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***Request for information***

Tēnā koe A Whittle

I am writing to you in response to your Official Information Act 1982 (OIA) request dated 14 February 2024 in relation to firearms legislation.

I have answered each part of your request below. Please note that Police does not provide legal advice or legal interpretation services to the public and questions about the law and its effect are not requests for official information. While the below information has been provided in order to be as helpful as we can, Police recommends that you seek independent legal advice. For example, the Citizens Advice Bureau and Community Law Centres provide free legal advice should cost be an issue.

*Do the following sections of the Arms Act 1983 (version 24 June 2023) or Arms Legislation Act 2020 still apply?*

*1. Sn 37 (3): The Minister of Finance shall, subject to subsection (4), pay compensation out of a Crown Bank Account for the value of all weapons in a serviceable condition, and for all parts, delivered to a member of the Police in accordance with subsection (2)(d).*

- If this Sn no longer applies, when was it repealed?*
- If it hasn't been repealed, why are LFO's being told they will not be compensated for firearms surrendered to the Police?*

Section 37<sup>1</sup> of the Arms Act 1983 applies only to “restricted weapons”. Restricted weapons (as defined in section 4 of the Arms Act) are weapons declared to be restricted

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<sup>1</sup> Subject to subsection (2) of this section or an endorsement made under section 30 of this Act, no person shall at any time be in possession of a restricted weapon, or of any part or parts intended or adapted for use as part of a restricted weapon.

(2) Before the expiry of 1 month after [the publication under the Legislation Act 2019] of an Order in Council declaring any weapon to be a restricted weapon, every person in possession of any such weapon or any part or parts intended or adapted for use as part of such a weapon shall cause the weapon, or the parts, —

- (a) To be destroyed; or
- (b) To be disposed of to a person approved by the Commissioner; or
- (c) To be exported from New Zealand; or
- (d) To be delivered to a member of the Police.

weapons by Order in Council. The weapons declared to be restricted weapons to date are listed in the Schedule to the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984, and currently include items such as firearms capable of full automatic fire, grenade launchers, rocket launchers and weapons designed for discharging a lachrymatory substance (such as oleoresin capsicum spray).<sup>2</sup> Additional weapons may be added to that Order from time to time under the power contained in section 4 of the Arms Act.

Should new weapons be declared to be restricted weapons, then section 37 provides a mechanism for a person in possession of such an item to dispose of or destroy the item etc or deliver to Police and receive compensation within one month of the new item being added to the Order in Council.

As you can see from the above explanation, section 37 is narrow in its application and applies only to weapons which have been declared to be “restricted weapons” by Order in Council. There has been no change to the Schedule to this Order in Council since 2012, and before that, there was only one other change in 1992.

## *2. Sn 60: Improvement Notices*

*- Does the FSA has the authority to issue an Improvement Notice under sn 60?*

Yes. Section 60<sup>3</sup> of the Arms Act gives a member of Police the authority to issue an Improvement Notice. Section 2 of the Arms Act defines a member of Police as “a police employee”. All the employees of the Te Tari Pūreke – Firearms Safety Authority are Police employees.

*- If a LFO is found to unknowingly possess a prohibited firearm, with no malicious intent (eg a genuine oversight or perhaps when sorting the estate of a deceased person), can Police issue an Improvement Notice to allow time for the LFO to comply and/or modify the firearm to make it compliant?*

*- If an Improvement Notice cannot be issued, why not?*

*- Why are firearms ordered to be surrendered and destroyed, or seized, in such circumstances as described above, instead of being issued an Improvement Notice?*

Please see section 60 of the Act, which is publicly available but is linked in the foot notes for you.

It is important to note that unlawful possession of a prohibited firearm is a serious offence, with a possible sentence of up to five years’ imprisonment and is not the sort of behaviour the improvement notice process was designed to address.

There are mechanisms that may be used by a genuinely motivated person to proactively surrender unlawfully held firearms to Police.

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(3) The Minister of Finance shall, subject to subsection (4) of this section, pay compensation out of the [Crown Bank Account] for the value of all weapons in a serviceable condition, and for all parts, delivered to a member of the Police in accordance with subsection (2)(d) of this section.

<sup>2</sup> Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984, clause 2 and Schedule.

<sup>3</sup> <https://www.legislation.govt.nz/act/public/1983/0044/latest/whole.html#LMS440460>

Section 59B of the Arms Act expressly gives Police discretion to not prosecute individuals who voluntarily deliver arms items they are not authorised to possess to Police under section 59B where:

- The offence is one of possession only; and
- There is no public interest in proceeding with a prosecution.

Alternatively, a person may surrender an arms item anonymously through a dealer under section 59A and they would not be required to provide their name or licence information.

For additional information, please refer to the below website link.

[Disposal of illegally held or unwanted firearms | Firearms Safety Authority New Zealand](#)

*- Where does it state in the legislation that modifications can no longer be made to ensure firearms are compliant with legislation, rather they must be surrendered for destruction?*

Unlawful possession of a prohibited firearm is a serious offence punishable by a term of imprisonment of up to five years. There is nothing in legislation that states modification of the class of arms item is allowed (for example a prohibited firearm to a non-prohibited firearm), except in very few circumstances, which we have outlined below.

Under the compensation regime that was temporarily established to facilitate the 2019 Firearms Amnesty and Buyback programme, regulation 28U (version as it was when in force) was introduced. This gave the ability to lawfully modify a prohibited firearm to a non-prohibited firearm with Police approval and oversight. Modifications were limited to those where permanently limiting the tubular magazine in an approved way was sufficient to make the firearm or its magazine no longer prohibited permitted as to empower. This regulation was timebound and in place for the duration of the buyback and amnesty period and was revoked on 31 December 2020.

Modification of a lawfully held prohibited firearm to non-prohibited firearm is now an activating circumstance and registerable event in the Firearms Registry (see event 8, Part 4, Schedule 1B Arms Regulations) as long as Police have given prior approval for this modification and the modification is certified by a person authorised by Police.

According to the Arms Act, possession of a prohibited item is only permitted in a narrow number of circumstances. Modification of a prohibited firearm from prohibited to non-prohibited may only be approved where a person is already lawfully in possession of the item by holding both the required endorsement and a permit for the item prior to seeking modification to non-prohibited.

Where someone is unlawfully in possession and are therefore committing an offence against the Arms Act, they are required to surrender the prohibited firearm (under section 59B/Schedule 1, clause 6(1), (2) and (3)), or it will be seized by Police.

*3. Sn 70 (1): Without limiting the operation of any other provisions of this Act as to the disposal of any firearm, airgun, pistol, restricted weapon, imitation firearm, prohibited magazine, prohibited part, pistol carbine conversion kit, ammunition, or explosive seized or detained under this Act, any such firearm, airgun, pistol, restricted weapon, imitation firearm, prohibited magazine, prohibited part, pistol carbine conversion kit, ammunition, or explosive that has been detained for not less than 12 months may be disposed of in such manner as the Commissioner may direct.*

*- Please confirm that any surrendered and/or detained firearm will be held for a minimum of 12 months before disposal.*

Yes, if section 70 applies, Police will retain items for a minimum of 12 months before disposing of them and section 65 provides for an application to be made for restoration of items that have been seized or detained items under Arms Act.

However, with regard to prohibited items delivered to Police after 21 March 2019, Schedule 1 and clause 6 of the Arms Act provides that:

- prohibited items delivered or otherwise surrendered to Police become the property of the Crown.
- Other than compensation that could have been paid under the now ended buyback regulations, there is no right to compensation.

There are also provisions for dealing with property under the Search and Surveillance Act where items are seized under a power under that Act (such as under a warrantless search of a search warrant) – see sections 149 to 163.

*- With pending Firearms Legislation changes, will LFO's have their seized firearms returned should the status or category of such firearms change and they no longer be restricted and/or prohibited?*

Police including Te Tari Pūreke, will continue to apply and enforce the law as it exists at the relevant time. If the law changes, Police (including Te Tari Pūreke) will uphold the law and licence holders must do the same. Failure by licence holders to abide by the law can result in reassessment of their fit and proper status, and compliance and enforcement actions will be considered.

For your information, Police has developed a process for proactive release of information, so the anonymised response to your request may be publicly released on the New Zealand Police website.

Nāku noa, nā



Matt Boddy

**Deputy Director Operations**

**Firearms Safety Authority**