



The New Zealand Arms Control Regime

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Introduction

This paper provides an overview of the New Zealand arms control regime². The writing of this paper is motivated both by a desire to share with others the strengths of that regime, and, following from this, to address what appears to be misunderstandings arising from the much publicised perspective of a very small group of commentators who hold a particular view on arms control³. The New Zealand regime is placed within an international context.

The New Zealand arms control regime

Firearms in New Zealand are primarily controlled by the Arms Act 1983; Arms Regulations 1992 and the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984 (see www.legislation.govt.nz). These are expanded by policy directions collated in the New Zealand Arms Manual 2002. These documents need to be read together for a more complete understanding of the New Zealand arms control regime (see www.police.govt.nz/service/firearms).

Central to the New Zealand arms control regime is the licensing of individuals as fit and proper to possess firearms. Those who wish to possess pistols, restricted weapons or military style semi automatic firearms (MSSAs) may apply for an endorsement on their firearms licence. In order to have the endorsement granted they must demonstrate that they are both fit and proper and have cause to possess that firearm⁴. The issuing of any such endorsement is subject to the direction of the Commissioner⁵.

Pistols, restricted weapons and MSSAs may only be sold or supplied to a person holding a permit to procure issued by a member of Police. Individuals are required to confirm having taken possession of these firearms where such a permit has been issued. Police use information from the permit to procure process to record the details of the pistol, restricted weapon or MSSA against the person's firearms licence⁶.

Firearms licenses and endorsements are renewable ten yearly on application. This application is for a new licence, with full vetting and security inspection being a requirement. In short, in order to be issued a new licence the applicant must demonstrate that they continue to be fit and proper to possess firearms.

Individuals applying for a firearms licence are determined as being, or not being fit and proper by a vetting process that includes but is not limited to:

1. Information held on Police computer systems, including criminal records, intelligence data and Court Orders such as Family Violence Protection Orders.

2. Face to face interview with the applicant's partner, spouse or next of kin (for both first time applicants and applicants to renew).
3. For first time applicants, face to face interview with an unrelated referee. For renewals this interview may be carried out by telephone.
4. Face to face interview with the applicant.
5. Physical inspection of security in place for firearms. Security requirements are set by regulation.
6. The recording of information about firearms held, ensuring that the security inspected is commensurate with the firearms the applicant claims to possess⁷.
7. Any other inquiry that the Arms Officer considers necessary. This may include obtaining a doctor's certificate.

Those wishing to have an endorsement must further satisfy Police as to their fit and proper status and the reason they wish to possess a pistol, restricted weapon or MSSA. This process includes:

1. Evidence of bona fide interest in possessing that pistol, restricted weapon or MSSA, that is, meeting the statutory 'cause to possess' required by the Arms Act.
2. Interview of referees who already possess pistols, restricted weapons or MSSAs.
3. For target pistol shooting; confirmation as being the member of a pistol shooting club recognised by the Commissioner of Police.
4. Security commensurate with the type of firearm to be possessed. Security standards for pistols, restricted weapons and MSSAs are of a higher standard than for sporting long arms and are set by regulation.
5. On renewal of the licence/endorsement, a physical audit of pistols, restricted weapons and MSSAs recorded against the applicant's licence
6. Any other inquiry the Arms Officer considers necessary.

Arms Officers are directed in the vetting process by the Vetting Guide and the Vetting Master Guide.

Those wishing to sell or manufacture firearms by way of business are required to apply to Police for a dealers licence. The arms dealers licence is issued on the basis that a person demonstrates that they are fit and proper to carry out this business. Dealers and their employees are also required to hold a firearms licence, and if selling pistols, restricted weapons or MSSAs the requisite endorsement. Security and recording requirements for Dealers are set by Regulation. The Dealer's licence is renewable annually.

Actions of fit and proper persons

Having been determined as fit and proper to use, possess or sell and manufacture firearms indicates that an individual is likely to possess and use firearms lawfully. Individuals who do not do so are no longer fit and proper.

A person is not considered fit and proper if:

1. They are subject to a protection order under domestic violence legislation. Protection orders have as a standard condition the 'deemed revocation' of the respondent's firearms licence. This standard condition may be discharged by a Judge on application from the respondent.
2. In the opinion of a Commissioned Officer of Police there are grounds for making such an order.
3. They have had their firearms licence revoked on the grounds they are not a fit and proper person.
4. A person who is not fit and proper is likely to have access to their firearms.
5. They fail to secure their firearms as required by the Arms Regulations 1992.

6. They demonstrate any other behavioural based problems, such as substance misuse, routine offending against the law (including the Arms Act), violence, attempted suicide and mental ill health such that it might cause concern.

Firearms licenses, endorsements and dealers licenses may be revoked where a person is considered no longer fit and proper to use or possess firearms, or as dealer they fail to exercise due control over their business.

Where Police have revoked a firearms licence they may, when the person has demonstrated themselves fit and proper reinstate the licence. A revoked firearms licence may be reinstated on appeal to the Courts.

Operational implications

The New Zealand legislative framework establishes as offences the unlawful use or possession of firearms. These are included in both arms control legislation and the criminal code.

Offences that involve the misuse of firearms, including possession for other than lawful, proper or sufficient purpose tend to be well understood. Offences involving the simple possession and transfer of firearms, in the absence of any other substantive offending require further explanation.

While they continue to hold a licence and/or endorsement a person is lawfully able to possess the categories of firearms that the licence and/or endorsement apply to⁸. It is only when they do not hold a licence and/or endorsement that a person may commit the offence of unlawful possession.

This applies irrespective that the person may or may not have taken possession of pistols, MSSAs or restricted weapons other than with a permit to procure. The onus for ensuring that a person holds a permit to procure rests with the person supplying the pistol, MSSA or restricted weapon. The person taking possession of the pistol, MSSA or restricted weapon may be party to the offence (by aiding or procuring the breach of the Arms Act) of supplying a pistol, MSSA or restricted weapon to a person who does not hold a permit to procure, albeit that it is themselves.

If a person makes or assembles for themselves a pistol, MSSA or restricted weapon they do not commit the offences of unlawful possession or supplying a pistol, MSSA or restricted weapon to a person who does not hold a permit to procure - so long as they hold a firearms licence bearing the requisite endorsement. A wise person in these circumstances will have advised their Arms Officer that they are making or assembling the pistol, MSSA or restricted weapon, ensuring that the firearm is recorded against their licence and/or endorsement.

It is when they come to supplying the pistol, MSSA or restricted weapon to another that the person making or assembling the pistol, MSSA or restricted weapon must ensure that the person they are supplying it to holds a permit to procure.

The development of legislation and policy - a consultative approach

In setting the principles of modern policing in 1829 Peel stated that 'the extent to which the cooperation of the public can be secured diminishes proportionally the necessity of the use of physical force and compulsion for achieving police objectives'. One mechanism to gain public cooperation is to include them fully in the law and policy making process.

The outcome of legislation developed in a consultative process is better law and enhanced public acceptance, and ultimately compliance with that law.

In the same way it is important to include interested parties in the development of policy. The New Zealand Mountain Safety Council, as an independent organisation very focussed on safety is central to this consultative process. The Mountain Safety Council branch network of instructors is pivotal to explaining law and policy to the wider firearm using public.

It is also important to acknowledge that firearm users tend to be the good people in the community. This is especially so in rural and small town communities. They will be the same people who support Neighbourhood Support, Victim Support, youth education and other policing initiatives. They will also be the people police officers rely on for support and back up!

The development of policy in terms of arms control is based on (to quote Chief Justice, Dame Sian Elias when she opened the 2005 Criminology Conference) "solid research, not pious hopes"⁹.

Different States, different needs

Arms control internationally is agreed by instruments such as, for example the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (SALW) in All Its Aspects (referred to in what follows as the 'POA').

An arms control regime is likely to be more effective if it takes into account the differing histories, cultures, environments and patterns of firearms possession and use that are apparent in different States. A 'one size fits all' approach is likely to be less effective than approaches that address these differences. The POA commits States to take steps that bear in mind the 'different situations, capacities and priorities of States and regions' (POA, II (1)).

Given this, States are justified in putting energy into developing strategies that they consider are more likely to be effective, given their own particular circumstances.

Conclusion

This paper has provided an overview of the New Zealand arms control, sharing with others the strengths of that regime. Arms control in New Zealand has been placed within an international context and the reason for the New Zealand view explained.

The New Zealand arms control regime can be more fully understood by referring to the following key documents:

- The Arms Act 1983
- The Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984
- The Arms Regulations 1992
- The Arms Code (Firearms Safety Manual Issued By the New Zealand Police)
- The Arms Manual 2002
- The Vetting Guide
- The Vetting Master Guide

¹ Joe has been a Police officer since 1983, working at all ranks in both administrative and operational roles to his current rank of Inspector. Since October 1998 he has managed the Licensing and Vetting Service Centre. This Service Centre is responsible, among other things for the national coordination of firearms control. He has advised a Parliamentary Select Committee on one Arms Amendment Bill, has developed policy which is within the Arms Manual 2002, is advising on the Arms Amendment Bill #3, has been advisor to UN delegations, and to the Australian Government in the 2007 review of its national firearms management system. He is the Police representative to the New Zealand Mountain Safety Council (NZMSC) and from 1999-2007 was the Deputy Chair of NZMSC. NZMSC is the civilian organisation responsible for the nation wide training of all firearms licence applicants. In practice this means that Joe has been associated with the design, administration and enforcement of firearms control systems on a full time basis for nine years. This is backed by operational policing experience.

² New Zealand has a very low crime rate with firearms, being approximately 1.3% of all violent crime, a very low accidental injury and death rate, and a reducing suicide rate with firearms as the choice of method (for example, in the 15-24 age group for males, suicide by firearm decreased from 6.9 deaths per 100 000 in 1977 to 2.9 per 100 000 in 1996). The culture of firearm use in New Zealand is such that Police do not routinely carry firearms.

³ In his paper *Global Deaths from Firearms* (2003: page 2) David Kopel comments on statements that take on a truth of their own as 'factoids' that 'gain strength through repetition, often without any (or very slim) empirical basis'. Such factoids are apparent in both national and international discourse on arms control.

⁴ The cause to possess pistols and restricted weapons is determined by statute. The applicant must be a target pistol shooter (member of a club recognised by the Commissioner of Police), or a bona fide collector, or a person to whom the pistol or restricted weapon has special significance as an heirloom or memento, or the Director or Curator of a museum, or an approved employee or member of a bona fide theatre, film or television company or society. For MSSAs the applicant must satisfy Police they have reason to possess the MSSA. Most common reasons include pest destruction, competitive service rifle shooting and film production.

⁵ Acting on the 'direction of the Commissioner (of Police)' is an aspect of New Zealand legislation that makes it important to include Police policy, collated in the Police (Arms) Manual, as part of the overall arms control regime. In this sense New Zealand legislation is less prescriptive than some other legislative frameworks. Being less prescriptive should not be interpreted as being less restrictive.

⁶ The primary purpose of the permit to procure process is to ensure that the pistol, MSSA or restricted weapon is supplied only to a fit and proper person.

⁷ New Zealand does not have a universal registration regime. In 1983 a radical and substantial decision was made to move from a registration regime that focussed on the firearm to a comprehensive licensing regime that focussed on ensuring, as far as possible, that only fit and proper people had access to firearms. This change was made on the basis that the registration system suffered from inaccuracy, had indications of low compliance, did not assist crime prevention and detection, was of high cost with the money of maintaining such a system better spent on other essential police duties (Judge Thorp; 1997, pages 13-16 *Review of Firearms Control in New Zealand*). A licensing system with more intensive vetting was considered to provide effective arms control. This view has not changed and is supported by more recent international experience. Despite recommending a universal registration regime in his 1997 *Review of Firearms Control in New Zealand* Judge Thorp noted that in order to be effective a threshold of 90% compliance was necessary. Judge Thorp (page 178) concluded that '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'. The observation of the outcome of legislative changes in other common law jurisdictions has not encouraged New Zealand to change the 1983 decision.

⁸ This is a natural corollary of a system based on licensing people as 'fit and proper' to possess firearms, and certain categories of firearms (rather than a system based on a registration regime). That pistols, MSSAs or restricted weapons are, or are not recorded on Police systems has no bearing on whether or not they are lawfully, or unlawfully possessed.

⁹ Despite the complexity of firearm control ('requiring social and economic rather than technical solutions' (United Kingdom Home Office (2006: 1) some advocates, including

operational police staff are attracted to and promote a range of mechanisms that include the universal registration of firearms, the banning of possession of certain categories of firearms, the deactivation of firearms, buybacks and the increase in penalties for the illegal possession and use of firearms. A research based approach suggests these approaches to arms control to be less than effective.