

Firearms Community Advisory Forum

Notes from a Meeting at Police National Headquarters

Tuesday 17 June 2014, 0930 – 1230 hrs

External Members:

Name	Role	Organisation
Paul Clark	Chair	Council of Licensed Firearm Owners Inc.
Vacant		Firearms Dealers
Darryl Crow	Chair	National Rifle Association of New Zealand
Steve Privett	National President	New Zealand Antique and Historic Arms Association
Trevor Dyke (for Tim McCarthy)	Former National President	New Zealand Deerstalkers' Association
Nicole McKee	Programme Manager Firearms & Hunter Safety	New Zealand Mountain Safety Council
Mike Pyatt	Observer	New Zealand Mountain Safety Council
John Herbert	President	New Zealand Service Rifle Association
Debbie Wakker	President	Pistol New Zealand
Jon Wilkins (apology)		

Members from Police:

Catherine Petrey, National Manager Policy (Chairperson)

Inspector Joe Green, Manager Licensing and Vetting (currently on secondment)/

Paul Gatland, Firearms Control Adviser

Robert Ngamoki, Senior Armourer

Mike Cole, Arms Officer, Wellington

Geoffrey Dunn, Team Leader, Policy Group

Sandra Keenan, Policy Group

Invitees:

Ministry of Foreign Affairs and Trade

Dell Higgin

Rosalind Dawson

New Zealand Customs Service

David Negri
Kirsty Marshall

Police

Inspector Trish O' Shaughnessy
Joanna Bond, Legal Services

1. Welcome and Introductions

The Chair, Catherine Petrey, National Manager, Policy, New Zealand Police, welcomed everyone present and thanked them for their attendance.

Catherine noted that, at the last Forum meeting, there had been a suggestion that it would be useful to have someone from Customs at the meeting. Accordingly, she introduced David Negri and Kirsty Marshall, attending from New Zealand Customs Service for this session. Catherine also introduced Inspector Patricia O'Shaughnessy, who is taking over management of the Arms Act from Inspector Joe Green, who will now be looking after Search and Rescue, and Emergency Management.

Catherine reiterated that, as for previous meetings of the Forum, the meeting would be run under strict Chatham House Rules – everyone should feel free to express their views, but no names will be attributed to any comments reported from the meeting on the Police website.

Catherine also commented that it was originally hoped to have two meetings of the Forum per year, but because it is already June, we are running a little late.

2. Update from last Forum meeting

Geoffrey Dunn, Team Leader, Justice and Transport, New Zealand Police, updated the meeting on progress since the last meeting of the Arms (Military Style Semi Automatic Firearms and Import Controls) Amendment Act 2012, which came into effect on 11 December 2013; along with the Arms (Military Style Semi-automatic Firearms: Pistol Grips) Order. Police was required to explain to the Regulations Review Committee why the 28-day Rule should be waived in relation to the Pistol Grips Order (which was because it had to come into effect simultaneously with the Arms Amendment Act.

Police also made a submission to the Regulations Review Committee, in response to a complaint about the Order (which would be discussed later in the meeting).

The other development was New Zealand getting agreement from Cabinet to formally ratify the Arms Trade Treaty, subject to a Treaty Examination Process, and some administrative changes (also to be further discussed later in the meeting).

3. Arms Trade Treaty progress and discussion (MFAT)

Dell Higgin, Ministry of Foreign Affairs and Trade, reported on the progress of the Arms Trade Treaty, an international treaty between governments to restrict illegal trade in arms.

Ms Higgin relayed the news that Cabinet has now taken the decision that New Zealand will proceed to ratify the Arms Trade Treaty. Another stage in the process was taking place on the very day of the Forum meeting, with the tabling of the Treaty in Parliament and its referral to the Foreign Affairs, Defence and Trade Committee for an international treaty examination. There will be a 15 day period for receipt of any submissions and consideration of the ratification. It appears that there is full cross-party support, so MFAT is confident that the select committee will recommend ratification and the Government will ratify the Treaty.

Given the Parliamentary process, the earliest that can happen is August, but it may take to early September.

[**Update:** The select committee reported back to Parliament on the Arms Trade Treaty on 3 July recommending ratification by New Zealand and New Zealand deposited the instrument of ratification on 2 September.]

Internationally, fifty ratifications are needed to bring the Treaty into force. Forty countries have already ratified so, given our parliamentary timeframe, New Zealand may not be among the first 50 countries to ratify.

The first conference of ratifying States is to be held in Mexico, most likely in the first half of 2015. New Zealand will be entitled to a decision-making role if we have ratified by then.

MFAT is proud that both New Zealand Government and non-Government members have a united voice in this regard and sees it as very good news that New Zealand is in favour of this very sensible treaty.

Although almost all Arms Trade Treaty obligations align with current New Zealand Law, some fine tuning of administrative and domestic constraints on imports and exports will be needed, particularly in view of the Privacy Act, to ensure that information can be provided to other countries and the United Nations under the Treaty.

In regard to the brokering of arms, a voluntary registration system for New Zealand-based brokers administered by MFAT will be put in place without legislation and government will look at a more durable option to be put in place after ratification to more comprehensively comply with the Treaty.

Ms Higgin concluded by reiterating that MFAT sees the prospect of New Zealand's participation in this Treaty as very good news indeed.

A representative from the arms community commented that the current process for importing firearms, parts and accessories has got increasingly complex over the years, and causes time delays. He asked whether this Forum will be able to have input into the development of any processes being updated under the new Treaty. In discussion, it was clarified that the Treaty does set standards for brokering, when arms are being traded between two external countries through the services of a broker in New Zealand.

4. Regulation Review Committee Complaint

Joanna Bond, Police Legal Adviser, briefed the meeting on a complaint made by the National Shooters Association (NSA) to the Regulations Review Committee about the Arms (Military Style Semi-automatic Firearms – Pistol Grips) Order which defines the “pistol grip” component of the military style semi-automatic firearm (MSSA) definition.

Ms Bond explained that the Regulations Review Committee can receive complaints and report to Parliament. The Committee has power to recommend that a Regulation be disallowed, but the final decision is made by the House.

The NSA made its complaint in writing and Police were given an opportunity to respond in writing. In addition, the Committee heard oral submissions. The NSA indicated it would like to respond in writing to the Police submissions. The five grounds of the complaint were that:

- 1 The Order was not in accordance with the objects and intent of the statute it was made under. The NSA argued that a pistol grip is a safety feature and essentially therefore its use should not be limited.

Police submitted that, keeping the pistol grip as a feature of a MSSA was consistent with Parliament's clear intention (when the Arms Act was amended in 1992) to ensure certain pistol grips attached to a semi-automatic firearm would move that firearm into the category of MSSA. Police disagreed that a pistol grip was a "safety feature" in the ordinary sense of that phrase.

- 2 The Order trespasses unduly on personal rights and liberties. The NSA submitted that a result of the Order made the previously lawful into the unlawful and imposed unreasonable compliance costs on individuals.

Police pointed out that the intention was to take the position back to what was generally accepted between 1992 and 2009 and that a relatively small group of firearms users were affected. In addition, Police had allowed a grace period for individuals to comply and waived the fee for those who required a new endorsement.

- 3 The Order excludes the jurisdiction of the courts without explicit authorisation in the enabling statute.

Police pointed out the Order does not exclude the jurisdiction of the courts.

- 4 The Order contains matters more appropriate for Parliamentary enactment. The NSA complained the definition should be included within the Arms Act itself rather than in subordinate legislation.

Police explained that the Select Committee considering the empowering provision under which this Order was made expressly considered this point when it was raised in submissions to the Select Committee. That Select Committee concluded no additional parliamentary oversight was required for Orders defining "pistol grip", although it did introduce a sunset clause for some other Orders. In addition, section 74 of the Arms Act already authorises similar subordinate legislation (for example, definition of restricted weapons).

- 5 The NSA submitted that the Order was not made in compliance with particular notice and consultation procedures prescribed by statute.

Police responded that s 11(2) of the Interpretation Act enabled the Order to come into force at the same time as the 2012 Act came into operation. If the Order had not been in force when the 2012 Amendment Act came into force, there would have been an interim period where there would have been no definition of "pistol grip" as envisaged by the new definition of "military style semi-automatic firearm".

At the time of the meeting we were still awaiting the Regulation Review Committee's decision on the NSA complaint. The Regulations Review Committee is always chaired by a member of the Parliamentary Opposition and we thought it may ask for further information before reaching a decision.

[Update: The Committee advised of its decision in the Regulations Review Committee's report on its Activities in 2014, lodged on 8 August and on Parliament's website. See pages 25-26 of the Report. By unanimous decision, it did not uphold the complaint. It considered that the making of the order was consistent with the object of the Act, and the intentions of the Arms Act as a whole, and did not breach the Standing Orders grounds. In its view, there cannot be a trespass against personal rights or liberties, as there is no statutory right to possess or own a component of a firearm. It found that the order does not exclude the jurisdiction of the Courts as claimed. It considered that the order does not contain matters of broad policy or substance more appropriate to primary legislation, on the basis that it simply describes a component of a definition in the Arms Act, in accordance with the legislative

power delegated by Parliament in section 74A(a) of the Act and does not introduce new policy.]

Communications

The chair advised that Police is committed to being open and consultative, and to make this a truly representative forum, holding more meetings if needed, and using the Police website to communicate issues. If people have issues, then please raise them – Police is looking for feedback. Inspector Green also commented that he has made a point of putting himself in positions where he could be challenged about Police's views. The Chair acknowledged that there has been some disappointment within the Firearms community that the wording of the Pistol Grip definition was not exactly what the Forum had suggested, but advised that this had ultimately come down to the drafting advice of the Parliamentary Counsel Office, who are the Government's experts in matters of drafting. It is Police's view that what the Forum intended was still largely given effect to. Discussion about communicating information to holders of firearms licences raised the following points:

- the Forum is a step in the right direction
- there can't be too much communication or advertising – this needs to be consistent and ongoing to keep people up to date
- firearms organisations need to take responsibility for informing their members – their members appreciate feedback
- owners that don't belong to any clubs or organisations still need to be informed
- information provided to retailers by Police Arms Officers was OK, but still a long way to go to informing the average firearm owner
- many owners do not keep in touch with Arms Officers
- suggestion of a Police mail-out to firearms licence holders. The chair responded that this is a challenge and raises issues of cost and effectiveness, and also would not reach unlicensed offenders.
- licensed owners have already jumped through hoops to get their licence – by definition they are responsible society members who want to comply
- could the registration fee be increased to cover the cost of communication with licence holders?
- Police Arms Officers are not always available to attend events involving groups of firearm owners
- a calendar of such events would be useful in order to plan for making staff available
- Arms Officers' advice and police firearms advertising could be improved by being more positive (explaining what owners can do in order to comply, rather than stressing what they can't do)

It was agreed that communications can still be improved and any further suggestions will be welcome.

5. Implementation of MSSA Amendment Act and regulations

The chair invited any comments on the implementation of the MSSA Amendment Act.

The following points were raised:

- There is some bewilderment about the exact purpose of the Amendment Act. A lot of informed owners already have endorsements and go along with the procedure, but many owners didn't understand their purpose, and what further level of safety has been achieved. A lot of owners have fitted thumbhole stocks onto what would otherwise be E-category firearms.
- Numbers of people have sought an E-Endorsement – groups would be very interested in knowing this number.
- Numbers of thumbhole stocks have been selling, as demand has been reducing the price. This does not include “contrivances” which are readily reversed.
- Restricted airguns – People have now caught on to what is needed. Most are good quality imports, with reliable owners who belong to clubs; some importers are confused about how to bring in airguns, although others don't seem to have problems.

Inspector Green advised that a special reason is needed before a permit to import can be approved. Examples of special reasons that have led to approval are listed on the Police website.

- AR Firearms (Armalite Rifles) – Trade sources are saying that a high percentage of firearms (one in five) being sold are now AR type. This is going to continue to increase, and it is anticipated that New Zealand manufacturers will start making AR weapons before long.

These firearms are more modern, lighter and faster than old bolt action rifles, and ammunition for them is more readily available than in other countries. All magazines are now promoting them, and traditional owners are now converting to AR. One rifle club estimates that, perhaps, 70% of its members – and a large proportion of duck shooters – now have semi-automatic as opposed to bolt action rifles.

There are different safety implications for AR rifles and extra responsibilities for the average hunter. The Mountain Safety Council has been focussing on this with its members, and emphasised it in the latest edition of its magazine – for which they were congratulated by a Forum member. There needs to be continuing awareness of the implications of this trend.

- Applications for Endorsements – one member commented that she had applied in November (in Auckland) but was not contacted until March, then processing took until April. There were varying reports of 30 or 40 days to process applications.

6. Customs

David Negri from New Zealand Customs Service, is responsible for policy in border enforcement. He introduced his colleague, Kirsty Marshall, who is responsible for issuing permits for importation of regulated goods (not firearms), and acts as a bridge between Auckland firearm importing agents and Police Licensing . They were invited to attend and came without any particular issues, but were interested in any relevant issues that come up, and can report back on-line or at any future Forum meetings.

In discussion, the following points and comments were raised.

- Airguns – Kirsty advised that she was surprised at the numbers of low value airguns that have been coming across the border, and being seized. She would like to

improve the instructions that Customs provides to its staff and would look to the expertise of Police Arms Officers to assist with this.

- The difficulty of assisting Customs officers to build up their firearms expertise – only to have them move on, and have to start over again with a new contact.
- Attempting to import firearm parts from Taiwan – where no permit is required to export, and for which no import permit is required in New Zealand – only to have the parts seized upon arrival. This is an area where Customs doesn't know who has a licence and needs the assistance of Arms Officers.

Geoff Dunn responded that this could possibly be proposed for legislative change but will not be considered until the next government is in place. A simple amendment would require permits to import parts.

- Inspector Green also commented that a statement is being prepared to go onto the Police website about exactly what needs an import permit under current law, and what does not. . Importation of Ammunition – New Zealand is the only country that doesn't require an import permit for ammunition. It would be good to have a formal statement to this effect from Police that can be provided to other (exporting) governments to assist in sourcing ammunition.

[**Update:** Information on import permits for parts of firearms is now on the Police website.]

- Retrospective Permits – Inspector Green advised that s.16 of the Arms Act requires that any firearm that is brought into New Zealand must have an import permit before it arrives, and a permit can only be applied for from within New Zealand. This creates an issue when someone purchases a firearm when they are overseas, and wants to bring it into the country. A provision to address this is in preparation. There are review provisions and Customs usually consults Police, who will investigate the person, and approve the import if appropriate.
- Review of Seizure – There is a discrepancy between the Customs and Excise Act and the Arms Act. When Customs detain an item, they should consult Police as to whether a permit would have been issued. Some issues that arise are speed of arrival – before a permit has been applied for or granted, and differences between what was expected and what has arrived.
- Importing Antique Firearms - it takes approximately three months to get an import permit. Many antique firearms are purchased by on-line auction, from catalogues which only come out three or four weeks before the auction. An item can be paid for, arrive and be seized with threat of destruction, before the import permit can be issued. There should be a provision for retrospective permits in such cases.
- Difficulty in completing the Import Permit application form – major purchasers may be interested in numbers of items in a particular catalogue. There is a way of un-protecting the spreadsheet in the online catalogue and cutting and pasting it into the Permit application form. Police's Paul Gatland is happy to explain this process.

There being no further items for Customs, the Chair thanked John Herbert for his excellent suggestion to invite Customs to attend the meeting.

Customs confirmed that members are welcome to email Kirsty Marshall with any suggestions as to how Customs might best deliver within the law, or when dealers or users have issues or questions. Emails can also be directed to the Customs website and will be forwarded to her.

7. Other Matters

- Representation on the Forum – John Herbert offered to represent Firearms Dealers at the Forum if Paul Clark wishes to only represent the Council of Licensed Firearm Owners Inc. It was also considered useful to have someone represent the Sports Industry Association – Andy Mercer may be a suitable candidate; he represents a number of brands in New Zealand, as well as pistols, MSSAs and ammunition, and is considered a responsible person. Geoff Dunn and Catherine Petrey indicated that the process for obtaining representation of firearm dealers or any new representatives would be considered out of session, but Police would be transparent on this.
- Issues for consideration – Joe Green thanked members for their early advice of issues for the agenda, giving the opportunity to invite Customs and a Legal representative to the meeting. Geoff Dunn emphasised that suitable issues for Forum consideration should be about policy that needs clarification or reconsideration, or new policy. Some issues that were suggested for this meeting were of a more operational nature, and best raised with the Principal Adviser: Strategic Development and Planning, in Response and Operations Group (to be Inspector O'Shaughnessy).

[Update: Inspector Trish O'Shaughnessy has left Police and Inspector Garth den Hayer is currently acting in the position previously held by Inspector Joe Green and now retitled Principal Adviser: Strategic Development and Planning.]

In closing, the Chair again thanked everyone for coming and reiterated that Police wants this Forum to be a genuine attempt to have an opportunity to hear about everyone's challenges.

John Herbert signed off with an invitation to anyone that would like the opportunity to shoot a variety of firearms in Wellington – an email to him is all that is needed.

The meeting closed at 12.30 pm.