

29 March 2019

Attorney-General

**Advice on Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill
2019(PCO 22048/2.4)
Our Ref: ATT395/291**

1. We have reviewed the latest version of the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill 2019 for the purpose of assessing its consistency with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). The Bill is expected to undergo further changes as a result of continuing consultation between the New Zealand Police and other agencies. We will update this advice if later versions of the Bill raise any further issues.
2. We have found the Bill in its current form appears to be consistent with the Bill of Rights Act.

The Bill

3. The Bill gives effect to a recently announced Government policy to alter the status of certain semi-automatic firearms to prohibited weapons. Many semi-automatic firearms can currently be purchased and possessed under a standard category “A” firearms license. Any that meet the definition of military style semi-automatic weapons require a Category “E” endorsement and a recent Order in Council has widened that definition to include many of the weapons that will be affected by this Bill.
4. Under this Bill, subject to stated exceptions all semi-automatic firearms will become prohibited weapons, meaning that it will be an offence for any person to own or procure one unless they fall within certain stated exceptions.
5. The effect of enacting this Bill will be that property that has been lawfully purchased will become illegal to possess and to do so will constitute an offence punishable by imprisonment. The Bill will legislate an opportunity for the surrender of these weapons to Police before the prohibition takes effect.
6. A number of new offences have been created because possession of prohibited firearms is criminalised.

The Bill of Rights Act is engaged but not limited by this Bill

7. The Bill of Rights Act has several sections that guarantee rights that arise through the criminal process but these are procedural in nature, consisting of fundamental fair trial rights (s 25), the rights of persons charged with offences (s 24), freedom from retrospective penalties and double jeopardy (s 26) and, of course, from disproportionately severe punishment (s 9). It leaves the Government free to legislate what conduct will or will not be criminal unless the conduct which is criminalised involves the exercise of another guaranteed right.
8. The Bill of Rights Act does not protect property rights so as to give any person a constitutional right against the compulsory acquisition or coerced disposal of property.
9. The only limitation of protected rights arises because the new offence of possession of a prohibited firearm at the time of committing an offence punishable by more than 3 years imprisonment (clause 53A), provides for an affirmative defence that the person had possession of the prohibited firearm for a lawful purpose but requires them to prove that lawful purpose. It therefore reverses the onus of proof and limits the right to the presumption of innocence.
10. A limitation on the right to the presumption of innocence will be justified for the purpose of s 5 if it is rationally connected to a pressing social objective, proportionate and causes minimal impairment of the right.
11. In this case the reverse onus applies only to the establishment of a positive defence rather than the elements of the offence, and it may be assumed that where a person has a lawful purpose for a prohibited firearm being in their possession it will lie easily within their capacity to provide proof of that lawful purpose on the balance of probabilities, and disproportionately burdensome on the prosecution to negate it beyond reasonable doubt. Such reverse onus provisions are used elsewhere in the Arms Act for similar reasons.
12. While s 25(c) of the Bill of Rights Act is limited by this Bill, that limitation is demonstrably justified.
13. This advice has been peer reviewed by Austin Powell, Senior Crown Counsel.



Vicki McCall
Crown Counsel

Noted/Approved/Declined

Hon David Parker
Attorney-General
/ /2019