



03 April 2024

S24.07

Submission to the Justice Select Committee on the Firearms Prohibition Orders Legislation Amendment Bill

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa (NCWNZ) is an umbrella group representing around 60 affiliated organisations and 300 individual members. Collectively our reach is over 200,000 with many of our membership organisations representing all genders. NCWNZ has 13 branches across the country.
2. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
3. This submission has been prepared by the NCWNZ Parliamentary Watch Committee drawing on existing NCWNZ policy and previous related submissions of NCWNZ.

Executive Summary

4. NCWNZ supports the broad policy of the Bill to reduce firearms crime and its impact on communities.
5. We note the Bill is part of the Coalition government's 100-day plan to improve public safety and restore law and order to our communities by giving the Police greater powers to search gang members for firearms.
6. We acknowledge the three key changes to existing legislation proposed to achieve the intended outcome:
 - First, the Bill amends the Arms Act 1983 to extend the group of persons against whom an FPO may be made.

- Second, the Bill amends the Arms Act 1983 to establish a new review process that enables persons subject to an FPO to apply to the court to have their FPO varied, modified, or revoked.
- Third, the Bill amends the Search and Surveillance Act 2012 to introduce a new “without cause” search power that enables the New Zealand Police (the Police) to conduct searches in respect of a person who the Police suspects, on reasonable grounds, is subject to an FPO.

Background

7. NCWNZ has policy on firearms that reflects a desire to maximise firearm safety and to minimise the presence of firearms in our communities.
 - 12.2.7.3 That the Firearms Code be amended to provide that all owners of firearms, including shotguns, be required to re-licence annually. 1974.
 - 12.2.7.4 That publicity be given to the fact that airguns are included in the same licensing regulations as all other firearms. 1974.
 - 12.2.7.5 That NCWNZ opposes the arming of Police with guns as the norm in our communities. 2020.
8. NCWNZ has a long history of supporting human rights through its policy development and submission process.
9. We are concerned that a full Regulatory Impact Statement was not provided at the time of policy decisions leading to this Bill due to time constraints.
10. We acknowledge the preparation of a Supplementary Analysis Report (SAR) carried out by the Police.¹
11. We remain concerned; however, the supplementary analysis did not undergo formal quality assurance due to time constraints.
12. NCWNZ is pleased that the proposed legislation will provide benefits to individuals subject to a Firearms Prohibition Order (FPO) who are now permitted to request a review of their FPO after five years rather than ten years.
13. We agree that providing a mechanism for the conditions of an FPO to be removed where these are no longer reasonable and appropriate provides better recognition of an individual’s rights.
14. NCWNZ believes the introduction of the new “no cause” search powers is of enormous significance and merits further analysis and consultation.

¹ <https://www.police.govt.nz/about-us/publications-statistics>

New “No Cause” Warrantless Search Powers

15. NCWNZ notes that Clause 14 of the Bill introduces a new warrantless search power associated with FPOs and understands “this power is exercisable by constables without having reasonable grounds to suspect that the person is breaching any condition of their FPO or any offence has been, is being or will be committed by the person.”
16. NCWNZ is further aware that “this ‘without cause’ approach towards search powers is novel in New Zealand’s criminal law”, and that “most warrantless search powers under the Search and Surveillance Act 2012 require the relevant officer to have ‘reasonable grounds to suspect’ or ‘reasonable grounds to believe’ before exercising search powers.”
17. NCWNZ is aware that implementation of the search powers proposed in the Bill will give rise to inconsistencies with the New Zealand Bill of Rights Act 1990 (NZBORA).²
- 18. NCWNZ considers the introduction of warrantless ‘without cause’ search powers for the first time into New Zealand’s criminal law to be of enormous significance and would expect such a historic and consequential piece of legislation to undergo a rigorous and extensive consultation and research process before its introduction to Parliament.**
19. Further, given the anticipated inconsistencies with the NZBORA, NCWNZ recommends an extended timeframe is given to the development of the Bill thereby allowing a thorough consultation with the New Zealand public and a full and robust analysis of the proposed amendments along with their implications and consequences.

Privacy Issues

20. Referring to consultation on Firearms Prohibition Orders carried out in 2020 and 2022, it is noteworthy that “The Office of The Privacy Commissioner did not support the introduction of FPOs as it did not consider the benefits of the regime would outweigh the significant privacy impacts that would result on individuals.” (Paragraph 45c Supplementary Analysis Report.)

Consultation

21. NCWNZ finds it inconceivable that there was no external consultation carried out during the preparation phase of the legislation.
22. We note the following from the Police’s Disclosure Statement: “No external consultation was undertaken on policy proposals due to time constraints. To inform advice Police have referred to previous statements from stakeholders made during consultation on proposals to introduce FPOs in 2020 and Select Committee submissions on the resulting FPO Bill in 2022. However, we note these views may no longer represent stakeholder

² <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html#DLM225513>

positions and proposals previously consulted on have a number of key differences from current proposals.”³

23. Particularly disturbing is the lack of consultation with Māori who are both victims of crime in disproportionate numbers, and who make up a large percentage of New Zealand’s gang population and therefore, will likely be subjects of the new FPO legislation.

Te Tiriti o Waitangi

24. NCWNZ’s policy ratified in 2018 states: “NCWNZ is committed to the rights and obligations articulated in Te Tiriti o Waitangi and the Treaty of Waitangi as the founding documents of Aotearoa. NCWNZ demonstrates a visible and tangible commitment to honouring the tikanga of tangata whenua and ensuring the fulfilment of rights and responsibilities of both Tiriti partners.”

25. NCWNZ is therefore deeply disturbed by the information that there are known inconsistencies with the principles of Te Tiriti o Waitangi inherent in the Bill.

26. We note that paragraphs 52 and 53 of the Supplementary Analysis Report make clear the lack of consultation with Māori and the anticipated conflict with the Crown’s duties in Article Three of Te Tiriti o Waitangi to provide Māori with all the rights and protections of citizenship.

Conclusions

27. NCWNZ supports the broad policy of the Bill to reduce firearms crime and its impact on communities.

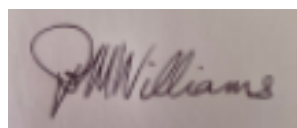
28. NCWNZ believes it is not appropriate to rush through a new law introducing warrantless search powers that is of such implication and consequence, in order to meet a 100-day timeframe set by the Coalition government.

29. We note the inconsistencies with the NZBORA and New Zealand’s privacy laws, and conflict with Te Tiriti o Waitangi inherent in the proposed Bill.

30. NCWNZ wishes to see the Bill in its current form withdrawn, and for it to be re-worked then re-introduced following a period of thorough analysis and consultation.



Suzanne Manning
NCWNZ Board



Bernice Williams
Parliamentary Watch Committee

³ <https://disclosure.legislation.govt.nz/bill/government/2024/24>