that the grounds for assessing whether someone is a fit and proper person to possess firearms are not set out in the Act and are instead left to police discretion. Although this has the advantage of allowing some flexibility, it can also lead to uneven enforcement—a point returned to in part 6.2.5. It also means that the general public has no easy way of knowing what criteria are applied by the Police in making the critical assessment of fitness.

Several Australian States now set out a list of “minimum circumstances” in which licence applications are to be refused, following a resolution to that effect by the APMC in May 1996.

No statute can provide a definitive list of circumstances which either qualify or disqualify someone from possessing a firearms licence, and “minimum circumstances” must be just that. However there is some merit in the claims for more explicit statutory criteria. The law should be as accessible to the

public as possible, and such criteria could promote greater consistency of application.

There are two relevant sets of criteria or characteristics: those which a licensee must possess, and those which a licensee must not. These characteristics apply equally to the “refusal” and “revocation” processes.

In respect of the mandatory criteria, it is clear that any licensee must:

- have security for his or her firearms to the required standard;
- have shown the required capacity for safe handling of firearms; and
- be of the required age.

These requirements currently appear in the Arms Act 1983, but it may be helpful to have them set out in one section as minimum eligibility requirements.

It has also been suggested that the Arms Act should require each applicant to show a genuine reason for owning a firearm. This is currently implicit in the New Zealand vetting process—applicants are asked specifically what their intended purpose is—but has never been elevated to a formal requirement needing proof. The Australian States have each adopted such a requirement following another resolution by the APMC in May 1996. Among the various “genuine reasons” it approved were:<sup>221</sup>

- sport or target shooting;
- hunting or recreational shooting;
- primary production;
- occupational requirements; and
- pest control.

Applicants are typically required to provide evidence of such a purpose, such as proof that they belong to an approved shooting club or written permission to hunt on someone’s land. Section 12 of the New South Wales Firearms Act 1996 expressly states that neither personal protection nor the protection of property will be considered sufficient.<sup>222</sup>

Rebecca Peters, Chair of the National Coalition for Gun Control in Australia has questioned the effectiveness of these



provisions, suggesting that it is not difficult to establish a “genuine reason” as in practice membership of shooting clubs and permits to hunt can be bought for a small price.<sup>223</sup> Such concerns recognise that a condition requiring a genuine reason for a licence cannot be relied on as an effective method of screening out unsuitable persons. While the inclusion of such a condition in place of the present informal consideration of the same subject-matter would give the appearance of a more intensive enquiry, and could serve to underline the fact the a firearms licence is a privilege not an absolute right, the difference would be cosmetic, and might well lead to such artificial situations as are reported by Ms Peters.

In respect of characteristics which make a person unsuitable to possess a firearms licence, the *Police Arms Manual* currently stipulates that a person is not fit and proper if he or she has:

- 1 shown no regard for the Arms Act or Arms Regulations;
- 2 been involved in substance abuse;
- 3 committed a serious offence against the Arms Act;
- 4 committed a serious offence against any other Act;
- 5 committed a series of minor offences against the Arms Act;
- 6 committed crimes involving violence or drugs;
- 7 affiliations with a gang involved in committing violent offences or in conflict with another gang;
- 8 been or is involved in matrimonial discord involving violence or threats of violence;
- 9 exhibited signs of psychological disturbance;
- 10 attempted to commit suicide or other self-injurious behaviour; or
- 11 for some other reason [been] considered not fit and proper.

There would be some benefit in making such criteria explicit in statutory form if they could be sufficiently clearly defined. However, the task of definition would not be an easy one. Further, the process of assessing the suitability of a licensee is not as scientifically precise as a neat checklist might suggest. If the criteria are to be defined in statutory form, representatives of the Police, psychiatrists, firearms users and family violence workers should have some input. Previous endeavours to fix statutory criteria have not succeeded, but another effort would

be justified. This would be an appropriate task for the proposed Firearms Authority to oversee.

### *Disqualification Periods*

In addition to general criteria which make a person unsuitable to possess firearms, some characteristics are of sufficient seriousness to justify disqualifying a person from obtaining a licence for a specified period. Many Commonwealth jurisdictions now define periods of disqualification for such events as:

- convictions for violent offences;
- convictions for firearms offences;
- domestic violence; and
- convictions for alcohol or drug offending.

The advantage of defining a period of disqualification is that it encourages uniformity. The risk is that the regime operates in too blunt a fashion. It is necessary to consider each potential class of disqualifying characteristic in turn.

### *Domestic Violence*

The Arms Act has recognised since 1992 that a person is not fit and proper to be in possession of firearms if he or she has been responsible for domestic violence. As the Act now stands, police have the power to revoke a licence whenever grounds exist for the making of a protection order under the Domestic Violence Act 1995. These grounds are quite wide, and include psychological abuse as well as physical violence. In addition, firearms licenses are automatically revoked when a final protection order is made, and suspended on a temporary order. The making of a protection orders should accordingly lead to disqualification.

### *Convictions for Violence and Firearms Violence*

While those who have convictions for violence are unlikely to be suitable to possess firearms, it may be too blunt to disqualify a person from possessing firearms upon any conviction for an offence of violence.<sup>224</sup> Experience shows that there are frequently mitigating and aggravating factors which differentiate between offenders and offences, and there is a

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need to find a balance which provides as much flexibility as possible while remaining practical.

A straightforward starting point is the group of offences defined as “serious violent offences” in the Criminal Justice Act 1985, such as aggravated robbery. There is a strong case for these offences to carry mandatory disqualification. An equally strong case exists for violent offences involving firearms, and those which involve family violence.

In the case of other violent offences, however, such as simple common assault (which may be no more than a touching), it is quite possible that a person may remain suitable to possess firearms despite a conviction. For this reason a conviction for such an offence should carry a presumption of disqualification, but reserve a discretion to the Court to permit the possession of firearms in appropriate circumstances. An application to the Court should be less onerous in those cases where the Police support (or at least do not oppose) the application, and the Courts should be encouraged to treat such cases with appropriate expedition.

#### *Breaches of the Arms Act*

Many serious firearms offences are contained in the Arms Act rather than in the Crimes Act, and it can be assumed that many of those convicted of Arms Act offences will be unsuitable to possess firearms. Once again potential exceptions would be those people convicted of minor offences, such as failing to notify a change of address, who are in all other respects responsible firearms owners. As with the less serious violent offences, there ought to be a presumption of disqualification for those convicted of Arms Act offences carrying penalties of imprisonment, unless a Court is satisfied that despite the conviction and taking into account the circumstances of the licensee, he or she is suitable to possess firearms.

#### *Convictions for Other Offences*

Currently more than 65 percent of refusals are influenced by driving offences involving alcohol, drug offences or long criminal records. While these matters may be relevant to a person’s suitability to possess firearms, it is not easy to devise any formula which defines with precision the nature of the

disqualifying characteristic. This points to the continued need for discretionary provisions enabling refusal and revocation of licenses.

#### *Poor Mental Health*

This topic is dealt with in part 6.1.5, which proposes the suspension of licenses upon the making of a Compulsory Treatment Order and provides a procedure for lifting suspensions if and when the condition which led to the making of the order has passed.

#### *Alcohol or Substance Abuse*

As with general convictions, the difficulty with alcohol and substance abuse is that they are not easily susceptible of concrete definition. Having said that, chronic alcohol or substance abuse are certainly factors which may render a person unsuitable to possess a firearm. Again a discretionary provision permitting the refusal or revocation of a firearms licence is the most satisfactory solution, rather than a defined disqualification. The continued use of the “unsuitable flag” also allows such matters to be recorded and taken into account in any application for a firearms licence.

#### *Unsafe Firearms Use*

Although less serious than the above characteristics, demonstrated unsafe behaviour with firearms would generally be of sufficient concern to warrant a disqualification or revocation. However, the difficulties in defining the disqualifying factor make it inappropriate to provide for automatic disqualification.

#### *Applications After the Disqualification Period*

If disqualification periods are introduced, there will be a need for a procedure to deal with the granting of licences after the expiry of such periods. An application to the Court appears appropriate. As in the case of applications for a “suitability declaration” it is possible that the Courts will choose to treat as little more than formalities those applications which are positively supported by the Police. However, the Act should

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make it clear that the expiry of a disqualification period is not in itself evidence of suitability to possess a firearm.

#### *The Unsuitable Flag*

As described in part 5.1 the Police currently use the unsuitable flag to record information about people who have not applied for a firearms licence, but who through their actions have been judged potentially unsuitable to possess firearms. This ensures that if a person so flagged applies for a licence, the relevant information will come to the notice of the officer considering the application.

The continued use of the unsuitable flag, or an equivalent mechanism, is a desirable way to fill the gaps which would still be left by an automatic disqualification system.

#### *Prohibited Persons Register*

One submission which received some support, in particular from the Sporting Shooters Association of New Zealand, was that a “Prohibited Persons Register” (PPR) should be created, listing high-risk persons.<sup>225</sup> This measure was promoted as a stand-alone system capable of replacing both the licensing of users and the registration of firearms. The Association stated:

[A] PPR conforms to that most important legal and constitutional tenet, namely that citizens should be considered law-abiding and innocent until they demonstrate by their behaviour that they are not, and thus warrant the attention of authority.

In order to implement such a system, it was suggested that legislation be enacted prescribing the circumstances which warrant registry notification, but that “as a guide”:

[A]ll indictable convictions, all police attended cases of serious domestic violence, all suicidal/homicidal and unstable mental cases diagnosed by medical practitioners (referred to a specialist for confirmation of diagnostic assessment) and all inmates of mental institutions, should be made notifiable to the PPR.

Although the system of disqualifications previously described goes some way towards the concept of a prohibited persons register, it encompasses a narrower class of persons than that envisaged by the SSANZ. With respect to the Association, the breadth of its proposal presents practical difficulties which are probably insurmountable. Further, for the reasons discussed in part 4, it is unrealistic to contend that such a system could replace both licensing and registration.

#### *Minimum Delay Periods*

Several overseas jurisdictions have introduced minimum delay periods, typically 14 or 28 days, between the receipt of applications for licenses or permits and their issuing, to allow for a “cooling off”, and to avoid impulse buying by persons in an unbalanced mental or emotional state. These provisions were said to have particular significance in avoiding access to firearms for the purposes of suicide, commonly an impulsive action, particularly in the case of younger persons.

While the concept seemed sound, in practice the enquiries which precede the grant of licenses in New Zealand already provide a longer de facto deferral than any required by the special overseas provisions. In addition, none of the suicide cases in the literature available to the Review instanced the purchase of a firearm for the purpose of suicide. Enquiries of the Coroners in the three largest New Zealand cities disclosed that none had any recollection of such a case. Further, such a provision would only be of practical value when there would otherwise not have been a firearm available for that purpose. There would be little point in delaying a second or third purchase.

For those reasons no recommendation is made.

## ■ RECOMMENDATIONS

**10.1 That the new Firearms Act specifically require every applicant for a firearms licence to produce evidence of:**

- a) satisfactory security arrangements; and**
- b) the successful completion of an approved course in firearms safety.**

**10.2 That the Firearms Authority endeavour to define, in consultation with representatives of the Police, psychiatrists, firearms users and family violence workers, a list of characteristics which are likely to make a person unsuitable to possess firearms, such list to be used to guide the exercise of the discretionary powers to refuse and revoke firearms licenses.**

*Disqualification Periods*

**11.1 That:**

- a) any person convicted of a “serious violent offence” be disqualified from holding a firearms licence for five years;
- b) any person convicted of a violent offence involving a firearm, including the threatened use of a firearm, be disqualified from holding a firearms licence for three years;
- c) any person convicted of a violent offence against someone with whom he or she is in a domestic relationship, within the meaning in the Domestic Violence Act 1995, be disqualified from holding a firearms licence for two years;
- d) any person against whom a final protection order under the Domestic Violence Act has been made be disqualified from holding a firearms licence for two years.

**11.2 That:**

- a) any person convicted of a violent offence other than one in any of the above categories be disqualified from holding a firearms licence for two years;
- b) any person convicted of an offence against the Arms Act punishable by imprisonment be disqualified from

**holding a firearms licence for three years—  
unless the Court declares the person to be suitable to hold a firearms licence.**

**11.3 That in any case the expiration of a disqualification period not in itself be taken as evidence that the person is suitable to possess a firearm.**

*Improving the Vetting Process*

Effective exclusion of those who are unsuitable to possess firearms depends on the availability of relevant information, both when a licence application is first considered, and on an ongoing basis. As far as the initial application is concerned, the current sources of information include:

- the Wanganui computer;
- the applicant himself or herself;
- the referee(s) provided by the applicant;
- any independent referee(s);
- the opinions expressed by the vetter; and
- local police intelligence.

Although these sources generally provide a reasonably good picture of applicants, a number of improvements to current practice have been suggested. The Ministry of Women's Affairs and the Police Association both expressed concern that in some circumstances the partner of an applicant may feel pressured if she is the only referee consulted. In an abusive relationship such a partner could fear repercussions if it became clear that her report had led to refusal of a firearms licence. For this reason it is desirable that whenever possible two referees are consulted.

It was also suggested that the police family violence database and the local women's refuge should be consulted in every case. While the first of these suggestions is capable of immediate introduction, the second will require further investigation which has not been possible in the course of this



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Review. If an arrangement which is suitable to both the referees and the Police can be worked out, this would no doubt be a helpful development.

Independent referees emerged from the analysis of refusal files as a more reliable source of information than referees supplied by the applicants themselves. There is no easy way to require the consultation of an independent referee. However, the Police should be encouraged to locate independent referees whenever there is some doubt about an applicant.

The ever-present possibility of rapid changes in health and emotional stability mean that even after thorough vetting there is a need for information on an ongoing basis. A shorter re-licensing period should ensure a more systematic identification of unsuitable licensees. However there is still a need for a mechanism to ensure that as far as is practical the Firearms Authority is in possession of the most up to date information. This would be helped by procedures for automatic notification of important disqualifying characteristics, and for action on the receipt of such notification. Currently the Police are automatically notified of every protection order under the Domestic Violence Act 1995 and a procedure is in place whereby police respond appropriately to those involving firearms. There is a case for such notification to extend to compulsory treatment orders (as to which see part 6.1.5 below). Consideration should also be given to extending notification to convictions for violence and for breaches of the Arms Act, so that appropriate action may be taken.

There is also scope for a procedure to ensure that every licensee who changes address has the security checked at his or her new home. This may simply be an extension of procedures to maintain the accuracy of address information.

#### ■ RECOMMENDATIONS

- 12.1 That in all but exceptional cases two referees be consulted as part of the vetting process.**
- 12.2 That the police family violence database be consulted in relation to each firearms licence applicant.**

- 12.3 That the Firearms Authority confer with the National Collective of Women’s Refuges as to the practicality of including a check with the local women’s refuge in relation to each firearms licence applicant.**
- 12.4 That in those cases where there are concerns about the suitability of a firearms licence applicant, the Police endeavour to consult an independent referee.**
- 12.5 That the Firearms Authority seek to develop a procedure for the automatic notification of relevant convictions.**

### **6.1.5 Reducing the risk of misuse by the mentally disordered**

This is another area in which there were not merely different views, but conflicting views, proceeding from different basic premises, which need consideration.

Part 4.2, which considered “Conventional Methods of Control”, and “Reducing Availability to High-Risk Users”, noted that:

Almost without exception gun control systems seek to limit the availability of firearms to criminals, children and mental incompetents.

What was not noted there, but needs to be kept in mind, is that controls over those not able through disability to exercise reasonable control are not just for the benefit of the public at large, but also for those suffering from disability. If examples are needed to support that contention they can be found in the two incidents which most immediately led to this review, in each of which a man with a history of mental disorder, who had obtained firearms and was firing them and clearly out of control, was himself shot and killed by police officers. And statistically the greatest danger by far arising from the mentally ill getting access to weapons is the risk of suicide.

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The New Zealand arms code contains provisions specifically directed at distancing criminals and children from firearms, but only indirect controls of the mentally disabled. They are of course affected by the requirement that applicants must be “fit and proper” persons. They may also be affected by s 60, which gives the Police power, if they have reasonable grounds for believing that a person is “by reason of physical or mental condition, however arising, incapable of having proper control of [a] firearm”, to enter and search premises and seize firearms.

The Police questioned the sufficiency of those provisions. Part 9 of their May 1996 Review expressed concern about a perceived reluctance by doctors and other health workers to give the Police information about patients “until it is too late for remedial action to be taken”. The Police attributed this reluctance in part to concerns about privacy rules, and in part to concerns about doctor/patient confidentiality and medical codes of ethics. They accordingly recommended:

- “That Principle 11, Privacy Act 1993 be amended to allow a health professional to advise the Police of any patient who that health professional believes on reasonable grounds, is no longer a fit and proper person to be in possession of a firearm”; and
- “That Police and the Department of Health work on establishing protocols to enable the sharing of information regarding persons with a mental disability and their possession of firearms.”

The public’s response to those recommendations, so far as this could be gauged from the submissions received, was wholly supportive. Indeed, in the case of some firearm user groups, the submissions went beyond mere support to the point of contending that mental health problems were of central importance. The issues requiring attention, these submissions said, were “not so much arms control problems as mental health problems”. Steps should first of all be taken to identify those who by reason of mental disability constituted a risk to public safety, and then procedures introduced to ensure they did not get a licence. Many submissions also referred to the changes in mental health policy which have increased the numbers of mental health patients discharged back into the

community. They declared strong support for the views expressed in the Mason Reports that, if the new policy were to be successful, more resources should be provided for the support of those so discharged.

By contrast, mental health professionals challenged the assumption that there is any relevant relationship between mental health and criminal violence. They also said that, if such a relationship did exist, their professional expertise gave them only a limited ability to identify in advance the high-risk individuals and to predict the likelihood of their becoming violent. To those concerns the Privacy Commissioner added his concern to avoid any undue or unnecessary publication, or retention, of mental health information.

It is necessary to look first at present knowledge about the extent and nature of any linkage between mental disorder and violent crime, for while it has long been believed that the two are strongly inter-related, that view has been under attack by mental health professionals for most of this century.

The most extensive recent research into this question is that being carried out by a group led by Professor Monahan of Virginia University. Its work had by last year proceeded to the stage of declaring support for the conclusion that a link does exist, but at a modest level: “3 percent of the variance in violent behaviour in the United States”.<sup>226</sup> Other findings reported were:

- that some major mental disorders result in 11 to 13 percent greater than average violence, but others result in lower than average violence;
- that, by contrast, alcoholic addiction produces a 25 percent increase above average violence, and drug addiction an average 35 percent increase (which suggests that an area requiring further consideration when appropriate data are available may be the introduction of provisions authorising the suspension or revocation of gun licenses on proof of alcohol or drug addiction); and
- that danger to others is related more to current psychotic symptoms than to any static diagnosis of mental illness.

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The combined effect of the weak linkage between mental disorder and violence, the possibility of major fluctuations in risk over brief periods of time, and the impracticability of achieving optimum levels of prediction save by examination over several days by a qualified professional who has been able to gain the confidence of the subject, has persuaded mental health professionals to discount the value of any general requirement of professional testing of applicants for firearms licenses.

The question whether psychiatric or psychological assessments should be made part of the licensing process was considered at length in the Cullen Report. The Inquiry had closely examined the history, personality and conduct of Hamilton. This showed him (in Lord Cullen's words) to have been a scheming, obstinate, devious and deceitful person, who could not be trusted. However the health professionals were agreed that although Hamilton had suffered from a personality disorder, there was no evidence of mental illness. Their evidence was summed up as follows:<sup>227</sup>

Both Professor Cooke and Dr Baird expressed the view that it was unlikely that any psychological or psychiatric examination of Thomas Hamilton would have alerted the examiner to his dangerousness. Professor Cooke emphasised that extreme violence was very rare and was virtually impossible to predict. A person assessing Thomas Hamilton would probably not have regarded him as a high risk. Dr Baird pointed out that the various actions and statements of Thomas Hamilton when taken together gave strong suggestions as to what was being planned by him "but it is only after the event that it has been possible for these all to be linked. Each on its own and at the time was trivial and unremarkable".

An analysis which appears to have gained Lord Cullen's support was given by the English psychologist Mr Michael Yardley. He saw the most common characteristic of serial killers as "social impotence". In his view:<sup>228</sup>

[T]he average person today feels more isolated and alienated than ever before as society becomes more centralised and less personal. The average position has changed, so one may

expect a shift in the whole normal distribution of human behaviour. On one side of the curve one may expect ever more bizarre and aggressive behaviour. Unless this fundamental problem is addressed—the problem of personal empowerment in mass society—more Dunblanes and Hungerfords are not only possible but likely along with a variety of less dramatic but equally destructive behaviour such as road rage and substance abuse. The increasing use of guns by British criminals may also be connected with the perceived empowerment/status achieved by firearm acquisition and use.

Lord Cullen's conclusions about the relationship between mental illness and violence, which closely match those of Professor Monahan's group, were as follows:<sup>229</sup>

[T]here are significant limitations in what can be done to exclude those who are unsuitable to have firearms and ammunition. There is no certain means of ruling out the onset of a mental illness of a type which gives rise to danger; or of identifying those whose personalities harbour dangerous propensities. On this ground alone it is insufficient protection for the public merely to tackle the individual rather than the gun.

It is against this consensus of opinion that the submissions urging that better diagnosis and treatment of mental disorders are the key to gun control issues must be assessed.

On the question of better diagnosis I am convinced, as was Lord Cullen, that professional assessment of all applicants for firearms licenses is neither a practical proposition nor likely to be effective if somehow the necessary professional resources could be assembled.

The argument that mental health deserves more recognition as a factor in gun crime is stronger in relation to mass killings than the other and far more numerous gun homicides and gun-related crimes, for as a matter of commonsense one can say that there will not be many mass killers who do not, with the benefit of hindsight, display some form of mental abnormality. But even in the case of the mass killers, while such a case may yet appear, there is so far no convincing evidence that routine psychiatric or psychological examination would have avoided

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those tragedies. The Dunblane report expressly so held in relation to Hamilton. The Police Complaints Authority reached a similar conclusion in relation to David Gray.

The claims for the better support and treatment of those suffering from mental disorders generally proceeded from stated beliefs that most recent mass killings, and also the Radcliffe and Gellatly shootings, were examples of mentally disordered men being allowed by an inadequate mental health system to gain possession of firearms they were not competent to manage.

Brief details of recent mass killings are included in appendix 3 to this report. Those details do not support the belief that any significant number of the mass killers had previously been in receipt of mental health care. To that extent the predominant importance sought to be given to mental health issues is not justified. It is however clear enough that mental issues do come up for consideration from time to time, and indeed appear to have done so in each of the last three events listed in the appendix.

It cannot have been intended that this Review should make yet another assessment of the merits and demerits of current mental health arrangements, and I have noted the recent public announcements that additional resources are being made available to provide assistance to mental patients in the community who are in need of it. That being said, it cannot be doubted that further recognition of the need for support identified in the Mason reports would assist the cause of gun control.

In any event, the conclusion that mental disorder is not of significance in the general run of cases does not mean it may not be of major significance in some cases. Nor does acceptance that mental health professionals cannot classify the whole gamut of applicants for licenses into those likely to be affected by mental disorder, and those who are not, mean that they do not from time to time observe patients whose mental states clearly indicate that they are at the time unfit to possess firearms. And while the number of such instances may not be large, the significance to public safety of the formation of such a view means that a failure to disclose its existence is likely to involve grave risk of serious consequences.

There is already precedent in New Zealand for imposing a duty on health professionals to disclose information considered to bear directly on public safety. Section 45A of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 directs that any doctor or optometrist who forms the opinion that a patient's mental or physical condition is such that "in the interests of public safety the [patient] should not be permitted to drive" *shall* give written notice to the licensing authority of that opinion and the grounds for it. The section then provides that persons who give such notice in good faith shall not thereby incur any civil or professional liability.

Enquiries were made of the Land Transport Safety Authority regarding the extent to which that provision is used, and the proportion of notices which are given on mental health grounds. The Authority advised that examination of a sample of the past two years' notices suggested that about 11 percent of the 400 to 500 notices received each year were given for "psychiatric" reasons. That proportion closely approximated the proportion of revocations of firearms licenses made by the Police for "mental health" grounds, as disclosed by the examination of revocation files for the purposes of this Review. The total numbers of revocations presently run at between 500 and 600 a year. It is reasonable to infer from those figures that, while mental disorders are far from the most important factor in arms control, they are sufficiently important to justify action to remove unnecessary impediments to the flow of relevant information from the mental health area to the arms control authorities.

Enquiries about the Australian firearms reforms revealed that proposals to introduce into the arms control area a mandatory compulsory disclosure regime similar to that contained in s 45A, by defining risk factors which would trigger the obligation to make disclosure, were abandoned in favour of provisions which support the making of voluntary disclosures by health professionals and declare that they shall not be liable to any penalty for doing so.

Most States already had legislation along those lines, but a meeting of their Police Ministers on 11 April 1997 endorsed a form of model legislation which it asked the States to introduce as part of the objective of obtaining uniform gun laws



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countrywide. A copy of their resolution is attached as appendix 4.

Armed with that background knowledge, I sought from those organisations most directly interested in such issues in this country<sup>230</sup> agreement to the introduction of similar legislation in New Zealand.

I also suggested that consideration be given to ensuring that arms controllers get advice of the making of Compulsory Treatment Orders (CTOs) under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and that such orders operate to suspend any firearms licence held by the person concerned. There is no present protocol ensuring that the Police obtain advice of the making of a CTO, although such orders must be strong evidence that the licensee is at the time incapable of having proper control.

These suggestions produced mixed responses. As to the first, the Privacy Commissioner agreed that statutory protection should be provided in a suitable voluntary disclosure regime, but sought to limit the ambit of the provision from “health professionals” to a narrower category, such as medical practitioners and registered nurses. As to the second, he asked that consideration be given to limiting the holding of information about CTOs where those had expired or been lifted.

The Ministry of Health thought it “reasonable, if not desirable”, to permit voluntary disclosure by a clinician, but opposed mandatory disclosure. It considered that the Privacy Code’s “serious and imminent danger” threshold for disclosure might be too high. It favoured the development of protocols by the Ministry in cooperation with the Police and professional bodies.

The Mental Health Commission contended that legislation “targeting disclosure of information regarding people with a mental illness” was neither necessary or desirable. It suggested that s 22C of the Health Act 1956 and Privacy Principle 11 are sufficient to meet the Police’s needs. If this were not so, it contended, the position might be rectified by legislation (the Whistleblowers Protection Bill), recently under consideration. The Commission expressed “less objection” to the CTO proposal, provided the Police were required to use that

information only for the purposes of arms licensing and the suspension could be lifted when the mental condition underlying the CTO no longer existed. It opposed police and health authorities developing protocols, and thought it “infinitely more preferable for medical professionals to receive information about individuals holding firearms license [*sic*], than it is for the Police receiving information about the mentally ill”.

The Medical Association, when asked whether there were any provisions in its Code of Ethics bearing on the issues, initially advised that it did not think so. A second inquiry, made following press publicity that a medical practitioner who had answered a police inquiry about the fitness of one of his patients had been disciplined by the Medical Disciplinary Committee, produced advice that that decision had been made pursuant to Rule 10 of the Association’s Code of Ethics, which declares the patient’s right to have information derived from him kept in confidence and divulged only with the patient’s permission except when the law requires otherwise.

No other views on the proposed reforms were received.

The above history in my view confirms the present absence of any common position on the issues as between the different mental health professionals, and justifies police concerns that without clear legislative direction the present poor level of communication of relevant mental health information will continue.

On the voluntary disclosure issue I would accordingly support an amendment to the Arms Act generally along the lines of the Australian model legislation but with an additional requirement that the disclosure be made not only bona fide, but for reasonable grounds. I do not accept that present legislation meets the position. I do accept, of course, that if legislation concerning disclosure of medical information is enacted which covers the special position of the mentally disabled, it would be unnecessary for special legislation to be further considered.

On the second proposed reform, it is my view that no sufficient reason has been shown against the Police receiving advice of the making of CTOs, or against orders effecting an immediate suspension of arms licences. There is a case for a further provision whereby the suspension could be lifted upon

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the licensee establishing that the condition underlying the making of the order no longer operated and that he or she was again capable of having proper control of firearms. As the order would only have been made upon the advice of a “responsible clinician”, it would seem appropriate to provide that fitness could be established by a certificate to that effect by the clinician concerned.

The disclosures authorised by such reforms would be significantly less extensive than those mandated in the case of motor vehicles by s 45A. It is at least arguable that the public interest is as much affected by unfitness on the part of a firearms licensee as it is by unfitness on the part of a licensed driver. I accept, however, that the arguments which persuaded the Australians that clear parameters for the conditions which would trigger a mandatory reporting system were likely to be settled only after further research and professional collaboration must apply equally in New Zealand. That circumstance alone would justify support for the second police proposal, that they continue to work with the relevant professional bodies “on establishing protocols to enable the sharing of information regarding persons with a mental disability and their possession of firearms”.

There is one further area in which some advance on current practices may be possible and should receive consideration.

Included in the material provided from Australia for the purposes of this Review were reports on a project undertaken by the Victorian Police following a series of shootings by police of persons later found to be suffering from mental disorders under the title Project Beacon. Six out of nine people shot by police in Victoria in 1994 fell into that category. As a result over the next year 8,657 police officers underwent a five-day course designed to enhance their skills in dealing with violent, or potentially violent, situations. A review of the programme, dated November 1996, reported a significant reduction in police shootings, and strong support from within the Victorian Police force for the continuance of the programme.

I am informed that our police have some knowledge of the Victorian programme. It must be desirable that its possible application in New Zealand be carefully considered.

■ **RECOMMENDATIONS**

**13.1 That the new Firearms Act include provisions:**

- a) **permitting voluntary disclosure by health professionals, generally along the lines of the model legislation recently approved by the APMC, but in addition requiring that any opinion so disclosed be formed “on reasonable grounds”; and**
- b) **directing that the making of a Compulsory Treatment Order under s 28 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 be notified to the Police forthwith and have the effect of suspending any firearms licence during the continuance of the order, such suspension to be lifted on proof that the condition underlying the making of the order no longer exists and that the person concerned is again a suitable person to possess a firearm, and that in considering suitability for the purpose of that procedure consideration be given to the certificate of a “responsible clinician”.**

**13.2 That within six months the Police:**

- a) **take appropriate steps to set up, in collaboration with the Ministry of Health and other governmental and professional organisations involved in the mental health system, a working party to establish protocols to enable the sharing of information regarding persons with a mental health problem who have possession of or access to firearms; and**
- b) **consider introducing a training programme for police along the lines of that introduced in the State of Victoria as Project Beacon.**

## **6.2 Promoting Responsible Attitudes to Gun Use and Ownership**

### **6.2.1 Combined registration and licensing system**

#### *The 1982 Case for Abandoning Registration*

The steps which led to the abandonment of registration of individual firearms in 1983 are described in part 2.2.

The submissions to this Review included a considerable number of statements by shooters questioning the wisdom of that decision. The extent of this uncertainty was confirmed by the DAOs, who reported that most shooters could not understand why particulars of their weapons were not recorded.

However the case for abandonment made in the McCallum paper still deserves careful consideration, and would have been much more persuasive in 1982. It was based on five propositions:

- the mechanical difficulties of converting the existing corrupt and incomplete records into an accurate register were beyond the resources available to the Police;
- shooters were unlikely to comply with the obligations involved in registration in sufficient numbers to make the system effective;
- registration would not assist crime prevention or detection;
- a licensing system with more intensive vetting would provide adequate arms control; and
- the cost of a registration system would be very high, and the money could be better spent on other essential police duties.

#### *The Practicality of Establishing a Registration Database*

In 1982 the difficulty of converting the paper-based registers of the time, which were spread through 16 district offices and riddled with error, must indeed have been daunting. Even today there will be mechanical problems setting up an adequate

register. One of the more intractable is the identification of individual firearms. However, this is a problem common to all jurisdictions, which has received considerable attention both in Canada and Australia in the past two years. The basic options are known and are being worked through. Both countries are aiming for simple, modern, cost-effective systems which will provide shooters, dealers and arms controllers with on-line access to all licensing and registration data. They have also been working with a UN committee endeavouring to agree a template for the unique identification of individual firearms which would have international application. Any New Zealand system should await progress with those investigations, which are expected to be completed within a year. Although New Zealand conditions may make some variation on any UN-approved system appropriate, the central problem must at least be similar in all three Commonwealth countries. Certainly any registration system which can operate efficiently countrywide in Canada should provide a useful base for an effective system here.

Recent difficulties with public sector databases show the need for due caution in setting up even as relatively simple a system as that which would be required. But the successful establishment of more complex databases in a variety of fields over the years since 1982 removes any question that mechanical difficulties can be overcome, provided use is made of overseas experience and the new systems are not introduced until all appropriate checks and tests have been carried out.<sup>231</sup>

### *Obtaining Compliance*

Obtaining a sufficient degree of compliance must still be a central concern.

Those whose general aversion to arms control led them to a particular dislike of the concept of registration have, here as abroad, asserted that any attempt to introduce registration of firearms will be met by massive non-compliance. Similar assertions were made as emphatically in Australia prior to the Australian reforms. It was of interest to find in Australia that most of those who had opposed the reforms, and still expressed doubts about their wisdom, were publicly accepting an obligation to comply. The submissions I have received give no

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ground for anticipating a different response from New Zealand shooters provided the new scheme and the manner of its introduction are made as user-friendly as possible. The Western Australian experience, discussed later, at the least shows that registration systems can work, and can achieve appropriate compliance rates.

#### *Benefits of Registration to Crime Prevention and Detection*

Although the 1982 Police Report concluded that “[t]here is no evidence to suggest there is any relationship between the registration of firearms and their control”,<sup>232</sup> and appendix R to the report noted that in none of a series of nine cases of homicide in 1981 had the existence of a register assisted the police, it also listed 16 cases from the preceding ten years in which the old registers, poor though they were, had assisted in apprehending offenders.

The report’s authors were aware that in the United Kingdom Greenwood’s studies had led him to the firm view, which he reported to the 1981 Wellington Symposium, that registration had no value for crime control. In 1994 an Australian study by Mason and Herlihy discussed Greenwood’s study and an earlier Australian study by Fine.<sup>233</sup> It concluded that registration had proved “a valuable investigative tool” for the Australian Police, and supported this by reference to specific cases drawn from different Australian States during the period 1981 to 1992, finally concluding that “examples currently available of effective use of a registration system—even when it is administratively clumsy and reputedly operating at less than maximum efficiency—indicate that the conclusions of Greenwood (1972) and Fine (1988) are probably now outdated”.

Another benefit sometimes attributed to the availability of a firearms index is that it would give additional information to police called to domestic violence situations. Once again, some benefit might ensue, but it is likely that in most cases the most accurate information would be that given by the complainant.

In my view the Mason and Herlihy study and the New Zealand studies which preceded the 1983 Act establish that registration, even at the relatively ineffective levels so far achieved either in Australia or New Zealand, can provide

assistance to the police in their front-line duties, but at a low level. Mason and Herlihy contended that a comprehensive, efficient and accessible registration index would provide greater benefits. That seems likely. However, at this time there is insufficient evidence to conclude that the assistance which registration would provide to crime prevention and detection would in itself support the costs involved in establishing it.

### *Sufficiency of Licensing Controls*

Experience since 1983 has shown that, while personal vetting is a useful and necessary part of any arms control system, it cannot effectively eliminate the unfit at the time of vetting, nor provide predictions which will ensure that changes in fitness will be identified before they have led to misuse. It is this fact which led Lord Cullen to conclude, in the passage previously cited, that “it is insufficient protection for the public merely to tackle the individual rather than the gun”.<sup>234</sup>

Experience since 1982 has shown that the expectation at that time that “plac[ing] the responsibility of safe firearms use squarely on the shoulders of the user” cannot be achieved by licensing alone. Further, continuance with a licensing-only system would necessarily involve acceptance of substantial limitations on the controlling authority’s ability to achieve control, and in particular:

- An inability to know who has what. The Auckland Police reported a few years ago a burglary of an Onehunga residence containing over 400 Class A firearms. The law placed the owner under no obligation to tell the Police of his collection.
- An inability to ensure that dispositions of firearms are made only to authorised licensees. The purchases from advertisements in *Trade & Exchange* reported in part 2.3 emphasise the need for tighter control over dispositions.
- The absence of incentives to develop more general acceptance of the personal responsibility which should be associated with firearm ownership and possession. Registration would make it possible for the Police to trace the origins of guns used in crime which are later recovered, and check how they



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reached the criminal. This in turn should increase appreciation by gun owners of the need to maintain security. It is believed that gun theft is under-reported when the theft was facilitated by non-observance of security conditions. It would also be helpful to be able to check that licensees who do not renew their licences no longer have any firearms in their possession.

- The loss of the benefits which registration would provide to crime prevention and detection, and to police engaged in domestic violence investigations. While those benefits are unlikely to be of such magnitude as in themselves to justify registration, they can be important in a limited number of cases.
- The absence of information needed to formulate gun control policy and to keep policy in tune with changing circumstances.

It must also be of some significance in considering the question whether New Zealand should return to a mixed licensing/registration system that international opinion now seeks to identify registration of firearms as one of five basic characteristics of adequate firearms control systems (see part 4.4).

#### *Cost*

The 1982 paper estimated the hours which would be involved in validating a register, but did not convert these into dollars. The May 1996 Review made two estimates, one putting the cost of registration at “between \$8M and \$16M”, and a second at “a minimum of \$20M”.

A costing exercise for firearm-specific licensing at three-year intervals was undertaken by Coopers & Lybrand at my request. That exercise estimated that the annual costs of such a system would average \$7.3M per annum more than the present system for the first six years, or \$4.5M per annum more than the cost of the present system plus the May 1996 enhancements, but that the annual cost would stabilise thereafter at a similar level to the current cost.

In addition there would be approximately \$10M in one-off establishment costs. In Coopers & Lybrand’s estimation the

“significant infra-structure investment ... [required] to deliver the improved functionality” would add approximately \$51M to current costs, or \$31M more than the cost of the enhanced, still “licence only”, alternative proposed by the May 1996 Review.

Those estimates can only be indicative as it was impossible to define precisely the relevant numbers of firearms or transactions, or to foresee accurately which aspects of the possible reforms might be approved for implementation. However, taken as indicative costings they do assist in considering the relative cost-benefit of system reforms as contrasted with other possible reforms, such as buy-backs. In that context I have little doubt that the expenditure of an additional \$31M to establish firearm-specific licensing on a three-year cycle would be likely to produce substantially greater benefits for New Zealand society than the expenditure of \$13M on the buy-back of 20,000 centrefire semi-automatics, plus \$35M on the buy-back of 45,000 semi-automatic and pump-action shotguns, which operations would diminish the total national armoury by no more than 7 to 8 percent.

Moreover, it is important to note at this stage that of the total \$31M the registration component is said by Coopers & Lybrand to be “modest” of the order of \$2M per annum for the first seven years. Most of the additional \$31M cost comes from increasing the frequency of licensing. It is reasonably clear that ten-year licensing is not effective by reason of its failure to deal adequately with changes in address, dispositions, deaths not notified, and changes in fitness between the licensing and renewal dates. All those factors point strongly towards a shorter term of licence. The maximum practicable term appears to be five years, but a much preferred maximum term would be three.

It follows that on current estimates the cost factor cannot be decisive on the question whether or not to reinstate registration of individual firearms.

In the final result, although the case made against continuing with registration of firearms seemed powerful in 1982, it appears much less persuasive in the light of the changes which have occurred since. These include not only the major advances in information technology, but also the changes in the public attitude towards gun controls, which must bear on the

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likelihood of achieving an appropriate rate of compliance with a combined licensing/registration system.

#### *The Western Australian Example*

The most attractive, and apparently the most successful, overseas firearm control system of those for which particulars are available to the Review, both in terms of its effect on levels of gun crime (see part 2.4) and its acceptance by gun users, is that used in Western Australia. This combines the following:

1. Annual licensing.
2. A requirement that every firearms licence specify the particular firearms which the licensee is entitled to use.
3. A requirement that persons who wish to use a firearm not noted on their licence must apply for the notation of the additional firearm on the licence, or obtain a temporary permit, which can be provided for a period not exceeding three months.
4. An exemption in favour of the employees and families of primary producers in relation to the use of firearms for pest control or farming purposes.
5. A provision for “corporate licences” to be held by approved governmental agencies or corporations, allowing them to possess the firearms identified in their licences and to permit named employees or agents to use those firearms for specified purposes and in specified places.

This system is conveniently described as a “firearm-specific licensing system”. It is the second and third of the five listed characteristics which provide its special character.

In Western Australia, licensing in that form goes back to 1973, and licensing in simpler forms to 1931. I was advised that the present situation had developed in a pragmatic way rather than in response to particular events or to the adoption of some new firearms control policy.

A firearm-specific system requires conscious consideration by gun owners of the use which may be made of their weapons. This was demonstrated in two different ways.

The total number of licences in Western Australia is 113,000, covering 270,000 firearms. (As the State population is

1.2 million, this represents a rate of gun ownership within the parameters previously suggested for New Zealand's gun ownership). There are no fewer than 49,000 joint registrations in which two or more people have been nominated and licensed as persons authorised to use a particular firearm.

The second procedure which indicates a heightened sense of responsibility on the part of owners (and a sound relationship between the Police and the shooters) is that under which owners can store their firearms at police stations for a modest fee. The guns are taken into the local station in the first instance, but transferred to police armouries if the proposed storage period warrants that action. Licensees who are going on holiday, or have particular concerns about the custody of their firearms (as for example if a member of the household has demonstrated suicidal tendencies) can take advantage of this arrangement. The advice in the AGB McNair survey, that on average there are 1.8 users of each New Zealand firearm, suggests that joint registration could also have a place in New Zealand. It is an arrangement having some similarity with the provision for nominated drivers which is an accepted part of motor vehicle insurance in this country.

Speakers at a Perth Firearms Symposium in 1981 cited Western Australian firearms controls as an example of bureaucratic excess which should be corrected.<sup>235</sup> However, such information as I was able to gather in Western Australia, not only from the Police but also from others interested in firearms control in that State, suggested a relatively harmonious relationship between arms control officers and user groups. Despite the strictness of its arms control arrangements they include such further user-friendly features as swift pro-cessing of licence and permit applications and registration of dispositions, and a system of reminders to licensees who are late with applications for renewal. This last feature has kept the number of prosecutions for licensing/registration defaults at very low levels.

Accepting that this end result may be due as much to the gradual establishment of a culture of responsible gun ownership as to the nature of the State's arms control laws, those arrangements must have assisted in developing the present level of responsibility.

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Apart from those basic features of the Western Australian model, there could be advantages to New Zealand in adapting its primary produce exemption and corporate licence provisions to our conditions. It is anomalous that our system still does not recognise the corporate character of much of our modern state.

#### *Assisting the Re-Introduction of Registration*

No doubt the setting up of an equivalent system in New Zealand would be affected by the special difficulties of introducing “yet another system” to a community of shooters who have become accustomed to minimal controls. It follows that, if such a system is to achieve an appropriately high rate of compliance, its introduction must involve as little effort and expense to shooters as can be arranged.

One respect in which a useful saving of effort on the part of shooters should be attainable would be by reducing the present three-stage dealings to two. At present the acquisition of a firearm which must be registered involves:

- obtaining a permit to acquire from an arms office;
- purchasing the firearm, generally from a dealer; and
- returning with the firearm and the permit to the arms office.

It should be considered whether the third step is necessary, and whether an obligation could not be placed upon dealers, who are already under obligations to record all sales, to give notice of individual sales to the Firearms Authority, perhaps by returning an endorsed copy of the permit. The registrar could then forward appropriate certificates to the dealer and purchaser.

Decisions on the manner of implementation of any new scheme and how its cost is to be borne will have an important bearing on the degree of compliance with, and accordingly the overall benefits of, such a scheme. For unless a compliance rate of not less than 90 percent can be achieved, the benefits derived from registration would be significantly reduced.

Shooters were angered when the lifetime licences which it had been agreed in 1983 should be the basis of licensing were

required by the 1992 Amendment to be handed in and replaced by ten-year licences, for which shooters had to pay an additional fee. Numbers of shooters still express feelings of injustice at that change. A concern has to be that those shooters still aggrieved about losing their lifetime licences in 1992 may be sufficiently aggrieved by a further reduction in their privileges, particularly if they are again required again to pay for the rearrangement, that they decide not to comply with the new regime in the numbers necessary to make it effective. If the Government considers the benefits likely to flow from the proposed rearrangement warrant its introduction, it should in my view be prepared to carry the cost of the reconstruction and limit the application of user-pays to maintaining the new system after its establishment.

Australia has chosen to spend \$A500M of taxpayers' money on its gun reforms. Most of this is being spent on a buy-back of the total range of semi-automatic and self-loading firearms, of both small and large calibres. Only quite small parts of the total sum are being applied to set up the new licensing/registration systems.

If, as is proposed in this report, New Zealand undertakes a more focused and selective banning and buy-back, the total cost of that operation and establishing new systems should be able to be carried out at a relatively lower cost than that accepted in Australia, even including provision for a higher standard of monitoring and enforcement of the new scheme than the Australians have provided in their planning.

The new system should be introduced in a staged fashion to avoid peaks and troughs in the work-load. It would be appropriate to introduce one-third of the new licenses in each of three consecutive years, and would also be convenient to accelerate re-licensing in the case of persons still holding a 1992-style licence who wish to acquire a further firearm. They could be required to register and re-licence at that point.

It is gratifying to note that submissions from many firearms users indicated support for the registration of firearms. By contrast, some users see registration as simply a precursor to the confiscation of firearms—a Trojan horse for the eventual banning of guns. This fear is indicative of a distrust of the government which reinforces the need to ensure that shooters

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are involved in the administration of any new system, and that whatever form that administration takes, a relationship of trust is developed as the basis for future progress.

#### *Summary*

The fact that a number of people with considerable experience of firearms control have opposed and still oppose the re-introduction of registration makes it desirable to restate the central conclusions of this section in brief form.

First, the reasons which led to the abandonment of firearm registration in 1983 no longer present compelling obstacles in 1997. Not only have technology and methods of administration moved forward since then, but experience has shown that the alternative of total reliance on personal vetting does not meet the reasonable needs of our society.

Second, the benefits of a well-run registration system should be sufficient to justify the estimated additional cost of \$2M per annum. The principal benefit would be greater personal responsibility for firearms. Each firearm owner would know that he or she was responsible and accountable for those firearms listed on his or her licence. If he or she wanted to allow others the use of those firearms, other than under direct supervision, this would require a joint registration or a temporary permit. Any firearm stolen or used in crime, and later recovered, could be traced to the owner. Selling or lending a firearm to an unlicensed person would carry with it a risk of detection much greater than under the present system.

Registration would also provide more information about firearm ownership for management and policy decision-making, assistance in solving crimes, and better protection for front-line police when attending incidents involving firearms.

If this new system is to succeed it will be essential that an adequate level of compliance is achieved—and 90 percent should be the minimum target. Considerable energy and commitment will be needed to achieve this. Measures to that end should include:

- modern, efficient and user-friendly management (see part 6.4);
- government funding of the establishment costs;

- the involvement of firearms users in the planning processes (see part 7);
- technical systems to enhance the integrity of the data; and
- effective publicity and educational programmes (see part 6.3.7).

■ RECOMMENDATIONS

**14.1 That the present licensing system be replaced by a combined licensing/registration system based upon three-year firearm-specific licenses, the new system to be introduced over three years, commencing on 1 July 1999.**

**14.2 That after the introduction of the new system any person who wishes to acquire a firearm and who still holds a 1992 licence be required to re-register under the new system.**

*Deaths of Licensees*

A particular defect in the present licensing system is the absence of adequate provision to ensure that deaths of licensees are notified to the arms authorities so that the register of licences can be corrected and steps taken to ensure that the licensees' firearms do not pass into the hands of persons not authorised to possess them.

The only provisions in the present code which bear on this issue are:

- section 43 of the Arms Act 1983, which requires persons who “sell or supply” a firearm to satisfy themselves that the purchaser is the “holder of a firearms licence”; and
- regulation 18 of the Arms Regulations 1992, which provides that:

Where the holder of a firearms licence in respect of a pistol, military style semi-automatic firearm, or restricted weapon dies, the personal representative of



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the holder of the firearms licence or any other person who obtains possession of the pistol, military style semi-automatic firearm, or restricted weapon, shall forthwith notify the Police of:

- a) The death; and
- b) The location of the pistol, military style semi-automatic firearm, or restricted weapon.

The DAOs advised that the obligations created by reg 18 are generally observed by the families of B (pistol) and E (MSSA) endorsees and that this enables them to correct the B and E registers and ensure that the relevant firearms are surrendered or transferred into appropriate custody. By contrast, the absence of any provision requiring notification by A licensees, who comprise 95 percent of the total pool, together with the effective abandonment of a pre-1983 practice under which DAOs were expected to read death notices and try to check the disposition of deceased licensees' firearms, has meant that only a small proportion of deaths of A licensees become known to the DAOs.

On those occasions when trustees or family members do advise the DAOs that an A licensee has died, the DAOs' usual practice has been to ask what is being done with the estate's firearms, and to accept any assurance that they have gone or will go into proper hands without further check or enquiry. No instance was reported of any physical check on the security that would be provided by the recipient of the firearms.

Inquiries were made from solicitors and trustee companies in Auckland who had recently obtained grants of administration of the estates of 47 firearms licensees. They disclosed that:

- only one had made a practice of inquiring about the existence of a licence for firearms—firearms were generally regarded as part of the deceased's chattels to be disposed of by the trustees according to any directions given them by the deceased;
- most thought the issue deserved more attention than it had previously received; and

- there is a wide variety of views about the appropriate response—the least intrusive was the suggestion that notification by the New Zealand Law Society and others of the need for inquiries would ensure that these were made in the future, the most radical proposed that the obligations in reg 18 be extended to A licensees.

Approximately 3,000 to 4,000 people who have held licences die each year. It is not known what proportion of these still possessed firearms at the date of their death. Informal inquiries suggest that many, perhaps most, would no longer have had firearms. It is likely that that proportion would increase if licensing were (as is proposed) a three-yearly event involving the payment of fees on each renewal. However, without some protocol which ensures that the arms authorities are notified of deaths of licensees it is likely that the record will deteriorate at the rate of 1,000 to 2,000 entries per annum and that considerable numbers of persons who have neither the authority of an appropriate licence, nor appropriate security arrangements, will take over the deceaseds' firearms.

The nature of an appropriate response must take into account the frequency of licensing. Its importance if licensing continues to be a ten-yearly event would be much greater than if licences were renewed more frequently. If a ten-year licence continues, there will be a clear case to extend the obligation in reg 18 to A licensees. In that event it would be reasonable to allow say six months for notification instead of requiring notification “forthwith”, but to specify that evidence of transfer to a named licensee with a current licence number should accompany notification, or that the firearms should then be surrendered to the Police or a licensed dealer. If the proposal for three-yearly licensing is approved, the problem will be much less. It might then be sufficient to restrict mandatory notification to the holders of endorsed licences, but seek the assistance of the New Zealand Law Society and the trustee companies in developing some new practice rule aimed at supporting the basic obligation not to dispose of firearms to unauthorised persons. This could take the form of a practice note adding to the inquiries already made by persons administering estates a

further inquiry concerning the holding by the deceased of a firearms licence or firearms.

The language both of s 43 and of reg 18 is awkward and should be reconsidered as part of the redrafting of the firearms code recommended in part 6.2.5. The obligation in s 43 should be to ensure “that the purchaser is the holder of an *appropriate* firearms licence”. Regulation 18 leaves uncertain which of the persons named has primary responsibility. It is also open to question whether both provisions should not be in statutory form.

■ RECOMMENDATION

- 15 That further provision be made for notification of the death of licensees, this to take into account the length of licenses under any new system.**

### **6.2.2 Training of shooters**

It has already been observed that the work of the Mountain Safety Council and its large band of volunteers in training applicants for licences in safe firearms methods has long been one of the strengths of the present system of arms control. More recently the Open Polytechnic of New Zealand in Wellington has offered a course which, for a fee, provides training in firearms law and safety. Both institutions have done a commendable job of administering their training programmes as presently structured, and have undoubtedly reduced the number of accidental deaths and injuries which would have occurred without such programmes.

Looking to the future there are two options which appear to offer some potential for improvement in the training of new shooters. These are the introduction of a practical component to training, and an investigation into the possible role of polytechnics in providing an infrastructure to support this. Both developments have been shown to work successfully in South Australia, where the TAFE network (the equivalent to the polytechnics in New Zealand) operates a number of successful

firearms safety courses. In the New Zealand situation both options should, if possible, build on the strengths of the current system.

In South Australia the basic firearms safety course consists of four hours of theory and two hours of practical instruction, each assessed. In addition there are specific courses for semi-automatic firearms and firearms collectors, as well as vocational programmes (for those who use firearms in employment) and an instructor accreditation programme. The cost of the basic course is \$A94 to the user, which allows full cost-recovery for the Institute. The practical component of the course covers both rifles and shotguns and emphasises safety over target accuracy, although a certain standard of accuracy is required for a pass. Since the introduction of the course in 1993, South Australia has observed a reduction in hospital admissions for gunshot injuries and a major reduction in fatal gunshot accidents. Although it cannot be proved that the improvement in firearm accident results has been caused by the practical training programme, these results are encouraging.

The advantages of using the TAFE network relate principally to the infrastructure they provide. These benefits apply both to the instructors and the students, as well as providing accountability and quality assurance. According to the coordinator of the programme in South Australia, the benefits include:

- contracts of employment for instructors;
  - professionally trained and accredited instructors;
  - work-cover and indemnity for instructors;
  - professional accountability of instructors;
  - pre-existing student management system;
  - indemnity for participants;
  - equitable fee structure;
  - maintenance of teaching standards across South Australia;
  - impartiality from vested club interests whilst retaining extensive club involvement;
  - broad coverage of almost the entire State;
- and

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- special provisions for remote areas (correspondence and distance learning).

If such a model is to be applied in New Zealand, it is highly desirable that those many enthusiasts currently engaged in voluntary training for the Mountain Safety Council be encouraged to become instructors for the new courses. As the list above suggests, not only would this mean that the instructors would be paid, they would also enjoy the protection of employment contracts and indemnity through their employer.

The apparent success of the South Australian model and the fact that it is presently being considered by other States for their training programmes must warrant consideration by an appropriate committee in this country, including representatives of the Firearms Authority, Mountain Safety Council, police, shooting organisations and the Association of Polytechnics in New Zealand, reporting to the Firearms Authority, with the task of examining the practicality of establishing a safety course providing both theoretical and practical training and using the South Australian system as a model. The committee may be assisted by obtaining the results of the business of the working party established in Australia following the APMC agreement of 10 May 1996 to investigate the adoption of a model similar to that in South Australia for the entire country.

#### ■ RECOMMENDATION

- 16 That a steering committee be formed, including representatives of the Firearms Authority, Police, Mountain Safety Council, Association of Polytechnics in New Zealand, and shooting groups to develop an approved syllabus and delivery method for a firearms safety course, which would include a practical training component.**

### **6.2.3 Sanctions for the misuse of firearms**

One in five of the submissions received from the public favoured tougher penalties. Numbers proposed that mandatory sentences, commonly for four years, be imposed for the use of firearms for criminal purposes, and be cumulative upon penalties appropriate to the offences for which the firearm was used.

Similar arguments have been put forward on many other occasions in many other countries. They are unlikely to be silenced, partly because they have an obvious appeal to the law-abiding shooter who has accepted the cost and inconvenience of gun controls and wants a greater share of the pain to be born by those who have not done so, and partly because it is not possible to prove or disprove deterrence in any clear and conclusive manner. At the best one has to talk in terms of probabilities.

However, at that level the following can be said.

- In general increased penalties have little deterrent effect. The most recent New Zealand findings on this point are in the publication *Trends in Reported Crime in New Zealand* which concluded that increased severity of punishment had not shown any deterrent effect over the period 1979 to 1995 for any class of offending.<sup>236</sup>
- Studies of the particular significance of increased penalties in the case of arms offences give little support for any different conclusion. The nearest thing to support came from the last in a series of studies of the effect of mandatory sentences for arms offences made by Colin Loftin and his associates at the University of Maryland over the period 1981 to 1992. Separate studies of six cities had found no discernible deterrent effect from mandatory sentencing but the last report found that by combining the results of all six studies a case could be made for a reduction in gun homicide, though not in gun robberies or gun assaults.

A particular difficulty facing arguments for additional penalties for firearms offences is the need to ensure that a criminal is not punished so harshly for carrying a gun that the additional

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penalty he risks if he injures or kills his victim is relatively small.

All in all, however appealing the case for mandatory sentences for firearm offences may be, offering as they appear to do a means of reducing gun violence at moderate cost to the public and no inconvenience to lawful gun users, there is a clear preponderance of informed opinion against their producing the desired result, and no evidence of moment the other way.

Some submissions also contended that insufficient use is being made by the Courts of existing sentencing powers. It proved difficult to obtain statistics concerning the length of sentences for firearm offences, but some statistics were obtained of sentences for four types of arms offences in 1983, 1987 and 1995. So far as they went they showed a slight upwards trend in effective penalties, but these remaining well within the statutory limits.

It may have been that, had the Courts been informed of the increased volume of such offending, the sentencing would have been different. The prevalence of a particular type of offending is a factor bearing on penalty, and there has been little information available to sentencers about the frequency of firearms crime.

Certainly the increases in 1987 and 1992 of the penalties for breach of s 95 (carrying or possession of a firearm save for lawful proper and sufficient purpose), which took them from imprisonment for up to three months and a fine not exceeding \$1,000, to imprisonment for up to four years and a fine not exceeding \$5,000, have given the Courts adequate power to impose penalties appropriate to the nature of that offending.

Two areas which do require attention are the present absence of any penalty (short of revocation of the licence) for breach of conditions of security in firearms licences, and the need to introduce new offences for breach of the obligations arising from the combined licensing/registration system if the proposals for introduction of registration of firearms are adopted. In the first case, penalties by way of instant fines may be appropriate for first offences. In the second case, if the registration regime is to obtain the necessary level of compliance, significant penalties must be provided.

■ RECOMMENDATIONS

- 17 That the new Firearms Act create offences for:**
- a) the breach of any security provision in a firearms licence; and**
  - b) the breach of the obligations created by any combined licensing/registration system**  
**—and provide a range of penalties appropriate to the seriousness of such offending.**

**6.2.4 Media portrayal of firearm violence**

It was commonly asserted in submissions that excessive media attention to violence and excessive exposure to violence in movies and television should be recognised as a principal cause of violent behaviour, and of gun violence in particular.

Overseas research into the relationship between media violence and actual violence stops short of any such straightforward conclusion.

A review of recent international research, which pays particular attention to Australian studies, is that published last year by the Australian Institute of Criminology.<sup>237</sup> Its conclusion is that the research to date has been able to “identify an association between exposure to violence in entertainment and violent behaviour, but [does] not prove that exposure causes violent behaviour”.

The paper then identified the two most significant variables in determining the extent of the impact of media violence as:

- the age of the viewer, children being most affected; and
- the context in which the violence is portrayed, as to which it suggested a need to educate young people to discriminate between fantasy and reality, and between justified and unjustified violence.

As to the second of these the paper suggested that:

This could take a similar format to traditional literature classes, or drug and sex education classes, as it is another



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part of modern life which can be potentially damaging if approached with a lack of relevant knowledge. Education such as this is already occurring in Canada ...

The paper also reports concerns about the concentrated attention given to shootings by newscasters, and notes cases which may have been imitation or “copycat” actions.

In this country too, “researchers argue about causality, while policy makers search for some evidence which will form the basis for sound policy decisions”.<sup>238</sup> It is a topic which is already monitored by the Broadcasting Standards Authority, and no doubt will continue to be. However, while it would be difficult to dispute the Australian conclusion that media portrayal of violence has some relationship to actual violence, or the view that media attention to firearm crime is at a level which must cause some concern, there is no basis in the material before me which would justify my making any specific recommendation at this time.

#### **6.2.5 Clear and comprehensible law**

It was noted in part 5.2 that the 1983 Act is:

[I]n itself difficult to construe, and its construction is certainly not helped by the circumstance that the 1992 Amendment was clearly compiled in haste and relates uneasily to the principal Act.

The Act was written before the advent of plain language drafting, and is structured in a way which does not assist the reader to understand its scheme or the location of the key sections. In contrast, many of the new Australian Acts are simple, logical and well-structured, and take advantage of modern drafting techniques to increase the accessibility of the law.<sup>239</sup>

The New Zealand Act frequently uses archaic language, for example s 36 provides:

No person shall carry a pistol or restricted weapon in any place beyond the curtilage of his dwelling, save under and in accordance with the conditions endorsed on his firearms licence by a member of the Police.

Leaving aside the fact that many women hold firearms licenses, the term “curtilage” is no longer in common usage, and even the word “dwelling” is not often heard in common speech.

Many sections in the Act leave important points unclear. For example it is not obvious whether someone whose licence has been revoked may continue to use firearms under supervision.<sup>240</sup> Nor is it clear whether it is legal to use an MSSA under supervision, although the preferable interpretation seems to be that this is not permitted—even if the MSSA is used by an A or B endorsement holder on a shooting range. This aspect of the law has been interpreted in different ways by different police districts.

The Police did what they could to overcome these problems by including in the *Arms Code*, a safety manual compiled with assistance from the Mountain Safety Council, a statement of basic points of firearms law in simple language. No doubt most shooters turn first to the *Code* or to fellow shooters or dealers for advice about the law rather than reading the Acts and Regulations themselves.

However, the *Code*, as it specifically recognises, is not a complete statement of the law. Readers are advised that this can be obtained from the local arms office. Not surprisingly, numbers of shooters have expressed concern to me that when inquiries were made, they received different advice from different officers.

Even if major reform is not made at this time, there is a need for the legislation to be rewritten in modern form to overcome the present shortcomings of the legislation. If major reforms are to be made, it must be even more important that these be made part of a new Act and that they not simply add another layer of complexity to what is already complex and obscure legislation.

## ■ RECOMMENDATION

**18.1 That the Arms Act 1983 and Arms Amendment Act 1992 be repealed and replaced with a new Firearms Act.**

**18.2 That the new statute be drafted in plain language with the goal of making the law in**

**relation to firearms as clear and accessible as possible.**

## **6.3 Additional Proposed Reforms**

### **6.3.1 Airguns**

For the purpose of the following discussion the term “airguns” is used to encompass air rifles, airguns and air pistols.

In para 10.2 of the May 1996 Review the authors described five “main features” of the proposed Australian reforms and supported only the fifth, the requirement that:

Air rifles require a licence and air pistols can only be held on a handgun licence.

The reasons for that proposal were stated as follows:

High powered air guns are now available, some of which have the velocity of a .22. In addition air pistols have been used in robberies and other criminal acts. There is currently no requirement the owners of such weapons to have a firearms licence. It is also believed that persons who have been refused a firearms licence are buying such weapons.

It is not known how many airguns there are in New Zealand. The most detailed study of the topic is in Appendix A to the 1982 police report, which advised:

It is impossible to estimate with any degree of accuracy the number of airguns in New Zealand at present but it is safe to assume it would be in the hundreds of thousands. The only measure available is statistics provided by the Customs Department which outlines the number of airguns imported into this country since 1978. On average approximately 10,000 airguns are imported each year.

Since that date airguns have continued to be imported at the rate of approximately 11,000 per annum,<sup>241</sup> but any calculation

of their total numbers must be affected by their relatively short life.

A significant development in recent years has been an increase in the numbers of high-powered airguns, some of which are capable of causing significant injury at distances of up to 50 metres, though very few have even 25 percent of the power of .22 rimfire rifles. High-powered air rifles are being increasingly used for pest control in suburban and “10 acre block” situations where the use of .22 rifles or shotguns would be inappropriate.

The current legal provisions governing possession of airguns are in s 21 of the 1983 Act which provides that:

No person shall have an airgun in his possession unless—

- a) He is of or over the age of 18 years; or
- b) He is between 16 years and 18 years of age and is the holder of a firearms licence.

However, s 28(3) excludes “specially dangerous airguns” which are airguns declared by the Governor General by Order in Council to be specially dangerous, and thereby become “firearms” requiring licensing.

A useful examination of the extent of injuries caused by airguns in New Zealand over the period 1979 to 1992 was published in 1996 by the Injury Prevention Research Unit at the Otago Medical School.<sup>242</sup> Its results and conclusions are accurately summarised in the headnote as follows:

**Results**—There were 718 airgun related injuries resulting in 1.56 injuries/100,000 population/year. Males and 10–14 year olds had higher than average rates of injury. The majority of the incidents were unintentional. There has been a marked decline in injury rates since 1989.

**Conclusions**—Airgun injuries, while not as serious as powder firearm injuries, account for a significant personal and societal burden. The results suggest that strategies aimed at controlling these injuries, especially those pertaining to children, are in need of review.

The report showed the rate of airgun injuries falling from 1.9 per 100,000 population in 1979 to 1.1 in 1992.<sup>243</sup> Unfortunately

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later statistics were not available to the IPRU, nor to me. It is desirable that this information gap be filled, as any action to be taken in respect of airguns must be affected by the question whether or not what was already quite a modest rate of injury has or has not fallen further since 1992.

The authors noted that half the injuries involved children under 15 years, from which they inferred:<sup>244</sup>

[E]ither supervision of persons under 18 has been inadequate, or ... persons over 18 have been discharging airguns in an irresponsible manner, or both.

There is sufficient anecdotal evidence of quite young children using airguns without any supervision to support the first of the IPRU's inferences. Indeed it is likely that many New Zealand children have their first experience of gun use in circumstances outside the law, by using airguns in the company of young contemporaries and completely without adult supervision. It may be desirable to recognise that fact.

A major dealer in airguns advised that most are sold to adults for use by children. This appears to be merely the continuation of a long-standing practice. Back in 1981 the Police found that 278 permits to procure airguns had been issued for over 11,000 airguns imported. It was concluded that older people were buying the airguns for younger friends or family.

The UK air rifle provisions require a licence for airguns whose projectiles have kinetic energy in excess of 12ft lb (or in the case of air pistols 6ft lb).<sup>245</sup> It has been suggested that airguns with muzzle velocities higher than the following be treated as firearms:

- .177 calibre 1,000 feet per second and over;
- .20 calibre 900 feet per second and over;
- .22 calibre 900 feet per second and over; and
- .25 calibre 800 feet per second and over.

Whether or not that formula is appropriate to modern armaments and circumstances should be the subject of consideration by a firearms technical committee. Wherever the appropriate level may be, it would be logical to specify a limit beyond which an airgun would be classified as a firearm, in

addition to retaining the present discretion to declare a particular airgun specially dangerous to cover any future developments in this class of weapon.

If those amendments are made it is difficult to see a sufficient case for bringing the majority of lower-powered airguns within the proposed licensing/registration system, especially if regard is had to the large numbers without serial numbers or other identifying characteristics. The proposal for compulsory licensing of all airguns is accordingly not supported.

There is nevertheless a case for some arrangement which would encourage more responsible control and use of airguns. This should commence by recognising that the use of low-powered airguns by 14 year olds is a high probability, and permit this, subject to conditions designed to encourage safe use.

Two alternative arrangements deserve further consideration:

- Requiring vendors of airguns to deliver to each purchaser a safety brochure, of the type already prepared for other purposes by the Mountain Safety Council, setting out basic safety rules in language appropriate for juvenile users, and obtaining an undertaking from the purchaser that no child under the age of 14 will be permitted to use the airgun except under direct supervision and that the purchaser will ensure that any child 14 or over permitted to use the airgun will first be instructed in its proper use and required to read and study the safety brochure provided.
- A system be devised for granting junior licences to the users of airguns aged between 14 and 18 years, requiring their completion of a junior licence application, their attendance at a safety course structured for that purpose, and the carrying of a junior licence certificate. Such an arrangement would be a more formalised and educational version of the old permit to acquire procedure. It would not carry with it any registration obligation, nor involve any renewal.

■ RECOMMENDATIONS

- 19.1 That the discretion controlling specially dangerous airguns presently contained in s 4 of the Arms Act 1983 be retained, but in addition an appropriate level be fixed above which high powered airguns be classified as firearms.**
- 19.2 That less powerful airguns not be classified as firearms.**
- 19.3 That the minimum age for the use of low-powered airguns be reduced to 14 years, but that the minimum age for the purchase of such guns remain at 18 years.**
- 19.4 That provision be made for either:**
- a) requiring vendors of airguns to deliver to purchasers a safety brochure and to obtain an undertaking from the purchaser that no child under the age of 14 will be permitted to use the airgun except under direct adult supervision, and that any child aged 14 or over given control of the airgun will first be instructed in its proper use and be required to read and study the safety brochure; or**
  - b) a “junior licence” category for persons 14 years and over who wish to use airguns.**

**6.3.2 Controls on imitation firearms**

The potential for misuse of imitation or “toy” firearms arising from their threatening potential has been recognised by the Arms Act controls on imitation firearms. The Act defines an “imitation firearm” as:<sup>246</sup>

[A]nything that has the appearance of being a firearm capable of discharging any shot, bullet, missile, or other projectile, whether or not it is capable of discharging any shot, bullet or missile, or other projectile.

That definition is wider than that of “replicas”, which feature in Australian and some other overseas arms codes.

### *Toys*

These are imitation weapons designed specifically for play. An American study undertaken in 1990 suggested that market forces and responsible manufacturers were reducing the degree to which toy guns resembled genuine firearms.<sup>247</sup> Similarly, there is some suggestion that there has been a move amongst New Zealand retailers away from stocking realistic toy guns following the Aramoana incident in 1992.<sup>248</sup> Notwithstanding these changes, realistic imitation guns have remained in retailers’ inventories and in the possession of many who bought the toys before the manufacturing changes went into effect.<sup>249</sup>

Visits by Review staff to a number of toy stores confirmed that most toy guns are easily distinguishable from real firearms, being made of either transparent or brightly coloured plastic. There are however a number of Smith and Wesson style toys on the market, made of black or brown diecast metal, which could be mistaken for genuine firearms.

### *Airguns*

The subject of airguns has been dealt with in part 6.3.1. Several models of these guns, which “transgress the toy gun and real gun distinction”,<sup>250</sup> are manufactured to look like real firearms. Of particular concern, due to their realistic appearance are soft-air guns, and some BB and pellet pistols.<sup>251</sup>

### *The Size of the Problem in New Zealand*

The use of imitation pistols in robbery is relatively common. The study conducted by Reece Walters is expected to indicate a relatively high use of imitations and toys by juveniles, who are committing an increasing proportion of aggravated robberies.

Although there is evidence that imitation firearms are used in robbery it is not currently known what categories of imitation are most frequently used, and such information is desirable before any assessment is made of the need for further controls.

### *Penalties*



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Penalties for the misuse of imitation firearms are included within both the Crimes Act 1961 and the Arms Act 1983. Among the principal provisions are:

- section 235 of the Crimes Act, which provides a penalty of up to 14 years' imprisonment for aggravated robbery, irrespective of whether any firearm used is real or an imitation;
- section 46 of the Arms Act, which provides for imprisonment of up to two years and a \$4,000 fine for carrying an imitation firearm except for lawful, proper and sufficient purpose,<sup>252</sup> and places the onus on the defendant to prove the existence of such a purpose;<sup>253</sup>
- section 54 of the Arms Act, which provides substantial terms of imprisonment for using an imitation firearm with intent to resist arrest,<sup>254</sup> or for possessing such an imitation firearm at the time of committing an offence punishable by imprisonment for a term of three years or more;<sup>255</sup>
- section 55 of the Arms Act, which provides up to five years' imprisonment for carrying an imitation firearm with criminal intent.<sup>256</sup>

These penalties, which are generally as great as those for the use of real firearms, sufficiently recognise the hazard arising from criminal misuse of imitations or replicas, and there is no present need for further penalties.

#### *Controls on Importation and Manufacture*

The remaining question is whether any steps should be taken to limit the manufacture or importation of imitations. One suggestion which deserves consideration is that manufacturers and retailers be restricted from selling replicas and imitations unless these are sufficiently dissimilar to genuine firearms.

This option has been trialed in the United States, where the involvement of imitation firearms in crimes and confrontations with police prompted federal legislation requiring that toy guns have a "blaze orange" marking.<sup>257</sup> As part of that legislation, Congress funded a study into the number of incidents involving imitation guns and the effectiveness of the marking

requirements. Care must of course be taken in applying US experience to the New Zealand context because of our vastly different circumstances and levels of gun crime. That said, the US study included useful observations as to the effectiveness of coloured markings in distinguishing imitation firearms from the real thing. The legislation provided that "... each toy, look-alike or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of each toy".<sup>258</sup> This was found to be insufficient to distinguish the toys from real guns for a number of reasons. One was the ease of altering coloured markings by painting the toy or removing coloured appendages. Moreover, police doubted whether coloured markings would be sufficient to dispel the belief that the weapon brandished was a real firearm, because of the threat inherent in "armed" incidents.

This raises the question whether citizens or police should attempt to distinguish imitations from genuine firearms in such situations. Evidence from the US study suggests that even when imitations brandished during encounters appeared to be toys, victims did not feel assured that the guns were not real, and were sufficiently fearful to comply with the offenders' demands.<sup>259</sup> There is a considerable risk involved in making a distinction during an ostensibly armed encounter. For this reason police in the United States are trained to assume that all weapons are real. This issue is further complicated by the practice of colouring the front sights on real firearms as an aid to aiming them.<sup>260</sup>

For these reasons the colouring of imitations will not be enough to distinguish them from genuine firearms. Rather, a more dramatic alteration to the configuration of these guns which would eliminate the possibility of confusion with real guns would be required. Such a restriction would probably completely close the market for toy guns, as an imitation which bears no resemblance to the real thing is no imitation at all.

The extent of penalties provided for the criminal misuse of imitations and the difficulty of formulating effective additional measures point against any positive recommendation. As far as toys are concerned, it is likely that changing public attitudes will in themselves maintain the trend of decreasing consumer demand for toy guns.

### **6.3.3 Controls on the sale of ammunition**

A number of submissions argued for the use of controls over the purchase of ammunition as a less intrusive and more effective method of limiting the misuse of firearms than controls over the firearms themselves.

While the relative anonymity of ammunition, and its transferability, prevent effective control by such methods, those circumstances do not prevent control over ammunition purchase from having a useful part in overall gun control.

If a firearm-specific licensing system is established, there would be advantages, in limiting purchases of ammunition to that appropriate to the firearms covered by the licence. Such a restriction would be aided by the introduction of electronic licence checks at dealers' premises (as to which see part 6.3.7). This restriction would place one further hurdle in the way of unauthorised shooters seeking to obtain ammunition through the agency of a licensed friend or associate.

#### **■ RECOMMENDATION**

**20 That purchases of ammunition be limited to those types of ammunition appropriate to the firearms licensed to the purchaser.**

### **6.3.4 Limiting the size of collections**

In 1981 Harding noted that:<sup>261</sup>

Firearms can be valuable investment items; indeed, this aspect of firearms ownership is significantly increasing.

The recollection of senior arms officers is that before the 1983 Act created a special C endorsement for collectors there was only a small group of a few hundred people unofficially regarded as collectors. By 1989 their numbers had grown to 2,626 and by 1996 to 2,980. The largest single collection known to the Police was said to number approximately 500. Numbers of other collectors were said to have between 200 and

300 firearms. Forsyth's 1981 study advised that in 1973 a sample group of 39 collectors had between them about 1,300 firearms, or approximately 33 firearms per collector.<sup>262</sup>

Enquiries from the representatives of collectors' organisations at hearings produced advice, tendered on a "rough estimate only" basis, that the average member's collection was likely to be about 30 firearms. As that estimate would have put approximately 10 percent of all firearms in the hands of the collectors the Police were requested to check the numbers of firearms held by 100 C endorsees selected at random. This check disclosed that they held 2,338 firearms, or effectively an average of 23.3 firearms each, 55 percent of those being rifles, and a further 33 percent being handguns.

If that result were extrapolated over the whole group, and there is no reason for thinking the sample atypical, this would mean that collectors among them hold approximately 70,000 firearms, ie. between 7 to 10 percent of the national armoury.

Because of the effective abandonment by 1989 of the keeping of records of firearm burglaries and thefts, the latest estimate of thefts from collectors is in a report completed by Commissioner Jamieson in 1989 which advised that in the period 1986 to 1989 collectors lost 73 pistols and four restricted weapons in nine burglaries. One of those burglaries resulted in the loss of 34 ordinary rifles, one SLR, five pistols and one machine gun.

The Police have expressed increasing concern at the growth of collections and the risks they represent as sources of firearms for criminal use. This concern was stated in appendix I to the May 1996 Review as follows:

Subject to an endorsement the Act permits private individuals who aspire to collect firearms such as pistols, restricted weapons and combat rifles to make a collection. If he appears to be "bona fide" there are no grounds to stop him yet he [*sic*] social value of this is questionable and the security risks in large collections of modern weapons are appreciable. There are now too many of that type of collection. Aspiring applicants for a collectors endorsement are required to state their interest, i.e. what type of firearm they are collecting or intend to collect, e.g. pre 1920 Remington revolvers. They thereby meet the requirement to be bona fide collectors. Many

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collectors however seem to have an obsession with modern weaponry and once the endorsement is given they extend their range towards more recent models and before long some private collectors accumulate large collections of state of the art mass produced weaponry. This is not what the collectors endorsement was intended for. Therefore the Police propose to redefine “collection” to include only “collectable” weapons, i.e. those having historical interest, of unusual mechanism, design or beauty, or those that are rare or old etc. Modern and mass produced weapons will be excluded.

Those proposals were hotly contested by the New Zealand Antique Arms Association and the International Military Arms Society and by a considerable number of individual collectors. They argue that the question what is “collectable” is in the end a subjective one; that a person who wishes to collect examples of a particular type of firearm should be able to collect recent as well as earlier examples of it; and that older weapons (for example from 1900) in good order are as lethal as modern weapons.

The principal arguments for permitting collection are that:

- it provides a recreation and form of investment which has proved a major interest for some thousands of people and in itself causes no harm to anyone;
- collectors have provided a means of recovering into the system guns which would otherwise have stayed outside the system—it is not possible to check the merits of that contention, but it is a view supported by a number of police officers who have experience of the arms business, and also by a number of experienced dealers who say that collectors operate a second and relatively informal market, seldom purchase from dealers, and actively seek out specimens to fill their collections; and
- if the class C endorsement were discontinued those who wanted to continue collecting, and were prepared to meet the additional costs, could do so by becoming dealers.

Clearly a continued proliferation of sizeable collections cannot be accepted unless security proportionate to the risk involved in such collections is provided. However, that is proposed in part 6.1.3.

Although there is only anecdotal evidence of restricted weapons being test-fired by collectors, it would have been sufficient to require consideration of stricter controls over such weapons in their hands. However, if the recommendation in part 6.1.1 that restricted weapons be deactivated is accepted that would answer that concern.

If both those amendments are approved, the remaining risk involved in collections (and no security can entirely eliminate risk) should be offset by the advantages which collectors provide as an informal agency bringing into the system firearms which would otherwise remain outside it.

## ■ RECOMMENDATIONS

**21.1 That, provided Recommendations 2 and 9 are approved, no restriction be placed on the size of firearms collections.**

**21.2 That, if those recommendations are not approved, the role and purpose of C endorsements be reconsidered.**

### **6.3.5 Amendments proposed by NZ Customs Service**

The Customs Service took the occasion of the Review to seek in all 12 amendments to those portions of the present code which affect the Service.

Several of those amendments were minor alterations designed to avoid difficulties in the language of the code as presently drafted. Since it is a principal recommendation of this Review that the present legislation be redrafted in plain language, and in a form comprehensible to those who may wish to use the code, those technical proposals are not further discussed.

Putting those aside there remain five proposed amendments of a more substantial nature which do call for consideration, and these are now considered in turn.

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*Definition of “New Zealand” for the purposes of determining the occurrence of importation*

Section 16 makes it an offence to import firearms or parts of firearms without a permit and provides that:

In this section “New Zealand” does not include the harbours and other territorial waters of New Zealand

By contrast to s 2 of the Customs and Excise Act 1996 defines “New Zealand” as:

[T]he territory enclosed by the outer limits of the territorial sea of New Zealand (as described in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977)

The effect is that firearms which remain on board a ship or a yacht, even though this be moored against a wharf, are outside arms control. A further effect is that firearms are placed in an entirely different category, in terms of importation, from drugs, which are within the general provisions of the Customs and Excise Act 1996.

It is an unsatisfactory limitation of police and Customs control of firearms from our domestic point of view that no immediate steps can be taken to seize and remove firearms discovered on the inspection of a vessel in New Zealand territorial waters. It is also unsatisfactory, from the point of view of meeting New Zealand’s obligation to assist in preventing international trafficking in firearms, that when Customs or the Police have information of a shipment of firearms believed to be intended for illegal importation into a friendly country they can take no steps to intervene and remove these weapons from a ship in New Zealand waters.

The request by the Customs Service that the Arms Act provisions be aligned with the Customs and Excise Act provisions is accordingly supported.

*Ships and Yachts*

The current practice is that Customs request overseas ships and yachts to declare whether or not they carry firearms. In the case of ships, firearms which are declared are locked in the master’s

safe or other secure place during the ship's stay in New Zealand, and in most cases the safe or store is sealed with a Customs seal. In the case of visiting yachts the master or other person in charge is asked to surrender the firearms for safe keeping by the Police while the yacht is in New Zealand waters. Police return the firearms when the yacht leaves New Zealand. That action is taken to ensure that they are stored in a secure area and not landed and sold illegally, or stolen, while the yacht is in New Zealand.

If s 16 is amended to include harbours and territorial waters in the term "New Zealand", it will be necessary to make some provision which will ensure that ships and yachts do not commit an offence merely by entering territorial waters with firearms on board. The amendment discussed with the officer who appeared in support of the Service's application was as follows:

Nothing in s 16 of this Act makes it an offence to import a firearm where such importation is—

- (a) made by the arrival of a ship in New Zealand territorial waters from a point outside New Zealand; and
- (b) such firearms are included in an Inwards Report made in accordance with s 26 Customs and Excise Act 1996: and either—
  - (i) remain secured on that ship in the place and manner directed by a customs officer or member of the Police; or
  - (ii) are removed to a place of security in accordance with s 141(b) Customs and Excise Act 1996.

There will be a recommendation that a further amendment be made to s 16 in those general terms, the precise nature of which should be settled as part of the drafting of a new Firearms Act.

### *Seizure of Firearms*

The Customs Service suggested a further amendment under which the provisions of the Customs and Excise Act as to seizure and forfeiture should be made to apply to seizures under s 19 of the Arms Act.



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The two statutes have separate codes as to seizure and forfeiture. In my view the proposed amendment would create a real risk of conflict between those two codes. In the absence of any evidence of practical difficulties arising from the present provisions, I am not prepared to support this proposal.

#### *Controls over Importation of Ammunition*

The Customs Service advises that there is currently no restriction on the importation of small arms ammunition, although the supply or sale of it directly or by mail order is restricted to licence holders and dealers by s 43A and s 43B of the Arms Act.

Occasions have arisen where firearms have been detained because no permit to import has been granted, but the accompanying ammunition has been released because of the lack of available controls. The Service suggests that this is a plain anomaly, which is no doubt correct. It next suggests that it might be appropriate to prohibit the importation of ammunition except by the holder of a firearms licence or by a licensed firearm dealer.

It is at least doubtful whether any such provision would be effective to remove the anomaly which the Service has identified. The anomaly would be overcome by amending s 16 to require permits for all imports of ammunition. That, however, would create a considerable amount of additional paperwork and cost for police and for dealers to overcome a problem which appears to have caused very limited practical difficulty. Granted that the present situation is anomalous, I am not prepared to recommend an amendment which may cause more disadvantage than the advantage gained by removing the anomaly. There will be an opportunity for the Service to suggest to the appropriate Select Committee an alternative amendment, if it can devise one.

#### *Proposed Amendment to s 3(2)(a)*

This provision allows members of the Police and Armed Forces and employees of the Institute of Environment Health and Forensic Sciences Limited to carry or be in the possession of firearms during the course of their duties. It was suggested that

this section should be extended to include customs officers, as this would authorise Customs officers to transport and store firearms which they have detained or received.

It may well be that the authority which is sought is already implied in the powers of seizure granted to the Customs Service, but there can be no objection to putting the question beyond doubt, and the proposal is accordingly supported.

■ RECOMMENDATIONS

**22.1 That the new Firearms Act incorporate the present effect of s 16 of the Arms Act 1983 after deleting s 16(2) and adding a proviso to the following effect:**

**“Nothing in s 16 of this Act makes it an offence to import a firearm where—**

- a) such importation is made by the arrival of a vessel in New Zealand territorial waters from a point outside New Zealand; and**
- b) all firearms are included in an Inwards Report made in accordance with s 26 Customs and Excise Act 1996; and either**
  - i) remain secured on that vessel in a place and manner directed by a customs officer or member of the Police; or**
  - ii) are removed to a place of security in accordance with s 141(b) Customs and Excise Act 1996.”**

**—with consequential amendments to the legislation by including in the definition clause the following definitions:**

**“Importation” means the arrival in New Zealand of a firearm or part of a firearm in any manner whatever, whether lawfully or unlawfully, from a point outside New Zealand; and “to import” and “imported” have corresponding meanings.**

**“Ship” means a vessel used in navigation not being a vessel propelled only by oars; and includes a hovercraft or submarine.**

**22.2 That the new Firearms Act incorporate the present effect of s 3(2)(a) of the Arms Act 1983 with the additional words:**

**“(v) An officer or agent of the New Zealand Customs Service.”**

### **6.3.6 Importation of undesirable weapons**

In 1990 the Commissioner of Police purported to ban the importation of all MSSAs, relying upon s 18(1)(b) of the 1983 Act which provided that any member of the Police might refuse to grant a permit to import firearms with respect to any firearm.

Section 18(2) provided that, without limiting the discretion conferred by ss (1)(b), no application for a permit in respect of a pistol or restricted weapon should be granted otherwise than by the Commissioner who should satisfy himself that there were special reasons why the weapon to which the application related should be allowed into New Zealand.

In *Practical Shooting v Police* the High Court held that the Commissioner was not entitled in effect to widen the category of restricted weapons by imposing an absolute ban on some class of weapon. The Court observed:<sup>263</sup>

If Parliament wishes the commissioner to have the power absolutely to ban the entry of certain firearms into New Zealand, whether they be restricted or non-restricted, Parliament should now give the commissioner that power in clear terms or itself legislate for such a ban.

The legislature responded by enacting a special code for MSSAs in the 1992 Amendment Act. At the same time it amended s 18 by extending the discretion to cover the importation of parts of firearms as well as the firearms themselves and by giving the Commissioner specific powers to control the importation of MSSAs, but not otherwise materially

altering the nature of the Police's discretion to refuse a permit for "any other firearms".

The May 1996 Review asks that:

[T]he Act be amended to allow the Commissioner of Police to refuse the importation of undesirable firearm types except where a "special reason" can be shown.

The explanation given for that request was that:

Currently the Commissioner of Police has the authority to refuse a permit to import a specific firearm that is considered undesirable. While there is authority for the Commissioner to ban specific firearms, the same cannot be said of firearm types.

Such weapon types that should be banned include shotguns with a barrel less than a certain length, firearms that discharge a bullet of a size greater than .50 calibre, and "bullpup" firearms of any type.

It is considered that the Commissioner should have the power to refuse the importation of undesirable firearm types except where a person can show a special reason. Special reason could be defined at a high level ie, "a truly exceptional and compelling need".

That explanation created a wave of objections, especially from the Black Powder gun enthusiasts who shoot large-calibre muzzle-loading weapons which are for the most part replicas of nineteenth-century firearms. Those weapons are at the opposite end of the scale of lethality from MSSAs, and it is difficult to found a case for banning or even restricting their use on any special risk they might pose to the public.

There was accordingly an understandable concern that giving the Commissioner power to determine when a firearm was "undesirable" could produce an arbitrary result. I am sympathetic to that view.

The power sought by the Commissioner must only be required to avoid the importation into this country of weapons

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which could, given time, be added to the category of restricted weapons by Order in Council.

If the Commissioner were given the power to refuse the importation of “specially *dangerous*” weapons except when the applicant were able to show a special need which could not reasonably be met save by the use of such a weapon, that should meet his concerns and avoid the problems foreseen by the objectors.

#### ■ RECOMMENDATION

- 23 That the new Firearms Act provide the Commissioner with a discretion to refuse the importation of any specially dangerous weapon unless the applicant for the permit can show a need which cannot reasonably be met save by the use of such a weapon.**

### **6.3.7 Communication with the public, and the use of technology**

Effective communication with the public, and in particular with firearms owners, will be an important task for the new Firearms Authority. Similarly, the Authority should make use of modern technology to increase both its customer service and overall levels of effectiveness.

#### *Publicity Campaigns*

It would be desirable for the new Authority to manage a range of publicity and educational campaigns on an ongoing basis. These could take many forms, and their precise nature would need to be worked out by the Authority in consultation with professionals. It would, however, be appropriate for publicity to be targeted towards, among other things:

- increasing public awareness of firearms laws;

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- encouraging compliance with the firearms buy-back, and with licensing and registration requirements;
- encouraging safe firearms-handling practice;
- informing medical practitioners of their powers to disclose information to the Firearms Authority; and
- complementing suicide and family violence campaigns.

Specific campaigns could be targeted to younger users, “reluctant compliers” and other appropriate groups. It would be desirable for the Authority to monitor and track the response of target audiences to its publicity material.

### *Toll-Free Number and Internet Home Page*

The provision of a free-call service and an internet home page would each assist the Authority to enable easy public access to information about the new law and the Authority. The Australian and Canadian reforms have both been presented to the public on the internet, and home pages are provided by organisations as diverse as the Sporting Shooters Association, the Coalition for Gun Control and “Dunblane Against Guns”. Toll-free telephone lines have also been provided in Australia and Canada to help inform people about the new laws.

Once the Firearms Authority was established, there would be a continuing need to provide shooters, dealers and the public with up to date information about the law and other matters such as the licence status of individuals. For example it would be desirable to enable the seller of a firearm to check via a free-call line (as well as by sighting the licence) whether the purchaser of his or her firearm was licensed before transferring possession of the firearm. Such a service could also enable callers to check whether a particular firearm had been reported stolen. An internet home page would allow up to date information of a more general nature to be conveyed.

### *The Use of Technology*

New technology has the potential to benefit both the Firearms Authority and firearms users in a number of ways. For the

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Authority, a computer database would obviously be necessary to maintain the register of licensees and firearms, and such a database would ideally interface with others, for example a “template” database to verify firearm details. In addition, technology may be used in several ways to enable better customer service and overall effectiveness in the work of the Firearms Authority. Two such options are:

- on-line checks of licence details; and
- the imaging of file documents.

#### *On-Line Licence Checks*

The Authority may wish to consider linking firearms dealers to its licensing and registration system electronically. Such a link, plus the addition of a magnetic strip to the firearms licence, could allow:

- dealers to check the current licence status of each customer with the swipe of a card;
- the confirmation of a licensee’s address at each visit to a dealer;
- dealers to restrict ammunition sales to those licensed for firearms of the relevant type without the need for complex lists; and
- the electronic transfer of firearm details from the dealer’s records to the purchaser’s licence at the point of sale.

Some dealers could choose to use the opportunity to develop their own software to link with the on-line system, providing them with additional stock-control, accounting and auditing functions.

#### *Imaging of Documents*

The Queensland Police are currently introducing a system whereby all documents associated with a licensee’s file, from the initial application forward, are scanned into a computer for easy access and storage. Such a system has the potential to allow any police station in the country to retrieve in seconds a full copy of a shooter’s file. Quite apart from the potential policing benefits, such a system would reduce the need for

large physical storage facilities, and would reduce problems with missing files.

Many other developments are possible, and it may be expected that a dedicated Authority would continue to adopt whatever means are available, technological or otherwise, to improve its levels of service and effectiveness.

■ RECOMMENDATIONS

**24.1 That the Firearms Authority coordinate publicity and educational campaigns on an ongoing basis.**

**24.2 That the Firearms Authority consider the use of:**

- a) a free-call telephone service;**
- b) an internet home page;**
- c) an on-line system linking its database to firearms dealers; and**
- d) an electronic imaging system to manage licensees' files and associated documents.**

### **6.3.8 Miscellaneous police recommendations**

#### *Search and Seizure Powers*

Recommendation 23 in the May 1996 Review suggests an amendment to the search and seizure sections, which are described as “generally adequate” but “too restrictive”, by extending the ambit of the power to search without warrant on suspicion of carrying or possession of a firearm in breach of the Act from “any public place” to “any place”.

Recommendation 24 then proposes that the Police have authority to search for and seize a firearms licence at the same time and under the same conditions as relate to the search and seizure of firearms and ammunition.

In general, of the search and seizure powers commonly used, only the powers of the Misuse of Drugs Act 1975 and the Sale of Liquor Act 1989 are in significantly broader terms than those in the Arms Act. Both those statutes are necessarily affected by



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the speed with which evidence of breaches of their provisions (either the existence of prohibited drugs or of unlawful manufacture or sales of liquor) can be destroyed, and the consequential importance of the Police being able to act with the minimum of delay.

The first of the extensions now sought would be a major extension, and in my view should only be granted if the present provisions are shown to be prejudicing the proper administration of the law. This was not shown by any evidence put before me.

By contrast the extension proposed in Recommendation 24 is a restricted and specific one which is warranted and desirable. The accompanying explanation notes that “this is now more important as the new style licence, which includes a photograph and a number of security features, make it less likely to be questioned by a seller”.

■ RECOMMENDATION

**25 That the search and seizure provisions be amended to authorise police to search for and seize a firearms licence under the same conditions as relate to firearms and ammunition.**

*Firearms Dealers*

Appendix I to the May 1996 Review proposes that applicants for dealers’ licenses should be required to satisfy the Police “that they can rely on them to uphold the spirit of the Act, comply honestly with all its requirements, and not put personal gain or interest above the public interest”. It is doubtful whether such a provision, the language of which is hortatory rather than definitive, would have the effect which its promoters seek. The solution must lie rather in redrafting the provisions setting out dealers’ obligations in plain language, and then monitoring and enforcing those obligations.

■ NO RECOMMENDATION

*Range Safety*

Appendix I to the May 1996 Review correctly notes the absence of any specific power to set criteria for ranges. It must be desirable to have control over ranges vested in the arms authority to ensure uniform safety standards. The terms of any such provision should be settled after adequate consultation with the shooting bodies which, till now, have generally managed to keep standards at an appropriate level. The definition of “range” will also need to be drawn so as to exclude private or family facilities.

■ RECOMMENDATION

- 26 That the new Firearms Act include power for the Firearms Authority to fix conditions for the establishment and operation of ranges, and to monitor and enforce such conditions.**

## **6.4 The Administration of Firearms Control**

The examination of the past administration of arms control by the Police made in parts 2 and 5 concluded that there were faults not only in the existing code, but also in the way that code had in the past been administered by the Police.

My understanding of the cause of the administrative shortcomings was communicated to the Commissioner in a letter dated 7 April 1997 (set out in Part 2.7 “Police Attitudes”) which suggested that:

[A] principal reason for present inadequacies has been that over the past three or four decades, during which period I accept that the demands on the Police to meet other commitments increased greatly, they accorded arms control a progressively lower priority in their overall planning.

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The letter asked whether this analysis was “really in contest” and, if not, invited the Police to consider the three alternative administrative arrangements for the future which had then been considered namely:

- retention of administration by the Police, with oversight by a consultative committee having advisory powers only but empowered to make representations to government on the implementation and functioning of the new systems;
- establishing an implementation authority to oversee the introduction and progress of the reforms over a stated number of years, as had been done in Canada, with administration then reverting to the Police; and
- setting up an independent Firearms Authority, reserving appropriate access to the Police.

The Commissioner’s letter in reply and the accompanying response did not address my analysis of the reasons for past maladministration, but acknowledged “a considerable change” in police attitudes.

As to future administrative arrangements, the Response advised police willingness “that some of the activities relating to the registration of our firearms be out-sourced to a contractor”, but on the condition that control remain with the Police “as its lead customer and its most dependent user”.

Future administration was addressed briefly in the Commissioner’s letter. On “the question of some independent or overriding authority”, this advised that “[i]f there is to be such a group I am inclined to the view that that proposed for Australia is probably the most viable one”, a reference to advice in my letter to the Commissioner regarding Australian intentions to set up advisory committees to work with their police forces.

In short, while the Police have accepted the need for radical reform, they consider that the process of change, and the future control of firearms, should be led and managed by them.

It is convenient to look first at the question of contracting out, or “outsourcing”, parts of the arms control business.

It is hardly if at all in contest that the establishment and maintenance of databases and the fees collection work involved in a combined licensing/registration system are not core police business. Whatever overall administrative arrangements are thought appropriate in the future, it seems unanswerable that that work should be contracted out to firms with expertise in such business. Far from that change being likely to create additional cost and expenses, the transfer of that business to firms specialising in such work is likely to result in useful cost saving.

The key issues for consideration at this stage go beyond that type of rearrangement, which should in my view be implemented whether or not any other administrative reform is made.

So far as the rest of the arms control business is concerned, it can next be noted that there are strong arguments for leaving vetting and enforcement functions with the Police.

The case for leaving enforcement where it is was put in the Response as being that “the skills associated with enforcement are classic policing skills of safe practice, interviewing skills, evidence management and documentation”. The case can equally be put on the basis that the Police are the body most directly involved in issues arising from the misuse of firearms, and the most appropriate body to investigate serious criminal offending. Shifting the responsibility for enforcement would raise significant safety issues.

As to the control of personal vetting, the investigations made for the Review into the way in which revocations, refusals and “unsuitable” decisions have been reached showed that in New Zealand the Police’s ability to gather information about licensees and applicants for licences from local as well as national intelligence sources is a valuable resource. It cannot be replicated, and in my view should continue to be part of the decision-making process. I agree with the Police that it would be undesirable to shift the personal vetting work.

But those conclusions leave very much open for consideration how the remaining administrative functions can best be arranged.

In my view the critical issue is whether, if administration as a whole is to remain with the Police, means can be devised to

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ensure that competition with other police work does not once again result in the suppression of the development and maintenance of an efficient arms control system.

The past effect of “the competition of arms business with other Police business” was discussed in part 5.2.3, which concluded that this factor had dominated the Police’s conduct of the arms control business.

The Police Response makes the points that the 1992 Relicensing Project was inadequately funded, and that the Police had made available resources additional to those provided for arms work, though “not sufficient additional policing to ensure a greater compliance”. That explanation fails to recognise the length of time over which arms control work has not kept up with current needs. Police records show that ever since the 1930s they have had insufficient resources to carry out in an adequate manner their statutory obligations in terms of arms control. The same records contain more than one acknowledgement of the need to avoid accepting responsibility for arms control work for which no sufficient resource is available. Yet time and again 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. I believe it would be difficult for the Police to change those ingrained attitudes and to implement major changes in arms control policy with the energy, enthusiasm and persistence which successful implementation would require.

Questions of the appropriate method of administering arms control systems have arisen in relation to the reforms of their arms control arrangements in Canada, Australia and England.

The Canadian reforms are to be implemented by a consortium of federal and provincial partners called the Canadian Firearms Centre. This was set up in 1996 to design and supply the systems and support services needed to implement those reforms. It has a seven-year life, that is to say it has a sunset clause operative on 1 January 2003. It has gathered together experts from a variety of disciplines including law, law enforcement, research, training and computer system design. It is presently endeavouring to settle modern and cost-

effective systems to implement the legislated requirement for nationwide registration of firearms.

The Australian reforms generally leave administration of arms control with the State police forces, but also propose the establishment of firearms consultative committees with representation of the different parties who have taken part in the debates over firearms control in Australia. Numbers of the States already have or have had such committees. Some have developed into bodies which receive complaints about police administration of licensing, and review those decisions, generally with a further right of access to the courts if the complainant or the Police is dissatisfied with the committee's determination.

The appropriateness of police control of firearms also received some consideration in the Cullen Report, though relatively briefly, as Lord Cullen did not consider his brief extended to making an overall review of arms control business. The point was discussed at para 8.2, where he considered and disapproved a Home Office proposal for a separate national arms authority. In his view it would be unwise to separate administration, including vetting inquiries, from enforcement. He considered the Police were best placed to inquire into and assess fitness to have and to hold firearms licences. To these extents the arguments which persuaded Lord Cullen also have weight in New Zealand.

The submission made to me by the Police Association supported the separation of administrative functions from vetting and enforcement functions, and favoured the transfer of registration and financial responsibilities to third parties. It spoke of a general "police aversion to handling cash". It also made plain that in its view the overall control of licensing should remain with the Police, both "as a matter of public safety and security" and because it believed it was important that vetting should be carried out by a police officer in uniform.

Individual submissions ranged from proposals for (i) the re-establishment of technical advisory committees to assist the Police on technical firearm issues, to (ii) the setting up of consultative committees to seek to develop and promote policies which recognise the different interests and to try to put these into acceptable balance, and (iii) a totally separate

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authority with police having access to its records. One of the most experienced lay commentators thought a single independent authority was needed both to overcome “a problem with country police and their comradeship with the customers” and to avoid variations in standards in different areas.

These submissions required an understanding of the different structural options for governmental agencies, an area in which I have no expertise. I accordingly sought advice from Mr Ian Miller of the Hamilton Miller Partnership, who has had experience of such issues. He was informed of my findings as to the strengths and weaknesses of the present system and the significance of the enhancements proposed in the May 1996 Review. He was brought into discussions with Coopers & Lybrand about the costs of various proposals. In the result he provided a discussion paper for my assistance which identified five structural options for the implementation of the proposed reforms. The paper, which is attached as appendix 5, looks in turn in turn at each option, lists its strengths and weaknesses, gives examples of its previous use in this country, and gives indicative cost estimates if it is adopted.

The five options, as briefly described at the commencement of the discussion paper, are:

- the status quo—the Police retain sole responsibility;
- police administration overseen by an independent advisory board;
- an independent implementation authority with a sunset clause, administration then reverting to the Police;
- a permanent independent arms authority; and
- integration with another government agency.

For the reasons previously stated in my view the present system is not viable, and would remain unacceptable even if the enhancements proposed in May 1996 were implemented. For that reason the first of the five options is not further considered.

I am also of the opinion that the fifth option, integration into another government agency, is not a viable option at this time. There is no other government agency as well suited as the

Police, let alone better suited to manage the arms business, if regard is had to their necessary involvement in vetting and enforcement activities. It follows that the matter for consideration is the relative advantages and disadvantages of options 2, 3 and 4.

*Option 2: Police responsibility overseen by an independent advisory board*

**“An independent advisory board is established to oversee and advise on the development and implementation of the response to the recommendations of the Review with the Police retaining accountability for resourcing and managing the activity.”**

While the different “strengths” listed in the discussion paper could reasonably be expected to be obtained from the appointment of an advisory board of appropriately qualified persons independent of the Police, and while such a board would provide an injection of fresh intelligence from people who are not required to balance the relative needs of arms business and other police business, I would regard this option as the least effective of the three now being considered.

One “weakness” to be added to those listed in the discussion paper is that the long history of police under-estimation of and under-provision for arms work is bound to carry with it an in-built resistance to change.

*Option 3: Independent sunset agency reverting to the Police*

**“An independent agency is established under a sunset clause to manage the development and implementation of the recommendations over a specified term, after which ongoing responsibility reverts to the Police.”**

The discussion paper proposes a five-member board, and for my part I should consider it appropriate to give the agency a five-year term. This would allow time to obtain the requisite New Zealand data and the benefit of overseas developments,



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particularly in Australia, but also in Canada and the United Nations Councils, which the agency should attend as New Zealand's representative to at least regional workshop level. A five-year term would also continue beyond the period of the establishment of the new systems, and allow not less than three years' experience of the operation of those systems in New Zealand and their modification to meet local conditions.

It must be particularly important to get the benefit of the work being done in Australia and Canada in establishing registration systems. Considerable amounts of time and money are being expended in both countries settling cost-efficient, simple, modern systems which will encourage an appropriate level of compliance with the registration obligations. There is no point in New Zealand duplicating that work. If the systems are sufficiently developed and tested in Canada and Australia, they would be useful in New Zealand. Equally there seems no reason to doubt that both countries would continue to be entirely willing to provide us with the benefit of their labours—a willingness which greatly assisted this Review. However, the circumstances of each country are sufficiently distinct from ours, and the areas of factual uncertainty sufficiently extensive, to call for a careful and continuing evaluation of any new arrangements and a willingness to rectify shortcomings when these appear.

One of the duties of the Authority should be, as proposed in the discussion paper, to advise on “the re-integration process and subsequent management arrangements”, and if thought fit to “recommend a continuing role for an advisory board”.

Reintegration could no doubt be assisted by secondments from the Police to positions with the Authority. The Canadian literature shows that numbers of Royal Canadian Mounted Police are working with the Canadian Firearms Centre.

The major problem which seems to arise from option 3 is assessing the risk that after integration the old problems will reappear, and devising strategies which can reasonably be expected to eliminate any real risk that once again the arms work will be submerged by other police business.

As to this, while detailed programming is difficult until the new systems have been settled and bedded in, some steps can be suggested as worth consideration, namely:

- it must be important to obtain a separate and independent budget for the arms control work;
- it would help later oversight if the Authority were required to settle performance standards for the licensing, registration and monitoring functions; and
- after re-integration there should be some independent body, perhaps an advisory committee, reporting to Parliament on the continued performance of the arms control work in police hands, and of the success or otherwise of the police administration in avoiding a recurrence of the past mistakes.

Such arrangements should go some distance towards ensuring that the new way is maintained, and that appropriate consideration is given to further reforms needed to meet changing circumstances.

The advantage of option 3 is that the whole of the arms business—administration, vetting, licensing decisions and enforcement—would come within the one agency, and effective communications between the different sections of the arms control business should be made easier by that situation.

*Option 4: Permanent independent authority*

**“An independent agency is established as the permanent authority for the development, implementation and maintenance of the recommendations.”**

This would become the preferred option if it were thought that re-integration with the Police after say five years of option 3 would still involve a serious risk that competition between the different parts of police business would result in the same problems as in the past.

The weakness in this option described in the discussion paper as the risk of a “them and us” tension deserves careful consideration. It may be unrealistic to expect the Police to give as much of their time and resources to assisting a separate entity as they would if effective control and decision-making

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remained with them, or was known to be likely to revert to them after a specified period.

■ RECOMMENDATION

**27 That Government set up a Firearms Authority either:**

- a) with a five-year sunset clause, administration then reverting to the Police; or**
- b) if it be thought that competition with other police business after re-integration would involve unacceptable risk of the problems which have affected arms control in the past recurring, on a permanent basis.**



## 7

### The Way Forward

Part 6 of the report suggested greater or lesser reforms in 19 separate areas of firearms control. In numbers of cases where reforms were proposed it was indicated that further information was needed, or at least desirable, before determining their timing and details. It is useful to consider next the factors limiting the *scope* of reform, and those which place limits on the *timing* of reform.

There are two factors which significantly limit the scope and potential benefit of legislated gun controls.

The first is that controlling “legal” guns, or guns held with lawful authority, can affect the size and use of the pool of “illegal” guns only indirectly. It would accordingly be misleading to propose any new arms control system without noting that early and dramatic reductions in gun crime cannot be expected. They have to be a long-term goal, which may not be fully achieved until means are found to reduce violence within our society.

That is not to say that nothing can be done, as is often argued by those who oppose controls. Some reductions in the levels of gun crime can be expected from reforms which encourage a more responsible attitude towards guns, which improve security standards and make it more difficult for criminals to obtain guns, and which (even if only occasionally) assist in the prevention or detection of gun crime. Rather it is a reminder that the aim of controls has to be reducing the risk of misuse, as they cannot eliminate it.

The second is that successful gun control is not just a matter of amending the arms code. Other codes and practices will

continue to limit the efficiency of any arms control system unless they also are amended. To give two examples, so long as the clearance rate for burglary remains at 16 percent, even the tighter security standards now proposed will have limited effect; and until the health system is able to provide assistance for those whose absence of mental health calls for it, arms control must be one of the losers.

Factors bearing on the timing of reforms—what can and what cannot be done in the immediate future—are more numerous.

The first is the present absence of relevant information, a point made time and again in this report because of the dominant significance it attained in so many aspects of the investigation.

The second is the need to establish a firm base from which to move forward. The re-licensing programme which commenced in 1993 still has one tranche of call-in notices to be sent out, to those licensees with the surname initials T to Z. That call-in is to be made on 1 July 1997. The notices will call upon recipients who wish to re-licence to do so within six months, that is by the end of 1997, failing which their 1983-style licences may be revoked. Past batches have produced 40 percent of re-applications within nine months and 50 percent within 18 months, but in the past only very limited action was taken to follow up non-responders. As yet virtually no revocations have been made on the grounds of failure to make timely responses.

It is essential that active steps be taken to complete the 1992 re-licensing exercise as soon as practicable and thereby get all licences on one basis. Moving from the 1992 licensing system to another will be sufficiently complex. Moving from a mixture of 1983- and 1992-style licences, with an undetermined but substantial number of 1983 licences unaccounted for, would be much more difficult. In addition to the standard call-in notices, clear public notice should be given that not only the last tranche of 1983 licensees, but any other 1983 licensees who wish to remain licensed, must apply to be re-licensed by a stated date, failing which their former licences will be revoked.

Some time should be allowed to process further applications. If the last date for late applications were made 31 March 1998, revocation could be effected in respect of non-responders on 30

## *The Way Forward*

June 1998. When that is done a reasonably accurate count of licensees will be possible, for the first time since 1985.

Some saving provisions will need to be inserted for two classes of people:

- A group who applied for and were issued licences under Project Foresight, but whose names were not entered in the Wanganui computer because staff contracted to make the appropriate data entries did not do so. The fact that significant numbers were not included in the licence register is known, but not the size of that group.
- Those who did re-licence under the 1983 Act, but in respect of whom the 1983 register and supplementary inquiries did not provide useable name and address details for 1992 call-in notices.

As both groups will not have received call-in notices, legislation which authorises any new system should reserve to them the right to apply within a limited time for reinstatement of their licences.

A third factor affecting timing is that successful long-term reform will require a change in attitudes towards guns, both by shooters and by the public at large, and changing attitudes requires more time than is necessary to formulate and enact legislation.

A clear majority of shooters have expressed concern that they might be asked to pay “yet again for yet another system”. If they are to be convinced of the need to accept and play their part in a new system, one which clearly would involve closer supervision than in the past, the State should consider accepting the capital cost of reconstruction, and present licensees should be given an opportunity to be heard upon it. That last requirement may also call for some delay in finalising a new programme.

It is also clear that numbers of areas which should be amenable to reform would be assisted by knowledge of the results of current overseas endeavours to achieve a similar result.

The necessity to complete the 1992 Relicensing Project would on its own defer the introduction of a new system to

mid-1998. If the other time factors are brought into account, the earliest appropriate starting date for a new system must be 1999. It is worth noting that the Canadian reforms, which have been under consideration for over two years, will not be wholly operative until 2003. They required a lead-in period of eight years.

From that point it is useful to try to identify those advances which ought to be attainable in the medium term, say the next five years, and then consider what programme would be best suited to achieve those advances.

Such an inquiry leads in my view inevitably to the conclusion that the opportunities for progress considered in part 6 will be realised 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.

What New Zealand presently has is not a system of “firearms control” so much as a system which tries to limit the granting and retention of firearms licences to persons fit to have them. If it wishes to develop controls over firearms it will need first to get the basic information about firearms, firearm crime, firearm suicides and firearm accidents, in sufficient quantity and quality to ensure that any new systems do meet our needs, and to enable amendment of those systems from time to time when changes in usage and other relevant circumstances make that appropriate.

If a Firearms Authority is set up by the end of this year, either on a permanent basis or with a five-year sunset clause, it would not be unrealistic to expect that by the end of 1998 it should have obtained considerably better information on such issues as:

- gun ownership (licensed and unlicensed);
- gun use;
- degrees of compliance with security conditions;
- gun-related crime; and
- gun suicides and accidents.



### *The Way Forward*

Other information, as for example the sources of guns used in crime, could and should be collected. But without sound information on those five basic matters, none of which was initially available for the purposes of this Review, and much of which is now available only in the form of “best fit” estimates, the prospects of getting a new system right must be greatly reduced.

By contrast, if such information were regularly collected and assessed it could provide a basis both for settling a new system, and for advising in annual reports how far the new initiatives are succeeding.

Certainly by the end of its fourth year the Authority could reasonably be expected to report not only on the state of the country’s armoury and any significant changes in gun use and misuse over that period, but also to express an informed view upon the best means of ensuring continued development of gun controls. If that expectation could be realised, the difference in terms of the information available to government on which to determine firearms policy would indeed be dramatic.

On the information presently available an appropriate programme for the immediate future would include:

- establishing this year a Firearms Authority, either with a five-year sunset clause or on a permanent basis, to oversee a staged programme of reforms;
- completing the 1992 Relicensing Project by 30 June 1998;
- declaring a general amnesty for a period of 12 months;
- deciding on the extent and terms of any buy-back and authorising the new authority to manage that; and
- directing the Authority to assist in the drafting of new legislation based upon the Review’s recommendations.

If the preferred option for the implementation of the reforms is an implementation authority with a sunset clause, it should be given notice that it will be expected, at least 12 months before the expiry of its term, to recommend the most appropriate

means of ensuring that further development of arms control is not again affected by the competition of other police business.

■ RECOMMENDATIONS

- 28.1 That the present Relicensing Project be completed and the number of 1992 licences be settled by revocation of those 1983 licenses where there is continuing non-compliance with call-in notices, by 30 June 1998.**
- 28.2 That the proposed Firearms Authority be established as soon as practicable and not later than 31 December 1997.**
- 28.3 That a general amnesty be declared for a period of 12 months commencing at the earliest convenient date.**
- 28.4 That the extent and terms of any buy-back be decided and the Firearms Authority be authorised to manage it.**
- 28.5 That the Firearms Authority be directed to assist in the drafting of a new Firearms Act based on the recommendations of this Review by 31 December 1998 with the intention of bringing the new Act into force by 1 July 1999.**

## 8

# Conclusions

From all the above, the responses to the questions asked in the terms of reference must be:

1. That the Arms Act 1983 and its subsequent amendments do not provide an effective code for the control of firearms in New Zealand, and in particular:
  - a) that the 1992 Amendment has received a low level of general compliance by the public, from which it follows
  - b) that the Police have not “been able to adequately enforce compliance”.
  
2. That there is a need for radical reform of the firearms laws. This is most likely to be achieved by a staged programme of reform, managed by an Authority not affected by conflicting interests and loyalties, in the manner outlined in this report.

## APPENDIX 1

### Recommendations

#### **Part 4.3 The arguments against further controls—the “firearms debate”**

- 1 That the new Firearms Act specifically provide that self-defence is not a legitimate purpose for the acquisition of firearms.

#### **Part 6.1.1 Restricting the availability of high-risk firearms**

##### *Restricted Weapons*

- 2 That all restricted weapons be permanently disabled.

##### *Handguns*

- 3 That no handgun endorsee be permitted:
  - a) to own more than two handguns during the first 12 months after gaining his or her endorsement; or
  - b) to own more than six handguns (not including muzzle-loading handguns) at any time unless his or her club and the NZPA certify that the standard of performance attained by that endorsee and the nature of the competition(s) in which he or she has attained that standard warrant approval of the purchase of additional handguns up to a maximum of 12.

##### *Military Style Semi-Automatics*

### *Appendix 1: Recommendations*

- 4.1 That MSSAs, including those in sporting configuration (as defined by a list of makes and models), be banned and made the subject of a buy-back.
- 4.2 That an exemption be extended to those professionally engaged in animal pest control who can establish that no other firearm would be equally effective for their particular business.
- 4.3 That a technical committee be formed to settle the list of makes and models of firearm within the MSSA class.

#### *Sporting Centrefire Semi-Automatics*

- 5 That all other centrefire semi-automatics be limited to a magazine capacity of seven cartridges.

#### *Semi-Automatic and Pump-Action Shotguns*

- 6.1 That semi-automatic and pump-action shotguns be limited to a magazine capacity of two cartridges.
- 6.2 That the cost of limiting their magazine capacity be met by Government.
- 6.3 That a technical committee settle an approved method or methods of magazine limitation.

#### *Details of Proposed Buy-Back*

- 7.1 That the duration of the buy-back of MSSAs be approximately six months.
- 7.2 That compensation be paid at market value for banned firearms and accessories which can be used only with banned firearms.
- 7.3 That compensation be paid to firearms dealers for any proven loss of profits.
- 7.4 That a procedure be settled for assessing, paying and dealing with disputes over compensation.

### **Part 6.1.2 Recovering surplus guns**

- 8.1 That a general amnesty be declared for a period of 12 months commencing at the earliest convenient date.
- 8.2 That the authority presently given to dealers by s 10(2) of the Arms Act be extended to cover all types of firearm.
- 8.3 That consideration be given:

- a) to police providing firearm storage facilities for a moderate fee; and
- b) to the establishment of prototype armouries in two metropolitan centres for a trial period of up to two years.

### **Part 6.1.3 Improved security**

- 9.1 That the present security regulations be replaced by provisions which fix levels of security proportionate to levels of hazard.
- 9.2 That a standing committee, including representatives of the Police, the security industry, the NZ Insurance Council, firearms users and firearms dealers, be set up to recommend new security standards, review these annually and recommend appropriate amendments.
- 9.3 That adequate provision be made in any new firearms control system for regular and consistent monitoring of security conditions.
- 9.4 That the practice of granting licences on the basis of assurances of compliance with security conditions without inspection of security be discontinued.

### **Part 6.1.4 Ensuring the suitability of firearms licensees**

- 10.1 That the new Firearms Act specifically require every applicant for a firearms licence to produce evidence of:
  - a) satisfactory security arrangements; and
  - b) the successful completion of an approved course in firearms safety.
- 10.2 That the Firearms Authority endeavour to define, in consultation with representatives of the Police, psychiatrists, firearms users and family violence workers, a list of characteristics which are likely to make a person unsuitable to possess firearms, such list to be used to guide the exercise of the discretionary powers to refuse and revoke firearms licenses.

## *Appendix I: Recommendations*

### *Disqualification Periods*

11.1 That:

- a) any person convicted of a “serious violent offence” be disqualified from holding a firearms licence for five years;
- b) any person convicted of a violent offence involving a firearm, including the threatened use of a firearm, be disqualified from holding a firearms licence for three years;
- c) any person convicted of a violent offence against someone with whom he or she is in a domestic relationship, within the meaning in the Domestic Violence Act 1995, be disqualified from holding a firearms licence for two years;
- d) any person against whom a final protection order under the Domestic Violence Act has been made be disqualified from holding a firearms licence for two years.

11.2 That:

- a) any person convicted of a violent offence other than one in any of the above categories be disqualified from holding a firearms licence for two years;
- b) any person convicted of an offence against the Arms Act punishable by imprisonment be disqualified from holding a firearms licence for three years—  
unless the Court declares the person to be suitable to hold a firearms licence.

11.3 That the expiration of a disqualification period not in itself be taken as evidence that the person is suitable to possess a firearm.

### *Improving the Vetting Process*

12.1 That in all but exceptional cases two referees be consulted as part of the vetting process.

12.2 That the police family violence database be consulted in relation to each firearms licence applicant.

12.3 That the Firearms Authority confer with the National Collective of Women’s Refuges as to the practicality of

- including a check with the local women's refuge in relation to each firearms licence applicant.
- 12.4 That in those cases where there are concerns about the suitability of a firearms licence applicant, the Police endeavour to consult an independent referee.
- 12.5 That the Firearms Authority seek to develop a procedure for the automatic notification of relevant convictions.

### **Part 6.1.5 Reducing the risk of misuse by the mentally disordered**

- 13.1 That the new Firearms Act include provisions:
- a) permitting voluntary disclosure by health professionals, generally along the lines of the model legislation recently approved by the APMC, but in addition requiring that any opinion so disclosed be formed "on reasonable grounds"; and
  - b) directing that the making of a Compulsory Treatment Order under s 28 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 be notified to the Police forthwith and have the effect of suspending any firearms licence during the continuance of the order, such suspension to be lifted on proof that the condition underlying the making of the order no longer exists and that the person concerned is again a suitable person to possess a firearm, and that in considering suitability for the purpose of that procedure consideration be given to the certificate of a "responsible clinician".
- 13.2 That within six months the Police:
- a) take appropriate steps to set up, in collaboration with the Ministry of Health and other governmental and professional organisations involved in the mental health system, a working party to establish protocols to enable the sharing of information regarding persons with a mental health problem who have possession of or access to firearms; and
  - b) consider introducing a training programme for police along the lines of that introduced in the State of Victoria as Project Beacon.



### **Part 6.2.1 Registration and licensing system**

- 14.1 That the present licensing system be replaced by a combined licensing/registration system based upon three-year firearm-specific licenses, the new system to be introduced over three years, commencing on 1 July 1999.
- 14.2 That after the introduction of the new system any person who wishes to acquire a firearm and who still holds a 1992 licence be required to re-register under the new system.

#### *Death of Licensees*

- 15 That further provision be made for notification of the death of licensees, this to take into account the length of licenses under any new system.

### **Part 6.2.2 Training of shooters**

- 16 That a steering committee be formed, including representatives of the Firearms Authority, Police, Mountain Safety Council, Association of Polytechnics in New Zealand, and shooting groups to develop an approved syllabus and delivery method for a firearms safety course, which would include a practical training component.

### **Part 6.2.3 Sanctions for the misuse of firearms**

- 17 That the new Firearms Act create offences for:
- a) the breach of any security provision in a firearms licence; and
  - b) the breach of the obligations created by any combined licensing/registration system
- and provide a range of penalties appropriate to the seriousness of such offending.

### **Part 6.2.5 Clear and comprehensible law**

- 18.1 That the Arms Act 1983 and Arms Amendment Act 1992 be repealed and replaced with a new Firearms Act.
- 18.2 That the new statute be drafted in plain language with the goal of making the law in relation to firearms as clear and accessible as possible.

### **Part 6.3.1 Airguns**

- 19.1 That the discretion controlling specially dangerous airguns presently contained in s 4 of the Arms Act 1983 be retained, but in addition an appropriate level be fixed above which high powered airguns be classified as firearms.
- 19.2 That less powerful airguns not be classified as firearms.
- 19.3 That the minimum age for the use of low-powered airguns be reduced to 14 years, but that the minimum age for the purchase of such guns remain at 18 years.
- 19.4 That provision be made for either:
  - a) requiring vendors of airguns to deliver to purchasers a safety brochure and to obtain an undertaking from the purchaser that no child under the age of 14 will be permitted to use the airgun except under direct adult supervision, and that any child aged 14 or over given control of the airgun will first be instructed in its proper use and be required to read and study the safety brochure; or
  - b) a “junior licence” category for persons 14 years and over who wish to use airguns.

### **Part 6.3.3 Controls on the sale of ammunition**

- 20 That purchases of ammunition be limited to those types of ammunition appropriate to the firearms licensed to the purchaser.

### **Part 6.3.4 Limiting the size of collections**

*Appendix 1: Recommendations*

- 21.1 That, provided Recommendations 2 and 9 are approved, no restriction be placed on the size of firearms collections.
- 21.2 That, if those recommendations are not approved, the role and purpose of C endorsements be reconsidered.

**Part 6.3.5 Amendments proposed by NZ Customs Service**

- 22.1 That the new Firearms Act incorporate the present effect of s 16 of the Arms Act 1983 after deleting s 16(2) and adding a proviso to the following effect:

“Nothing in s 16 of this Act makes it an offence to import a firearm where—

- a) such importation is made by the arrival of a vessel in New Zealand territorial waters from a point outside New Zealand; and
- b) all firearms are included in an Inwards Report made in accordance with s 26 Customs and Excise Act 1996; and either
  - i) remain secured on that vessel in a place and manner directed by a customs officer or member of the Police; or
  - ii) are removed to a place of security in accordance with s 141(b) Customs and Excise Act 1996.”

—with consequential amendments to the legislation by including in the definition clause the following definitions:

“Importation” means the arrival in New Zealand of a firearm or part of a firearm in any manner whatever, whether lawfully or unlawfully, from a point outside New Zealand; and “to import” and “imported” have corresponding meanings.

“Ship” means a vessel used in navigation not being a vessel propelled only by oars; and includes a hovercraft or submarine.

- 22.2 That the new Firearms Act incorporate the present effect of s 3(2)(a) of the Arms Act 1983 with the additional words:

“(v) An officer or agent of the New Zealand Customs Service.”

### **Part 6.3.6 Importation of undesirable weapons**

23 That the new Firearms Act provide the Commissioner with a discretion to refuse the importation of any specially dangerous weapon unless the applicant for the permit can show a need which cannot reasonably be met save by the use of such a weapon.

### **Part 6.3.7 Communication with the public and the use of technology**

24.1 That the Firearms Authority coordinate publicity and educational campaigns on an on-going basis.

24.2 That the Firearms Authority consider the use of:

- a) a free-call telephone service;
- b) an internet home page;
- c) an on-line system linking its database to firearms dealers; and
- d) an electronic imaging system to manage licensees' files and associated documents.

### **Part 6.3.8 Miscellaneous police recommendations**

#### *Search and Seizure*

25 That the search and seizure provisions be amended to authorise police to search for and seize a firearms licence under the same conditions as relate to firearms and ammunition.

#### *Range Safety*

26 That the new Firearms Act include power for the Firearms Authority to fix conditions for the establishment and operation of ranges, and to monitor and enforce such conditions.

**Part 6.4: The administration of firearms control**

- 27 That Government set up a Firearms Authority either:
- a) with a five-year sunset clause, administration then reverting to the Police; or
  - b) if it be thought that competition with other police business after re-integration would involve unacceptable risk of the problems which have affected arms control in the past recurring, on a permanent basis.

**Part 7: The way forward**

- 28.1 That the present Relicensing Project be completed and the number of 1992 licences be settled by revocation of those 1983 licenses where there is continuing non-compliance with call-in notices, by 30 June 1998.
- 28.2 That the proposed Firearms Authority be established as soon as practicable and not later than 31 December 1997.
- 28.3 That a general amnesty be declared for a period of 12 months commencing at the earliest convenient date.
- 28.4 That the extent and terms of any buy-back be decided and the Firearms Authority be authorised to manage it.
- 28.5 That the Firearms Authority be directed to assist in the drafting of a new Firearms Act based on the recommendations of this Review by 31 December 1998 with the intention of bringing the new Act into force by 1 July 1999.

APPENDIX 2

**Importation of Firearms, 1880–1996**

<b>Year</b>	<b>Number of firearms</b>	<b>Year</b>	<b>Number of firearms</b>
1880	3,723	1912	15,384
1881	2,818	1913	11,897
1882	2,937	1914	13,537
1883	3,954	1915	12,231
1884	3,149	1916	14,070
1885	2,165	1917	4,706
1886	1,805	1918	3,642
1887	2,465	1919	8,688
1888	2,273	1920	20,586
1889	2,725	1921	6,145
1890	2,921	1922	1,182
1891	3,151	1923	1,814
1892	5,464	1924	3,429
1893	6,129	1925	8,697
1894	5,063	1926	9,544
1895	4,254	1927	4,758
1896	2,845	1928	6,002
1897	3,260	1929	7,364
1898	4,111	1930	5,209
1899	5,306	1931	2,425
1900	8,097	1932	1,267
1901	12,184	1933	2,648
1902	9,731	1934	5,561
1903	10,129	1935	6,562
1904	8,816	1936	11,272
1905	6,931	1937	11,494
1906	8,059	1938	6,922
1907	8,062	1939	5,903
1908	10,995	1940	0
1909	10,833	1941	0
1910	10,919	1942	10
1911	11,954	1943	4

*Appendix 2: Importation of Firearms*

1944	6	1970/71	8,972
1945	2	1971/72	11,474
1946	1,129	1972/73	16,995
1947	13,744	1973/74	34,230
1948	7,828	1974/75	32,579
1949	7,196	1975/76	14,337
1950	7,681	1976/77	12,562
1951	15,965	1977/78	11,510
1952	15,470	1978/79	16,539
1953	3,191	1979/80	17,802
1954	6,398	1980/81	9,932
1955	8,602	1981/82	14,607
1956	11,287	1982/83	14,639
1957	7,677	1983/84	13,053
1958	8,514	1984/85	11,293
1959	6,187	1985/86	8,821
1960	12,816	1986/87	12,148
1961	15,160	1988	17,761
Jan–June 1962	3,096	1989	20,621
1962/63	16,027	1990	20,090
1963/64	17,412	1991	12,281
1964/65	16,154	1992	10,729
1965/66	17,587	1993	10,387
1966/67	13,339	1994	10,524
1967/68	10,375	1995	15,103
1968/69	18,822	1996	12,240
1969/70	10,583	<b>Total:</b>	<b>1,063,658</b>

*Source:* New Zealand Customs Service

After 1962 these figures do not include airguns. Some airguns may have been included in earlier years, however this is not known. Firearms imported by the military are excluded.

## APPENDIX 3

### Principal Firearms Incidents

*Mass shootings in New Zealand, 1990-1997, plus Port Arthur and Dunblane*

#### 1. 1990 — Aramoana (Gray)

<b>Date</b>	13–14 November 1990
<b>Number of Victims</b>	14 (including police shooting of Gray)
<b>Firearms Used</b>	.223 Norinco semi-automatic AK47 lookalike .22 Remington S semi-automatic rifle
<b>Licence Status</b>	Licensed firearms holder for eight years
<b>Mental History</b>	No history of mental illness. The Police were unable to find anyone who thought him capable of violent action. Considered a lonely, reclusive man.

#### 2. 1992 — Paerata (Schlaepfer)

<b>Date</b>	20 May 1992
<b>Number of Victims</b>	6 plus suicide of Schlaepfer. 4 victims shot. 2 others died as a result of stab wounds
<b>Firearms Used</b>	Double-barrelled 12-gauge shotgun
<b>Licence Status</b>	Held a class A licence issued in 1984



*Appendix 3: Principal Firearms Incidents*

**Mental History** No previous history of mental illness nor of domestic violence.

**3. 1994 — Dunedin (Bain)**

**Date** 20 June 1994  
**Number of Victims** 5  
**Firearms Used** .22 semi-automatic rifle  
**Licence Status** David Bain was a class A licensee and the owner of the firearm used in the homicide  
**Mental History** David Bain had no history of mental illness nor any previous convictions.

**4. 1996 — Dunblane (Hamilton)**

**Date** 13 March 1996  
**Number of Victims** 18 (including suicide of Hamilton)  
**Firearms Used** 2 semi-automatic pistols. Used one to shoot victims and the other to shoot himself  
**Licence Status** Licensed firearm holder  
**Mental History** Did not have a mental illness. Two psychiatrists at the Inquiry expressed the view that it was unlikely that any psychological or psychiatric examination of Hamilton would have alerted the examiner to his dangerousness. All the experts agreed that, though he did not have a mental illness, he suffered from a personality disorder which manifested itself in lack of empathy, fascination with weapons and habitual suspiciousness.

**5. 1996 — Port Arthur (Bryant)**

**Date** 28 April 1996  
**Number of Victims** 35 killed. 21 injured  
**Firearms Used** 2 military style semi-automatic rifles

*Review of Firearms Control in New Zealand*

<b>Licence Status</b>	Never held a firearms licence
<b>Mental History</b>	At trial both psychiatrists considered that Bryant did not suffer from a mental illness, but that he did have a significant personality disorder which left him with limited capacity for empathy which enabled him not only to contemplate mass destruction, but to carry it through.

**6. 1997 — Raurimu**

<b>Date</b>	8 February 1997
<b>Number of Victims</b>	6
<b>Firearms Used</b>	1 single-shot shotgun
<b>Licence Status</b>	Had held a licence which had been revoked the previous year
<b>Comments</b>	In this instance a young man with a psychiatric history which had earlier resulted in the revocation of his firearms licence has been charged with killing his father and four guests at the family lodge, and a neighbour, using a single-shot shotgun. As he still awaits trial on those charges it would be improper to attempt any further analysis of the incident at this time.

*Incidents Leading to Call for Review*

**7. 1995 — Invercargill (Gellatly)**

<b>Date</b>	26/27 September 1995
<b>Number of Victims</b>	1 (Gellatly) shot by police
<b>Firearms Used</b>	Numerous shotguns and rifles removed from dealer's premises
<b>Licence Status</b>	Unlicensed
<b>Mental History</b>	A long-standing chronic mental illness diagnosed in 1984 as paranoid

*Appendix 3: Principal Firearms Incidents*

schizophrenia. It was accepted in the PCA report and in the Coroner's findings that the behaviour of the deceased was greatly influenced by his mental instability.

**8. 1995 — Whangarei (Radcliffe)**

<b>Date</b>	20 November 1995
<b>Number of Victims</b>	1 (Radcliffe) shot by police
<b>Firearms Used</b>	30-30 rifle removed from dealer's premises
<b>Licence Status</b>	Licence and firearms had been removed in June 1994 as a police officer believed Radcliffe not a fit and proper person by reason of his mental illness, but his licence had not been revoked at time of fatality
<b>Mental History</b>	Radcliffe had a previous mental history though diagnoses of his condition were not clear or uniform. One psychiatrist who saw him 11 days before his death said that he could not reach any firm diagnosis and that when he saw Radcliffe there was nothing to suggest he was a danger to himself or anyone else.

APPENDIX 4

**APMC Resolution, 11 April 1997**

**Agenda Item 7.3(A)**

*National Firearms Controls—Grounds for Refusal or Cancellation of Licence and Seizure of Firearms*

Council resolved to:

- a) [E]ndorse the following model legislation to enable health practitioners, at their discretion, to inform Police (the Firearms Registrar) when, in their professional opinion, there is doubt concerning a person's fitness to own or use a firearm:
  - 1) Where a medical practitioner, registered psychologist, registered nurse, other health professional, or a counsellor has reasonable cause to believe that:
    - a) possession of a firearm by a person, to whom he or she has provided professional services, is likely to be unsafe for that person or any other person; and
    - b) that person holds or intends applying for a firearms licence or possesses or may intend to possess a firearm,  
the medical practitioner, registered psychologist, registered nurse, other health professionals, or counsellor may inform the Registrar as soon as practicable and confirm in writing, of the person's name, address and the reason why, in the opinion of the practitioner, it is or would be unsafe for the person to have possession of a firearm.
  - 2) Compliance by a medical practitioner, registered psychologist, registered nurse and other

*Appendix 4: APMC Resolution*

health professionals or a counsellor with section (1) attracts no civil or criminal liability;

Council notes that the process for reporting should not carry penalties for non-compliance and should protect the practitioner from both civil and criminal liability. Council also endorses the principle that the scheme is not intended to cause discrimination against any groups or individuals and should contain avenues for appeal and review of decisions.

- b) [R]equest health practitioner associations to develop, for their members, curriculum and pre and in service training packages to assist in identifying risk factors in the context of firearms regulations and reporting to police (the Firearms Registrar).

## APPENDIX 5

### **Discussion Paper: Structural Options for Reform of Firearms Administration**

(The following paper was prepared by Mr Ian Miller at the request of the Review.)

#### **Introduction**

Consideration is being given to the options for enhancing the control of firearms.

This paper identifies and describes five options for a structure to oversee/manage the development and implementation of any new measures which may be proposed. They range from the relatively simple device of a body to independently monitor the performance of the agency responsible for managing the changes, through to a purpose-designed entity to implement and maintain the new procedures on an ongoing basis.

A consistent format is applied to the analysis of each option to facilitate comparison and evaluation as follows:

- The assumptions regarding the option are stated.
- The option is described.
- The relative ease of implementation is discussed.
- Existing precedents for the use of the option are identified and described.
- An indicative cost of operation for a standardised level of activity is estimated.
- The perceived strengths and weaknesses are identified.

## Appendix 5: Options for Administration

At the conclusion of the report I have provided a brief summary of how I personally assess the merits of the options identified.

### **Context**

The options are developed on the understanding that there may be two different forms of application of the structural options. Responsibility for enhanced gun control measures may remain with the Police or may shift to some other authorised agency. In the former case a mechanism to maintain the momentum of the review recommendations may be necessary.

### **The Options**

In summary the options identified are as follows:

- *Option 1: The Status Quo* Police have sole responsibility: The status quo is retained with the Police remaining responsible for developing and implementing the recommendations of the Review.
- *Option 2: An independent Advisory Board oversees Police responsibility:* An independent advisory board is established to oversee and advise on the development and implementation of the response to the recommendations of the Review with the Police retaining accountability for resourcing and managing the activity.
- *Option 3: Independent sunset agency reverting to Police:* An independent agency is established under a sunset clause to manage the development and implementation of the recommendations over a specified term after which ongoing responsibility reverts to the Police.
- *Option 4: Permanent independent authority:* An independent agency is established as the permanent authority for the development, implementation and maintenance of the recommendations.
- *Option 5: Integration into other Government agency:* The responsibility for the development, implementation and maintenance of the recommendations is assigned to some existing agency other than Police, which is considered to have the relevant skills, technology and public standing to manage the role effectively.

## Assessment of the Options

### *1. Status Quo: Police Responsibility*

**Assumption:** That there is some reluctance from Police or politicians to change the current policy and service delivery arrangements.

**Description:** The Police would continue to provide policy advice on gun control measures and implement and manage the agreed measures as part of the broad sweep of Police activities.

**Existing precedents:** Maintains the status quo.

**Indicative cost of operation:** N/A.

**Ease of implementation:** This is a no change scenario and as such should be implemented without any difficulty.

### **Perceived strengths and weaknesses**

#### *Strengths*

- Builds on existing level of expertise.
- Police personnel have high personal motivation to achieve effective gun control.
- Continued integration may enhance overall enforcement capability.
- No need to “market” a change in approach to the public with the attendant costs and risks that would entail.
- Limits potential for unwanted political debate.
- Information system costs should presumably already be included in the INCIS budget.
- Provides a fast start to implementation of any agreed enhancements.

#### *Weaknesses*

- Management of licensing is not a core Police activity.
- Front line policing activities must be considered to have priority for Police resources.
- Police are likely to continue to give priority to front line activities.



## *Appendix 5: Options for Administration*

- Gun control has potential to be an industrial dispute pawn.
- Police track record to date.
- Overheads charged to the activity likely to include factors that are not strictly relevant to licensing.

### *2. An Independent Advisory Board Oversees Police Responsibility*

**Assumption:** That the Commissioner of Police or the Minister may wish to have the benefit of an independent advisory board to oversee the development and implementation of the recommendations of the Review in order to ensure they are given appropriate priority by Police.

**Description:** Either the Commissioner or the Minister would appoint a board of say 4–6 persons. The board's terms of reference would charge them with overseeing and advising on the conduct of the programme of activity which arises from the recommendations of the Review.

The board would likely have a fixed term sufficient to see the process through to an agreed major milestone. I would envisage that its life could extend to say the end of the first year of re-licensing under the new policy framework, which is envisaged to be 1999. If need be the term of office could be extended further should the process turn out to be more protracted than expected.

**Existing precedents:** There are a range of advisory boards working with departments and Ministers on a similar basis to that envisaged. They are generally prerogative entities, which exist at the whim of the instigator and therefore may be seen to lack teeth. However if the chief executive or Minister values their input they can be a powerful tool in a period of change and for on going management support. Current examples include the advisory boards in Social Welfare (one for each business unit), Inland Revenue, Health (Health Information Council) and Internal Affairs (Heritage and National Identity Boards).

**Indicative cost of operation:** Boards tend to meet on an as required basis, which could be between six and twelve times a year. If they are required to monitor financial and business

performance they may be engaged to provide a certain amount of time each month for that purpose over and above meeting times.

The usual arrangement is to negotiate a fee similar to that paid to a board director. Government rates are generally regarded as involving a charity component although that is under review at the present time. If there were no change the fees would probably be in the order of \$600–800 a day. For a board of six members meeting say twelve times a year the fees would come to \$50,400. Actual and reasonable travel expenses would be available. I would estimate these at \$500 per meeting for say four members or \$24,000.

There would be associated administrative costs such as the preparation and issue of agenda and recording minutes. My assumption is that the effort involved would be little more than what one might expect in any well run change management project and as such should be regarded as part of the overall business case for change.

**Ease of implementation:** This can be variable dependent on the level of public interest. Where a chief executive takes the initiative it can be very straightforward. A list of possible members is prepared for the chief executive. A short list of preferred candidates is identified and these persons approached to determine their interest in participation. If they are willing to become members it is then simply a matter of documenting terms of reference and getting down to business.

If the role is likely to be of a higher profile the process can become more complicated particularly where there is consultation at a political level involved. In that event a suggested shortlist is often referred for discussion with caucus members before any approach is made to the potential candidates. Notwithstanding this additional step in the process it is still possible to secure the appointment of a board in a relatively timely fashion.

### **Perceived strengths and weaknesses**

#### *Strengths*

- Injects a measure of independent accountability into the process.
- Not subject to competing priorities.
- Enables a wider range of interest and expertise to be utilised.

### *Appendix 5: Options for Administration*

- Can provide potential adversaries the opportunity to channel their interest in a positive manner at board level.
- Allows the chief executive or Minister a degree of separation.
- Creates a single focus change champion.
- Provides a useful conduit for information that may otherwise be filtered or not sent.
- Lends weight and formality to the area, which can sustain momentum.

#### *Weaknesses*

- Dependent on the level of public interest the appointment process may be constrained and some potential candidates may decline involvement.
- Can hijack the process.
- May be held at arms length by the agency responsible for the change process.
- May be “captured” by change agency.
- Ultimately has only advisory powers and therefore unable to command action.

### *3. Independent Sunset Agency Reverting to the Police*

**Assumptions:** That there is a perceived need for ensuring that the agreed enhancements are implemented in a timely manner and that this can not be guaranteed if the Police have the sole responsibility, given the competing demand from business as usual and other major initiatives such as INCIS. However once the enhancements are implemented the benefits of reintegration of the function into Police are seen to outweigh retaining a separate agency.

**Description:** A separate entity is established for the sole purpose of developing and implementing the recommendations from the Review after which the ongoing responsibility reverts to Police.

The entity could be established under existing legislation using the funding provisions of the Public Finance Act or be set up under a specific enactment. The choice of approach would be dependent on the extent to which the entity requires separate legal recognition to carry out the functions (i.e. ability to sue and be sued).

There would be an independent advisory board to oversee and guide the operations including advising on the re-integration

process and subsequent management arrangements (for example they could recommend a continuing role for an advisory board). The entity would employ its own policy and implementation resources. Staff could be seconded from Police or recruited from any other available source. Given the transitional nature of the activity it is likely there would be a considerable amount of outsourcing. Activities such as data entry and call center operations are prime examples of this approach or ways of implementing it.

Police would continue to play a key role in the licensing processes and quite likely the buy-back as well. They would vet applicants and inspect facilities or arrange for suitable qualified agents to act on their behalf. They would have on-line access to licence holder and gun registration details, which are likely to be retained as part of INCIS for ease of re-integration. They could receive and store firearms that are put forward for sale or surrender.

**Existing precedents:** There have been many such implementation agencies. Two examples I am familiar with are the Information Authority, which was established under the Official Information Act 1983 for a three-year term to assist bed down that legislation and advise on future enhancements and the National Interim Provider Board, which was set up as a part of the Department of Prime Minister and Cabinet to manage the transition of the Area Health Boards to Crown Health Entity status.

The common feature of such agencies has been that in every instance there was a pre-existing body, which could potentially have provided the service but competition for priority or concern about performance led to the alternative approach. Also, at the conclusion of the change process the function was absorbed back into an existing agency albeit on a reduced scale.

**Indicative cost of operation:** The board costs are likely to be higher than an advisory board as the level of accountability increases. I would suggest say five members at an average of \$30,000 plus say three members travelling at \$500 a month giving a total cost of \$168,000.

The level of staffing is dependent on the nature of the work programme and the amount of out sourcing of services such as data entry.

Given the work which has been done on scoping the costs, I would suggest that a peak staff level of around 40 is realistic

## *Appendix 5: Options for Administration*

during the start-up phase if there is any form of universal registration of firearms and limited use of outsourcing. Thereafter I would assume an ongoing total cost of operation in the vicinity of \$4 million per annum including board members' fees.

During the start up phase there would be additional expenses such as training costs and publicity. There would also be capital costs associated with the establishment and fit-out of an office.

**Ease of implementation:** If legislation is required there is likely to be delay. If existing provisions can be used the process can be quite quick. The National Interim Provider Board was established within three months including recruiting staff and the board members and securing and fitting out premises. In that instance the board was established as part of the Department of Prime Minister and Cabinet in order to provide a mechanism for Crown funding to be channelled to the activity without the need for either a separate appropriation or legislative enactment.

### **Perceived strengths and weaknesses**

#### *Strengths*

- Focused on a clear objective with no competing priorities.
- The involvement of a board can be more attractive to potential recruits than working for a mainstream agency. (Sense of action and perceived lack of bureaucracy a strong drawcard.)
- Can provide potential adversaries the opportunity to channel their interest in a positive manner at board level.
- Has a clear timetable and incentive to get on and complete the task.
- High visibility enhances accountability.
- Staff likely to be very task-oriented and give above average effort.
- Enables Police to concentrate on their core business

#### *Weaknesses*

- Re-integration requires careful planning and management to avoid loss of key personnel and reduction in performance standards and priorities.
- Single focus of a stand-alone entity can mean the bigger picture is not seen when that may be important.

- Reliant on high performing board members.
- Agency may want to remain intact and not re-integrate.
- Can set up a “them and us” tension with historic provider of service although this can be minimised with use of secondments which carry over existing knowledge and experience and maintain established lines of communication.
- Risk that once re-integrated the activity is overshadowed by other priorities and the gains are lost.
- Larger organisations often carry high overheads which when spread to a new activity on re-integration can lead to cost increases that are not matched by service improvements.
- Strategic alliances which are fostered by the independence and focus may be lost on re-integration.

#### *4. Permanent Independent Agency*

**Assumptions:** It is concluded that the function is not a core policing activity and a stand-alone entity is established to provide focus and expertise to manage the development, implementation and ongoing operation of the agreed measures.

**Description:** A Crown entity is established with the legislative mandate to implement and manage the agreed gun control measures.

The entity would be subject to the provisions of the Public Finance Act. It would be accountable to a designated Minister and operate pursuant to a contract that was agreed for and on behalf of the Minister. The Minister would be assisted in that process by a designated Department (could be Police or some other justice or regulatory department), which would also monitor performance of the contract terms.

The entity would provide an annual report to Parliament and be subject to the scrutiny of Parliamentary Select Committees and the Auditor General.

In all other respects the entity would be little different from the sunset clause agency. It would have close and continuing relationship with Police and is likely to recruit or second staff from that agency.

## *Appendix 5: Options for Administration*

**Existing precedents:** There are a host of agencies that have been established to give focus, direction and enhanced accountability for a function of Government. They range from the State Owned Enterprises, which manage commercial activities to the bodies, which dispense Crown funds such as Creative New Zealand and the Lotteries Commission.

For the purposes of this exercise one might look at the Civil Defence Authority or the Fire Services Commission for a large scale precedent or at the Registrar of Security Guards and Private Investigators and the Commissioner for the Environment for small-scale examples.

The common features are the appointment of a governing body to oversee the activity and hire a chief executive. The chief executive is responsible for organising how the service will be provided. That can range from outsourcing to an in-house operation with variations in between. The decision on which approach to follow is based on an assessment of the likely quality, cost and public reaction.

This type of agency often has a close and relationship with other organisations working on associated topics. Increasingly these relations are the subject of memorandum of understanding and similar protocols and can even involve purchase agreements whereby one provides the other a specified service for an agreed price.

**Indicative cost of operation:** The cost would be similar to that for a sunset agency.

**Ease of implementation:** The main difficulty with this option is the likely delay in securing the necessary legislative mandate. Gun control is a high profile issue: debate around any reform proposals could well be protracted. It could however, be possible to start the establishment process in advance of the mandate and this has been done in similar circumstances.

### **Perceived strengths and weaknesses**

#### *Strengths*

- Focused on a clear objective with no competing priorities.
- If involves a board can be more attractive to potential recruits than working for a mainstream agency.

(Sense of action and perceived lack of bureaucracy again a strong drawcard.)

- High visibility enhances accountability—failings hard to hide.
- Staff likely to be task-oriented.
- Able to take a long-term view and plan and manage accordingly.
- Can provide potential adversaries the opportunity to channel their interest in a positive manner at board level.
- Clear public accountability.
- Enables Police to concentrate on their core business
- Cannot pass problems to a successor like a sunset agency could.

*Weaknesses*

- Single focus can mean the bigger picture is not seen when that may be important.
- High dependency on board member quality.
- Can set up a “them and us” tension with historic provider of service although this can be minimised with use of secondments, protocols and service level agreements.

*5. Integration Into Another Government Agency*

**Assumptions:** That the decision is taken to remove the function from Police on the basis that it is not a core activity and to align it with some pre-existing functions in another Government agency which provides registry/licensing type services.

**Description:** The function would be managed as part of an existing Government agency, probably a department rather than a Crown entity given that the former is where most licensing/registry activities are currently located.

The operational structure and work processes are likely to be very similar to that outlined for a stand-alone agency. This would include maintaining the ongoing relationship with Police. It is very possible that an advisory board could be used as well although the role of the board would be limited by comparison with a stand-alone entity; it would not have executive functions.



## *Appendix 5: Options for Administration*

The principle differences from a stand-alone model would be a relative lack of visibility and the potential for priorities to be influenced by factors that have corporate rather than business significance. On the benefit side, there would be potential to share resources and utilise economies of scale so as to reduce costs. By the same token, overhead costs can often increase in larger organisations, which of course flies in the face of the perception that economies of scale will naturally lead to reductions.

**Existing precedents:** The core functions of Government are still being defined. There has been a decade of considerable change and while the pace has slowed the activity is continuing. Right now options for managing emergency services are under review and this could lead to the relocation of functions within existing agencies.

The result of this process is that there are many activities which have been brought together within a larger organisational “shell”. For example the Ministry of Commerce is home to a wide range of functions many of which have a semi-independent status e.g. Consumer Affairs, Patent Office, Communications, Information Technology, Proceeds of Crime and Tourism.

In short it is not uncommon for Government to relocate a function between agencies. I would expect that officials would consider that option as a matter of course when providing advice on how to progress the recommendations of the Review.

**Indicative cost of operation:** In theory the cost should be the same or less than that for a stand-alone agency. However the reality often seems to be different. Overhead costs have a habit of growing and whether or not they benefit a particular function may have little bearing on the apportionment process. Within a large and complex environment financial management systems cannot always allocate costs as precisely as a single purpose entity.

Being part of a larger organisation may also mean that remuneration policies are weighted to factors which are not relevant to a particular activity but none the less lead to increased costs. For example an organisation with a bias to policy work may increase pay rates in an employment contract to attract recruits but the same rate has to be paid in an area which does not have the same recruitment concerns.

The impact of these allocative decisions can be very material in terms of the overhead costs of activities.

**Ease of implementation:** Legislation is likely to be required but this would presumably be more straightforward than that for a stand-alone entity. My own experience with relocation of functions has been that the processes are relatively simple and, with sound management, can be implemented with minimal fuss and bother.

### **Perceived strengths and weaknesses**

#### *Strengths*

- Enables Police to concentrate on their core business
- Builds on comparable skills and experience—synergies.
- Allows economies of scale to be captured.
- Puts relationship with Police on a formal documented basis.

#### *Weaknesses*

- No obvious home for the activity in an existing agency.
- Potential risk of competition for internal priority leading to down grading of service.
- Risk of “them and us” conflict with Police.
- Possible increase in costs because of higher overhead loading.

### **Summary of the Options**

My assessment is that the preferred option should be the one which gave the greatest certainty that there will be proper accountability for ensuring the proposed enhancements deliver the objective of reduced risk from inadequate gun control. That would encompass the following components. The enhancements must be implemented in an expeditious and effective manner. There must be effective close and continuing links with relevant law enforcement agencies. The implementation process must be simple to administer. Public confidence in the measures proposed has to be maintained and enhanced. The new arrangements have to be delivered in a cost-effective manner.

The extent to which the options identified might meet these objectives involves a degree of subjectivity; ultimately there will always be factors that influence the outcome and which are not

*Appendix 5: Options for Administration*

anticipated. At this stage I tend to the view that should the function remain with the Police, at the very least the process of implementing your recommendations would benefit from the advice and assistance which an advisory board could provide. The experience of the past suggests that competing priorities will always exist in that environment and assistance is required to ensure an initiative such as this is not downgraded because of unrelated factors.

On balance though, I would in fact go further and look seriously at establishing a purpose-specific development and implementation agency and would not discount the option of retaining that independence in the long term. I believe there is sufficient evidence to show that such an approach can be more timely, cost-effective and ultimately successful than staying with the status quo agency. It also sends a very clear signal that change is going to happen and makes the process transparent.

In summary, I would favour an approach which ensured that there was a high degree of independence from core Police activities for the registration and licensing activities while retaining their role in the specialised areas of fit and proper assessment and possibly gun security reviews.

## APPENDIX 6

### **Incidence of Firearms and Firearms Users in New Zealand**

(The main section of a report prepared for the Review by AGB McNair, December 1996, detailed tables and questionnaire omitted.)

#### **Background and Objectives**

The issue of firearms control has recently become controversial both within New Zealand and internationally. In response to increasing public concern the New Zealand Government has commissioned a review of firearms control in New Zealand.

A number of approaches have been taken to gather the wide range of information that will be required for the review.

One of these approaches was to conduct a survey of the general population.

The objectives of the survey research were to estimate of the proportion of households in New Zealand where at least one person owns a firearm, to determine the types of firearms that are owned, and estimate the number of people who use firearms.

#### **Methodology**

The data presented in this report was collected by means of participation in the AGB McNair Fast Facts service. This service uses a Computer Aided Telephone Interviewing (CATI) Facility.

Questions were incorporated in the December Omnibus, which is a national survey and interviews 1,000 people aged 15 years and over. Only one person is interviewed per household, with that person being chosen on a next birthday basis, to provide a random sample of individuals.

The questionnaire was formatted on computer prior to interviewing. Interviewers then keyed responses to the questions

directly into PCs as they conduct the telephone interview. Routing logic was pre-specified in order to ensure that interviews followed the correct question sequence.

Interviewers worked under full-time supervision and the shift supervisors were equipped with both visual and audio monitoring facilities to ensure the highest possible standard of interviewing. Interviewing took place between Wednesday 27 November – Friday 6 December 1996 and was conducted between 5pm and 9pm on weekdays and 10am and 8pm on weekends.

Telephone numbers were selected at random from complete ranges of live numbers supplied by Telecom. These numbers were issued to interviewers on screen, no answers and engaged numbers were automatically programmed for re-issue. Appointments were also made and call backs scheduled for convenient times, thus ensuring interviews with hard-to-find respondents. At least three calls were made to each phone number before substitution.

Quotas on age and sex within four geographical areas of New Zealand were imposed upon the sample, therefore figures in this report are representative of the population.

### **Cautionary Note**

There is undoubtedly a number of unlicensed firearms in New Zealand; the extent of which is very difficult to measure. It is unlikely that a respondent to a general population survey will reveal household ownership of illegal firearms during the course of the survey. For this reason, the results from this survey are expected to be an understatement of the indicators measured.

In order to reduce the level of understatement, the questions for the survey were designed to be as non-threatening to respondents as possible. The steps taken included asking about behaviour of people in the respondent's household as a whole, as opposed to their own behaviour. In addition, the question regarding ownership of firearms was couched in terms of different types of recreational equipment.

### **Executive Summary**

Twenty percent of respondents indicated that someone in their household owns a firearm. Incidence is higher than average amongst the following types of households:

- rural
- higher household incomes (\$40,000+)

### *Appendix 5: Options for Administration*

- main income earner is a Farm Owner or Manager or a Labourer/Manual, Agricultural or Domestic worker

Seventeen percent of respondents indicated that someone in their household owns a rifle. Eleven percent stated the same for shotgun ownership, and 2% for pistol ownership.

Nine percent of respondents indicated that there is both a rifle and a shotgun in their household.

The number of people in New Zealand who have used a firearm in the last 12 months is estimated to be approximately half a million (468,187).

Propensity for firearm usage is higher amongst people from the following household types:

- main income earner is a Farm Owner/Manager
- those living in small towns/rural areas
- those in the Southern region
- people who live in “young households with no children” or households where the “youngest child is 15+”.
- household income of \$60,000 or more.

## **Research Findings**

### *Firearm Ownership*

Twenty percent of respondents indicated that someone in their household owns a firearm.

Incidence of firearm ownership appears to be higher in households:

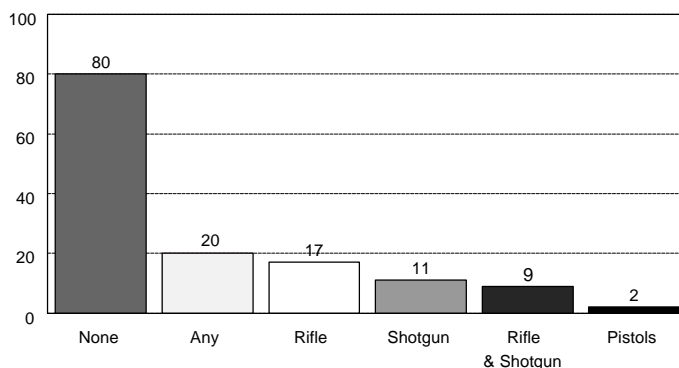
- in rural areas (37%)
- in the South Island (31%)
- where the youngest child is 15+ (26%—significant at 90% confidence interval)
- where the main income earner is a Farm Owner or Manager (73%), a Labourer/Manual, Agricultural, Domestic worker (38%) or a technical or skilled worker (27%—significant at the 90% confidence interval)
- higher household incomes (\$40 000+) (24%—significant at the 90% confidence interval).

### *Types of Firearms Owned by Household Members*

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As demonstrated in the graph below, 17% of respondents indicated that someone in their household owns at least one rifle, for shotguns this figure was 11% and for pistols the figure was 2%.

**Types of Firearms Owned**



The questionnaire also included a question on “other” types of firearms which are owned by household members. A listing of the types of firearms mentioned by respondents is included as Appendix A of this report.

### *Dual ownership of rifles and shotguns*

Nine percent of respondents stated that there is at least one rifle and one shotgun in their household.

Of households with at least one rifle, 53% also have at least one shotgun. By comparison, 80% of households with at least one shotgun also have at least one rifle.

### *Firearm Usage*

Twenty six percent of respondents indicated that someone in their household had used a firearm in the last 12 months.

Two approaches were identified to estimate the proportion or number of people in New Zealand who have used a firearm in the last 12 months. These are outlined below:

- multiply the average number of people per household who have used a firearm by the number of “permanent private dwellings” in New Zealand.
- divide the average number of people per household who have used a firearm by the average number of people per household.

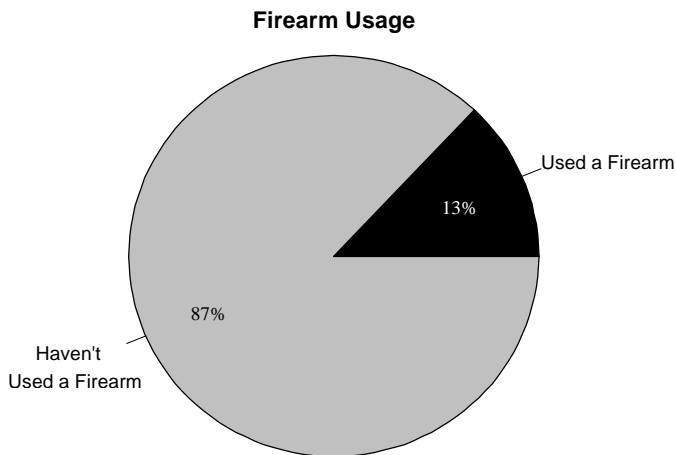
### Appendix 5: Options for Administration

We estimate that, on average, 0.4 people per household have used a firearm in the last 12 months.

Assuming there are 1,170,468 “permanent private dwellings” in New Zealand (1991 Census), the number of people in New Zealand who use firearms is estimated at approximately half a million (468,187). Given a population base of 3,434,950 (1991 Census), this estimate suggests approximately 14% of the population have used a firearm in the last 12 months.

Using the second approach, with an average household size of 2.8 (1991 Census), a similar proportion is calculated.

The overall average household size from the survey is 3.04, which is higher than the Census average. Using the survey data for the calculation results in a slightly lower estimate of 13%. This estimate is within the margin of error of the 14% estimate.



Using the second calculation and household size information from the survey, we are able to analyse sub-groups' propensity to use a firearm.

The following groups have a higher than average propensity for firearm usage:

- main income earner is a Farm Owner/Manager (39%)
- those living in small towns/rural areas (21%)
- those in the Southern region (18%)



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- people who live in “young households with no children” (23%) or households where the “youngest child is 15+” (18%—significant at the 90% confidence interval).
- household income of \$60 000 or more (17%—significant at the 90% confidence interval).

APPENDIX 7

**Draft Security Conditions: for Settlement  
by an Expert Committee (see part 6.1.3)**

**Grade 1. For licensees with not more than ten A  
class firearms**

*Either A:* For firearms with removable vital parts (“RVPs”) only:

- a) firearms stored out of sight in a locked cupboard/room/receptacle; and
- b) a vital part removed from each firearm and stored in a locked 6mm mild steel (or equivalent) safe attached to the building; and
- c) all ammunition must be concealed and not stored with (a) or (b).

*Or B:* For all Class A firearms:

- a) firearms stored in a locked steel box of 6mm steel (or equivalent) attached to the building;
- b) each firearm rendered inoperable by the use of a trigger lock or breech plug; and
- c) all ammunition concealed in a separate location.

Note: It was considered that Option “A” could be attractive because of the reduced cost of the smaller safe/box necessary for the RVPs.

Vehicle security for “A class” firearms should be:

- a) firearms rendered inoperable (either RVP taken out or breech plug/trigger guard); and
- b) firearms concealed;

## **Grade 2 — for B endorsees with not more than ten pistols**

Security requirements in the building should be:

- a) *either*:
  - i) a 6 mm mild steel (or equivalent) safe, attached to the house, and concealed from view in a locked cupboard/room;
- or*
- ii) a strongroom;
  - b) an audible intruder alarm complying with S 4301/93; and
  - c) ammunition stored in a separate locked container.

Vehicle security should be:

- a) a stout box;
- b) attached to and concealed inside the vehicle; and
- c) an audible alarm triggered by attempted access to the box.

## **Grade 3 — for any licensee with more than ten firearms of any type or with any MSSA held under a special exemption**

This Grade would not include dealers with premises open to the public, but would include commercial importers of firearms who do not sell directly to the public and gunsmiths who solely repair firearms.

Requirements should be:

- a) all firearms stored in *either*:
  - i) a strongroom; *or*
  - ii) a 6 mm mild steel (or equivalent) safe;
- b) a monitored alarm to NZS 4301/93
- c) perimeter locks to NZ S 3621/83
- d) ammunition stored separately in locked containers

**Grade 4 — for dealers with premises open to the public**

Requirements should include:

- a) *Either:*
  - i) armoured glass (to appropriate standard); *or*
- ii) 19 mm steel grills;
  - b) bollards;
  - c) sound structural construction of building;
- d) perimeter locks to S 3621/83;
- e) monitored alarm to NZS 4301/93;
- f) ammunition stored in a separate place, concealed from and inaccessible by the public;
- g) all displayed firearms inoperable (either by separate storage of RVP or breech plug/trigger lock);
- h) all firearms stored either in locked racks or in a strongroom;
- i) all firearms concealed from public view after hours.

APPENDIX 8

**List of the Principal Persons and Organisations who Assisted the Review**

**New Zealand Police**

Assistant Commissioner Ian Holyoake

Superintendent Lindsay Hunter

Inspector John Coote

Mr Doug Agnew

Ms Clare Aubrey

Ms Tracey Anderson

Ms Mary Schollum

Detective Marc Heron

District Arms Officers, in particular those who assisted with the security check: Mr Bryan Atkins, Mr Peter Johnston;

Mr Robert Kilkolly, Sergeant Lindsay Peacock and Mr Gary Tomlin.

**Ad hoc security committee**

Mr Ray Beatson

Inspector Rodger Honan

Mr Stan Pogson

**Ad hoc technical committee**

Warrant Officer John Berry

Mr John Howat

Mr Robert Ngamoki, Chief Armourer, New Zealand Police

**Professional consultants**

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AGB McNair Limited  
Coopers & Lybrand, Wellington  
Mr Ian Miller, Hamilton Miller Partnership  
Dr Greg Newbold, University of Canterbury  
Mr Reece Walters, Victoria University of Wellington

**Mental health and privacy professionals**

Dr David Chaplow  
Dr Barbara Disley, Mental Health Commission  
Judge Ken Mason  
New Zealand Medical Association  
Mr B H Slane, Privacy Commissioner  
Dr Janice Wilson, Mr Ron Paterson and Dr Nick Judson,  
Ministry of Health

**Others**

Mr Philip Alpers  
Coroners Mr Stephen Osborne, Mr Richard McElrea and Ms  
Erica Kremik  
Mr Dale Farnsworth  
Mr Graham Ford, High Court, Auckland  
German Embassy, Wellington  
Mr Stuart Hayman  
Ms Juliet Hay, Department of Justice  
Ms Barb Lash and Mr Philip Spier, Ministry of Justice  
Injury Prevention Research Unit  
Superintendent A G McCallum  
Mercury Bay Shooting Federation  
Mr Graham Nugent, Landcare Research New Zealand Limited  
Otago Regional Council  
Mrs Pam Oughton  
Mr Tony West, Land Transport Safety Authority

**Those consulted at hearings**

Alliance Party of New Zealand  
Mr Philip Alpers  
Mr Bob Badland  
Ms Annette Beautrais, Canterbury Suicide Project  
Christchurch City Council

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Dame Barbara Goodman  
Mr Chaz Forsyth  
Mr T N French  
Mr John Furley  
Mr Kevin Godkin  
Mr Stuart Hayman  
Mr John Howat  
International Military Arms Society  
Gunsafe  
Mountain Safety Council Firearms Advisory Committee  
NZ Antique Arms Association  
NZ Council of Licensed Firearms Owners  
NZ Customs Service  
NZ Deerstalkers Association  
NZ Pistol Association  
NZ Police Association  
NZ Smallbore Rifle Association  
NZ Specialist Arms Dealers' Association  
NZ Sports Goods Association  
Mr Neville Robertson  
Sporting Shooters Association of New Zealand Inc  
Mr Paul Telfer  
Mr Hong Tse  
Wellington Service Rifle Association  
Mr Steve Wilson  
Ministry of Women's Affairs  
Mr R G Young

**Those consulted in Australia:**

*Australian Institute of Criminology, Canberra*

Dr Adam Graycar  
Ms Melanie Brown  
Mr Peter Grabosky

*Department of Justice, Victoria*

Mr Tim Daly  
Mr Howard Burrowes

*Firearm Reform and Compensation Project, Victoria*

Ms Karen Cleave

*Review of Firearms Control in New Zealand*

Mr John Richardson  
Inspector Steve Taylor

*Office of Law Enforcement Coordination, Canberra*

Mr Daryl Smeaton  
Mr Kerry MacDermott  
Mr Wayne Smith  
Ms Sue Hunt

*Sporting Shooters Association of Australia, Adelaide*

Mr Peter Allan  
Mr Greg Fleetwood

*New South Wales Police*

Ms Lynn Ashpole  
Mr Mick Roelandts

*South Australia Police*

Superintendent Jim Litster  
Inspector Cormac McCarron  
Senior Sergeant Ted Warren

*Queensland Police*

Inspector John McCoomb  
Senior Sergeant Michael Crowley

*Victoria Police*

Mr Geoff Cliffe  
Mr David Dettman  
Mr Peter McDonald  
Inspector Chris Penno

*Western Australia Police*

Superintendent Steve Robbins  
Senior Sergeant Jeff Hildebrandt

*Others consulted in Australia*

The Hon. Daryl Williams, Attorney-General and Minister for  
Justice  
The Hon. Bill McGrath, Minister of Police and Emergency  
Services, Victoria



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Dr Chris Cantor, Australian Institute for Suicide Research and Prevention

Mr Lindsay Ford, Firearms Consultative Committee, Victoria

Professor Richard Harding, The University of Western Australia

Professor Paul Mullen, Monash University

Ms Rebecca Peters, National Coalition for Gun Control

Mr Geoff Smith, Regency Institute of TAFE, South Australia

Professor Gordon Hawkins, Sydney

**Those consulted in Canada:**

Mr James Hayes, Canadian Firearms Centre

Ms J Ackroyd, Canadian Firearms Centre

Inspector Mike Buisson, Royal Canadian Mounted Police

**Those consulted in the United Kingdom:**

Lord Cullen, Dunblane Inquiry

Mrs Glynis McKeand, Dunblane Inquiry

Home Office, London

**Those consulted in the United States of America:**

Professor F Zimring, University of California

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NOTES

- <sup>1</sup> Police Complaints Authority, *Report of the Police Complaints Authority on the Fatal Shooting of Eric Bruce Gellatly at Invercargill on 27 September 1995* (11 March 1996), at 28.
- <sup>2</sup> Police Complaints Authority, *Report of the Police Complaints Authority on the Fatal Shooting of Barry Ronald Radcliffe at Whangarei on 20 November 1995* (15 April 1996).
- <sup>3</sup> *Ibid.*, at 32.
- <sup>4</sup> Operations Support Group (PNHQ), *A Review of Firearms Control in New Zealand* (“the May 1996 Review”).
- <sup>5</sup> *Ibid.*, at 1.
- <sup>6</sup> Section 3, Arms Act 1983.
- <sup>7</sup> Clarke, “The Right to Bear Arms”, unpublished thesis, University of Otago, 1995, at 11.
- <sup>8</sup> NZPD C 1858–60, 757.
- <sup>9</sup> NZPD 1920, 186, at 754.
- <sup>10</sup> *Supra* at note 1, at 13.
- <sup>11</sup> O’Connor, “Arms Control in New Zealand, 1845–1930”, submission to 1983 Police proposals, 1981, at 4.
- <sup>12</sup> Department of Justice, *Crime in New Zealand*, 1965.
- <sup>13</sup> *Supra* at note 1, at 14.
- <sup>14</sup> *Ibid.*, at 15.
- <sup>15</sup> McCallum (NZPNHQ), *Firearms Registration in New Zealand*, September 1982, at 8. Since commonly known as “the McCallum report”.
- <sup>16</sup> *Supra* at note 1, at 19.
- <sup>17</sup> *Ibid.*
- <sup>18</sup> *Ibid.*
- <sup>19</sup> *Proceedings of the International Shooting Sports Symposium, Wellington, 1980*, at 16.
- <sup>20</sup> Greenwood, *Firearms Control: A Study of Armed Crime and Firearms Control in England and Wales*, 1972 (1st ed).
- <sup>21</sup> *Supra* at note 13, at 62.
- <sup>22</sup> *Supra* at note 9.
- <sup>23</sup> *Ibid.*, appendix G, at 3.
- <sup>24</sup> *Ibid.*, at 16.
- <sup>25</sup> *Ibid.*, at 32.
- <sup>26</sup> Arms Act 1983, Long Title.
- <sup>27</sup> A non-licensee is entitled to be in possession of a firearm if under the “immediate supervision” of a licensee or, in the case of airguns, a person over the age of 18 years: s 22(2), Arms Act 1983. It is an offence punishable by up to three months’ imprisonment or a fine of up to \$1,000 to possess a firearm without a licence. In addition, it is an offence for anyone, including a licensee, to be in possession of a firearm without “lawful, proper, and sufficient purpose”: s 45, Arms Act 1983.
- <sup>28</sup> Section 20(3), Arms Act 1983.
- <sup>29</sup> Section 43, Arms Act 1983.
- <sup>30</sup> Section 24(1)(b), Arms Act 1983.

- 31 Section 27, Arms Act 1983.  
32 Supra at note 1, at 31.  
33 Regulation 27 and Schedule 1, Arms Regulations 1984, and New  
Zealand Police, *Important Information For All Firearms Owners*,  
Project Foresight pamphlet, 1984.  
34 Once the Police are satisfied that the applicant is a fit and proper  
person to possess a pistol, s 30 provides that “a member of the Police  
may, subject to any direction from the Commissioner, make the  
endorsement”. This may be contrasted with s 24 which provides that  
“a firearms licence *shall* be issued if a member of the Police [is  
satisfied that the applicant is a fit and proper person]”.  
35 Section 35, Arms Act 1983.  
36 Section 2, Arms Act 1983.  
37 Section 21, Arms Act 1983. It is an offence under s 21(2) to be in  
possession of an airgun if: (i) under the age of 16 years; or (ii) between  
16 and 18 years and not the holder of a firearms licence.  
38 Section 22(1)(b), Arms Act 1983. An antique firearm is defined as:  
(a) Any firearm that—  
(i) Is held in the possession of any person solely as an antique  
(but not as a copy or replica of an antique); and  
(ii) Is not designed for firing, and is not capable of firing,  
rimfire or centrefire cartridge ammunition; or  
(b) Any firearm declared by regulations made under this Act to be an  
antique firearm for the purposes of this Act.  
39 *Guns Review*, 1985 (June) 415, at 416.  
40 A Norinco 84S 5.56mm (.223) semi-automatic rifle with a 30-shot  
magazine and a Remington model Nylon 66 .22 semi-automatic rifle.  
41 On 19 August 1987, in Hungerford, England, Michael Ryan used an  
AK47-style semi-automatic to kill 16 people, and on 8 December that  
year Frank Vitkovic killed eight people in Melbourne, Australia, using  
an M1 SAR. See Clarke, supra at note 1, at 42.  
42 Ibid, at 40–41.  
43 Ibid, at 43.  
44 Section 30B, Arms Act 1983.  
45 Section 35, Arms Act 1983.  
46 See s 2, Arms Act 1983.  
47 Supra at note 1, at 50.  
48 Regulation 19, Arms Regulations 1992.  
49 Regulation 28, Arms Regulations 1992.  
50 Regulation 8, Arms Regulations 1992.  
51 In the case of long arms, such a breach would have to justify a decision  
that the licensee was no longer “fit and proper” to possess firearms  
(see s 27, Arms Act 1983). In the case of MSSAs, pistols and other  
restricted firearms, however, observance of security precautions is a  
condition of the endorsement, and any such breach will justify  
revocation of the endorsement. See ss 32, 33, 33A and 33B, Arms Act  
1983.  
52 Section 43B, Arms Act 1983.  
53 Section 43A, Arms Act 1983.  
54 Section 60A, Arms Act 1983.

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- 55 Section 27A, Arms Act 1983.  
56 Section 25, Arms Act 1983.  
57 Section 8, Arms Act 1983.  
58 Supra at note 1, at 46 (citing police publicity pamphlet “What You  
59 Need to Know About the New Firearms Laws”).  
60 Donnelly, “Study into the Number of Registered Sporting Rifles in  
61 New Zealand” (appendix J to McCallum, supra at note 9).  
62 Supra at note 9.  
63 A permit to procure permitted the purchase of any number of shotguns  
64 by the permit holder.  
65 Forsyth, *Mountain Safety Manual*<sup>34</sup>*Firearms in New Zealand*, July  
66 1985.  
67 Nugent, “Hunting Firearms in New Zealand—A Survey” (appendix E2  
68 to Coote (PNHQ), *Arms Amendment Bill*, 1992).  
69 Coote (PNHQ), *Arms Amendment Bill*, 1992.  
70 Operations Support Group (PNHQ), “Universal Registration of  
71 Firearms” (appendix A in *A Review of Firearms Control in New  
72 Zealand*).  
73 Sources: undercover police officers and fishermen. The evidence  
74 related to the South Island only.  
75 See appendix 6.  
76 Nugent estimates the percentage of rifles as being around 66 percent,  
77 as compared with 30 percent for shotguns (fig 1 to Coote, supra note  
78 58). Forsyth estimates that 45 percent of firearms were rifles, while 30  
79 percent were shotguns (fig 5B to Forsyth, supra note 56, at 118).  
80 There were 30,512 licences issued for game-bird hunting in 1996, a  
decrease of 17 percent since 1990. This figure does not include any  
allowance for the numbers of landowners/occupiers who are entitled to  
hunt on their own property without a licence.  
See the discussion on “Grey and illegal guns”.  
In their “sporterised” state these became A category weapons and thus  
did not require an E endorsement.  
PNHQ count of firearms on the record of licensees, January 1997.  
Supra at note 59, at 4.  
Import figures, appendix 2.  
A survey conducted in April 1997 by NZPA of one-third of its  
members suggests that they hold approximately 8,500 of the 25,400  
registered pistols, an average of 3.5 pistols per member. NZPA  
understands that the international average for the members of pistol  
clubs which participate in international competitions is approximately  
2.7 pistols.  
See part 2.4—the calculation of the number of licensees.  
Newbold, “The Criminal Usage of Firearms”, March 1997.  
Ibid, at 3.  
Heron, “Review of Firearms Control: Covert Purchases”, April 1997.  
Advice from undercover officers suggested that stolen weapons were  
generally passed on rather than collected in any considerable  
number—February 1997 discussions. Oral submissions of the Police  
Association, during hearings in Wellington, suggested that gangs store

their firearms in “safehouses” and bury them, as well as concealing them in gang headquarters.

81 Amnesty figures from PNHQ, March 1997.

82 Amnesty figures from the United Kingdom recovered 48,000 weapons in 1998, while the most recovered in amnesties in New Zealand was 2,090 in 1993. See submission of Home Office to Lord Cullen’s inquiry, at 51 (Lord Cullen, *The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996*).

83 Supra at note 71, at 17.

84 Advice from undercover officers, February 1997.

85 Alpers, for example, asserts that New Zealand has 11 times as many guns per capita as England and Wales, and 60 percent more than the Australians: Alpers, *Policing Gun Laws*, 1996, at 4.

86 Greenwood, “Evidence submitted to Lord Cullen’s Inquiry”, supra at note 76, at 40 (para 124). In his 1972 publication, *Firearms Control in England and Wales*, Greenwood had concluded from amnesty figures that the number of illegally-held pistols exceeded those registered: at 235–239. Stevenson also asserts that illegal holdings substantially exceed legal ownership: “Evidence submitted to Lord Cullen’s Inquiry”, *ibid*, at 41.

87 Lord Cullen, supra at note 76, at 107 (para 9.5).

88 Report of Superintendent Cox from visit to Firearms Registration Unit in Ottawa, dated 26 November 1996.

89 Department of Justice, Canada, “Background Information on Firearms Control”, at 4.

90 Research, Statistics and Evaluation Directorate, Department of Justice Canada, “A Review of Firearm Statistics and Regulations in Selected Countries”, 25 April 1995.

91 Department of Justice, United States of America, “Weapons, Crime and Violence in America”, at 67.

92 Supra at note 79.

93 Firearms Comparisons between New Zealand and Australia, NZ Police 30 May 1996; and discussions between Inspector JM Coote and Commissioner in Canberra, at 4.

94 PNHQ, internal memo of Licensing and Vetting Operation Support Group, dated 17 December 1996, at 4.

95 PNHQ, fax, dated 12 February 1997; and “Resources/Costs/Revenue—Relicensing Project”, 30 June 1996.

96 Or, for example, if the Police learnt that the licensee had died. These would result in the cancellation of the original entry without any record being kept.

97 Supra at note 59, at 16.

98 Supra at note 9. This estimate was based on the records of 280,000 registered firearm owners; at the same time 96,500 permits to procure shotguns had been issued.

99 Supra at note 56, at 159.

100 Supra at note 57, at 1.

101 The survey of licensees conducted for this Review showed 2.1 percent of licensees owned no firearms. However, this is a “bottom estimate”

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because the form did not request a response from those who owned no firearms.

102 Interviewers rang 4,518 randomly selected households until 1,000  
respondents agreed to take part in the survey. The objectives of the  
survey were to ascertain: the proportion of New Zealand households  
where at least one person owns a firearm; the types of firearms owned;  
and the number of persons who use firearms.

103 Supra at note 56, at 102–114.

104 Supra at note 57, at 6.

105 Supra at note 63.

106 “Hunter Number Declining”, *NZ Herald*, 3 May 1997.

107 Supra at note 1, at 27.

108 Notes of meeting of Justice and Law Reform Select Committee, 9 June  
1992.

109 Supra at note 1, at 26.

110 *Practical Shooting Institute (NZ) v Commissioner of Police* [1992] 1  
NZLR 710.

111 Letter to Commissioner, 7 April 1997.

112 Triggs, *Interpreting Trends in Recorded Crime in New Zealand*, 1997,  
at 17.

113 For a recent review of the overseas literature, see the principal  
submission by J.A. Stevenson to the Dunblane Inquiry (Lord Cullen,  
*The Public Enquiry into the Shootings at Dunblane Primary School on  
13 March 1996*), at 1–9.

114 At vii. The report is dated March 1997, but has not been released at  
the time of compiling this report.

115 Source: *New Zealand Yearbook*, 1996; see also Statistics New  
Zealand, *New Zealand Now Crime Tables*, 1996.

116 Statistics New Zealand, *New Zealand Now Crime*, 1996, at 9.

117 In absolute numbers, violent offences rose to a level of 45,454 in 1995,  
and decreased slightly to 45,191 in 1996.

118 Supra at note 5, at 15.

119 The Police first adopted a policy of arrest for violence arising out of  
domestic incidents in 1987. This policy was reinforced and restated by  
the Commissioner in *Ten One* 1993, 49 (27 August). For further  
discussion of this factor see Triggs, supra at note 1, at 53.

120 Substantial increases occurred over the 1992–1995 period for assault  
using firearms; manual assaults, assaults causing injury; minor  
assaults; kidnapping and abduction; and serious and minor threats. The  
only violence group which did not increase was homicide: Triggs,  
supra at note 1, at 53. In the case of non-domestic violence, it seems  
that an increasing focus on community policing and a commitment to  
curbing street violence and disorder (NZ Police 1993) may also have  
had an effect on reporting rates: *ibid*.

121 The absence of a trend for homicide further suggests that the increase  
in violent offences may have been attributable to reporting practices,  
since homicide is the offence least likely to be affected by reporting  
trends: *ibid*, at 54.

122 For explanations of these categories, see supra at note 5, at 21.

123 Victoria Link Ltd and AGB McNair, “The New Zealand National

- 124 Survey of Crime Victims”, 1997, at 77.  
125 Ibid.
- 126 Norton, “Firearm Related Deaths in New Zealand 1978–87” *New Zealand Medical Journal* 1993, 106.
- 127 Source: Statistics New Zealand, *supra* at note 5, at 14; Planning and Policy Group (PNHQ), Firearm Statistics.
- 128 Ibid.
- 129 It may also be noted that nine people were killed in Masterton in 1992 with a hammer and six people were killed in Hamilton in an arson attack in 1995.
- 130 The two cases of which I am aware of before Aramoana are Hona (9 October 1934) and Graham (20 October 1941).
- 131 Firearm homicides includes murder, manslaughter and infanticide. There were 92 people killed in such homicides over the period 1990–1994, as compared with 24 killed in the Aramoana, Bain and Schlaepfer incidents.
- 132 In the United Kingdom, by 15 May 1997 over 700,000 people had signed the official “Snowdrop Petition” for gun control following the shooting at Dunblane. A Newspoll survey conducted in Australia in the wake of the Port Arthur massacre indicated that 68 percent of people believed the proposed gun law reforms were about right or could be even stricter.
- 133 Walters, “Mass Murder—What Do We Know?” *Criminology* (newsletter of the Institute of Criminology, Victoria University of Wellington) 1997, 7 (March).
- 134 A Colt AR15 .223 cal. semi-automatic rifle and Fabrique Nationale .308 cal. semi-automatic rifle at Port Arthur and a .223 Norinco semi-automatic AK47 lookalike at Aramoana.
- 135 Of 85 serious assaults, 39 were “Assaults child (firearm)”, 16 were “Male assaults female (firearm)” and nine were “Common Assault (domestic) (firearm)” — a total of 75 percent. Although all of these offences may not have been family violence, police estimate that 80 percent of “male assaults female” offences are family violence. It seems reasonable to conclude on balance that over 50 percent of the offences were likely have been family violence. Research by Alpers and Morgan in 1995 found that of the 40 people murdered with firearms between 1992 and 1994, 55 percent were killed in the course of family violence (63 percent if perpetrators are included): see Alpers and Morgan, “Firearm Homicide in New Zealand: Victims, Perpetrators and Their Weapons 1992–94”, at 2. Police calculations showed 23 domestic homicides involving firearms, giving a proportion of 58 percent: see Police, “Domestic Violence Bill: Firearms Surrender or Seizure upon the Making of Protection Orders”, 1995, at 2. The Alpers and Morgan study was criticised by some because it included the Bain and Schlaepfer homicides which added a total of nine victims between them. However if these two incidents are removed from the analysis the results show 42 percent of victims shot in family violence incidents. Either way the proportion is significant.
- 136 Police, *ibid*, at 5.
- 137 A 1995 study of police offence records for a six-month period found

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that only 0.6 percent of family violence offences involved firearms. Similarly, a study of 188 cases in which children witnessed family violence, found only 1 percent involved firearms: see Maxwell, *Children and Family Violence: The Unnoticed Victims*, 1994, at 4. The sample of 188 cases was drawn from the main study group of 528 records which in turn represented just under half the police incidents reported to HAIPP over the three-year period.

137 Police analysis of offence statistics from 1992 to 1994 showed that firearms accounted for 42 percent of domestic homicides in that period, and study in 1991 found that firearms were used in approximately one-third of partner homicides: see Police, *ibid*, at 2; and Fanslow, “Epidemiology of Partnership Homicide: New Zealand 1978–1987”, paper presented to the Family Violence Prevention Coordinating Committee Conference, Christchurch, 1991.

138 Busch and Robertson, *Protection from Family Violence: A Study of Protection Orders Under the Domestic Protection Act 1982*, 1992.

139 See Alpers and Morgan, *supra* at note 23; and Langley, Norton and Alpers, “Firearm Misuse: Licence Status of Perpetrators and Legality of the Firearms”. In February 1997, police surveyed family violence coordinators from 17 districts, covering approximately two-thirds of the country. The coordinators indicated that in their experience only a small proportion of respondents with firearms are unlicensed. The average estimate was 4 percent; however, this finding should be viewed with some caution: of 16 coordinators who made an estimate, 11 estimated 0 percent, while the other five estimated between 5 and 20 percent. The variation in the data makes the average of 4 percent somewhat open to question. Although it is possible that some women avoid disclosing that their partners are in possession of firearms without a licence for fear that this may make their situation worse, the result does provide some support for the proposition.

140 Section 21(1)(a), Domestic Violence Act 1995.

141 Section 21(2)(a), Domestic Violence Act 1995.

142 Section 21(1)(c), Domestic Violence Act 1995.

143 Section 21(2)(b), Domestic Violence Act 1995.

144 See 121 *Ten One* 11, 12 July 1996.

145 The results of the February 1997 survey of family violence coordinators found that of 1,948 protection orders received by police, firearms or a licence were present in 163 or 8.4 percent. An earlier sample to October 1996 had found 10.5 percent with firearms. At first blush these results are surprisingly low given that the survey carried out by AGB McNair found that firearms are owned in an average of 20 percent of households in New Zealand. However, closer analysis shows that approximately 83 percent of the protection orders in the police sample were in urban areas. AGB’s results broken down by area indicate that firearms are owned in 10 percent of metropolitan, 20 percent in provincial households and 37 percent in small town/rural households. The Auckland and Wellington regions each showed 8 percent ownership. This would tend to indicate that the low proportion of protection orders involving firearms may be due largely to the urban nature of the orders.



- <sup>146</sup> A survey of family violence coordinators for the purposes of this Review found no difficulties with the operation of this policy and indicated a general belief among coordinators that the law is being complied with.
- <sup>147</sup> Homicide figures are supplied by the New Zealand Police; the remainder by IPRU.
- <sup>148</sup> Ibid. This estimate is based on the average number of suicides each year over the period 1980–1993.
- <sup>149</sup> Ibid. The numbers of hospitalisations recorded by IPRU include readmissions and thus may count one attempt at suicide more than once if successive treatments are required.
- <sup>150</sup> Data for the years 1960–1979 are from Forsyth, *Mountain Safety Manual* 3/4 *Firearms in New Zealand*, July 1985; data for the years 1980–1993 are from IPRU.
- <sup>151</sup> Source: Forsyth, *ibid.*
- <sup>152</sup> Source: IPRU.
- <sup>153</sup> Source: IPRU. The number of suicide attempts will only include those serious enough to warrant hospitalisation, as IPRU figures are based on the recorded number of persons discharged from hospital.
- <sup>154</sup> Beautrais, Joyce and Mulder, “Access to Firearms and Risk of Suicide: A Case Control Study” *Australian and New Zealand Journal of Psychiatry* 1996 (December), 741.
- <sup>155</sup> Those which required hospital admission for longer than 24 hours and which met specified criteria: *ibid.*, at 742.
- <sup>156</sup> Includes cutting or stabbing, electrocution, drowning, jumping from a height and other “uncommon methods”: *ibid.*, at 744.
- <sup>157</sup> *Ibid.*
- <sup>158</sup> Forsyth, *supra* at note 39, at 1.
- <sup>159</sup> Source: IPRU, Otago Medical School. The hospital admissions data include re-admissions, and since the same injury may result in more than one admission, the figures may be inflated to an unknown extent.
- <sup>160</sup> These figures show ten deaths in 1993, 15 in 1994 and 12 in 1995—an average of 12 per annum.
- <sup>161</sup> See Forsyth, *supra* at note 39, at 18.
- <sup>162</sup> *Ibid.*, at 16, citing figures supplied by the NZDA and MSC.
- <sup>163</sup> Sources: ACC and National Injury Surveillance Unit, Flinders University. The New Zealand average is 0.27 deaths per 100,000 population; Australia’s average is 0.11.
- <sup>164</sup> See Australian Institute of Criminology, *Violent Deaths & Firearms in Australia: Data & Trends*, 1996.
- <sup>165</sup> See Newton and Zimring, *Firearms and Violence in American Life: Report to the National Commission on the Causes and Prevention of Violence*, 1969; and Zimring, “Firearms and Federal Law: The Gun Control Act of 1968” *Journal of Legal Studies* 1975, 4: 133. The themes in those papers were developed, with responses to criticisms of them to that date, in Zimring and Hawkins, *The Citizen’s Guide to Gun Control*, 1987.
- <sup>166</sup> Greenwood, *Firearms Control: A Study of Armed Crime and Firearms Control in England and Wales*, 1972.
- <sup>167</sup> *Ibid.*, at 91. That claim was based on the duty to keep arms imposed on

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- citizens in Saxon times and the provisions in the Bill of Rights 1688 which gave Protestants the right to bear arms for the defence of their faith.
- 168 Zimring, *Scientific American*, 1991 (November), at 24.
- 169 Kleck and Gertz, "Armed Resistance to Crime" *Journal of Criminal Law and Criminology* 1996, 68(1).
- 170 That research has since been replicated: see Lott and Mustard, "Crime, Deterrence, and Right to Carry Concealed Handguns" *Journal of Legal Studies* 1997 (January).
- 171 Lord Cullen, *The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996*, 16 October 1996, at 113 (paras 9.30–9.32).
- 172 Ibid, at 107 (para 9.5).
- 173 See the discussion of "The Number of Firearms" in part 2.3.
- 174 *Journal of Criminal Law and Criminology*, 1996, 86(1).
- 175 Zimring, "Reflections on Firearms and Criminal Law", *ibid*, at 8 and 9.
- 176 Injury Prevention and Research Centre (now the IPRU), *Intentional Injury in New Zealand—Analysis and Monitoring Report 4*, 1995 (June).
- 177 Beautrais, Joyce and Mulder, "Access to Firearms and the Risk of Suicide: A Case Control Study" *Australian and New Zealand Journal of Psychiatry* 1996 (December).
- 178 *Firearms and Violence in Australian Life*, 1981.
- 179 Ibid, at 131.
- 180 "Jumping the Gun: Firearms and the Mental Health of Australians" *Australian and New Zealand Journal of Psychiatry*, 1996.
- 181 *Routine Activity and Rational Choice*, vol. 5, Transaction, 1993.
- 182 Ibid, at 95.
- 183 Zimring and Hawkins, *supra* at note 1, chapters 4, 7 and 8.
- 184 *Supra* at note 14, at 94.
- 185 "Gun Control: A Banker's Perspective" *Gun Control Review*, 1988 (December).
- 186 "Guns in Homicide—The Social Reality" *Weapons and Violence in Australia*, 1990.
- 187 See *supra* at note 14, at 132–145.
- 188 Robbery statistics were available only for the past three years, during which time both Queensland and New South Wales changed their basis for measuring robbery to include victims of trauma as well as persons suffering direct loss or injury. Both circumstances made it unsafe to seek to apply the available figures, especially as the most recent figures for New South Wales showed a massive increase in the volume of robberies which could only be explained as consequential upon the change in the basis of measurement.
- 189 *NZ Herald*, 31 January 1997.
- 26 *Supra* at note 11, at 6.
- 27 Gabor, "The Impact of the Availability of Firearms on Violent Crime, Suicide and Accidental Death: A Review of the Literature With Special Reference to the Canadian Situation", Department of Justice,

- Canada, 1994, at 6.
- 192 Gubb, to Region and District Commanders re Operational Implications  
of Arms Amendment Act 1992 “Administrative Instruction No. 1”.
- 193 Coote, circular re Review, 13 October 1994; and Police Executive  
Conference Notes, 28 October 1994.
- 194 Lord Cullen, *The Public Inquiry into the Shootings at Dunblane  
Primary School on 13 March 1996*, 16 October 1996. See chapter 8,  
and particularly paras. 8.8–8.13, 8.56–8.65, and 8.74–8.90 of the  
report.
- 195 See the *Proceedings of the 1980 International Shooting Sports  
Symposium October 1980*, and address by Inspector Cook.
- 196 Alpers, *Policing Gun Laws*. A report commissioned by the NZ Police  
Association, October 1996.
- 197 PNHQ, “Draft Management Review”, December 1995, at 11.
- 198 Walters, “Accuracy of Police Licensing and Firearm Records”,  
Institute of Criminology, Victoria University of Wellington, April  
1997, at 16.
- 199 Harding, *Firearms and Violence in Australian Life*, 1981, at 3.
- 9 Coopers & Lybrand, *Report on Cost Information Required for Review  
of Firearms Control in New Zealand*, 1997, Part 2, at 10.
- 201 Operations Support Group (PNHQ), *A Review of Firearms Control in  
New Zealand* (“the May 1996 Review”), at 1.
- 202 The full list is contained in the schedule to the Arms (Restricted  
Weapons And Specially Dangerous Airguns) Order 1984.
- 203 Regulation 22, Arms Regulations 1992.
- 204 Section 32(1)(b), Arms Act 1983.
- 205 Firearms Regulations 1974 (WA), reg 26. I understand that if a firearm  
is permanently disabled so that any attempt to use it is impossible, the  
Western Australia Police treat it as no longer coming within the  
definition of a firearm.
- 206 Weapons Act 1996 (QLD), s 7; Weapons Regulations 1996, reg 73.
- 207 See p. 4 of appendix A of the Operations Support Group (PNHQ), *A  
Review of Firearms Control in New Zealand* (“the May 1996  
Review”), where it quotes a “recent study of 78 firearms incidents”, 11  
percent of which involved handguns.
- 208 Nugent, “Hunting Firearms in New Zealand—A Survey” (appendix E2  
to Coote (PNHQ), *Arms Amendment Bill*, 1992), at 5.
- 209 This estimate was based on a larger scale buy-back which would  
involve more extensive administration than that likely to be necessary  
for the class proposed.
- 210 The 1997/98 year incurs the highest cost under the enhanced system  
model due to the incidence of many one-off costs.
- 211 The Act in effect defines *all* semi-automatics to be MSSAs unless they  
fit within the definition of “sporting configuration”—as a result, most  
semi-automatics could technically be considered “MSSAs in sporting  
configuration”.
- 212 Forsyth, *Mountain Safety Manual*<sup>34</sup>*Firearms in New Zealand*, July  
1985, at 104. The work carried on by these societies has now been  
taken over by the New Zealand Fish and Game Council, which is  
made up of representatives of 12 regional Fish and Game Councils

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- 213 who manage game hunting and fishing throughout the country.  
These exemptions were made pursuant to s 18(1) of the Wildlife Act  
1953, which gives the Minister of Conservation a discretion to declare  
an exception “in such circumstances and at such times, areas and  
places and subject to such conditions as may from time to time be  
authorised pursuant to a notification given by the Minister”.
- 214 Supra at note 11, at 4.  
215 See part 4.3 of this report.  
216 See Rosenfeld, “Gun Buy-Backs: Crime Control or Community  
Mobilization?”. In Plotkin (ed), *Under Fire: Gun Buy-Backs,  
Exchanges and Amnesty Programs*, 1996, at 1.
- 217 Supra at note 6, at 16 (para 8).  
218 A report commissioned for the Police Association, March 1996.  
219 Where the licence holder’s premises was visited (or a visit was  
attempted) but the security of their firearms could not be checked  
because licence holder was not home, could not be located or was no  
longer in possession of firearms.
- 220 Motor vehicle theft in this context includes unlawful taking, theft and  
interference with a motor vehicle.
- 221 See Firearms Act 1996 (VIC), s 10; Firearms Act 1973 (WA), s 11A;  
Firearms Act 1996 (NSW), s 12; and Weapons Act 1990 (QLD), s 11.  
222 Firearms Act 1996 (NSW), s 12(2).  
223 National Coalition for Gun Control, Australia, media release, 11 May  
1997. For example in Tasmania an applicant may buy a permit to  
shoot on Crown land for \$A5, and in Victoria may buy a membership  
of the Sporting Shooters Association for \$A45.
- 224 The class of “violent” offences will need to be specified as a list. Such  
a list is currently in use by the Police for the purposes of planning and  
policy.
- 225 Letter from Dr LA Beltowski (SSANZ), 4 January 1997.  
25 Monahan, “Mental Illness and Violent Crime” (presentation  
summary), *National Institute of Justice Research Preview*, 1996  
(October).
- 227 Lord Cullen, *The Public Inquiry into the Shootings at Dunblane  
Primary School on 13 March 1996*, 16 October 1996, at para 5.47.  
228 Written submission to Dunblane Inquiry, at 11–12.  
229 Supra at note 26, para 1.11.  
230 Ministry of Health, Mental Health Commission, New Zealand Medical  
Association, Royal Australian and NZ College of Psychiatrists, Privacy  
Commissioner.
- 30 Systems are being developed in both Australia and Canada to verify  
electronically the accuracy of firearm details. Such systems may assist  
to enhance the integrity of data on the register, as well as reducing the  
need for physical inspection of firearms.
- 31 McCallum (NZPNHQ), *Firearms Registration in New Zealand*,  
September 1982, at 26.
- 32 Herlihy and Mason, “Firearms Registration: The Controversy  
Revisited”, Australian Institute of Criminology, January 1994.  
33 Supra at note 26, at para 1.11.

- 34 *Firearms Laws and Use: Proceedings of the First Australian National Conference, Perth Australia*, 1981.
- 35 Triggs, *Interpreting Trends in Recorded Crime in New Zealand*, 1997, at para 2.6.2.
- 36 Brown, “The Portrayal of Violence in the Media: Impacts and Implications for Policy”, 1996.
- 37 Ibid, at 5.
- 38 See, for example, the Weapons Act 1990 (QLD).
- 39 Section 49A provides that:
- 49A. Unlawful possession of firearm or airgun after revocation of firearms licence—**
- Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$4,000 or to both who, being a person whose firearms licence has been revoked, is in possession of a firearm or airgun at a time when that person is not the holder of a firearms licence, and is not a person authorised, expressly or by implication, by or pursuant to this Act, to be in possession of that firearm or airgun.
- The question is whether a person is “authorised” by the Arms Act, expressly or by implication, to be in possession of a firearm while using it under the supervision of a licence holder. The difficulty is that the provision relating to use of firearms under supervision, s 22, is not phrased as an affirmative authorisation but as a defence to a prosecution for possession of a firearm or airgun without a licence. Despite the wording of the Act, it would seem that the preferable interpretation is that this does, in reality, amount to an authorisation by implication.
- 241 Firearms Import Statistics 1880–1995, including an update with 1996 figures, and more detailed schedules received by the Review on 3 March 1997.
- 242 Langley, Norton, Alsop and Marshall, “Airgun Injuries in New Zealand, 1979–92”, Injury Prevention Research Unit, 1996.
- 42 Ibid, at 116.
- 43 Ibid.
- 245 Firearms (Dangerous Air Weapons) Rules 1969.
- 246 Section 2, Arms Act 1983.
- 247 Police Executive Research Forum (US Department of Justice), “Toy Guns: Involvement in Crime and Encounters with Police”, at 8.
- 248 Clarke, “The Right to Bear Arms”, thesis, 1995, at 58.
- 249 Supra at note 46.
- 250 Ibid, at 13.
- 251 Ibid, at 16. A soft-air gun is a copy of a firearm with a small spring piston or air propellant capable of shooting only lightweight plastic projectiles at low muzzle velocity.
- 252 Section 46(1), Arms Act 1983.
- 253 Section 46(2), Arms Act 1983.
- 254 Seven years: s 54(1), Arms Act 1983.
- 255 Five years: s 54(2), Arms Act 1983.
- 256 Section 55(1), Arms Act 1983.

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- <sup>257</sup> The Federal Energy Management Improvement Act of 1988, Public Law 100-615, s 4. See *supra* at note 46, at appendix 1.
- <sup>258</sup> *Ibid*, s 4(b)(1).
- <sup>259</sup> *Supra* at note 46, at 38.
- <sup>260</sup> *Ibid*.
- <sup>261</sup> *Firearms and Violence in Australian Life*, 1981, at 29.
- <sup>262</sup> *Supra* at note 11, at 159.
- <sup>263</sup> [1992] 1 NZLR 709, at 718.