

# Departmental Disclosure Statement

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<b>Firearms Prohibition Orders Legislation Bill</b>
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the New Zealand Police

New Zealand Police certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 December 2021.

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## Part One: General Policy Statement

This is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The single broad policy implemented by the amendments in this Bill is to improve public safety by preventing people whose behaviour and actions represent a high risk of violence, or reflect an underlying risk of violence, from being able to access firearms or restricted weapons.

The Bill complements recent amendments to the Arms Act 1983, which ensure that only those people considered fit and proper to possess firearms can be issued with a firearms licence.

The Bill introduces firearms prohibition orders (FPOs), which address some limitations with the Arms Act 1983 that might enable a high-risk person to legally access or use firearms or restricted weapons, associate with people in physical possession of firearms, or reside at or visit locations where firearms are held, including gun shops, arms fairs, or gun clubs.

Under the Bill, a court can make an FPO against an offender who is 18 years or over and who has been convicted of a specified offence under the Arms Act 1983, the Crimes Act 1961, or the Terrorism Suppression Act 2002, or is convicted of a serious violent offence as defined in section 86A of the Sentencing Act 2002 (qualifying offences). The court must be satisfied that, on the balance of probabilities, the order is reasonable, necessary, and appropriate to assist in managing the risk that the offender poses to public safety.

The making of an FPO means that the offender would be prohibited from accessing, possessing, or using any firearm, pistol, restricted weapon, airgun, imitation firearm, magazine, part of a firearm or restricted weapon, pistol carbine conversion kit, prohibited item, or ammunition. The offender would also be disqualified from holding a firearms licence.

The Bill sets out a series of standard and special conditions for an FPO and the penalties for breaching those conditions. FPOs continue in force for 10 years and would take effect either on the date on which the order was made, or, where the offender is sentenced to a term of imprisonment, the date on which the offender is released from custody.

If an offender who is subject to an FPO is subsequently convicted of a qualifying offence, the court may impose special conditions on the FPO, or vary, modify, or replace it.

There are other technical amendments to the Arms Act 1983 as a consequence of the new FPO provisions.

The Bill comes into force 3 months after its enactment to give Police sufficient time to prepare information, systems, and processes to implement the changes.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>In designing the proposed regime, the New Zealand Police considered the international experience in the use of firearms prohibitions and firearms prohibition orders, particularly the regimes in Canada and five jurisdictions in Australia. The New Zealand Police also considered the findings and recommendations of the following reviews and inquiries:</p> <ul style="list-style-type: none"> <li>• Inquiry into issues relating to illegal possession of firearms in New Zealand: Report of the Law and Order Committee – April 2017 (<a href="https://www.parliament.nz/en/pb/sc/make-a-submission/document/51SCLO_SCF_00DBSCH_INQ_68642_1/inquiry-into-issues-relating-to-the-illegal-possession">https://www.parliament.nz/en/pb/sc/make-a-submission/document/51SCLO_SCF_00DBSCH_INQ_68642_1/inquiry-into-issues-relating-to-the-illegal-possession</a>)</li> <li>• Review of police use of the firearms prohibition orders search powers: Ombudsman New South Wales – August 2016 (<a href="https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/37132/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf">https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/37132/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf</a>)</li> <li>• Inquiry into firearms prohibition legislation: Legal and Social Issues Committee – November 2019 (<a href="https://www.parliament.vic.gov.au/images/stories/committees/LC-LSIC/LCISIC_59-02_FA_prohibition_legislation.pdf">https://www.parliament.vic.gov.au/images/stories/committees/LC-LSIC/LCISIC_59-02_FA_prohibition_legislation.pdf</a>)</li> </ul>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>Firearms Prohibition Orders – New Zealand Police, 22 July 2020 (<a href="https://www.police.govt.nz/firearms-prohibition-orders-legislation-bill-regulatory-impact-analysis">https://www.police.govt.nz/firearms-prohibition-orders-legislation-bill-regulatory-impact-analysis</a>)</p>	
<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The RIA did not meet the threshold for the RIA Team assessment. Instead, a Quality Assurance Panel with representatives from the Ministry of Justice and the New Zealand Police has reviewed the Regulatory Impact Assessment “Firearms Prohibition Orders” produced by the New Zealand Police and dated July 2020. The Quality Assurance panel considers that it partially meets the Quality Assurance criteria.</p>	
<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>The RIA did not include the costs associated with the regime. These were included in the following Cabinet paper: Firearms Prohibition Orders: Final Design Parameters.  <a href="https://www.police.govt.nz/firearms-prohibition-orders-final-design-parameters-cabinet-paper">https://www.police.govt.nz/firearms-prohibition-orders-final-design-parameters-cabinet-paper</a></p>	
<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>The available information about the potential costs and benefits were included in the following Cabinet paper: Firearms Prohibition Orders: Final Design Parameters. Overall, the costs of Firearms Prohibition Orders will be impacted by:</p> <ul style="list-style-type: none"> <li>the number and nature of the qualifying offences</li> <li>the number of orders made by courts – and the number of appeals from the making of an order</li> <li>the number and seriousness of order breaches</li> <li>the conviction rates for breaches – and the percentage that result in a sentence of imprisonment.</li> </ul> <p>The two key drivers of costs will be the number of orders made by courts, and the sentencing costs arising out of breaches.</p> <p>The modelling indicates that costs will build over the first few years of the regime until a steady state is obtained, around year 16 of the regime. At steady state, the number of orders made per year is estimated to be 974, with the Justice sector costs per year of \$11.84 million. The twenty-year impacts of Firearms Prohibition Orders have been estimated at \$204.3 million, at which state there would be 9,601 active Firearms Prohibition Orders.</p> <p>People subject to a Firearms Prohibition Order will bear some non-monetised costs as a result of the conditions imposed. However:</p> <ul style="list-style-type: none"> <li>firearm possession and use is a privilege and not a right</li> <li>limiting such people's access to firearms is important to reducing the risk to the safety of New Zealanders.</li> </ul> <p>Courts will be able to modify the standard conditions where appropriate to support a person's rehabilitation and reintegration needs. This includes recognising their employment and cultural needs.</p> <p><a href="https://www.police.govt.nz/firearms-prohibition-orders-final-design-parameters-cabinet-paper">https://www.police.govt.nz/firearms-prohibition-orders-final-design-parameters-cabinet-paper</a></p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>

The effectiveness of the Firearms Prohibition Order regime will be impacted by the compliance of individuals subject to the regime. The costs and benefits will be impacted by the compliance of those individuals with the conditions of their Firearms Prohibition Order.

Firearms Prohibition Orders set out conditions aimed at reducing the risk of the person accessing or using firearms. If they do not comply with those conditions, this reduces the benefits (public safety) of the regime. Moreover, non-compliance with the conditions of a Firearms Prohibition Orders would result in a person being charged with a breach offence, and potentially sentenced to a term of imprisonment. This would have costs to the criminal justice system.

The benefits also depend on Police's ability to identify and prosecute breaches of Firearms Prohibition Orders.

<https://www.police.govt.nz/firearms-prohibition-orders-final-design-parameters-cabinet-paper>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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There has been external consultation with other government agencies, including MFAT, to ensure that the Bill was consistent with New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The impact on Māori was considered during the policy and external consultation process. A public consultation process ran for eight weeks from 11 November 2019 to 13 January 2020. Police also sent targeted emails to key stakeholders, including those representing Māori interests. Police are engaging with Māori on an exposure draft of the Bill and will continue this process of engagement through to the Select Committee, to ensure the Bill and its impacts on Māori are fully understood. NZ Police takes the principle of partnership seriously. We want to ensure engagement with our Treaty partners is genuine and provides the best opportunity for Māori views to be reflected in policy and legislative development.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	
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A vet of the Bill against the BORA is currently being carried out by the Ministry of Justice. The Bill may impact a number of rights and freedoms, including the freedom of association (s 17) and movement (s 18) and the right to be secure from unreasonable search (s 21). The proposed Firearms Prohibition Orders regime has been designed to limit the impairment on these rights and freedoms to no more than is necessary to achieve the objectives of Firearms Prohibition Orders.
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The proposed Firearms Prohibition Order regime may also place some restriction on the right to be presumed innocent (s 25(c) of the BORA). Section 66 of the Arms Act 1983 provides that if a firearm is found on the same premises or vehicle, the assumption is made that the item is in the possession of the FPO-holder unless the person can prove otherwise. Police is of the view that section 66 is an important pre-existing aspect of arms control, and is justifiable in relation to the Bill.
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## Offences, penalties, and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>Under the Bill a court may order that a person be subject to a Firearms Prohibition Order if the court has found them guilty of a qualifying offence.</p> <p>Clause 10 introduces the following new offences relating to a breach of a Firearms Prohibition Order (with associated penalties):</p> <ul style="list-style-type: none"> <li>a breach of a Firearms Prohibition Order by accessing, possessing, or using any firearm, pistol, restricted weapon, airgun, imitation firearm, pistol carbine conversion kit, magazine, part of a firearm or restricted weapon, or ammunition</li> <li>a breach of a Firearms Prohibition Order by failing, without reasonable excuse, to comply with any condition of the order</li> </ul> <p>Clause 10 also introduces a new offence, that of supplying firearms (etc) to a person knowing they are subject to a Firearms Prohibition Order.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was consulted when the Cabinet papers seeking approval for these provisions were being developed.	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>Clauses 15-16 (amendment to schedule 4 of the Privacy Act 2020) provides for the sharing of information from New Zealand Police to the Department of Corrections about firearms prohibition orders. This information sharing is consistent with the existing information sharing provisions relating to other Court orders (including, for instance, protection orders).</p> <p>The Bill does not alter the extent or nature of existing lawful search powers and information gathering powers. And with the exception of a new clause in Schedule 4 of the Privacy Act 2020, the Bill does not extend the current statutory information gathering powers available to agencies. The imposition and conditions of a Firearm Prohibition Order are also determined by a judge in open court and are subject to the usual rights of appeal.</p> <p>There will be some new information flows, but Police is of the view that these will not create significant privacy issues and that there are sufficient privacy safeguards currently in place within the criminal justice system to mitigate any privacy impacts.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Office of the Privacy Commissioner provided submissions on the original public consultation for a Firearms Prohibition Order regime, was informed during the development of the Firearms Prohibition Order Cabinet paper, and has been involved with the drafting of the Firearms Prohibition Orders Bill, which includes the proposed additional information sharing provision.	

## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Public consultation on Firearms Prohibition Orders was undertaken between 11 November 2019 and 13 January 2020. Police also sent targeted emails to key stakeholders, including the firearms community, those with an interest in gun control, those with an interest in human rights and privacy, and our Treaty partner representatives.</p> <p>The public consultation document was deliberately broad as it was intended to obtain the public's views on Firearms Prohibition Orders, and potential design parameters. A copy of the public consultation document can be obtained from: <a href="https://www.police.govt.nz/sites/default/files/publications/firearms-prohibition-orders-public-consultation-document.pdf">https://www.police.govt.nz/sites/default/files/publications/firearms-prohibition-orders-public-consultation-document.pdf</a>. Police received 41 submissions:</p> <ul style="list-style-type: none"> <li>• 35 expressed a position on the criminal use of firearms in New Zealand. Twenty-four (24) of these submitters (69%) considered the criminal use of firearms in New Zealand to be a problem, while 11 submitters (31%) did not.</li> <li>• 34 expressed a position on Firearms Prohibition Orders. Twenty-one (21) of these submitters (62%) supported the concept, while 13 submitters (38%) did not.</li> <li>• 35 expressed a position on whether Firearms Prohibition Orders would reduce the risk of harm caused by criminal use of firearms. Seventeen (17) of these submitters (49%) considered they would, while 18 submitters (51%) were of the view they would not.</li> </ul> <p>Police is currently engaging with Māori on an exposure draft of the Bill and will continue this process of engagement with Māori through to the Select Committee stage of the legislative process, to ensure the Bill and its impacts on Māori are fully communicated and understood. As part of this engagement, Police have presented to the Minister's Arms Advisory Group who have expert knowledge in the subject area and have insight into implications for Māori. They commented on the duration of Firearms Prohibition Orders, the Bill's consistency with the Arms Act 1983, and Firearms Prohibition Orders' similarity with comparable orders.</p>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Firearms Prohibition Orders exist in Canada, and five Australian jurisdictions. In designing the proposed regime, the New Zealand Police considered the international experience in the use of firearms prohibitions and firearms prohibition orders, particularly the regimes in Canada and five jurisdictions in Australia.</p> <p>The New Zealand Police also considered the findings and recommendations of the following reviews and inquiries:</p> <ul style="list-style-type: none"> <li>• Inquiry into issues relating to illegal possession of firearms in New Zealand: Report of the Law and Order Committee – April 2017 (<a href="https://www.parliament.nz/en/pb/sc/make-a-submission/document/51SCLO_SCF_00DBSCH_INQ_68642_1/inquiry-into-issues-relating-to-the-illegal-possession">https://www.parliament.nz/en/pb/sc/make-a-submission/document/51SCLO_SCF_00DBSCH_INQ_68642_1/inquiry-into-issues-relating-to-the-illegal-possession</a>)</li> <li>• Review of police use of the firearms prohibition orders search powers: Ombudsman New South Wales – August 2016 (<a href="https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/37132/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf">https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/37132/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf</a>)</li> <li>• Inquiry into firearms prohibition legislation: Legal and Social Issues Committee – November 2019 (<a href="https://www.parliament.vic.gov.au/images/stories/committees/LC-LSIC/LCISIC_59-02_FA_prohibition_legislation.pdf">https://www.parliament.vic.gov.au/images/stories/committees/LC-LSIC/LCISIC_59-02_FA_prohibition_legislation.pdf</a>)</li> </ul>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

## Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>
<p>The Bill does not itself reverse or modify the usual burden of proof for an offence. However, the Bill will have this effect due to an existing provision of the Arms Act 1983. Section 66 of the Arms Act 1983 provides a rebuttable presumption around possession. This means when a firearm is found on land or in a building that a person is occupying, or in a vehicle that a person is driving, it is deemed to be in their possession unless they can prove on the balance of probabilities that the firearm was not their property and it was in the possession of some other person. This places a reverse onus on the defendant in these circumstances to disprove possession.</p> <p>The Bill includes a new offence of breaching a Firearms Prohibition Order by accessing, possessing, or using any firearm, pistol, restricted weapon, airgun, imitation firearm, pistol carbine conversion kit, magazine, part of a firearm or restricted weapon, or ammunition. Depending on the circumstances, this offence would potentially be subject to the reverse onus provisions existing in section 66 of the Arms Act 1983. There is justification for the reverse onus for this offence. Possession of one of the named items by a person subject to a Firearms Prohibition Order would be a serious offence and the proof as to possession of the firearm or restricted weapon will be the crucial element of the offence. It is considered that the defendant is in the better position than the prosecution to establish whether or not they had possession.</p> <p>Police considers that firearms and related items are inherently dangerous, are a privilege to possess, and any use or carriage needs to be justified, with the onus appropriately being placed in the defendant. Police consider that amending the burden may inappropriately liberalise the carriage, possession and use of firearms if in practice it becomes much more difficult for Police to disprove beyond reasonable doubt that a person did not have a lawful, sufficient, and proper purpose and/or possession. This is particularly the case when the person has been subject to an order prohibiting them from accessing, using or being in possession of a firearm.</p>	

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>Clause 5 extends existing immunities for undercover officers who engage in activities that would be a breach of a Firearms Prohibition Order due to their undercover activities. A prosecution for a breach offence would not be able to be commenced or continued against any constable in respect of such acts committed by them, at the time or during a period when they were acting as an undercover officer, except with leave of the Attorney-General.</p>	

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
Clause 8 creates a new decision-making power for the court to impose a Firearms Prohibition Order on someone who have been convicted of a qualifying offence. The Court may make such an order where it is satisfied that the imposition of a Firearms Prohibition Order is necessary, reasonable, and appropriate to assist in managing the risk that the offender poses to public safety. The conditions of a Firearms Prohibition Order could limit a person's rights, such as their freedom of movement or association.	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>