

27 February 2025

Firearms Policy
Ministry of Justice

Email: firearms@justice.govt.nz

Tēnā koe

1 Feedback on the Arms Act rewrite

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the Ministry of Justice's (**the Ministry**) *Arms Act rewrite: discussion document* (**discussion document**).
- 1.2 This feedback has been prepared with input from the Law Society's Criminal Law Committee and Public Law Committee.¹

2 General comment

- 2.1 The Law Society supports the intention to rewrite the Arms Act 1983 (**the Act**) and notes the significant period of time since the Act was last comprehensively reviewed. We agree the Act is no longer fit for purpose.
- 2.2 However, the Law Society notes there are several areas relevant to firearms reform that the discussion document states are out-of-scope for this consultation.² While the discussion document states that these out-of-scope topics will be considered in the broader firearms reform programme, we consider that some of these areas are relevant to this consultation. In particular, the Law Society is of the view that it is necessary to consider the impact of the proposals in this consultation on the Crimes Act 1961.

3 Theme 2: Products controlled by the Act

Definition of a firearm

- 3.1 The discussion document seeks feedback on the definition of 'firearm' in section 2 of the Act.³ We note that the Crimes Act provides for a number of firearms offences that apply the Act's current definition of 'firearm'.⁴ Therefore, if the definition of 'firearm' is amended following this review, it would change the scope of the firearm offences in

¹ More information about this committee can be found on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

² At page 5.

³ At page 8.

⁴ Crimes Act 1961, section 2.

the Crimes Act (even though such changes are considered to be beyond the scope of this consultation). Officials should therefore ensure any policy work relating to the definition of 'firearm' takes into account any resulting changes to other enactments which apply, or refer to, this definition.

- 3.2 In the Law Society's view, the definitions of 'firearm' and 'airgun' are fit for purpose, and we note in particular that a less comprehensive definition would likely not provide the clarity necessary for use within criminal offence provisions. We would have concerns with an attempt to make the definitions less specific and do not recommend such an approach.
- 3.3 Lastly, the Law Society notes that the discussion document does not use the correct meaning of the word 'discharge',⁵ as decided in *Whiu v Police* [2024] NZHC 208. In *Whiu*, the Court held that an unloaded air rifle could be 'discharged,' the reason being that the pulling of a trigger of an unloaded firearm is 'discharging it' even if no projectile could possibly be propelled from the weapon.⁶ We consider this may be a term that could benefit from legislative definition, to avoid misinterpretation or further litigation.

Firearms amnesty and buy-back provisions

- 3.4 While a risk-based approach is not objectionable, the Law Society suggests that consideration should be given to a holistic assessment of risk, taking into account that acquiring or creating an illegal firearm may be possible if the necessary component parts are readily available. We suggest that a review of similar jurisdictions regimes may assist in the development of a considered regime if this option is progressed.
- 3.5 The Law Society further considers that legislation should provide for an amnesty and buy-back regime, and an administrative structure should be provided to assist with such a regime.

4 Theme 3: Responsible possession and use

Licensing

- 4.1 The current process for obtaining a firearms licence seems largely suitable for the majority of users. However, the Law Society suggests that considering possible exceptions to the 10-year period of a licence may be beneficial. For example, medical exceptions and testing requirements for the continued safety of the public may be necessary in prescribed circumstances, in a similar way to that of a driver's licence.

Fit and proper person test

- 4.2 The discussion document seeks feedback on the fit and proper person test as set out in section 24A of the Act.⁷ The Law Society notes that in practice there is a measure of inconsistency between:

⁵ At page 8.

⁶ *Whiu v Police* [2024] NZHC 208 at [36] – [49].

⁷ At page 14.

- (a) Section 23(1)(b) – which prescribes the revocation of a firearms licence that is later overruled by the District Court as not being a disqualification; and
- (b) Section 24(1)(a) to (d) and (f) – where the making of an order or the entry of a conviction *may* have the effect of making a person unfit regardless of whether or not the convictions are later overturned or the order revoked.

4.3 We suggest that consideration should be given to the breadth of discretion conferred for revocation of firearms licences and are of the view that the current requirements should be clarified. Improved clarity in this area would enhance the ability of firearms users and others to understand what matters are relevant to the retention of their licence and ensure that the regime is clear and appropriate.

Manufacturing firearms products

4.4 The Law Society notes that it would likely be difficult to implement an effective regulatory regime where there is a power to create and transfer weaponry without notification and approval.

5 Theme 4: Supplying, importing, and buying products

5.1 The Law Society emphasises the public interest in a stringent regulatory regime that provides for notification and registration of weapons. Such a regime would help achieve the objective of safe possession of firearms, as well as maintenance of individual, public, and community safety.

6 Theme 5: Compliance, offences, and penalties

Offences and penalties

- 6.1 To enhance safety for individuals, the public, and the community, a clear and consistent framework is necessary, which includes appropriate consequences for breaches. The Law Society suggests the Ministry should conduct a comprehensive review of the offences and their corresponding penalties in both the Crimes Act and the Arms Act, in order to establish a cogent and workable offence and penalty regime.
- 6.2 To encourage compliance with the regime, we consider it may be useful to include some form of continuing education requirements for renewal of a licence. This could include information about obligations and offences.

7 Other matters

Bail Act 2000

- 7.1 While aware that the following is considered out of scope for this consultation, the Law Society encourages consideration of:
 - (a) Granting an express power in the Bail Act 2000 (**the Bail Act**) to temporarily confiscate firearms where a person is arrested and charged with an offence and subsequently granted police bail.

- (b) Granting an express power in the Bail Act to impose a condition that firearms be surrendered to a named person (or class of persons) pending determination of the charge where there are reasonable grounds for concerns about the safety of the person charged or any other person if access to firearms is not restricted. We note that such a condition could come within section 7(4) of the Bail Act in some circumstances, but consider that an express provision may be useful.

8 Next steps

- 8.1 We would be happy to answer any questions or discuss this feedback further. Please feel free to get in touch via the Law Society's Law Reform & Advocacy Advisor, Shelly Musgrave (shelly.musgrave@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jesse Savage', with a stylized, cursive script.

Jesse Savage
Vice-President