

Arms Bill

Submission of the New Zealand Law Society Te
Kāhui Ture o Aotearoa

20 February 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui o Aotearoa (**the Law Society**) welcomes the opportunity to comment on the Arms Bill (**the Bill**), which proposes to repeal and replace the Arms Act 1983 (**the Act**) to provide greater protection for public safety, simplify regulatory requirements, and improve compliance.
- 1.2 The Bill seeks to achieve these goals through a suite of proposals aimed at:¹
- (a) Encouraging a culture of community safety and support;
 - (b) Enabling legitimate possession and use;
 - (c) Ensuring compliance through education and enforcement; and
 - (d) Maintaining public interest and safety.
- 1.2 The Law Society supports the aim of protecting public safety. However, it has identified aspects of the Bill that require further consideration and improvement, if the Bill is to proceed. This includes concerns for public safety and whether certain amendments will assist in achieving the aims of the Bill, alongside other revisions necessary to improve drafting and workability. We make recommendations to improve the Bill where possible, though in areas where there may be wider policy considerations or there is insufficient information from which to form a proposed amendment, we recommend officials be directed to provide further advice.
- 1.3 This submission has been prepared with the assistance of the Law Society's Criminal Law Committee.² The submission addresses:
- (a) Concerns about reverse onus offences and implications for rights protected by the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**);
 - (b) Part 1 – Preliminary provisions;
 - (c) Part 2 – General requirements;
 - (d) Part 3 – Licences and approvals;
 - (e) Part 5 – Shooting clubs and shooting ranges;
 - (f) Part 6 – Further offences and Firearm Prohibition Orders;
 - (g) Part 8 – Miscellaneous provisions.
- 1.4 The Law Society **wishes to be heard** on this submission.

¹ Explanatory note

² More information about these committees can be found on the Law Society's website: <https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/>

2 Reverse onus offences and Bill of Rights Act concerns

- 2.1 A key concern arising from the Bill is the inclusion of reverse onus offences carrying increased penalties. As the Bill of Rights Act advice prepared by Crown Law (**Bill of Rights advice**) states, these provisions limit the right to be presumed innocent, protected by section 25(c) of the Bill of Rights Act.
- 2.2 Reverse onus offences are found at:
- (a) clause 23(1) (contravention of requirements for possession of pistol or restricted weapon in clause 20);
 - (b) clause 25(1) (contravention of requirements for possession of pistol carbine conversion kit in clause 24); and
 - (c) clauses 250(3), 251(3), 253(2), and 260(2).
- 2.3 In respect of each, the Bill of Rights Act advice states that they impose a *legal* burden on the defendant, but that the consequent limitation on the right to be presumed innocent is reasonably justified. It states that in most cases it would be ‘a simple matter’ for an accused to prove the lawful basis for their carriage or possession of a firearm.³ The Law Society is not convinced by this reasoning, nor the conclusion. In addition to omitting consideration of clause 248 of the Bill, the question of proportionality is not satisfactorily addressed for those offences carrying more significant potential penalties.

Clause 248(2) – deemed possession in premises and vehicles

- 2.4 Clause 248(2) imposes a reverse onus additional to that contained in the substantive offence provisions. Pursuant to clause 248, the occupier of a premises or driver of a vehicle is deemed to be in possession of a specified arms item if it is found in that premises or vehicle. Clause 248(2) provides that, where any offence follows, the defendant must prove that the arms item was not their property and that it was in the possession of some other person.
- 2.5 The Law Society agrees there is a strong public interest in the effective enforcement of this regulatory regime. However, we respectfully consider that the conclusion that proving a lawful basis for carriage or possession will ‘mostly be a simple matter’ is inadequate and incomplete. The Bill of Rights advice indicates that this is seen to be justified as it follows the prosecution proving the fact of ownership, use, or carriage,⁴ but the effect of clause 248(2) is that in certain circumstances the defendant also bears a burden of proof in respect of possession. They must do more than prove the necessary excuse, purpose or authorisation, they must also prove that they do not own and did not possess the arms item.
- 2.6 This imposes a significantly higher evidential burden than suggested in the analysis, and in many cases, it may be impractical or impossible for a defendant to discharge this

³ Crown Law *Bill of Rights Vet Advice: Arms Bill* at [38].

⁴ Above, n 3, at [33].

requirement.⁵ The implications are significant, with some defendants facing a sentence of up to seven years imprisonment. As drafted, the provision risks creating an undue and unworkable obligation on defendants, unjustifiably infringing their section 25(c) right to be presumed innocent, and potentially section 25(d), where the proposed onus may be read as compelling a defendant to give testimony against another person if they are able to identify the person who did have possession of the firearm.

- 2.7 The Law Society suggests that a more rights-consistent approach could be achieved by deleting the words ‘and that it was in the possession of some other person’ from clause 248(2).

Application of clause 248(2) to the clause 252 offence

- 2.8 We have also identified what may be an unintended consequence of the Bill’s drafting, resulting in the potential for section 248 to be relied upon where an individual is charged under clause 252.
- 2.9 Clause 252 provides for the offence of carrying or possessing, in public and without lawful purpose, a restricted firearm, pistol, or restricted weapon. A person convicted of this offence is liable to a term of imprisonment not exceeding seven years. Appropriately, given the significant penalty attached, clause 252 does not include a reverse onus such as that found at (for example) clause 260(2) or 253(2).
- 2.10 However, the Bill also imports the definition of ‘public place’ from Summary Offences Act 1981 (**SOA**) (clause 5). This definition can encompass a vehicle in a public place, as well as a place open to or being used by the public, whether any occupier is lawfully entitled to exclude a person from that place. In those circumstances, clause 248 may be (mis)used to deem possession. Although in the case of a vehicle this may be seen as less problematic, in the case of an occupier of premises that is open to or being used by the public, this could impose a significantly higher evidential burden than appears to have been intended, and which may be impractical or impossible for a defendant to discharge.
- 2.11 We recommend that clause 248 is amended to specify the offences to which it applies (or, alternatively, that clause 252 is amended to clarify that clause 248 does not apply).

General justification for, and proportionality of, the proposed reverse onus

- 2.12 The Act predates the Bill of Rights Act and so the offences carried across into the Bill were not, at the time of their original enactment, subject to a rights-consistency analysis. The Bill therefore provides an opportunity for greater scrutiny.
- 2.13 In assessing whether the limit on section 25(c) of the Bill of Rights Act is justified, the Bill of Rights Act advice notes that:

⁵ Noting that the authority for determining possession states that the ‘defendant must be aware of where the item is; be aware of what the item is; have actual or potential control of the item; and have an intention to exercise that control’: *Perez v R* [2015] NZCA 267 at [44]. Subsequently, the Court concluded that the physical element did not include ‘potential’ control: *Simon v R* [2017] NZCA at [14] – [17]. As stated in *Adams on Criminal Law* at AA45.01A.

Relevant considerations here include the regulatory context, whether matters of justification or excuse are likely to be in the particular knowledge of defendants rather than the prosecuting authorities, and the penalty levels involved.

- 2.14 The inherent danger of arms items, the strong public safety imperative underlying arms regulation, and the public interest in effective enforcement of that regulatory regime are all cited in support. It is noted that in many cases it would be difficult for the prosecution to prove, beyond reasonable doubt, the absence of lawful purpose or reasonable excuse for carriage or possession of an arms item. Conversely, and as noted above, the advice concludes it would be relatively simple for a defendant to prove the lawful basis for their carriage or possession of the item. The severity of the more significant penalties arising from several of the reverse onus offences is said to be insufficient to counter these considerations. However the advice does not address in any detail whether the limitation on section 25(c), overall, is proportionate to the objectives being pursued.
- 2.15 Again, we acknowledge the strong public interest in the regulation of arms and the important purposes that the Bill (and its offence provisions) serves. However, it should also be acknowledged that the right infringed is also of high importance too, and where the prospective penalty is substantial, that infringement is significant. The Law Society is not convinced, in the case of significant periods of imprisonment, that the question ‘does the limiting measure impair the right or freedom no more than is reasonably necessary for sufficient achievement of its purpose?’, can be answered in the affirmative. Such an analysis, most recently reiterated by the Supreme Court in *AG v Chisnall*, appears from the Bill of Rights advice not to have been undertaken.⁶ Clauses 25(1) and 250 apply a reverse onus in respect of offences for which a person is liable on conviction to a term of imprisonment of up to five years, while clause 23(1) applies a reverse onus to an offence carrying a maximum term of imprisonment of seven years.
- 2.16 The presumption of innocence is a fundamental common law right, protective of the liberty of the individual and an important restraint on the coercive (and prosecutorial) power of the state. Its importance is heightened where an individual faces the prospect of imprisonment and, where the potential term of that imprisonment is long-term (over two years), the imposition of a reverse onus may be a serious violation.
- 2.17 The Law Society recommends the Bill is amended, at least in respect of the three offences specified above, to achieve greater rights-consistency. This could be achieved by redrafting the three offence clauses to clarify that an evidential, rather than legal, burden applies. Explicit reference to an evidential onus could be made.

3 Part 1 – Preliminary provisions

Transitional provisions

- 3.1 The Bill’s transitional provisions are set out at Schedule 1 and appear largely straightforward. We note, however, that firearms licence holders who continue to sell or supply ammunition after the commencement of the Bill, and who do not hold a business

⁶ *AG v Chisnall* [2024] NZSC 178, at [197], [211] to [212], applying the *Hansen* methodology.

licence, must apply under clause 171 of the Bill to be approved as an ammunition seller (clause 10, schedule 1). An application must be made within 12 months of the commencement date, from which point the person is to be treated (until the application has been determined), as if they have been granted approval under clause 172.

- 3.2 This appears intended to ensure a transitional arrangement that protects those who presently sell ammunition from suffering disadvantage and potential economic loss by the introduction of a new licence for ammunition sellers. However, it is unclear what the position is intended to be during the period from commencement of the Bill through to the time an application is made, which could be some 12 months. The drafting of clause 10(4) of Schedule 1 suggests that such individuals are not to be treated as though they have approval under clause 172, which would make it an offence under clause 10 for them sell or supply ammunition commercially. A person who commits such an offence is liable to a sentence of imprisonment of up to two years. The significance of this is such that it may be worthwhile stating explicitly (if this is the intention) that sale and supply of ammunition is prohibited until such time as an application is received by the Chief Executive. See, for example, the greater level of specificity provided at clause 13 of the Schedule.
- 3.3 Clause 30 of Schedule 1 enables the making of regulations for the purpose of facilitating or ensuring the orderliness of the transition from the Act to the new regime. Those provisions may be made ‘instead of’ the provisions in Schedule 1, and may prescribe that provisions of the Bill do not apply (or apply with modification).
- 3.4 As a matter of principle, such provisions are undesirable as they empower the Government of the day to override the will of Parliament, where typically only Parliament should be able to amend its own laws. Recognising that they can serve legitimate and necessary purposes, the expectation is that they will be used only where necessary, with appropriate constraints and safeguards.⁷
- 3.5 In this instance the drafting of this clause appears to be largely consistent with the Regulation Review Committee’s principles on the use of transitional override powers.⁸ We note:
- (a) The provision is for the purpose of facilitating the transition between two comprehensive regimes.
 - (b) The power is time limited, both in terms of when it may be exercised and for how long the regulations may remain in force.
 - (c) The Minister may only recommend the making of regulations that they are satisfied are ‘reasonably necessary’ for transition, and are ‘consistent with the purposes of the Act.’

⁷ See, for example: Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 15.1, and Dean R Knight and Edward Clark, *Regulations Review Committee Digest* (7th ed, New Zealand Centre for Public Law, 2020) at Chapter 14, Part IV.

⁸ Regulations Review Committee *Regulation-making powers that authorise transitional regulations to override primary legislation* (15 July 2014), at 7.

(d) Where the clause allows the making of regulations that apply instead of provisions under the Bill, this may also be for only a transitional period.

3.6 That said, we draw this to the Committee's attention, in particular subclause (3). Given the strong public interest in the objectives of the Bill, we recommend the Committee satisfies itself that the proposed power is necessary and appropriately drafted.

Interpretation

3.7 Clause 5 provides the interpretation section of the Bill, with additional definitions included at clauses 6 to 11.

3.8 Whilst we commend the overall improvement in clarity of the definitions provided, the Law Society is concerned that several definitions make reference to a regulatory power that would allow the types of firearms or arms items included within those definitions to be amended by secondary legislation.⁹ Clauses 9(b), 10(d) and 11(a) permit the definitional scope of 'restricted firearm', 'restricted magazine', and 'restricted weapon' to be amended in this way. These terms are used in several offences throughout the Bill.¹⁰

3.9 We consider such an approach is not appropriate, given that these definitions are relied upon for offences carrying significant criminal penalties, including terms of imprisonment for up to seven years. Definitions that determine the scope of serious criminal liability should be set by Parliament through primary legislation, not altered through delegated powers. Allowing such changes to be made by regulation risks undermining legal certainty, fair notice to the public, and the constitutional principle that the scope of conduct attracting substantial criminal sanctions must be subject to full legislative scrutiny.

3.10 We further note that in clause 5, the definition of 'exempt standard firearm' is equally unconstrained:

exempt standard firearm means a firearm, or any kind of firearm, exempted by regulations from being a standard firearm for the purposes of this Act.

3.11 The Law Society recommends that the Committee remove the regulatory power to amend definitions that are substantive to criminal offences.

'Ammunition'

3.12 At clause 5, 'ammunition:'

(a) means material that can be fired, discharged, projected, or detonated from a firearm that has all of the following components:

- (i) a projectile (for example, bullets, shots, and missiles); and
- (ii) a propellant (for example, smokeless powder) and

⁹ Authorising provision at clause 363.

¹⁰ See clauses 248, 252, 254, 255, 256, 257, 258, 259, 261, 262, 269, 270, 272 and 273.

- (iii) a casing (for example, a cartridge case); and
 - (iv) a primer (for example, boxer primer); but
 - (b) Excludes restricted ammunition.
- 3.13 The drafting of this definition could be read to require that a *firearm* has the listed components. This makes the definition nonsensical in terms of determining what ‘ammunition’ is. It is the material that must contain all of those components, and therefore all components necessary for the production of ammunition. We recommend that this be redrafted to ensure it accurately reflects what is meant by the term ‘ammunition.’

4 Part 2 - General requirements

- 4.1 Part 2 of the Bill sets out the general requirements for possessing arms items, as well as carrying on associated business activities, selling, supplying, and importing. Much of this, including the corresponding offences, is carried across from the Act with some amendments, including to penalty levels. We note that, for the most part, the drafting of these provisions is an improvement on the Act and should assist those seeking to understand their rights and liabilities under the Bill.
- 4.2 Being a question of policy, the Law Society tends not to comment on the setting of criminal penalties. Exceptions to this are where the scale of penalties (or their application) engages section 9 of the Bill of Rights Act, or where there appear to be unintended inconsistencies. In the case of this Bill, the reform of penalties is intended to ensure they are consistent across the Bill (and as compared to other legislation), and uplifts are proposed to ensure penalties are set at levels reflective of the seriousness and high risk associated with the criminalised conduct. To assist with the aim of consistency, we include brief notes below where proposed penalties appear to result in inconsistencies.

Clauses 14 and 15: Possession of standard firearm

- 4.3 Clauses 14 and 15 replace section 20 of the Act, and target possession of a standard firearm without a licence. The maximum penalty will be increased from one to three years’ imprisonment.
- 4.4 It is unclear whether clause 14(3) is also intended to cover those circumstances presently covered by section 45 of the Act - , the carrying or possession of any firearm, airgun, pistol, prohibited magazine, restricted weapon, or explosive without lawful, proper and sufficient purpose. Under the Act, this carries a maximum penalty of imprisonment for a term not exceeding 4 years or to a fine not exceeding \$5,000 or to both.
- 4.5 The Regulatory Impact Statement: Firearms Reform – Offences and penalties (**Offences and penalties RIS**) indicates section 45 was intended to be carried across into the Bill, with a penalty uplift to a term of imprisonment not exceeding 5 years and/or to a fine

not exceeding \$15,000.¹¹ However, it has not been. Section 45 is commonly used in circumstances such as where search of a defendant's address results in a shotgun being located. Under the Bill:

- (a) Clauses 252 and 253 could not be used as the shotgun is not in public.
- (b) Clause 254 could only be used if the item is a restricted firearm/pistol.
- (c) Clause 255 could not be used as it requires that an offender 'carry' a restricted firearm. Carries has a different meaning than 'possesses.'
- (d) Clause 256 could only be used if the offender 'carries' (or the item is 'with them'), and at the time that they carry it they have a criminal intention. Many persons will stockpile guns not for any particular criminal purpose.

4.6 It appears the only applicable offence for this unlawful possession would be that under clause 14 – possession of a firearm without a licence. This has a maximum penalty of three years imprisonment, which is in fact a decrease from the current four year maximum under section 45 of the Act. It is not clear whether this is intended.

Clause 20: Possession of pistol or restricted weapon

4.7 Clause 20 sets out the circumstances in which individuals and licensed businesses may possess pistols or restricted weapons. Subclause (6) provides that it is an offence if a person, without reasonable cause, contravenes clause 20. The maximum penalty is a term of imprisonment not exceeding seven years.

4.8 We draw the Committee's attention to the fact that a single penalty is proposed regardless of whether the offending relates to an individual or a licensed business. Often, such an offence will include separate penalties for each. Such an approach can reflect that a higher maximum penalty may be appropriate for offending by a business, both for deterrent purposes and because the harm and/or risk posed may be greater. For example, the Committee may wish to consider whether it is perhaps more serious and high-risk for a licensed business to possess – and potentially sell or supply – such weapons, without the necessary authority.

Clause 24: Possession of pistol carbine conversion kit

4.9 We refer to our comments above, in respect of clause 20. Clause 24 also provides for the same level of maximum penalty for both individuals and licensed businesses.

Clause 31: Possession of a restricted firearm

4.10 Clause 31 provides for the circumstances under which an individual or a licensed business may possess a restricted firearm. As with clauses 20 and 24, the proposed penalty does not differentiate between an individual committing the offence as opposed to the licensed business. We refer to our comments, above.

¹¹ Ministry of Justice *Regulatory Impact Statement: Firearms reform – Offences and penalties (3 of 3)* (28 August 2025) (**Offences and penalties RIS**) at p 27.

4.11 Clause 31 also increases the maximum penalty to a term of imprisonment not exceeding seven years. This is the same maximum penalty for several of the serious offences contained in Part 6 of the Bill, including: unlawfully carrying or possessing a restricted firearm in public (clause 252), carrying a standard firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition or explosive with criminal intent (clause 256), and presenting a restricted firearm at another person (clause 257).

4.12 In contrast, clause 31(4) could encapsulate varying degrees of culpability, from unlicensed and unendorsed possession, to licensed but no endorsement, to licensed but expired endorsement. While acknowledging the reasons for a strict approach to restricted firearms, the Committee may wish to consider whether the maximum penalty at clause 31(4) is consistent with other offences under the Bill. It may be worthwhile considering a penalty less than seven years, but still more than the three years that applies for possession of a standard firearm (under clause 14).

Clause 34: Requirements for possession of restricted magazine

4.13 We refer to our comments above, in respect of clause 20. Clause 34 also provides for the same level of maximum penalty for both individuals and licensed businesses.

Clause 37: Possession of restricted ammunition

4.14 Clause 37 prohibits the possession of restricted ammunition, without exception. Unlike the preceding provisions, it sets out no circumstances under which possession can lawfully occur.

4.15 The Bill does not set out clearly the position on restricted ammunition. It provides:

- (a) Restricted ammunition may not be possessed: clause 37.
- (b) A person may only import restricted ammunition if possession of the restricted ammunition is authorised or expressly permitted by 'this Act' and the person has a permit to import the restricted ammunition: clause 56.
- (c) The Chief Executive may, subject to the requirements of clause 193, issue a permit for the import of any restricted ammunition that is 'authorised or permitted expressly by or under the Act to be possessed': clause 193(5)(n). Clause 193(6)(d) then refers to that permit holder being a 'person permitted by regulations to possess restricted ammunition.'
- (d) Regulations may declare any ammunition to be restricted ammunition: clause 363.

4.16 There does not then appear to be a provision in the Bill enabling the making of regulations for the purpose of specifying persons who are permitted to possess restricted ammunition.

4.17 The Law Society recommends identifying at clause 37 who may be permitted to possess restricted ammunition, as is the case for restricted firearms at clause 31. If it remains the intention to address this via Regulation, we recommend the Committee seek advice from officials as to whether this is currently provided for under the Bill. Reference to such

regulations should be made at clause 37 to enable navigation of the Bill and clarity of when possession may be permitted.

Clause 40: Selling or supplying standard firearm, blank-firing gun, or airgun

- 4.18 Clause 40(5) will increase the penalty for sale or supply of a standard firearm to an unlicensed individual, from a term of imprisonment of no more than two years imprisonment or a fine not exceeding \$20,000 to a term of imprisonment of no more than three years imprisonment or a fine not exceeding \$40,000.
- 4.19 The new maximum term of imprisonment will equal that of possession without a licence under clause 14(3) (though we note that a fine will not be available for that offence). Under the Act, the maximum term of imprisonment for sale or supply (two years) exceeds that of the offence for possession without a licence (one year). The penalty in respect of the offence under clause 40(6) remains unchanged.
- 4.20 It is not clear whether it is intended to lower (comparably) the seriousness of supply in contravention of clause 40(1) and (2), and we draw it to the attention of the Committee.

Clauses 29, 37, 47, 53 and 54: Ammunition

- 4.21 Multiple provisions control the possession and sale/supply of ammunition and restricted ammunition, with corresponding penalties as follows:
- (a) Possession of ammunition without a firearms licence or visitor licence (or under the immediate supervision of a person who holds a firearms licence) without reasonable excuse carries a maximum penalty of 2 years imprisonment or a fine not exceeding \$10,000 (clause 29).
 - (b) Possession of restricted ammunition without reasonable excuse carries a maximum penalty of three years imprisonment (clause 37).
 - (c) Selling or supplying ammunition commercially without reasonable excuse, if not a licensed business or approved ammunition seller, carries a maximum penalty of two years imprisonment or a fine not exceeding \$20,000 (clause 47).
 - (d) The offence of selling or supplying restricted ammunition, without reasonable excuse, carries a maximum penalty of three years imprisonment (clause 53).
 - (e) The penalty for breaching the requirements of clause 54, under which arms and ammunition may be sold by mail order or online, is a term of imprisonment not exceeding two years, or a fine not exceeding \$20,000.
- 4.22 The Committee may wish to review these proposed penalties for consistency. We note in particular that the penalties for sale and supply of ammunition and restricted ammunition (including ammunition by mail order and online) are the same as those for mere possession of ammunition or restricted ammunition.

5 Part 3 - Licences and approvals

- 5.1 Part 3 of the Bill sets out a new licensing regime to govern the use of firearms. While some of the provisions mirror what is currently in the Arms Act, there are some notable and significant differences.
- 5.2 The Bill purports to add additional safeguards to 'ensure that only responsible users can access arms items'.¹² This includes preventing gang members from holding firearms licences which we discuss in more detail below. Clause 67 sets out who may apply for a firearms licence, with clause 68 governing who is disqualified from applying.
- 5.3 Subpart 1 of Part 3 differs from the comparable sections in the current Act in that it has a stronger fitness criteria, more thorough application requirements, a more formal and standardised process and the inclusion of review mechanisms beyond the courts.

Gang membership

- 5.4 Currently, being a member of a gang is not an automatic disqualifying factor for a firearms licence. However, section 24A of the Act enables the regulator to determine that an applicant is not fit and proper, including if the person is a member of, or has close affiliations with, a gang or an organised criminal group. The Bill seeks to change this by introducing clause 68 which automatically disqualifies an individual from holding a firearms licence if they are a gang member (as defined in section 4 of the Gangs Act 2024). This raises several concerns.
- 5.5 Firstly, the Bill of Rights advice acknowledges that, like other individuals, gang members receive the protection of section 17 of the Bill of Rights Act, freedom of association, as even within the gang they may engage in legal and pro-social activities. It goes on to note that 'the adverse consequences of gang membership in this Bill are a significant disincentive to joining or remaining in a gang and will limit the freedom to do so'.¹³ However, the advice ultimately concludes that automatic disqualification is a justifiable limitation on the section 17 right given:
- (a) Firearms feature persistently in serious offending by gangs;
 - (b) Gang members are responsible for a significant portion of firearm offences;¹⁴ and
 - (c) Loyalty demanded of gang members creates a high risk that the gang will be able to exercise control over the firearm, or that the firearm will be diverted to other non-licensed gang members.
- 5.6 We note there is no clear supporting evidence in either the Bill of Rights advice or the Regulatory Impact Statements to support some of the assertions above. To the contrary, the Regulatory Impact Statement - Firearms Reform - Encouraging a culture of community safety and support, Quadrant 1 (**Quadrant 1 RIS**) notes the Ministry's

¹² Explanatory Note, p 1.

¹³ Crown Law, Bill of Rights Advice, at [8].

¹⁴ The Regulatory Impact Statement, Firearms Reform - Encouraging a culture of community safety and support, notes that as at March 2025 Gang members are responsible for 22 per cent of all firearms offences.

preferred option was to maintain the status quo, such that decisions on whether a gang member can hold a firearms licence should remain at the discretion of the Regulator.¹⁵ Further, the Quadrant 1 RIS states ‘the risk of increased appeals and costs to individual rights to freedom of association by including gang membership as an automatic disqualifying factor are considered higher than the benefits’.¹⁶

- 5.7 Secondly, the automatic disqualification of an individual on the grounds of gang membership will result in reliance on the National Gang List (**NGL**) as the key source of whether an individual is a current gang member. The Quadrant 1 RIS notes the NGL has known accuracy and system bias issues and lacks the ability to accurately verify whether someone is a member of a gang. This may provide avenues for applicants to challenge or appeal licensing decisions if the NGL is not accurate. It further notes the Privacy Commissioner has raised concerns about using the NGL in practice. Therefore, automatic disqualification under clause 68 may raise significant privacy implications which have not been considered in depth in the context of this Bill.
- 5.8 Whilst the Law Society supports the important purpose of ‘firearms safety’ and ‘keeping firearms out of the hands of criminals’, we are nevertheless concerned that due to a lack of strong supporting evidence and the Ministry’s preferred option of maintaining the status quo, there are insufficient grounds to safely conclude that automatic disqualification does not breach section 17 of the Bill of Rights Act. We agree with the Quadrant 1 RIS that maintaining the status quo enables the regulator to consider an applicant’s association or membership of a gang as part of the assessment of whether someone is ‘fit and proper’ and consider this to be a more rights-consistent method than the proposed changes.¹⁷ We recommend the Select Committee consider this issue in greater detail, and take advice as to options for a less rights infringing means of achieving the policy objective.
- 5.9 Finally, while gang membership in and of itself is not a prohibited ground of discrimination, the impact of automatic disqualification is likely to fall disproportionately on Māori.¹⁸ This is acknowledged in the Quadrant 1 RIS where it states:

Any interventions that target gang members will have a disproportionate impact on populations that are overrepresented in gangs. Gang membership is known to be concentrated among populations that are on average younger, disproportionately male, live in more deprived communities and Māori.

- 5.10 The Bill of Rights Advice further acknowledges that available data suggests more than 70% of persons on the NGL identify as Māori.¹⁹ Although the Quadrant 1 RIS notes that

¹⁵ Regulatory Impact Statement, Firearms Reform - Encouraging a culture of community safety and support. Part 3, at p 3.

¹⁶ Ibid at p 6.

¹⁷ *AG v Chisnall*, above n 6.

¹⁸ The Bill of Rights Advice acknowledges that available data suggests more than 70% of persons on the National Gang List identify as Māori, at [22].

¹⁹ Bill of Rights advice, at [22].

previous consultation took place with a Māori Firearms Forum, and a Māori Focus Group Wānanga (coordinated by the Ministry), there is nothing in that document or any of the other Regulatory Impact Statements which discusses the impact of automatic disqualification on Māori in detail. We invite the Select Committee to discuss this issue with relevant and interested organisations.

Retrospective application

5.11 The Quadrant 1 RIS states:²⁰

For avoidance of doubt, this change would not be retrospective. That is, the regulator would not be required to review existing firearm licence holders to confirm whether they are gang members. Rather, as the persons licence comes up for renewal, or they are brought to the attention of the regulator, the regulator would reconsider the status of their licence in line with the new disqualifying factor.

5.12 However, we note that clause 151 states that a firearms licence is immediately revoked if the holder of the licence **becomes** disqualified under section 68 from holding a firearms licence, or not considered fit and proper. It is unclear whether the use of the word 'becomes' in clause 151 only applies to an individual who becomes a gang member after the Bill comes into force, or whether it also applies to an individual who is currently a gang member with a valid firearms licence.²¹ Arguably, if an individual has a valid firearms licence and is also a gang member when the Bill comes into force, they may *become disqualified under section 68* by virtue of their membership alone. At the very least it appears that they would fall within clause 151 if they are not considered fit and proper. These two scenarios indirectly create a retrospective application of the automatic disqualification.

5.13 We recommend the Select Committee clarify whether clause 151 is intended to have any retrospective effect, or whether the decision as to whether a current holder of a firearms licence, who is also a gang member, can continue with the licence should remain with the Regulator (in accordance with the Quadrant 1 RIS).

New Regulator

5.14 The Bill shifts the core regulatory functions from Police to a new firearms regulatory agency (**the regulator**). The regulator will operate independently from Police, 'to enhance transparency and improve trust and confidence in the system'.²² While the Law Society does not purport to comment on the policy decision behind creating a new regulator, we do note the Departmental Disclosure Statement (**DDS**) indicates there has not been sufficient time for relevant agencies to consider the implications of creating a new regulator, including privacy concerns (as identified by the Office of the Privacy

²⁰ RIS Quadrant 1, at [98].

²¹ We also note there does not appear to be any supporting evidence to quantify the proportion of gang members who currently hold a firearms licence for legitimate purposes.

²² Explanatory Note, p 1.

Commissioner). We invite the Select Committee to discuss these issues with the Commissioner in more detail.

6 Part 5 – Shooting clubs and shooting ranges

- 6.1 Part 5 covers clauses 208 – 245, repeating most of the provisions inserted into the Act by the Arms (Shooting Clubs, Shooting Ranges, and Other Matters) Amendment Act 2025. Most of the concerns set out in our submission on that Bill are reiterated here and remain extant.²³
- 6.2 Particularly, we note the decision not to provide the Commissioner with the discretion to decline an application to enrol a non-pistol shooting club, and no power to cancel an enrolment in certain circumstances. Despite this, clauses 341(1)(a)(xi), (xii) and (b)(x) and (xii) (appeals to District Court) appears to envisage that there may be cases where an enrolment of a non-pistol shooting club or range under clauses 222 and 238 may be refused or revoked.
- 6.3 The Law Society recommends that clauses 222 and 238 be amended to set out the clear parameters for refusing, revoking, or cancelling an enrolment and to require the Commissioner to provide written reasons for the refusal/cancellation.

7 Part 6 – Further offences and firearms prohibition orders

- 7.1 Much of Part 6 re-states current offences in the Act, in a more comprehensible way, with generally increased maximum penalties.²⁴ Offences relate to the possession, use, misuse and supply of arms items. The Offences and penalties RIS states that the proposed reform of offence provisions seeks to carefully balance the legitimate and lawful use of firearms with preventing the likelihood of firearms getting into the wrong hands.²⁵

Clause 249: Person in possession of arms items or ammunition must give identifying information

- 7.2 Clause 249 repeats current section 66B and requires a person to give their identifying details to any member of Police if they are in possession of any arms item or ammunition. The drafting of clause 249(3)(b) could be improved by amending the word ‘willingly’ to read ‘wilfully’ as this connotes knowledge of, or recklessness to, inaccuracy.

Clause 250: Unlawfully carrying or possessing explosive

- 7.3 The drafting of clause 250 risks it being used to charge a person unlawfully in possession of ammunition, rather than an explosive, the explosive being the propellant inside the round of ammunition. Given the significance of the five year imprisonment penalty, we consider it would be sensible for the provision to include an exculpatory statement denoting that unlawful possession of ammunition does not apply to this section. Under

²³ Our submission on the Arms (Shooting Clubs, Shooting Ranges and Other Matters) Amendment Act 2025 can be found here: <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Arms-Shooting-Clubs-Shooting-Ranges-etc.pdf>

²⁴ We note below where this is not the case if the penalties proposed in the Bill appear inconsistent with the seriousness of the described offending.

²⁵ Offences and penalties RIS at [7].

clause 250, this would carry a maximum penalty of five years imprisonment. Whereas under clause 29, which provides for an offence where ammunition is possessed in contravention of clause 29(1), the maximum penalty is two years imprisonment or a fine not exceeding \$10,000. To guard against the use of clause 250 in this manner, we recommend inserting a statement to the effect that explosive does not include ammunition.²⁶

- 7.4 Further, when the prospective penalty under clause 250 is compared with clause 253, which provides a maximum penalty of three years for carrying an explosive in a public place, the result is an apparent inconsistency. Carrying an explosive in a public place attracts a lower penalty than simply possessing an explosive. This may undermine the coherence of the offence hierarchy and the proportionality of offence penalties.

Clause 252: Unlawfully carrying or possessing restricted firearm, pistol, or restricted weapon in public place

- 7.5 Clause 252 provides the offence of unlawfully carrying or possessing a restricted firearm, pistol, or restricted weapon in a public place. This carries the same penalty, seven years imprisonment, as the lesser offence of possessing a restricted firearm without a licence,²⁷ and may require consideration.

Clause 253: Unlawfully carrying or possessing standard firearm, airgun, ammunition, or explosive in public place

- 7.6 Clause 253, as mentioned above, carries a three-year penalty, as does possessing a firearm without a licence. This is inconsistent with the additional element of danger present in the offence described in clause 253 (the fact that it occurs in a public place).

Clause 254: Carrying pistol, restricted firearm, restricted magazine, or restricted weapon without authority

- 7.7 This clause sets out the offence of carrying a pistol, restricted firearm, restricted magazine, or restricted weapon without authority. It replicates current section 36 of the Act with one amendment: it requires the chief executive to revoke the relevant endorsement, whereas under the Act it is a commissioned police officer. It is unclear whether this change is intended to address any problems arising from section 36, but we note that such a change may result in an undue delay where the chief executive is relied upon to action this revocation.

- 7.8 We recommend that the Committee clarify whether this change is intentional, and seek advice on any practical or timeliness issues that may arise as a consequence.

Clause 255: Carrying restricted firearm with criminal intent

²⁶ Similar to the provision of clause 29(3) which states that ammunition does not include ammunition for exempt firearms; and projectiles for airguns.

²⁷ Clause 31.

- 7.9 Clause 255 sets out the offence of carrying a restricted firearm with criminal intent and carries a maximum penalty of seven years imprisonment. This is the same penalty as that imposed by the offence of possessing a restricted firearm without a licence.
- 7.10 There are additional elements of inherent danger in clause 255, such as the criminal intent and the possibility of discharging or threatening to discharge the restricted firearm during the course of the intended criminal conduct. As with clause 250, we consider this may be an inconsistent result and risk undermining the offence hierarchy and proportionality. We recommend the Select Committee review this.

Clause 256: Carrying standard firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive with criminal intent

- 7.11 Clause 256 repeats section 55 of the Act, relating to carrying an arms item or ammunition by a person who has a criminal intent.
- 7.12 Repeated reference to ‘have with them’ is problematic, given the established precedent setting out that ‘having with them’ is a matter of fact and degree.²⁸ The case law also suggests that more than one person can ‘have’ the firearm. The use of these terms risks overcriminalisation by encompassing potentially innocuous arms items that a defendant ‘has with them’ during the offending, but which would not present a risk to anyone (for example, a sole round of ammunition). We suggest it would be preferable to amend clause 256 so that clearer guidance is given to both those who are responsible for enforcing the law and firearms users.
- 7.13 We further note that subsection (2) is unclear. This states that an individual having possession of a specified arms item with them when they intended to commit an offence is ‘evidence’ that the defendant intended to have it with them while committing the offence. We query whether this is meant to provide a deeming provision or a presumption. If it is a deeming provision, the correct statutory wording would be ‘proof’, rather than ‘evidence.’ If it is a presumption, then it needs to be specified whether this is a rebuttable or irrebuttable presumption. Simply stating it is evidence is unnecessary.

Clause 259: Discharging standard firearm, restricted firearm, pistol, restricted weapon, or airgun in or near dwellinghouse or public place

- 7.14 Clause 259 largely restates section 48 of the Act regarding the discharge of a firearm near a house or public place. However, the penalty for this offence has been increased from six months’ imprisonment to three years’ imprisonment. In our view, this significant increase elevates the offence into the category of ‘truly criminal’ conduct. As a result, if the provision remains in its current form, the courts will likely imply a mental element into the offence.²⁹

²⁸ *Manapouri* [1995] 2 NZLR 407, at [417] – a Court of Appeal judgment that applied the dictum of the English case *R v Kelt* [1977] 1 WLR 1365.

²⁹ This is known as *actus non facit reum nisi mens sit rea* or the legal principle that serious criminal offences require the prosecution to prove some form of mens rea (or guilty mind) for every element of the actus reus: Legislation and Design Advisory Committee *Legislation Guidelines: 2021 edition* at Chapter 24.

7.15 Serious criminal offences require a mental element for each component of the offence. Where the legislation does not expressly provide for such an element, the courts will generally read one in. We therefore consider it appropriate for the prosecution to be required to prove the relevant mental element and recommend clause 259 is to insert this. Additionally, we recommend that the Committee consider amending the provision to include a separate subsection retaining the six-month maximum penalty in circumstances where no intent can be established.

Clause 260: Using, discharging, or carrying exempt standard firearms without reasonable excuse

7.16 Clause 260 is a modified replication of section 49 of the Act, relating to using, discharging or carrying an ‘exempt’ standard firearm without reasonable excuse.

7.17 We note our concern set out above with the use of the term ‘exempt’ standard firearm, and the fact that it is to be left to regulations to determine which firearms are considered exempt, and that this concern is amplified by the application of the term to a criminal offence.

7.18 We recommend that either this offence be deleted, or the definition of ‘exempt standard firearm’ amended (as recommended above).

Clauses 266: Manufacturing arms items without authority

7.19 The term ‘illegally manufactured’ in clause 266 is unclear, and we recommend that a definition for this term be inserted into the Bill.

Clause 267: Possessing digital blueprint to illegally manufacture arms item

7.20 Clause 267 inserts a new offence of possessing a digital blueprint for illegal manufacture of an arms item. This is targeted at the development of 3D-printed firearms. Subsection (3)(a) provides that a person possesses a digital blueprint if they:

- (a) possess a computer or other data storage device on which the digital blueprint is held, stored, or recorded; or
- (b) control or access the digital blueprint by means of a remote computer or web portal.

7.21 It is inherent in the word ‘possess’ that the person must have awareness of the nature of the item they ‘possess’ and this means that the burden for establishing the possession element will lie with the prosecution.³⁰ Possession in the digital context is also well established by case law relating to objectionable material. It incorporates a mental element of knowledge.³¹

7.22 As such, we consider that clause 267(3)(a) has the potential to lead to overcriminalisation because it does not require the mental element of knowledge. Subsection (3)(b) is less concerning as it clearly indicates a knowledge element via the

³⁰ *Police v Rowles* [1974] 2 NZLR 756 at 759.

³¹ Section 131A, Films, Videos, and Publications Classification Act 1993; *Police v Tavernor* DC Whangarei, 8 September 2009 at [40] – [61], referring to *Neyrick v Police* HC Hamilton, 31 July 2007.

words ‘controls’ or ‘accesses.’ It is not difficult to anticipate scenarios in which a person has ‘possession’ as defined by subsection (a), of the digital file, or computer, or 3D printer, without the requisite knowledge that the general definition of ‘possession’ imports. For example, where a USB drive is borrowed from a friend for the purposes of reviewing other files on that drive, but where that device also stores a digital blueprint. It is unlikely that the person borrowing the USB drive is aware of everything that may be on the drive.

- 7.23 The maximum penalty prescribed by clause 267 (up to ten years imprisonment) is significant. We recommend including a knowledge or awareness element within clause 267(3)(a) or deleting it.
- 7.24 Finally, we note that producing a 3D-printed item from a digital blueprint also requires the machine-readable code (G-code). Clause 267(4) defines a ‘digital blueprint’, but does not provide any linkage or requirement for both components of the definition. In the Law Society’s view, connecting the two necessary components of a digital blueprint is critical where such a serious offence is contemplated. If a person has one but not the other, then they will not be able to manufacture the arms item. This is necessary, especially where the remaining items listed in the example as evidence of intent to manufacture are now common, everyday items.³² We therefore recommend that subsection (4) should be amended to include the word ‘and’ between subsections (4)(a) and (b), to make clear that both elements must be present for an offence to be committed.
- 7.25 Lastly, the example of circumstances that indicate an intention to manufacture the arms item, as provided in the brackets of new section 267(1) are expressed broadly and may be interpreted as sufficient to prove intention. It does not establish intention, but it may be taken as such if not amended.

Clause 268: Possessing ammunition component intending to manufacture

- 7.26 Clause 268 is a new provision, which intends to make it unlawful for people without a firearms licence to manufacture ammunition.
- 7.27 For the concerns about the definition of ammunition within the meaning of clause 5, please see the interpretation section of the submission. This issue is relevant to how clause 268 reads. However, it is only part of the concern about the drafting of this section.³³
- 7.28 We query what is meant by the term ‘access’ in clause 268(1)(b). Would the ability to purchase or hire the relevant tools be sufficient? We note that the tools, equipment, or machinery required for the manufacture of ammunition are commercially available and may be used for other tasks. This is an important contextual tool that needs definition to

³² Noting that the example of other circumstances that indicate an intention to manufacture the arms item, as provided in the brackets of subsection (1) are expressed in a broad way that may enhance the overcriminalisation issue.

³³ Noting here that new section 268(1)(b) contains a typographical error, where it reads: ‘enabling the manufacture ammunition.’ This subsection is missing the word ‘of’ between the words manufacture and ammunition.

be sufficiently narrow that it excludes the ordinary meaning of the word, given the particular set of circumstances required to make this provision a legitimate offence with less potential for overreach.

7.29 We recommend that the drafting of this offence is refined.

Clause 270: Being in charge of a standard firearm, restricted firearm, pistol, restricted weapon, or airgun while under influence of drink or drug

7.30 This clause replaces section 47 of the Act, with an increase in the maximum penalty for the offence. We recommend amendment to two components of this provision; updating the drafting to reflect the language used in other statutes, and narrowing the ambit of the offence.

7.31 Whilst it appears that section 47 has resulted in few charges, we consider that the elements of the offence should be refined to ensure the offence provisions are not reliant on the discretion of charging practices. *Peck v Police* highlights that the critical question is what is meant by the term 'in charge of' (the firearm). Heath J stated, in response to that question:³⁴

[27] Similarly, I hold, under section 47 of the Arms Act, that it is necessary for the Police to prove not only physical proximity to a firearm, but also that there is a likelihood that the person charged might use the firearm or permit a third party to have access to it, while in the drunken state. It is the likelihood of either of those two events occurring which gives rise to the risk to public safety with which the Arms Act is concerned.

7.32 We consider this offers too broad a basis for a criminal conviction with a potential imprisonment term as the penalty. For example, it remains unclear whether the fact of a firearm stored in the house in which the alleged offender was intoxicated is sufficiently proximate to satisfy the offence provisions if they 'might' use the firearm or permit someone else to use it.

7.33 We recommend inserting a definition of the phrase 'in charge of' that requires more than a likelihood that the person charged 'might' use the firearm or permit a third party to use it. We suggest a threshold reflective of the seriousness of the offence penalty, such as that the person had the firearm in their direct control. Direct control denotes something more than being in physical proximity to the firearm, such that the person might use it or permit a third party to use it. Alternatively, amending the term 'in charge of' to read 'in direct control of' may equally improve the scope of the provision.

7.34 Secondly, we also query whether the continued use of the phrase 'under influence of drink or drug' is advisable given the existence of psychoactive substances that may make a person intoxicated even though they have not been influenced by 'drink or drug'. We recommend alternative drafting such as 'alcohol, drug, medication, or other psychoactive substance'.

³⁴ *Peck v Police* HC Hamilton AP58/02, 20 December 2002.

Clause 271: Obstructing officer of Arms Regulator

7.35 Clause 271 introduces a new offence of obstructing an officer of the regulator. Whilst this provision is largely unobjectionable, we query whether:

- (a) The provision may be too restrictive, noting that the regulator also has a power of inspection; and
- (b) There should be a requirement for the obstruction to be intentional, to align with other similar offences, such as section 23 of the SOA (obstructing Police).

7.36 The Law Society recommends the Committee consider amending the section to include the above elements.

Clause 272: Reporting of injuries caused by standard firearms, restricted firearms, pistols, restricted weapons, airguns, or restricted

7.37 This clause restates section 58 of the Act, requiring a person causing death or injury to another to report the matter 'in person' at the nearest Police station or to a police officer as soon as reasonably practicable. We recommend the Committee consider whether it is possible or desirable to update the language of this provision to allow for technological alternatives such as reporting via Audio-Visual Link or similar. This may be more efficacious where certain police stations or officers are not always available for example due to reduced staffing hours or distant Police stations.

Clauses 274 – 281: Infringement offences

7.38 Subpart 7 introduces clauses 274 – 281 and is designed to facilitate an infringement offence regime as an alternative to prosecution of certain offences under the Bill. Given the definitions provided in the interpretation section (clause 274), it appears that the offences that may be turned into an infringement offence are unlimited and will be prescribed by regulations, yet to be determined.

7.39 The Law Society considers that the breadth of discretion this leaves to be determined by regulations is undesirable where many of the offences carry significant penalties, including potential imprisonment for an extended period of time. It would also circumvent the penalty provisions enacted by Parliament and raise the risk of inconsistency in the application of the proposed infringement regime versus the offence provisions. This would, in turn, raise other concerns about the appropriate use of discretion and risk of discriminatory application.

7.40 The Law Society recommends that the Committee consider inserting a definition that sets out which offences are to be infringement offences.³⁵

Clause 282: Time for prosecutions not limited

7.41 This is a continuation of section 68 of the Act. It provides that there are no time limits on prosecutions for offences under the Bill by setting out that section 25 of the Criminal Procedure Act 2011 does not apply to the Bill.

³⁵ Similar to section 38A of the Summary Offences Act, 1981.

- 7.42 We note that this has been the status quo for many years for Arms Act offences; however, while it may have been necessary previously, we query whether there are justifiable reasons for its continuation. Particularly where Arms Act offences may result in a person being arrested, and section 23(2) of the Bill of Rights provides that a person arrested or detained has the right to be charged promptly or released.³⁶ Pre-trial release is governed by the Bail Act 2000, and there are limits to when Police bail may be granted.³⁷
- 7.43 The Law Society considers clause 282 is no longer necessary and may no longer be reasonably justifiable. We therefore recommend it be deleted.

Clause 283: Liability of principals and agents

- 7.44 Clause 283 inserts a redrafted, clearer version of section 67 of the Act. This imposes a vicarious liability on principals or employers for Arms Act offences committed by ‘agents or employees.’
- 7.45 The Law Society suggests that the term ‘agent’ should be defined to ensure clarity of who the employer has vicarious liability for, and we query whether, under modern employment law, this would include contractors engaged by a principal.

Clause 284: Offences committed by corporations

- 7.46 This section allows for corporations to be subject to a fine where an offence is punishable by imprisonment and uplifts the maximum fine to \$40,000 (from \$4,000). As with clause 282, we query whether there is continued value in recycling such a provision. We note that judges now typically receive nuanced guidance on sentencing levels and are, in our view, adept at providing relevant and adequate sentencing judgments on both corporations and individuals across many differing contexts.
- 7.47 The Law Society recommends that the Committee consider specifying fines for corporations separately from fines for individuals throughout the Bill as a more responsive and measured way of providing for corporate accountability.

Clause 299: Offence to supply firearms, etc, to person subject to firearms prohibition order

- 7.48 Clause 299 provides that it is an offence to supply firearms, etc, to a person subject to a firearms prohibition order and sets the maximum penalty at seven years imprisonment. As mentioned above, this is the same penalty as possessing a restricted firearm without a licence. Giving a person who is subject to a firearms prohibition order a firearm represents a higher level of risk, we query whether setting the maximum penalty the same as simple possession of a restricted firearm was intended.

Firearms Prohibition Orders

- 7.49 The Law Society notes the similarity between the current Firearms Prohibition Orders (**FPOs**) regime and the Bill. On the issue of FPOs more generally, the Law Society made a

³⁶ Noting here that the Bill of Rights advice did not discuss this issue or the justification for the difference between other legislation and this Bill in terms of rights of a person arrested or detained.

³⁷ See sections 21, 9, 9A, 10, 12, 16, 17A.

substantive submission in 2022, when the Firearms Prohibitions Orders Legislation Bill was first introduced. Many of our concerns raised in that submission, particularly in relation to the Bill of Rights consistency, remain extant.³⁸ We add that in light of recent Bill of Rights developments in case law, most notably *AG v Chisnall*, it is encouraging to see the amendments to the current regime provided by new sections 292 and 295, enabling the variation, modification or revocation of an FPO. These provisions are amended from the current sections 39D and 39F, respectively.

- 7.50 Whilst we support the addition of such changes, and consider they make the regime objectively more rights-compliant, the Law Society further recommends the insertion of a clarifying section denoting that the overall effect of the conditions imposed should be ‘no more intrusive than is necessary to mitigate the risk of relevant offending by the particular defendant to an acceptable level.’³⁹

8 Part 8 – Miscellaneous provisions

Clauses 331 to 335: Delivery or surrender of arms items and ammunition

- 8.1 These provisions deal with the surrender of arms items by persons or licensed businesses.
- 8.2 Clause 335 provides for the surrender of arms items that have been declared restricted by Order in Council under clauses 363 or 364. It requires that items are surrendered before the expiry of one month after the publication of the Order in Council.
- 8.3 While we acknowledge the necessity of a timeframe, depending on the extent of consultation and communication that has taken place in advance of the Order in Council being made, one month may not be an adequate period of time. We note, for example, that six months was provided following the legislative response to the terrorist attack on Christchurch masjidain. As specified at clause 335(5), an individual will be liable for prosecution if they remain in possession of the newly restricted arms at the conclusion of that one-month period. While the stipulation of any period is to some extent arbitrary, the proposed one month seems likely to result in a greater number of circumstances where practical challenges prevent timely surrender. This could include, for example, a period of overseas travel, illness, or lack of awareness given the short period in which the changes may be publicly communicated.
- 8.4 The retention of Police discretion not to prosecute individuals who surrender arms items, while positive, may not be an adequate means of addressing delay caused by practical challenges in a consistent manner.

Clause 340: Forfeiture

³⁸ See our submission on the Firearms Prohibitions Orders Legislation Bill here: <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Firearms-Prohibition-Orders-Legislation-Bill.pdf>

³⁹ Responding to the decision in *AG v Chisnall* [2024] NZSC 178 at [27], where the standard to ensure rights compliance of particular kinds of sentences is set out.

- 8.5 Clause 340(2)-(4) requires a sentencing court to order the forfeiture of arms items upon conviction of certain offences under the Act. This is subject to clause 340(5), which provides that the court may determine not to require forfeiture if it considers that, 'given the circumstances of the offending, it would cause undue hardship to make an order under those provisions.'
- 8.6 This standard differs from that under present section 69(2) of the Act, which provides for the same discretion where the court considers that, given the circumstances of the offending, 'it would be unjust to make that order'.
- 8.7 The standard proposed by the Bill will therefore be higher than at present. It is unclear whether this is intended. It appears not to be addressed in a RIS, and we are not aware of criticisms or concerns about the exercise of this discretion by the judiciary. In the absence of a clear rationale for amending the discretion, and analysis of the likely implications, the Law Society recommends retaining the 'unjust' standard in section 69(2).

Clause 341: Appeals

- 8.8 The Law Society recommends that clause 341 be amended to specify the time limit for appeal against the decisions listed in subsections (1) to (3).
- 8.9 As provided for by clause 341(4), appeals against relevant firearms decisions are made by way of an originating application, and are therefore subject to the District Court Rules 2014 (**DCR**). Because the time limit for appeal is not specified in clause 341, Rule 18.4 of the DCR applies and the appeal must be filed within 20 working days.
- 8.10 Consistent with the Bill's objective of improving the accessibility of the legislation, this simple addition would aid individuals who consult the legislation in order to identify what they can do in response to an adverse decision. It is unlikely, without specialist knowledge, that a person would know of the existence of the DCR and their applicability in this instance.
- 8.11 In addition, we recommend the inclusion of a provision enabling the District Court to extend the timeframe for filing notice of application for leave to appeal, consistent with the Criminal Procedure Act 2011 (see section 220(3)). At present (and as will be the case under the Bill), if an appeal is not filed within 20 working dates, DCR 18.4(3) provides that the Court may extend the timeframe for bringing the appeal, however this must be done by filing an interlocutory application for special leave to appeal. This relatively simple amendment could further assist with accessibility and access to justice.

Clause 361: Medical assessments

- 8.12 Clause 361 provides that health practitioners may provide the chief executive with medical reports of a person they consider is unfit to use or possess any arms item. The prescribed obligation is that the health practitioner 'must consider notifying the chief executive as soon as practicable' of their opinion and the grounds on which it is based.
- 8.13 This replicates the present obligation under section 92 of the Act, however the Law Society recommends amendments to improve both the clarity of the obligation and its

practical effect. Requiring a health practitioner to only 'consider' notifying the chief executive leaves significant room for varying practice or lack of clarity and surety for what might be felt like the practitioner to be a significant step to take (noting here the typical confidentiality of doctor/patient relationships). It also appears somewhat inconsistent with the Bill's policy imperative of ensuring public safety.

- 8.14 The Law Society recommends clause 361 is amended to provide a clear obligation on health practitioners to advise the chief executive if they form the opinion as set out at subsection (1)(b). This would be consistent with, for example, section 18 of the Land Transport 1998.



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