

# New Zealand Law Society

## THE ARMS (MILITARY STYLE SEMI-AUTOMATIC FIREARMS AND IMPORT CONTROLS) AMENDMENT BILL

1. The New Zealand Law Society (Society) welcomes the opportunity to comment on the Arms (Military Style Semi-Automatic Firearms and Import Controls) Amendment Bill (Bill). The Society does not express any view on the policy underlying the Bill but is concerned that the Bill as drafted empowers the Executive to widen the scope of the Arms Act 1983 by regulation. As a general rule, the application of an enactment should not be determined via the use of secondary legislation.

### *Definition of “military style semi-automatic firearm”*

2. This submission focuses on the amendments to the definition of a “military style semi-automatic firearm” which enable the definition to be augmented via regulation (clause 4 of the Bill), and the ancillary amendments to the regulation-making powers in section 74 of the Arms Act 1983 (clause 11 of the Bill).
3. As drafted, clause 4(1) defines a military style semi-automatic firearm to include:
  - firearms declared by regulations to be a military style semi-automatic firearm (sub-clause (b));
  - any firearm of the type described in regulations made under this Act as a military style semi-automatic firearm (sub-clause (c)); and
  - a firearm that has a feature that is defined or described in regulations made under this Act as a feature of a military style semi-automatic firearm (sub-clause (d)).
4. Clause (4)(1)(a)(vi) also envisages that the definition of a “pistol grip” for the purposes of the definition will be prescribed by regulation.
5. The regulation-making powers in section 74 of the Arms Act are amended to enable regulations to be made for these purposes (clause 11). Section 74(1) is itself in very wide terms expressing the regulation-making power as follows:

“The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes ...”
6. This combination of clauses provides a wide discretion for the definition of a military style semi-automatic firearm to be amended and augmented by regulation. The rationale for the amendments is described as being to provide:

“... greater certainty about what is and is not a military style semi-automatic firearm for the purposes of the Act, and permits certain aspects of the definition to be defined, declared, or described by regulations in order to provide greater adaptability to changing circumstances as they arise in the future.” (Explanatory Note, p5).

7. The Society agrees that certainty could be promoted by clearly identifying the makes and models of firearms which fall within the definition of military style semi-automatic firearms in clause 4(1)(a). Identifying those in regulations is one method for achieving this, although another way would be to establish a register recording the makes and models of firearms that are considered by the relevant authorities to be military style semi-automatic firearms.
8. However, and in any event, as drafted, clause 4(1)(b) enables a firearm to be declared to be a military style semi-automatic firearm by regulation with no (or at least very little) reference to the specific definition in clause 4(1)(a). Accordingly, the effect of clause 4(1)(b) is to empower the Executive to widen the definition in clause 4(1)(a) and hence the application of the Act over time.
9. Clauses 4(1)(a)(vi), (c) and (d) have the same impact. Each of them effectively enables the scope of the enabling legislation to be widened by regulation.
10. The Society acknowledges that circumstances change over time, and that there is a particular public concern in relation to weapons of this nature. However, as a matter of principle, decisions as to the scope and application of primary legislation (particularly legislation which regulates a freedom that would otherwise exist) are matters for Parliamentary consideration.

### ***Recommendations***

11. For these reasons, the Society recommends that the Committee consider the following amendments to the Bill:
  - (a) That “pistol grip” be defined in section 2 of the Arms Act, and clause 4(1)(a)(vi) be amended by deleting the reference to “as defined in regulations made under this Act” and the proposed regulation section 74(1)(lb);
  - (b) In relation to clause 4(1)(b) and the proposed regulation section 74(1)(lc):
    - (i) those clauses be amended to constrain the power to declare by regulations firearms which fall within the clause 4(1)(a) definition of a military style semi-automatic firearm; and/or

- (ii) consideration be given to providing for a register of makes and models of firearms which fall within the definition of military style semi-automatic firearms; and
- (c) Clauses 4(1)(c) and (d) be deleted, with the consequent removal of the proposed regulation sections 74(1)(ld) and (le).

***Conclusion***

12. The Society does not wish to appear in support of this submission.

A handwritten signature in black ink that reads "Mary Jeffcoat". The signature is written in a cursive, slightly slanted style.

**Mary Jeffcoat**  
Vice President  
15 June 2011