

Sunday, 15 May 2011

**Submission on the
Arms (Military Style Semi-automatic Firearms and Import Controls)
Amendment Bill**

To the **Law and Order Select Committee**

This submission is from **Richard Lincoln**,

1. I am the applicant party to the legal proceedings referred to in this matter as **Lincoln v Police**.
2. **I wish to appear before the committee to speak on my submission.**
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SUBMISSION

Introductory points

1. I introduce my submission with a list of points that I believe are essential for the committee to understand if the committee is to have any hope of making sense of the Arms Act and the Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Bill:
 - 1.1. The phrase “military style semi automatic” is an invented nomenclature for a sporting firearm which has one or more features that were thought to be cosmetically similar to a real military combat weapon.
 - 1.2. The phrase is a legal definition invented in section 2 of the principle Act which does not apply in any jurisdiction except New Zealand.
 - 1.3. A firearm which is defined by the Arms Act to be a “military style semi automatic” **is a sporting firearm – it is not a military combat weapon.**
 - 1.4. The phrase is a legal fiction and has no common language meaning among the general public nor any agreed meaning within the licensed civilian gun owner’s community.
 - 1.5. The New Zealand defence force and the police are armed with real military combat weapons which, under the Arms Act, are classified as restricted weapons – **these defence weapons are not military style semi automatic firearms and are not classified as such.**
 - 1.6. Military combat weapons are not semi-automatic, they are fully automatic and have special features which are not found on a sporting firearm.
 - 1.7. The Lee Enfield .303 rifle owned the Hon Rick Barker was purpose designed and manufactured as a military combat weapon.
 - 1.8. The reason that sporting firearms, that had features considered to be military style, were restricted in 1992, was because a previous Police Commissioner (Jamieson) believed that the features (as now set out in the Act) caused the owner of such a firearm to take leave of his or her senses. It

is acknowledged by the writer that this sounds incredible and ridiculous but that is the historical truth to the 1992 amendments.

I **oppose** the intent of this bill because:

2. The Bill can be demonstrated to be counter-productive to the outcomes sought; as stated in the Police regulatory impact statement. In particular the Bill will facilitate regulatory provisions which will create uncertainty for licensed civilian gun owners.
3. The amendments to the principle Act proposed in the Bill run contrary to the purpose of the principle Act; to promote firearms safety; by facilitating regulations that will place restrictions on safety features of firearms.
4. There are better alternatives; alternatives that can achieve the outcomes stated as being sought by the police regulatory impact statement. The proposed amendments will not achieve the stated outcomes sought.
5. The amendments to the definitions of military style semiautomatic firearms are not required for any public safety reasons and unduly infringe on the rights and liberties of the writer and all other licensed civilian gun owners.
6. The Bill undermines the parliamentary process of statutory legislation and perverts the use of regulations; which are supposed to be used only for "housekeeping" and not substantial changes in law.
7. The Bill hands by-proxy powers to the commissioner of police and the executive of the police national headquarters and these individuals are not appropriate persons to be handed such powers because they are anti-gun proponents who care nothing for the rights and liberties of civilian gun owners.
8. The amendments proposed in the Bill will in practice allow the commissioner of police to continue and expand police anti-gun initiatives such as those that are currently being unlawfully imposed on licensed civilian gun owners.
9. The Bill is unconstitutional and in conflict with the Treaty of Waitangi, the Human Rights Act, New Zealand Bill of Rights Act and the Bill of Rights 1688.

10. The Bill will lead to a rise in the number of illegal firearms and thereby create a risk to public safety and security of New Zealand citizens.
11. Licensed civilian gun owners in New Zealand are deeply suspicious and distrusting of the commissioner of police, the police executive and the executive council, and I do not believe that they can or will comply with the regulations that will surely follow if the Bill is passed. It would be far better to enact statutory provisions which licensed civilian gun owners agree with, understand and can comply with.
12. There is no evidential link or rational reason to classify any sporting firearms as military style semiautomatic firearms. Semiautomatic sporting firearms that are (**only by dint of New Zealand law**) classified as military style semiautomatic firearms are not used in gun crime. The best outcome is the repeal of the 1992 amendments to the Arms Act rather than adding more fictitious and irrational difficulties to it.

I wish to make the following comments:

13. Clause 4 of the Bill introduces delegated regulatory powers that will allow the commissioner of police to persuade the executive council to continually reclassify sporting firearms as military style semi-automatic firearms, even if the effected firearms are not semi-automatic and / or do not have any military connotations, and I oppose this.
14. Clause 4 of the Bill is unconstitutional because in New Zealand, laws that have substantial consequences for the rights and liberties of New Zealander's must be enacted by Parliament in statutory legislation after proper and appropriate parliamentary scrutiny, whereby citizens, via the select committee and other processes, can have their say. Delegated regulations are supposed to be used for minor and inconsequential housekeeping, such as, in the Arms Act, fees charged for licenses and so on. The Regulatory powers proposed in clause 1 of the Bill go well beyond housekeeping and are therefore unconstitutional and an abdication of parliamentary sovereignty in favour of a police state. I do not want to live in a police state and I oppose this clause.
15. The objectives of clause 4 of the Bill, as set out in the police regulatory impact statement (that is, the clarification of what sporting firearms fall within the New Zealand legal definition of being a "military styled semiautomatic sporting firearm") are better

achieved by removing the safety feature of a “military pattern free-standing pistol grip” from the New Zealand legal definition of a “military styled semiautomatic sporting firearm.” I oppose clause four.

16. The objectives of clause 4 of the Bill, as set out in the police regulatory impact statement (that is the clarification of what sporting firearms fall within the New Zealand legal definition of being a “military styled semiautomatic sporting firearm”) are better achieved by deregulating the restrictions on normal magazine capacities and aligning the restricted capacity with international jurisdictions; ten cartridges. I note that since 1992 the Arms Act has placed a 15 cartridge limit on the magazines of .22 calibre semi-automatic firearms. No one with a 15 cartridge capacity magazine in a semi-automatic firearm has taken leave of their senses and gone on a shooting rampage. It is therefore well established that the magazine capacity level which, according to the belief of some senior police, causes a civilian gun owner to take leave of their senses, must be at least 15 rounds. This is one third greater than the 10 round limit which I propose. I oppose clause four.
17. Clause 10 of the Act is superfluous. The commissioner of police has no authority, and nor should he, to making a binding determination of what is, and what is not a military style semi-automatic firearm. Justice Mackenzie confirmed this in the legal action that I took against the commissioner when he tried to classify my sporting rifle as an MSSA. I oppose clause 10.
18. I will personally seek judicial review of all delegated regulations that attempt to classify my sporting firearms as military style semi-automatic firearms. I use my firearms responsibly and have done nothing wrong. I do not believe there is any reason to punish me with regulations that impinge on my rights and liberties.
19. I have read all the Hansard debates from the first reading of this Bill and it becomes patently obvious that all the ministers participating have little or no knowledge of the facts about firearms or the quasi-political police policy framework which licensed civilian gun owners have to endure.
20. I am a High Court endorsed expert in military style semi-automatic firearms, firearms generally and New Zealand gun control law. I do not own any military style semi-automatic firearms nor do I presently have any special interest in owning a military style semi-automatic firearm. I have some formal training in law and in particular

constitutional law. I remain at the service of the select committee, the legislature and the minister of police for the purpose of providing objective reasoned advice and evidenced facts on firearms and arms control policy.

I propose:

1st. That the amendments to the principle Act take the following form:

Military style semi-automatic firearm means any firearm excluding a pistol or restricted weapon, that after being loaded, fires, ejects, and chambers a cartridge with each pull of the trigger, and has any one or more of the following features;

- (a) a folding or telescopic butt:
- (b) a magazine that is capable of holding, or that, by its appearance, indicates that it is capable of holding;
 - (i) in the case of a magazine designed to hold rimfire cartridges of a calibre of 0.22 inches or less, more than 15 cartridges; or
 - (ii) in any other case, more than 10 cartridges:
- (c) bayonet lugs:
- (d) a flash suppressor

2nd. That there be no additional delegated powers of regulation by order in council added to the principle Act.

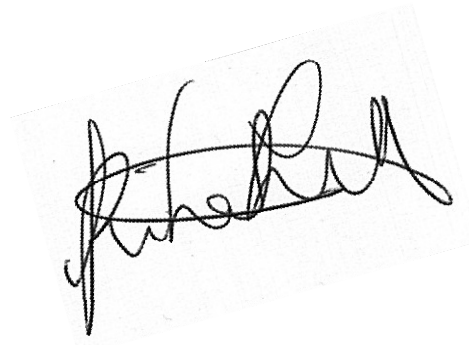
3rd. That, at least until some factual evidence and statistics are available there be no further restrictions placed on air-pistols.

4th. That, in accordance with the opinion of police (that firearms may not be held for the purpose of self defence) the purpose (Title) of the Act be amended to omit the word "weapons."

5th. That the committee consider the intent of the principle Act and the principle stated in the 1992 Hansard, and restated by the Hon Louisa Wall as "**ensuring that those who use firearms are able to do so and that their liberties are not at all compromised**" and in deliberating on this, consider suitable amendments to change the current landscape whereby the commissioner of police will not allow a responsible law abiding fit and proper licensed civilian gun owner to import a military style semi-automatic firearm unless a corresponding military style semi-

automatic firearm is forfeited to the commissioner in exchange, without compensation; thereby illegally extorting the permit applicant of several thousand dollars of private property.

Finally I should like to extend my gratitude to the Law and Order Select Committee for the opportunity to be heard and to participate, in the matters that directly impact on my rights and liberties, as a patriot and shareholder in the governance of my nation and its people.

A handwritten signature in black ink, appearing to read "Richard Lincoln", is written on a light-colored, slightly textured rectangular background. The signature is fluid and cursive, with a prominent horizontal line across the middle.

Richard Lincoln