

Submission

Arms Legislation Bill

NZ Council for Civil Liberties

About the New Zealand Council for Civil Liberties

1. The New Zealand Council for Civil Liberties is a watchdog for rights and freedoms in New Zealand. The Council is a voluntary not-for-profit organization that works through education and advocacy to promote a rights-based society and prevent the erosion of civil liberties.
2. We wish to appear before the Committee to make an oral submission.

Introduction

3. The Arms Legislation Bill aims to improve public safety by increasing the controls on the use and possession of arms. Council notes that the possession of arms is a privilege in New Zealand. To our knowledge this privilege has no special protection in legislation or treaty.
4. The Council believes that there are no human rights or civil liberties issues with the proposed controls, only with the circumstances when they are to be applied.
5. The Universal Declaration of Human Rights (UDHR), to which New Zealand is a signatory, begins:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world

The Council agrees that there can be no lasting peace without justice, and no justice without human rights. Furthermore, the Council believes that any measure which interferes with human rights ultimately harms public safety.

6. The courts in New Zealand have the power to alter law by declaring parts of acts to be inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). The courts have recently shown a willingness to use this power. Therefore the Council believes that any act which transgresses human rights will be altered by the courts.

Innocent Until Proved Guilty

7. Section 36 of the bill amends section 24A of the principal act. The proposed sections 24A(1)(a),(b), and (c) all establish the grounds used to determine whether an applicant is a fit and proper person to hold a firearms license. This includes whether the applicant has been charged with a crime, even when they have not been found guilty.
8. Article 11 of the UDHR states that “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty”¹. This right is enacted in New Zealand by section 25(c) of NZBORA, which states “[Everyone has] the right to be presumed innocent until proved guilty according to law.”²
9. The Council believes that the proposed sections 24A(1)(a),(b), and (c) are inconsistent with section 25(c) of NZBORA, and with New Zealand’s treaty obligations.

Freedom of Association

10. Section 36 of the amendment bill amends section 24A(1)(i) to deny applicants when “the applicant is a member of, or has close affiliations with, a gang or an organised criminal group”.
11. Article 20 of the UDHR states that “Everyone has the right to freedom of peaceful assembly and association.”³ This right is enacted in New Zealand by section 17 of NZBORA, which states “Everyone has the right to freedom of association.”⁴

¹ <https://www.un.org/en/universal-declaration-human-rights/index.html>

² <https://legislation.govt.nz/act/public/1990/0109/latest/DLM225527.htm>

³ <https://www.un.org/en/universal-declaration-human-rights/index.html>

⁴ <https://legislation.govt.nz/act/public/1990/0109/latest/DLM225527.htm>

The Council notes that no caveats or conditions exist in section 17.

12. The Council believes that the proposed section 24A(1)(i) is inconsistent with section 17 of NZBORA, and with New Zealand's treaty obligations.

Recommendation

13. The New Zealand Council of Civil Liberties recommends that section 36 of the Arms Legislation bill be amended to remove the words "charged with or" from sections 24A(1)(a),(b), and (c) of the principal act so that the proposed controls are applied only to people who have been convicted.

14. We recommend that section 36 be further amended to remove section 24A(1)(i) so that the proposed controls do not infringe freedom of association.
