

# CRIMINAL BAR ASSOCIATION OF NEW ZEALAND INC.

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## **Submissions on the Firearm prohibition order legislation**

**TO:** The Chairperson of the Justice Committee

This submission is from the Criminal Bar Association.

I can be contacted at [president@criminalbar.org.nz](mailto:president@criminalbar.org.nz).

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Adam Simperingham', with a stylized, flowing script.

**Adam Simperingham**  
**President**  
Criminal Bar Association

## **1. FIREARM PROHIBITION ORDER LEGISLATION**

- 1.1. First, the Bill amends the Arms Act 1983 to extend the group of persons against whom an FPO may be made. Currently, an FPO is only able to be made against a person aged 18 years or over who has been convicted of a specified serious offence. The Bill provides that an FPO may also be made against a person aged 18 years or over who is a member or an associate of a gang or an organised criminal group who has been convicted of an offence under the Arms Act 1983, Crimes Act 1961, Misuse of Drugs Act 1975, or Psychoactive Substances Act 2013 that is punishable by a term of imprisonment of 1 year or more. This change enables courts to make FPOs against gang and organised criminal offenders who have been convicted of a wider range of offences and who pose a risk to public safety. The Sentencing Act 2002 is amended to reflect this amendment.
- 1.2. Extension of FPO to a wider group of minor arms / non-violent offending
- 1.3. This extension of FPO powers is not based on criminal use of firearms but stereotypes around gang membership and crime. It includes anyone convicted of any offence carrying a maximum penalty of 1 year imprisonment or more. The offending could be entirely unrelated to firearms. This is opposed on the basis that it is too significant an infringement on individuals where there is no reasonable basis to suspect that they will commit firearms related offending. It is divorced from any identifiable firearms risk. It also extends to very minor Arms Act offences which have not nexus to serious firearm risk.
- 1.4. It is noted that that this proposal extends to “associates” of gangs. This would include family members, children and partners, regardless of their involvement in any crime. It is submitted that it is arbitrary and unfair to include associates of those in an organised criminal group.
- 1.5. This proposed amendment is opposed.

## **2. APPEAL AMENDMENT**

- 2.1. 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. An FPO continues in force for 10 years and currently there is no right to challenge the FPO other than as part of an appeal against the sentence. The new review process enables a person who has been subject to an FPO for at least 5 years to apply to the court for an order varying or revoking their FPO. This affords a review mechanism for persons subject to the significant restrictions of an FPO who believe they no longer pose a risk to public safety.

- 2.2. This is supported. It is submitted that the ability to apply for a review ought to be available after a shorter period of time. Two or three years is sufficient.

### **3. PROPOSED AMENDMENT TO THE SEARCH AND SURVEILLANCE ACT 2012**

- 3.1. 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. A search can be conducted at any time and may be exercised without the Police having reasonable grounds to suspect that any offence has been, is being, or will be committed by the person. As a person who is subject to an FPO has been identified as posing a high risk to public safety, they should be subject to the highest level of monitoring to ensure that they are not accessing firearms and are complying with their FPO. The new search power allows the Police to search the person, any thing in the person’s possession or control, any premises in which the person is present or that the person owns, occupies, or controls, and any vehicle in which the person is present and any other persons present in the vehicle believed to be in possession of arms, and to seize and detain any arms found.
- 3.2. The proposed search and surveillance act power for warrantless searches associated with FPO’s is strongly opposed.
- 3.3. The current wording of section 18A requires a constable to only have “reasonable grounds to suspect” that a person is subject to a firearms prohibition order in order to utilise the section. From the outset any proposal involving searches should require a constable to satisfy themselves that a firearm prohibition order is in force, not simply have reasonable grounds to suspect that one is in force.
- 3.4. It is noted that under s 18A(2), a constable may exercise the power without having reasonable grounds to suspect that any offence has been, is being, or will be committed by the person. This law purports to legislate an arbitrary search which breaches rights protected under the New Zealand Bill of Rights act 1990. People are entitled to be free from unreasonable search and seizure. It is submitted that were such a law to be enacted it would be contrary to the New Zealand Bill of Rights Act.
- 3.5. Further, the ability for this legislation to applied in a discriminatory way is high. Gang members, Māori and Pasifika men would be disproportionately targeted with this legislation both in terms of the making of FPOs and the use of the search power.
- 3.6. It is noted that this proposed warrantless search power would allow a police officer to search the person, search anything in the person’s possession or under their control including a vehicle, search any premises in which the person is present, owns, occupies or controls as well as any vehicle in which the person is present.

- 3.7. The proposed warrantless search would extend to other people present in the vehicle who the constable has reasonable grounds to believe are in possession of firearms. It is noted that this is duplicative in the sense that the Search and Surveillance Act 2012 already empowers Police to search where there are reasonable grounds to suspect that a person has firearms in their position, including the entry into property or vehicles. It is submitted that this proposal dilutes protected privacy rights of people including those with criminal histories.
- 3.8. Finally, it is submitted that any warrantless search must be based on an officer having reasonable grounds to suspect that a crime has been committed, that a person is in danger, or that evidence will be imminently lost. These warrantless search provisions are already included in the Search and Surveillance Act 2012. Since its enactment, case law has developed considering the limits of each of these sections.

#### **4. CONCLUSION**

- 4.1. The Criminal Bar Association is available to make oral submissions before the Select Committee, or to discuss these issues further outside of the Select Committee process should that assist.