

Reviewing the 1983 Arms Act

By Chaz Forsyth

Introduction

The review of existing law is often accompanied by trepidation among those affected because of the possibility of draconian changes, or the imposition of more expense when complying with the new laws. In the case of firearm controls, which are usually enacted to control violent offending with firearms, the revised laws have in the past, created more offences, so offending against the revised legislation, with more laws to break, often show an increase.

When the New Zealand Arms Act (1983) is considered, its ground-breaking legislation switched from registration of all rifled firearms, to user-licensing (with personal vetting for suitability) and the abolition of such registration measures (although these remained for handguns and restricted weapons). Borne of successful liaison between firearm owners and the Police, with input from the public, an atmosphere of trust had been successfully developed between Police and the firearm owning public. The police anticipated improvements in operational aspects as well as savings in administration from the new legislation:

“The computerisation of (license holder) records will provide frontline police with rapid access data on firearms which will increase the safety factor for these members. Previously these records were held in 17 separate manually operated indices throughout the country.

The Act provides the police with additional powers to deal with persons who commit offences with firearms but at the same time will enable licensed persons to pursue their chosen sport without undue interference.

The Act will also substantially reduce the amount of work that is currently undertaken administering arms records” (New Zealand Police, 1984)(p. 8).

This relationship changed following a multiple homicide at Aramoana late in 1990, when an aberrant individual, already known to police, shot several people with some semi-automatic rifles. The then Minister of Police, shocked (like all New Zealanders) by the carnage, immediately sought a review of the law relating to firearms. Changes which took effect four years later included the abolition of the lifetime arms licence, restricted mail order purchasing, and a reclassification of some self-loading firearms into a special class of their own. Semi-automatics with one or more of such features as a free-standing pistol grip, magazine capacity of more than seven centrefire cartridges, flash eliminator or a bayonet lug required registration (listing), more secure storage, and could only be held by those who passed more stringent vetting measures.

This article will consider the implications of publicly available submissions recently made to the Select Committee on Illegal Firearms, as they may affect licensed arms owners. It will do this by addressing what appear to be widely held concerns about the private ownership of firearms. It is important to keep in mind however, that most of the incidents which have led to this inquiry have a connection with illicit drugs and people not authorised to hold firearms.

Too many firearms, and too many firearm owners?

A very popular concept is one which generally holds that more firearms in a community beget more firearm-armed violence, and may even contribute to greater violence overall. This is an idea which has taken root in many other countries, particularly those with strict firearm controls. It has been explored by Thorp (1997), who debated the presence of firearms in the population, considering that the more firearms there were, the more firearm offending there was.

The number of licensed arms owners underwent a drop, from over 300,000 in the mid-1980s, to just over 200,000 in the early 1990s. The number has since gradually increased to just over 240,000, an average annual recruitment of approximately 12,000 being largely counterbalanced by attrition arising from licence surrenders and the death of some licence holders.

For New Zealand, a ratio of 0.236 firearms per capita was observed in 1935, dwindling to 0.222 in 1962, and then gradually increasing from 0.265 in 1979 to 0.312 in 2004, an increase in nearly 18% (using the 1979 figure as a base). The latest ratio is more than 35% higher than that for 1935, when the ratio was first calculated. Firearms in the New Zealand firearm pool are increasing more quickly than the human population of New Zealand.

Armed offending since 1961, the date of the current Crimes Act, has clearly increased and it is strongly suggested that factors other than the mere presence of firearms contribute to the dynamic outlined here. To compensate for the sharp increase in population, the use of rates per 10,000 are used, to relate the number of recorded offences to the population. A comparison such as this requires a long term historical series, and for the purpose of this research, data extending back to 1962 has been used (Figure 1).

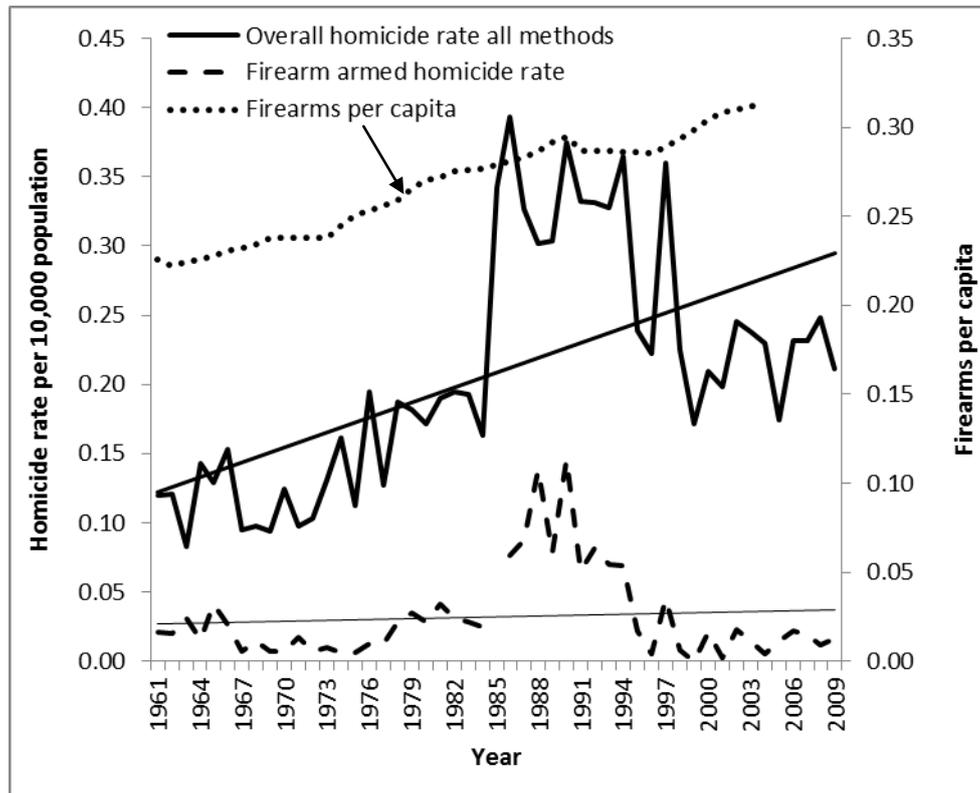


Figure 1: Trend in rates of homicide and firearm-armed homicide per 10,000 population, vertical axis values at left side refer. The break in the firearm-armed homicide curve arises because of a gap in the data for one year as the Arms Act 1983 data collection became established. Firearm ownership per capita, 1961 - 2009 axis values are at right.

(Sources: AJ, 1986; Forsyth, 1978, 1985, 2011; Statistics New Zealand, 1996).

The uppermost curve in Figure 1 shows firearms per capita. For all practical purposes, New Zealand does not have a domestic firearm manufacturing industry, so all must be imported. Firearm imports are governed by the need to seek, and be granted permission to import all firearms into New Zealand under Regulations 10 and 13 of the Arms Regulations (1992). Permits to import are issued by the Police and their requirements are rigorous in terms of the details they require before a permit is granted. The curve for firearms per capita trends almost parallel that of the overall increase in homicides from 1962, diverging sharply from that for homicides by firearm. This supports a contention that in the case of homicides, firearms by themselves seem not to influence homicide rates.

Firearm safety education

A minimum level of expertise in firearm handling is needed before an arms licence is granted. This expertise takes the form of a working knowledge of the basics of firearm safety. These requirements are the responsibility of the New Zealand police under Regulation 14 (Arms Regulations 1992). The New Zealand Mountain Safety Council (NZMSC), was approved for supplying firearm safety instruction since 1971 through its volunteer instructor network of some 500 instructors, at more than 120 locations (NZ Police, 2002). The Technical Correspondence

Institute (TCI), later known as the Open Polytechnic, offered an alternative firearm safety course which generated another 10,000 enrolments from 1987 until its termination in 2015. Candidate numbers have fluctuated, dwindling to less than 7,000 in the early 1990s, and are now increasing to more than 11,000 annually.

Provision for monitoring the work of volunteers was in the past provided by the Mountain Safety Council, but its termination of the contracts of the staff involved ended that function in 2015. Indeed, reliance upon the New Zealand Mountain Safety Council for the provision of services is open to question because that body has disbanded its standing technical committees, one of which dealt exclusively with firearm matters.

The desire of the NZMSC to in future discard its volunteers and rely upon paid staff for the provision of firearms safety instruction under the Arms Regulations (1992), raises questions about the likely future cost of individual arms licences, should these costs be passed on to arms licence applicants. It also raises questions about the availability of paid staff to attend a lower number of locations at which instruction and testing is to be provided, reducing the level of service to rural communities and increasing the likelihood of non-compliant firearm usage in such areas. The loss of local knowledge is another impediment to the service provision available from volunteers, whose understanding of local issues is greater than that of paid professionals who travel from population centres.

Questions to the effectiveness of firearm safety education rest upon the annual incident statistics for 2003 to 2015 (Figure 2). Overall annual casualty rates arising from unintentional firearm misuse remain low, and when translated into victim numbers, show that total casualties have never exceeded 18, of which fatalities have never exceeded 6, and injuries never more than 12.

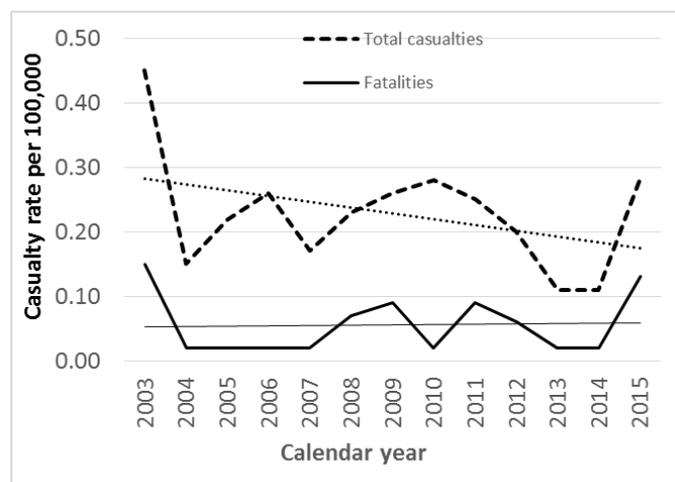


Figure 2: Unintentional shooting casualties 2003 to 2015. The trend lines show a decline in the overall casualty trend, and a level trend for unintentional shooting fatalities. (Source: Forsyth, 2016)

Further impediments to firearm ownership

The passing of Police Amendment (Cost Recovery) Bill into law in 2016 empowers the Police to charge for public services hitherto provided at no charge. It is possible that in future, permits to import a firearm, to procure a firearm, or for gaining permission to make a mail order purchase will each incur a charge of (say) \$50. Such permits, requiring Police approval, will obviously contain the mechanism for recording such transactions, paving the way for the recording of all details of imports, purchases or transfers, just as permits to import have done for decades.

These transactions could allow controls to be placed upon the number of firearms able to be held by each licensed person, and on the amount of ammunition to be bought or held at any time. Further changes, to the requirements for secure storage of firearms and ammunition, would add to the overhead costs to be met by any licensed owner if they are to comply with the law. Changing the status of “A” category semi-autos so they fall within the classification of “E” category MSSAs may be another possibility of any new legislation. This would add to costs in two ways, because of the requirement for further interviews, the supply of two more referees, and the higher grade of storage required.

Discussion

Trusting people with arms

For people to be considered suitable for the holding of an arms licence, they must be found to be “fit and proper”. Their claims for this status must be supported by two referees, who are both liable for the veracity of the testimony made in support of the licence applicant. Part of this process involves vetting by the Police, who scrutinise their records for evidence of past offending, as well as meeting the needs for secure storage and displaying generally responsible behaviour in the community. Generally, offences of many kinds, including for drunken driving, serious offences against any other Act, including violence, or association with gangs, will disqualify a person from arms ownership New Zealand Police (2015).

The awarding of an arms licence reflects both the vetting process and meeting its requirements, something which not all in the community can satisfy. This trust is placed by society upon arms owners in the expectation they will comply with all laws, acting responsibly (of course) with firearms. Breaching of this trust is likely to result in revocation of the arms licence. Naturally, the question must be asked, “Can anyone be trusted with a firearm?”

A partial answer to that question is that firstly, less than 3% of all offending in New Zealand involves firearms, so most of the non-offending population can be. The second is that fewer than 500 serious misuses of firearms occur annually, “serious” being defined as a violent offence, or an offence threatening violence, against the person. This suggests that if each firearm were to be used once, just 500 firearms would suffice for all homicides, attempts at homicide, aggravated robberies and attempts in any year in New Zealand. For a firearm pool estimated to exceed a million firearms, this is a tiny percentage (0.05%) and shows that the other 99.5% do not feature in criminal offending. This is in direct contrast to motor vehicle misuse, where almost 0.8% feature in thefts, and 0.2% are involved in motor vehicle accidents. This begs the question, “Are we failing to focus upon anything of greater social importance by dwelling upon firearm controls?”

A corollary of this though is, can the Police be trusted? From the reforms of 1983, where emphasis switched, with evident police enthusiasm for a user-focussed licensing system and away from listing of most of the inanimate chattels, a gradual anthropomorphism seems to have taken place, as registration was reintroduced for MSSAs in 1992, and a decade later was expressly provided for, for all remaining firearms (New Zealand Police, 2015).

Community liaison takes the form of the Police Firearms Community Advisory Forum which liaises with representatives of lawful firearm user groups. Despite assurances to the effect that the police are not considering full firearm registration, the Arms Manual contains specific mention of universal firearm registration in two sections, (New Zealand Police, 2015)(pp. section 3.7 (section 3: page 3) and section 19 (p. 1)) . This suggests a complete reversal to the 1983 Act, when inefficient chattel registration was abandoned in favour of user-licensing, a measure which was expected to lead to significant savings in police resources (New Zealand Police, 1984).

Registration of firearms has never been shown to be a viable tool for resolving firearm-armed crime, nor firearm-armed violence prevention. It diverts already scarce police resources into focussing upon the demonstrably law abiding, and away from criminal endeavours of a more serious kind.

Societal expectations of arms owners

Society quite reasonably requires law abiding behaviour from those entrusted by the state with firearm possession. In exchange for meeting this responsibility, lawful arms owners enjoy the opportunities, both recreational and occupational, provided by access to their firearms.

It is logical to expect that in the face of irresponsibility, carelessness, or wilful firearm misuse, for the full weight of the law to be applied to miscreants in this area. Thousands of arms licences have been revoked as a result of such infractions. However, when those in possession of illegal firearms are obviously not licensed to have them, and are frequently involved with other enterprises such as the manufacture and sale of illicit drugs, then other questions must be asked. These questions include:

1. If manufacturers of illicit drugs are found with firearms, what was the source of any firearms found in their possession?
2. Of the firearms found in the possession of those manufacturing or selling illicit drugs, what proportion were of the types which should have been registered?
3. Is any research undertaken to ascertain the ownership history of any registerable firearms found with people involved with illicit drugs?
4. What evidence has been found to show these were obtained from licensed firearm owners?

Justification for changes

Given that licensed arms owners have already been vetted, interviewed and checked, it might be expected that the trust placed in licensed arms owners might be respected by the authority granting that trust. It might also be expected that justifications for changes would be based upon breaches of that trust shown by misbehaving such as an upsurge of offending by licensed arms owners, or some other evidential material of offending such as breaching conditions of secure storage, use or other conditions of lawful ownership. As it happens, these appear to be lacking, and in recent testimony to the Select Committee on Illegal Firearms, the Police Association, corroborated by the police, indicated that “seizures” of firearms were more numerous than before, providing evidence which included firearms returned to their lawful owners, questionable numbers of firearms, and even non-firearms, in their “statistics”.

What was apparent was an absence of evidence of licensed owner abuse of the law, but some dubious evidence of illegal activities. This seems to be an attempt at smearing lawful arms owners by linking their involvement with firearms with the unlawful activities by those unlawfully in possession of firearms. Many questions are raised by this supplementary submission.

Failures in police systems?

No government agency is perfect, and none ever will be. Police, through their annual reporting, strive to present themselves and their efforts in the best possible light. Although enquiries are sometimes held when operations and the operational handling of an incident clearly displayed room for improvement, the recent Livingstone case where two children became homicide victims in the

aftermath of a domestic incident following highlighted numerous failures in police procedures. This incident involved unlawful access to firearms which were demonstrably not properly investigated.

It has been widely reported that Vote Police has not undergone an increase for the past five years, and this factor, if true, linked with changes in the Police Act to enable cost recoveries to be made, points towards efforts made to compensate for an effective annual funding cut by seeking further public contribution, possibly by imposing a user pays system. Unfortunately, some of these cost recoveries may result in public good activities being funded by those regarded as direct beneficiaries, and those who pay are subsidising public goods.

What is becoming clear is that licensed arms owners are far easier to target than manufacturers and dealers of illicit drugs. The reason licensed arms owners are 'softer' targets for police attention is because the provisions of the Arms Act (1983) and the Arms Regulations (1992). Technical offending against the provisions of this legislation is punishable either by licence revocation, fines or terms of imprisonment, or both. Dealers and manufacturers of illicit drugs, already in breach of drug legislation, need hardly worry about such matters unless or until they are apprehended for drug offending. That they are likely to violently resist police intervention is well known, and makes them 'harder' targets.

Reports of shortages in police staffing and resourcing in connection with firearm matters are evidenced by long delays in gaining the documentation required for importing, and transferring firearms, completing purchases from afar, and seeking arms licence renewals.

Parallels with other hazards in society

News reports often tell of incidents of under-age, or unlicensed motor vehicle drivers becoming involved in road accidents and even in attempts at evading police apprehension after detection. If these reports are true, there may be a case to be made to require the securing of motor vehicles from unauthorised access and use, as firearm owners have been for more than two decades. It is interesting to reflect too, that with a motor vehicle fleet of some 4.5 million, that approximately 35,000 thefts of these, all registered, are reported annually. Suffice to say that motor vehicles are large, highly coloured, and it is believed that a not insignificant number are never recovered after their thefts. The use of large motor vehicles for multiple homicide in foreign countries can hardly pass unnoticed either.

An enthusiasm for firearms is routinely displayed by some in the news media, to judge by the alacrity with which reports of “arsenals” of firearms are discovered in the hands of putative miscreants. Even safety cartridges, long recognised by authorities as being safe for routine handling in quantities of up to 20 tonnes, provide for excitement to those in the news media, whose reporting of matters relating to firearms frequently evoke the use of emotive terms.

Another hazard in society are those arising from the misuse of cutting and stabbing instruments, predominantly knives, in common use. That these featured more than twice as frequently as firearms do in New Zealand homicides is not normally noted by social commentators who often wish to set the country to rights (Figure 3). Notably absent are calls for registration of such instruments, as are almost routinely made when firearms feature in the news.

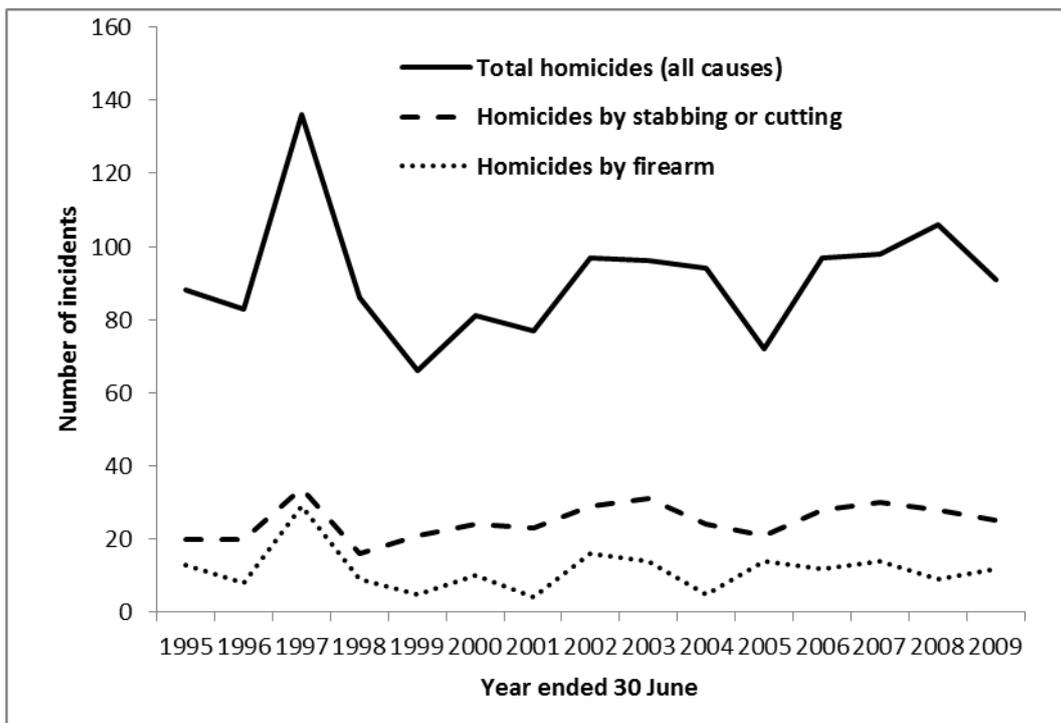


Figure 3: Annual incidence of homicides by two causes, cutting and stabbing instruments, and firearms. (Source: Forsyth, 2011)

The curves for overall homicide numbers and for those arising from the misuse of cutting and stabbing instruments show a slight upward trend, but that for homicides by firearm diverges slightly by remaining flat. Naturally, with a slight annual increase in the population, a rising trend is only to be expected.

The founder of modern policing, Sir Robert Peel, wrote that the power of the police to fulfil their functions and duties is dependent on the securing of the willing co-operation of the public in the task of securing observance of laws. This diminishes proportionately to the necessity for compulsion to achieve police objectives. Finally, he wrote that, “the test of police efficiency is the

absence of crime and disorder, and not the visible evidence of police action in dealing with them” (Attributed to Peel, 1829).

Conclusions

Societies are dynamic entities in that they develop as their populations change as they migrate, integrate, and mature, just as industries which drive their economies do. Social conditions obviously undergo these changes, necessitating changes in laws to reflect its needs and aspirations. A key factor in any of such changes is unless there is social acceptance of them, a demonstrable failure will ensue, and in the case of revised laws, the law will become regarded as being irrelevant, with consequent lowered compliance.

So it is with firearm controls, as the law abiding strive to comply, but those who choose not to comply initially form the ‘grey’ market, from which firearms may, by theft or illegal transfer, move into the ‘black’ firearm pool (Thorp, 1997). Criminals, by definition, those beyond the law, are obviously not affected by compliance with these measures, needing only to await the non-compliance of others (Greenwood, 1973). Peel’s nine principals of policing held that the power of the police depends upon the willing cooperation of the public, and in this regard, if those affected by revised firearm control measures are to provide compliance, then the measures must first be seen to be effective.

The gross over simplification that more firearms equals more firearm-armed violence in a society cannot be sustained when the highly visible offence of homicide is examined. It is suggested that this holds good for most other forms of violent offending in society, particularly when it is remembered that the number of firearms per capita has increased by almost 20% as legitimate recreational opportunities for firearm use, and the number of licensed arms users have increased.

Firearm safety education, despite the onset of changes among the providers, must be considered to be effective when the annual casualty rate of unintentional shooting incidents continues to trend downwards, despite increasing numbers of licensed arms users. The idea that education, not legislation, is a better way of managing ills that are perceived in a society is never better displayed than by the results of this education measure, which although required by regulation, is largely implemented by the participation of skilled volunteers.

The placement of impediments to the private ownership of firearms, these taking the form of increased security, and higher fees for bureaucratic administration, is likely to be met by a decline in

lawful firearm possession, and an increase in firearm possession by those not authorised for it. Changes in the status of some firearms, besides being a reversion to focus upon the chattel, not the aberrant human user smacks of a determination to do something, anything, to be seen to be doing *something*. Such measures are doubly counterproductive in that they will require eventual enforcement attention, as well as facing an increased likelihood of intervention by emergency services when unintentional incidents, more likely when the untrained attempt to participate in firearm use.

On the evidence so far presented, the justification for tightening controls on firearm ownership is weak, and the absence of relevant evidence indicative of any such need is lamentable. Only two parties are calling for further restrictions on lawful firearm use, and one of these is charged with the task of maintaining controls upon unlawful use. Targeting licensed arms users is an easier option for police than the dealers and manufacturers of illegal drugs. However, licensed arms users are more likely to resent additional attention from the police when they have already undergone vetting for suitability for firearm ownership. They feel that the criminally involved should be given greater attention from the police because they are offending against drug laws as well as arms controls.

Urging further requirements upon the lawful users when no evidential linkage between these and the unlawful is presented is intellectually dishonest at best, and may be completely misleading, at worst. The other party seeking tighter controls is the news media, whose absence from formal processes of law making, although perhaps indicative of an intent to demonstrate independence, verges upon the irresponsible and is certainly ill-informed).

An alternative solution is clearly enforcement of existing laws, because it is inconceivable that current offending is any more inventive than that of a decade ago, and it is known that policing priorities have changed. A switch to the use of modern methods for catching old-fashioned criminal behaviour is therefore called for, not changes to laws when offending against current ones by licensed arms owners is minimal, and compliance with fresh laws will impose unacceptable burdens upon the law abiding, while criminals remain unconstrained.

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Appendix

Betrayal of trust between licensed arms owners and the police; or

- Do offence patterns reflect inadequacies in firearm safety training?
- In absence of reported/recorded offending by licensed arms owners, are police guilty of manufacturing/manipulating official statistics to point towards or suggesting greater offending with firearms;
- Establish if official data points towards any increasing trend in offending;
- Establish if police are differentiating between offences by licensed arms owners and firearm offences with only unlicensed or prohibited persons;
- Determine trends in overall offending patterns;
- Identify offence patterns in firearm-armed offending, and comparing these;
- Note levels of resourcing of police activities overall, and in management of firearm licensing system in particular, noting slow response times for:
 - arms licence renewals
 - granting of permits to import
 - issue of new arms licences
 - issue of other documentation as required by Act or Regulations
- Be prepared to promulgate suitable findings in widest possible arenas;
- Use these results to press the case for focussing upon those unlawfully in possession;
- Note that firearm-armed offending requires specific extra penalties upon conviction;
- In suggesting further controls upon firearm-armed offending, note that controls must gain public support otherwise the law will become regarded as an “ass”, and the laws require support through enforcement;
- Will be obeyed by a major portion of the population including potential and actual violent offenders;
- Do not require a decrease in the number of firearms in lawful circulation because these do not feature in firearm-armed violence;
- Measures must be socially cost-effective;
- Recall that the current law places the burden of proof upon the accused;
- And that people already vetted as being “fit and proper” are being subjected to further delays and strictures that appear to be harassment.
- Notable that knives feature more often than firearms in homicides, intimidation and threats, grievous assaults, than firearms do in these offences. Logically, registration of knives, if effective, might “control” more offences than firearm registration.
- Logically, if reducing the number of firearms in the community is thought likely to reduce violent offending in the community, then restricting the number of motor vehicles, and/or their use, should reduce the road toll.