



New Zealand Women's Law Journal Te Aho Kawe Kaupapa Ture a ngā Wāhine

By email

29 March 2022

Justice Committee

Submission on Firearms Prohibition Orders Legislation Bill

- 1 Thank you for the opportunity to submit on the Firearms Prohibition Orders Legislation Bill (**FPO Bill**).
- 2 This submission is made on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust (the **Trust**). The Trust is responsible for administering the New Zealand Women's Law Journal, which is the only academic publication that is solely dedicated to publishing legal scholarship about gender justice and supporting the work of women lawyers in New Zealand. The primary aims of the Trust are to promote awareness about gender justice in the law and to support women in the New Zealand legal profession in their careers. This includes contributing to wider society discourse about legal issues facing women.
- 3 This submission does not engage with the substantive merits (or otherwise) of Firearms Prohibition Orders (**FPOs**) as a means of reducing firearm-related harm in Aotearoa, or the potential rights implications that may arise. Rather, our concern is with the breadth of qualifying offences and the absence of any reference to family violence or other forms of gender-related harm.
- 4 Our primary position is that the qualifying offences should be broadened to include family violence offences. Should the Committee have a broader appetite for amendment, our view is that the qualifying offences should be refined to target those offences that have a clear nexus with increased risk of firearms-related offending, and to better address the particular risks posed by family violence offending.

Qualifying offences under the FPO Bill

- 5 Under clause 39A(1)(a), an FPO may be made in respect of an offender who has been convicted of one of the specified offences contained in the Arms Act 1983 or the Terrorism Suppression Act 2002, s 98A of the Crimes Act 1961 (participation in an organised criminal group), or a “serious violent offence” as defined in s 86A of the Sentencing Act 2002.¹

¹ Serious violent offences include sexual violence, manslaughter, murder, wounding with intent to cause grievous bodily harm, kidnapping and many more.

- 6 There is no specific provision for family violence offending (other than where the abovementioned offences occur within a family violence context).
- 7 The public consultation document and early Cabinet materials recognised the need for legislative reform to respond to firearm use in the family violence context. To that end, option three in the public consultation included criminal harassment and breaches of protection and restraining orders amongst the qualifying offences.
- 8 At the consultation stage, the stated objective of the FPO regime was to prevent “people who have a history of serious violent offending, firearms offending, or breaches of Protection Orders” from being able to access and use firearms, thereby posing an “unacceptable risk to the safety of New Zealanders.”²
- 9 The consultation document and early Cabinet materials acknowledged the risk of firearms-related offending in the family violence context, particularly to wāhine Māori.³

In five of the 23 homicides in 2017 and 2018 where a firearm was used, the offender was the subject of a Protection Order. Given this, using a lower benchmark of a breach of a Protection Order, whether firearms were used in the breach or not, would capture people who have demonstrated a propensity to flout such orders. It may also capture those who go on to commit serious violence offences, including murder, with a firearm. However, it may also capture a large number of other people who would not go on to commit serious violence or firearms offences.

- 10 And:⁴

Māori also have higher victimisation rates, particularly for violent interpersonal offences. The 2018 New Zealand Crime and Victims Survey indicated Māori women were more likely to be victims than the national average, particularly for family violence and intimate partner violence. Māori could therefore benefit from a Firearms Prohibition Order regime as it may result in fewer Māori (particularly Māori women) being victims of violence.

- 11 However, the FPO Bill as introduced to Parliament does not include breaches of protection or restraining orders or criminal harassment in the list of qualifying offences.
- 12 We understand the decision to exclude those offences from the FPO Bill arose in response to concerns about diluting the regime,⁵ unintentionally capturing offenders who would not have gone on to commit serious violence or firearms offences,⁶ and from a belief that the safeguards built into the protection orders and firearms licensing regimes afford sufficient protections.⁷ We respectfully disagree.
- 13 The removal of those qualifying offences from the Bill is at odds with the statement considering the convictions that would qualify for a Firearms Prohibition Order “to

² Consultation document at p 7.

³ Consultation document at p 14.

⁴ Consultation document at p 10. See also cab paper 1 (entitled: PUBLIC CONSULTATION – FIREARMS PROHIBITION ORDERS) at [37].

⁵ Cabinet paper entitled Firearms Prohibition Orders: Final Design Parameters at [22].

⁶ Consultation document at p 14.

⁷ Cabinet paper entitled Firearms Prohibition Orders: Final Design Parameters at [25] and [26].

ensure that these orders are focused tightly on higher-risk offenders, where there is a clear link between the nature of offending and firearm related risk.”

Family violence offences should be included as qualifying offences

- 14 In our view, the qualifying offences under clause 39A(1)(a) should include family violence offending. In particular, breaches of protection order, and arguably, a broader range of family violence offending. Section 9 of the Family Violence Act 2018 defining the meaning of “family violence” should provide guidance on the kinds of offending which could be considered as family violence offences.
- 15 Without limiting the breadth of family violence offences examples of qualifying offences could include assault on a child or by a male on a female, assault on a person in a family relationship, strangulation or suffocation, or assault with weapon.
- 16 The Trust submits a broader range of family violence offences should be included as qualifying offences. An alternative pathway is to include the availability of a FPO under section 123A and B of the Sentencing Act 2003. That section enables the imposition of a protection order at sentencing for family violence offences.
- 17 There is evidence that firearms are used to perpetuate family violence harm.⁸ The New Zealand Family Violence Clearinghouse estimates that 10 percent of all family violence deaths are carried out with firearms.⁹ Its research also found a link between breaches of protection orders and family violence-related deaths: between 2009 and 2017, of the 37 offenders who had been served with a protection order and was the predominant aggressor in a family violence death, 57 percent had breached one or more protection orders.¹⁰
- 18 We also tautoko the perspective of the Women’s Refuge, which shared the following observations about the use of firearms in abusive relationships in its submission on previous Arms Act amendments:¹¹

Although use of firearms in family violence deaths is not prevalent, the threat of having firearms used (against the victim, against the victim’s children, or against other people or animals) is much more frequently a tool for ensuring the continued and effective control of the victim and suppression of her potential resistance than the actual use of firearms.

In one such example in 2018, a Women’s Refuge client reported to us that she had been trapped in a relationship with an abuser in a relatively isolated community for over eight

⁸ Firearms are incredibly threatening and can exacerbate an abusive power dynamic. They can be used by abusers to inflict emotional abuse and exert coercive control over their victims. The presence of a gun within the home increases the risk of a women being injured or killed by intimate partners. Gun ownership is a privilege and not one which should be afforded to people who have a history of violence. Considerations of a person’s violent history should include all instances of family violence and a person should have to demonstrate they are consistently non-violent in order to receive a firearm/ firearms licence.

⁹ Family Violence Death Review Committee submission on the Arms Legislation Bill, 23 October 2019 at p 1. (https://www.parliament.nz/resource/en-NZ/52SCFE_EVI_91272_FE23764/16189d4d0d3c3f639ec59ce263a9064fe95e87fd). The submission noted that the majority of these offenders were unknown or had only a “minor history” with government agencies such as Police.

¹⁰ New Zealand Family Violence Death Review Committee, Sixth Report: Men who use violence, 2020 at pp 47 - 48. Note that not all related to firearms.

¹¹ At [6] – [8]. <https://womensrefuge.org.nz/publications/>

years. If she ever carried out any actions that were suggestive of her deciding to leave or preparing to assert greater independence (such as visiting neighbours or trying to use the abuser's phone) he would take out his collection of firearms and clean them in front of her, while explicitly detailing how they killed animals instantly. This deterred her from leaving this partner for many years, and, accordingly, kept her and her children captive in a situation of fear and control for the duration of this relationship.

This anecdote is a common story heard by our advocates. [...]

- 19 The Women's Refuge submission also noted its experience that the firearms used in family violence are almost always legally obtained, either by the perpetrator personally, or by an acquaintance.¹²
- 20 We acknowledge that there are inbuilt safeguards against firearm use by perpetrators of family violence in the Family Violence Act 2018, and in the firearms licensing regime. The court has the ability to consider the risks associated with firearms when making a protection order, and the standard conditions for a protection order require surrender of any weapons within the person's control.¹³ Although, as the Minister acknowledged, these standard conditions do not always apply, and they may be modified or removed by the court.¹⁴ Equally, we accept that a person with a history of family violence offending is unlikely to be deemed "fit and proper" for the purpose of obtaining a firearms licence. However, these existing safeguards (particularly the fit and proper test) would also apply to most of the qualifying offences under cl 39A(1)(b). The point of the FPO Bill is to go further, by restricting alternative avenues of firearm access and exposure for high-risk offenders.
- 21 Further, whilst someone who is not "fit and proper" cannot obtain a firearms licence, this does not prevent them from:
 - a. Legally accessing or using firearms, for instance, under the immediate supervision of a licensed firearms holder;
 - b. Associating with people in physical possession of firearms, including people with firearms on or about their person;
 - c. Residing at, or visiting locations where firearms are held, including gun shops, arms fairs or gun clubs.
- 22 The safeguards contained in the protection orders regime and firearm licencing process only prevent family violence perpetrators from owning or controlling firearms. They do not address the wider access issues that the FPO Bill aims to address. There is still a high risk that a person, the subject of a protection order, would still be able to legally access and use a firearm.
- 23 The discretionary nature of the regime and the high bar for imposition of a FPO offer sufficient safeguards to ensure the offences that reflect the degree of firearms related risk, including family violence offending, would be captured by the scheme.
- 24 Persons with qualifying convictions are not automatically subject to a FPO; it is a matter of judicial discretion. Cl 39A(2) provides that the court *may* make a FPO against an offender if satisfied, on the balance of probabilities, that the imposition of an FPO

¹² At [9].

¹³ Cab paper 2 at [25] – [26].

¹⁴ Cab paper 2 at [26].

is necessary, reasonable, and appropriate to assist in managing the risk that the offender poses to public safety.

- 25 We disagree with the conclusion that including breaches of protection order in the qualifying offences would dilute the FPO regime. In our view, family violence offending is more linked than some of the types of offending currently covered. This relates to a broader concern we have about the breadth of offences currently included in cl 39A(1)(a).

Inappropriate to carry over s 86A of the Sentencing Act 2002

- 26 We are concerned by the importation of the “serious violent offences” contained in s 86A of the Sentencing Act 2002 to the FPO Bill.
- 27 As the Committee will be aware, s 86A was introduced by the National Government in 2010 as part of the soon-to-be-repealed three strikes law.
- 28 The purpose of the three strikes regime is to deny parole to “certain repeat offenders and to offenders guilty of the worst murders” and to “impose maximum terms of imprisonment on persistent repeat offenders who continue to commit serious violent offences.” It is broad-brush and punitive.
- 29 By comparison, the FPO Bill is specifically focussed on mitigating the risk of firearms-related violence by reducing the opportunities for high-risk offenders to access firearms. Separate and meaningful consideration should be given to whether there is a nexus between any qualifying offence and firearm-related violence.
- 30 In our view, it is not appropriate to directly transplant the s 86A “serious violent offences” to the FPO Bill, as a number of the listed offences do not have a clear link to firearm-related violence.
- 31 There are a number of offences which are routinely used in family violence prosecutions, which are less “serious” (by which we mean they have lesser maximum penalties) but are clearly connected with a risk of violence (firearm-related or otherwise).
- 32 In our view, consideration should be given to whether other violent offences, such as assault on a child or by a male on a female, assault on a person in a family relationship, strangulation or suffocation, or assault with weapon ought to be included.

Suggested amendments to qualifying offences under clause 39A

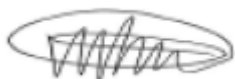
- 33 We suggest the following amendments to cl 39A(1)(a):
- d. Inclusion of family violence offences, including but not limited to breaches of protection and restraining orders;

- e. Amend cl 39A(1)(a)(ii) to remove reference to s 86A of the Sentencing Act 2002, and instead list specified “serious violent offences” that have a clear nexus with firearm-related violence.¹⁵

Conclusion

- 34 Thank you for the opportunity to submit on the FPO Bill. Please feel free to contact us if you have any questions or wish to discuss anything further.

Ngā mihi



Kate Fitzgibbon/ Victoria Rea

Advocacy Team Member/ Law Reform Manager

The New Zealand Women’s Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust

¹⁵ This consideration may include having regard to including other offences commonly related to domestic violence, including assault on a child or by a male on a female, assault on a person in a family relationship, strangulation or suffocation, or assault with a weapon.