

# **COLFO REVIEW OF THE LAW AND ORDER SELECT COMMITTEE REPORT**

## **Summary**

The Law and Order Report (“the report”) does not meet the terms of reference for which it was set up to answer. Instead, virtually without exception, it makes recommendations that target only legal possession of firearms and creates solutions that are unworkable, expensive, impracticable and will make no difference to criminal firearm misuse.

This report represents a waste of taxpayers’ money and Parliament’s time. The body of the report is some 18 pages which for the most part does not answer the terms of reference. The analysis is superficial and some in areas flawed. In other areas, exactly how the committee reached its conclusion is hard to ascertain. The select committee has not referenced any of its conclusions to the evidence it received. We do not know, for example, where the recommendation that ammunition purchases are recorded came from and the basis for this. By not doing so, it is hard to see the basis for any recommendation.

None of the recommendations are costed. Costing is important as expensive measures reduce Police budgets for other more pressing matters for example ensuring that burglaries are investigated. It will be recalled that the Canadian Long Gun registry debacle meant vast swathes of the Police budget was used in an ineffectual registry that could have been used for detecting and preventing crime.

A self-funding system will be expensive- and we have seen how the Canadian registry cost billions. The expense of this will act as a deterrent to compliance, and the cost shortfall will have to come from the existing Police budget with flow on effects on crime prevention and detection.

## **Background**

Following the find of a cache of illegally held firearms, and following several sensational incidents involving criminals using firearms, the Minister of Police announced an inquiry into how the criminals obtained these firearms.

The committee decided on the following terms of reference:

- How wide spread criminal Possession of firearms is;
- How criminals come into possession of firearms
- What changes **may**<sup>1</sup> further restrict the flow of firearms to criminals and “those who do not have a licence”<sup>2</sup>

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<sup>1</sup> Note the use of the word “may”. The Committee, by adopting this test can adopt the most draconian changes imaginable as it “may” make a difference.

<sup>2</sup> The inherent tautology of “criminals and those who do not have a licence”. A person in possession of a firearm and not under the immediate supervision of a licence holder is a criminal.

Nowhere in the report is there any indication of the answer to this question of how widespread criminal misuse is.

There is no information into how criminals come into possession of firearms. The assumption must be therefore that sale or theft from lawfully held firearms is the major source of criminal supply. This assumption is made because the overall response of the report is towards legally held firearms and existing “fit and proper” people. Other mechanism (such as smuggling firearms into New Zealand) is simply not addressed at all, so the degree of this problem is simply unknown. This is a clear failure by the committee to do what it was asked to do. It may well be that this is simply “too hard” as to gather this information would require criminal elements to volunteer their sources<sup>3</sup>.

The committee chose the use of the word “may” in the context of restrictions on firearms, this means that any restriction no matter how unusual can be recommended. This goes to the absolute heart of the document. The committee has profoundly asked the wrong question by giving itself to recommend anything no matter how impractical or costly as it “may” make a difference. It “may” make a difference if all rifles of .50 BMG calibre are made illegal because they “may” be used in a crime, even though these \$20-50,000 rifles have never been used in a crime worldwide<sup>4</sup>.

COLFO suggests that entirely the wrong question has been asked at the very heart of the inquiry and this has led the Committee to wrong conclusions. A better question would have been “should” not “may” and have a benchmark such as its compliance cost and effect on law abiding persons. This has not happened.

We note that the submissions as filed included a “secret” submission by New Zealand Police. This has been requested and denied, citing operational concerns. It is deeply troubling that the New Zealand Police think it appropriate to not engage with the Community they are meant to serve. Moreover, the New Zealand Police are now considered by many in the shooting community to have lost their trust. We have, for example, raised unilateral decisions with the police such as a change in policy regarding folding stocks and security which the Police have ridden rough shod over. This can only add fuel to the fire and continues to erode the high esteem in which the Police were formally held and the overall loss of trust and confidence.

## **The structure of the Report**

The twenty recommendations are broken up into 6 headings namely:

- The Sale and Supply of Firearms and Ammunition;
- The Definition of Military Style Semi-Automatics;
- The Effectiveness of Licensing, Training and Registering Firearms;

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<sup>3</sup> COLFO notes that it supplied to the Committee Information from a UK study which indicated how criminals in the UK obtained military firearms such as sub machine guns.

<sup>4</sup> For completeness, we note that an IRA sniper did indeed use a .50 rifle in the 1970’s. This example should, however, indicate the degree of hysteria that this issue can create.

- Criminal Offending with Firearms;
- The Reduction in the number of “Grey Firearms”<sup>5</sup>
- The Importation of Firearms.

As will be seen, only one of the headings clearly covers the scope of the report. The rest seem to clearly, or at least partially look only at lawfully held firearms. We will look at these topics in turn.

### **Sale and Supply of Firearms and Ammunition**

These recommendations for the most part are against the weight of the evidence presented to the Committee.

Recommendations one and two are “tinkering” with the Arms Act. While in general no sensible opposition can be raised to a dealer’s licence being needed to supply ammunition by way of a business the committee has no given a reason for this. Indeed, when we reflect this against the purpose of the report, the committee must have evidence that ammunition is being supplied to criminals as a business. There is no evidence of this ever having taken place in New Zealand. Moreover, COLFO is concerned this could be used to restrict ammunition supply only to firearms which are “registered”<sup>6</sup>. It is not uncommon, for example, on a hunting trip to ask a colleague to purchase ammunition for them which may not be of a type for a firearm you own.

Recommendation four- that the Arms Act is amended to require dealers to keep records of ammunition sold- makes no sense. What this will record is that a dealer sold ammunition to a licensed person as a licence is required to show to purchase ammunition. This would create thousands of business records every day and there is no logical reason why this would prevent criminals having access to firearms. There is no compliance cost analysis for this. Ammunition has no unique identifier and there is no logical basis for this recommendation. We note that usually shots are not fired in a Criminal activity as the firearm is presented for show. COLFO is baffled as to how this makes any difference to criminal misuse of firearms. All it records is a person legally purchases an item they are legally allowed to possess.

Recommendation four states “many” submitters raised concerns about the sale of firearms online. This is disingenuous. The bulk of submissions- we estimate 95%- did not raise this issue at all. Notwithstanding, recommendation four suggests that websites that sell firearms be registered with the Police- presumably so they can be regularly checked. More over some websites- such as Trade Me- merely facilitate the sale by introducing vendors to purchasers. The onus is still on the vendor to inspect the licence and by not doing so are committing an offence. Moreover, does this mean if firearms are sold in a print medium (such as “Buy, Sell and Exchange”) do these need to be registered in some way? Clearly there is no difference whatsoever.

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<sup>5</sup> These are firearms that are held illegally, but not for any nefarious purpose.

<sup>6</sup> See below.

We have observed that there is no suggestion of what compliance costs will be and unless this occurs regularly this recommendation is merely window dressing. There is no doubt that the Police cannot administer the Arms Act as it stands and all this will do is divert resources from other areas, such as data matching if licensees are gang affiliates.

Recommendation five is that the permit to procure system is used for ALL firearms. The legal sale of a firearms is from one licence to another and both parties inspect the other licence. This process was abandoned in the 1970s as being unworkable as New Zealand moved to the registering the owner, not the item. There is no doubt that this is registration by stealth<sup>7</sup>. The cost of this is not quantified. The report states “this will enable the Police to build up a database”. It can only be noted with dismay that that despite overwhelming evidence to the contrary, the committee have decided registration will work in some way.

Moreover, any data base is hackable despite the best intentions. There have been instances of NZ Government databases being hacked which will lead to a “shopping list” being made available to the criminal underworld.

### **Definition of Military Style Semi-Automatics**

COLFO is concerned however that leaving what is a MSSA to the Police will simply lead to the usual Police approach of dictation to the firearms community without any regard to the practicalities<sup>8</sup>. Most importantly however, this recommendation has **nothing to do** with any of the terms of reference.

We note that if all semi-automatics become “E” category then:

- Even more people will be able to possess higher capacity magazines<sup>9</sup>;
- Even more people will be able to legally own what are now highly restricted items;
- Police would not be able to keep up with the increased vetting and security check requirements;
- Many people will conceal what they own due to fears of forcible confiscation<sup>10</sup> which will lead to a vastly increased pool of “grey guns” – an area which the committee note need to be reduced.

We note that it was Police misguided action in relation to “thumbhole” stocks that led to the flood of clearly “A” Cat semi-automatics coming into New Zealand.

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<sup>7</sup> It is almost beyond belief that the Committee considers registration a workable solution given the overwhelming evidence of how ineffective it is.

<sup>8</sup> Police ignored COLFO when it came to the thumbhole stock case and as a result lost in the High Court.

<sup>9</sup> We estimate 80-90% of all New Zealand shooters own at least one semi-automatic rifle or shotgun

<sup>10</sup> COLFO can only say this view is understandable given that in every case we are aware of registration leads to confiscation of private property from only lawful people. The Australian “buy-Back” despite its name was mandatory confiscation of private property and netted only 20% of legally held guns for a third of a billion dollars outlay.

## **Effectiveness of licensing and “Registering”**

Despite this somewhat broad brush the committee has concluded that a solution is that firearms prohibition orders should be made available. We note however that a person in possession of illegal firearms can face severe penalties currently.

The committee recommends that the term fit and proper is codified to align with the Police Arms Manual. This term has been in existence for a long time and the case law has made it well refined.

There is some discussion that a stand down period is created before a licence is revoked. Putting aside the issue of whether this really meets the terms of reference, if a person has had their licence revoked, and is now a “fit and proper” person it is hard to see exactly what this will achieve. COLFO is concerned that a person may be dis-incentivised from self-reporting mental health issues as their licence will be suspended for a period.

The Committee recommends that being a gang member or prospect is grounds to not be a fit and proper person. This is fully supported, providing there is a mechanism to challenge the assessment through the Courts.

Recommendation 11 is simply illogical and almost incomprehensible. Despite clear evidence of the cost and ineffectiveness of any sort of firearms registry the committee recommends when security is checked or license are renewed then serial numbers “are recorded”. This is registration. This is a costly, ineffective and even when we benchmark it against the “may” test adopted by the committee then it is impossible to see how this makes any difference to the illegal obtaining of firearms.

## **Criminal offending with firearms**

There is recommendation that penalties for firearms offences are reviewed. While there is an argument that the regimes are somewhat dated, we do note that the reviews recommendations will create people who have committed crimes as a result of the law changes recommended. For example, if the ever popular Ruger 10/22 .22 rifle becomes an “E” category firearm, then this will mean someone caught by these law changes could face a disproportionate penalty. Much would turn on any lead in period which would need to be substantial.

We also note that since illegal firearms are closely associated with the illegal sale of narcotics, and given that a concurrent sentence is likely, then unless the penalties in the Arms Act exceed those in the Misuses of Drugs act this is unlikely to have any real deterrent value. COLFO supports however, any stance that will target those who combine drugs and firearms. There is a suggestion that the storage requirements for “A” Category firearms are looked at. This is an area that has been broached endlessly at the CFAC and can be characterised by an inflexible and intolerant view from Police. The suggestion that “non-requirement with storage” is a ground for revocation is nice in theory but needs to be approached with extreme care. From time to time firearms are reasonably improperly secured. Technically, if a person

is coming back from a hunting trip and stops to relieve themselves with rifle stored in the car, then the firearm is unsecured. It seems remarkable that this should automatically

lead to a loss of licence. If a person is cleaning a rifle after a shooting session, and the door bell rings, then are they supposed to answer the door rifle in hand?

### **Reducing the number of “Grey” firearms**

COLFO fully supports an amnesty. This should be advertised as widely as possible. We would suggest that part of this process is a reminder a dealer may well purchase a “grey” firearms as an incentive to remove from circulation a “grey” firearm.

### **Importing firearms into New Zealand**

This recommendation covers when a person legally imports firearms either for hunting or competition and recommends that it is checked with Police that they are indeed removed. This seems fine, although it should be made clear that the firearms can be lawfully on sold or gifted whilst in New Zealand to the appropriate person. Experience has taught that some competitors gift items on leaving New Zealand. In addition in some cases firearms are left in New Zealand by their owners to avoid difficulties in re-importing.

### **Conclusion**

Overall there is little in this report COLFO supports. While we do endorse and agree with some of the measures which target gangs and narcotics, we are of the view that this report is flawed and is unsafe to make law on. The report for the most part does not meet its terms of reference.