

Philip Alpers
PO Box 90-227
Auckland 1030
New Zealand

14 November 1995

The Secretary for Justice
PO Box 180
WELLINGTON

Domestic Violence Bill: Invited Comments on Provisions Relating to Firearms

By opposing mandatory seizure of firearms following a protection order, police and some legislators seem inclined to deny the reality of gun-related violence as revealed by their own files. Denial should no longer be an acceptable reaction to any aspect of domestic violence.

Guns in Family Violence: Legal Weapons Pose the Greatest Risk

In June of this year, research data¹ obtained by the author from the NZ Police under the Official Information Act showed that, in all the firearm-related homicides in this country in the three years 1992-94:

- Of all the dead, 63% were shot during family violence, 91% of these with a legal firearm
- Almost all victims of firearm homicide (95%) were shot by a familiar person
- Nearly two-thirds of firearm homicide victims (and ten out of eleven female victims) were killed with a legal firearm from the collection of a licensed gun-owner
- Most firearm homicide victims were killed by a licensed gun-owner

In addition, a parallel study² showed that half the perpetrators involved in *non-fatal* misuse of firearms during domestic disputes were licensed gun-owners.

There should be nothing surprising about these figures. Where comparable jurisdictions have studied the same relationship they report similar proportions. In New South Wales, 62% of firearms seized in domestic violence incidents are legally owned.³ In Canada, 78.3% of gun-related domestic homicides were committed with firearms in the legal possession of licensed owners.⁴ Canada's Department of Justice study prompted the Canadian Journal of Criminology to report:

“...the statistically most common scenario for firearm homicide: a female victim killed in her home, with a legally owned gun, by a man she knows well.”⁵

Police Policy Advice Contradicts Police Data

Yet nearly four months after the publication of NZ Police data which confirmed the same pattern in this country,¹ Justice & Law Reform Select Committee chair Alec Neill MP is quoted as having told Parliament that there is no evidence to back mandatory seizure of firearms following protection orders, because:

“Police had told the committee that few domestic-related homicides were carried out by licensed firearms owners.”⁶

Asked about this contradiction, a police spokesman told legislators⁷ that the recent New Zealand research study was carried out using police figures for the wrong three years. He suggested that by removing the David Bain and Brian Schlaepfer multiple shootings from the survey’s findings a more representative result would be achieved.

What if the Bain & Schlaepfer Killings Had Never Happened?

It is unusual for statistical data to be adjusted to account for simple disbelief. Yet the issue is of such importance -- literally a matter of life and death to an unknown number of victims in future years -- that this submission will pretend for a moment that the country’s two most recent mass family gun killings did not occur. When the ten people shot dead in the Bain and Schlaepfer shootings⁸ are removed entirely from the police figures, the results are as follows:

- Of all the dead, 54% were shot during family violence, 86% of these with a legal firearm
- Almost all victims of firearm homicide (93.5%) were shot by a familiar person
- Most (52%) of firearm homicide victims (and six out of seven female victims) were killed with a legal firearm from the collection of a licensed gun-owner
- Most (54%) of gun homicide victims in family violence were killed by a licensed gun-owner

These temporarily adjusted figures seem no less indicative of the need for mandatory seizure of firearms following a protection order. In addition, the following should be considered:

- If our survey had covered the last five years instead of three (not possible due to the lack of police data), it would also have included the 13 deaths at Aramoana. Once again, David Gray was a licensed sporting shooter firing legal guns. It is highly likely that a longer survey interval would have been even less supportive of the current police position.
- Although protection orders would not have prevented some shootings it achieves little to set these cases aside. The point is that most gun victims are killed by licensed sporting shooters. For this reason, licensed gun-owners should be seen as a high-risk group in family violence, just as licensed drivers are accepted as the main target of road safety initiatives.

1995 Gun Homicide Data Also Supports Mandatory Seizure

Since the cut-off date for our survey on 31 December 1995, nine more New Zealanders have fallen victim to gun homicide. Of these, **55%** were shot during family violence and **67%** at the hands of a licensed sporting shooter.⁹ As the latter figure shows an increase of 14.5% on the previous three-year average, the 1995 gun homicide figures to date support the case for mandatory seizure even more strongly than those examined during our survey interval.

Armed Offenders Squad Data Reveals Major Problem in Some Areas

Twelve years ago, Deputy Commissioner of Police Ken Thompson told a reporter:

“Domestic violence accounts for 75% of all armed offenders squad callouts.”¹⁰

Under the Official Information Act the author has recently obtained data from 15 of 17 Police Armed Offenders Squads covering the year ending June 30, 1995.¹¹ These reveal that a surprisingly high proportion of Squad callouts in some areas are to events in which the weapon is held by a licensed sporting shooter. The highest proportion of licensed perpetrators located in callouts where firearms were involved occurred in the following nine Squad areas:

Greymouth	75% of perpetrators where firearms were involved held a gun licence
Invercargill	57%
Palmerston North	50%
Hamilton	45%
Napier	40%
Nelson	40%
Christchurch	40%
New Plymouth	37.5%
Dunedin	33%
15-Squad average:	20%

Thus half of this country's Armed Offenders Squads report that between one-third and three-quarters of the gun-carrying offenders they encounter are licensed sporting shooters with legal guns. An unreported proportion of these events involve family violence, but given the 1983 figures quoted above it seems that domestic disputes may still be the cause of a majority of AOS callouts.

The Harmless Gun

The evidence presented here shows that most gun-related homicide is committed with the so-called “harmless gun.” This is the legally held sporting weapon lying in wait for the next opossum in the orchard, or the duck-shooting season. It is also the most common category of gun in New Zealand. Mandatory seizure on a protection order would remove from the home (the highest place of risk) precisely those guns which are most likely to be used in family violence, during the period of highest risk to the applicant.

Seizure of Firearms Should Be Blamed on the Law, Not the Woman

The responsibility for removing a man's guns should be shouldered by the state, not fobbed off on the applicant for a protection order, who by definition is in a state of vulnerability.

As police will confirm, seizure of firearms strikes at the core of some men's self-esteem more than many other sanctions. The knowledge that his former partner has specifically requested that his weapons be confiscated is likely to inflame the situation for some men more than "the law" taking them away automatically.

Where applicants have only just summoned up the courage to ask for the state's help to protect their children and their home, many will surely see the additional option of firearm removal as "going too far" or "too much of a risk" -- thus unwittingly putting themselves in peril.

Accordingly I ask that the applicant be relieved of the burden of deciding that the respondent's guns be confiscated, and that the Domestic Violence Bill provide for the mandatory seizure of firearms immediately following a protection order.

Burden of Proof

The current Bill puts the burden on the applicant to "prove" that the weapons provision is a necessary addition to the protection order. Proving dangerousness is a notoriously difficult task even for highly skilled forensic psychiatrists who concede that their best predictive accuracy in cases of firearm violence may only be in the range of 40-60%.¹² Even on the basis of probabilities, expecting an applicant to prove dangerousness leaves a wide latitude for error.

Once again, the respondent is bound to conclude that his guns are being seized "because of something she said," rather than a statutory requirement applied in all such cases.

Accordingly I ask that the burden of proof remain with the respondent, as below.

Fit and Proper

As a society we have already decided that a firearms licence is not a right, but "a special privilege granted by the community to people who can show that they are sensible, responsible and law abiding."¹³ Current arms legislation clearly puts the burden on gun owners to prove to the satisfaction of police that they are "fit and proper persons,"¹⁴ not only on first application for a licence but also at five-year relicensing intervals. Both police and the courts have established guidelines and precedent for judging such applications and deciding their worth. These principles and procedures could be extended to protection orders with relative ease.

After mandatory seizure of both licence and weapons a gun owner should be required to prove, by means of a standard application for renewal of a firearms licence, that he or she remains a fit and proper person to possess firearms in a time of domestic strife.

At this juncture, at the time of highest risk and with a copy of the protection order before them, police would have the opportunity to re-assess the respondent in the light of recent events. To avoid adding insult to injury the normal relicensing fee could be waived.

If satisfied that the cost of refusal of a licence would be too high for the respondent to bear for any good reason (i.e. earning a living), and that the risk to the public (and specifically to the applicant) is not serious enough to warrant a refusal of licence, police could support the respondent's application for re-licensing. With the court's approval this would then be granted, along with the return of all or any guns deemed prudent or reasonable.

Alternatively, police and the Family Court could agree that a new licence should not be granted for a chosen period. As in the current system, continued refusal by police to reinstate a revoked licence for any reason could still be subject to appeal in the District Court.

This procedure would not require any new definition of "fit and proper," the phrase being already wide enough to allow police or the court to refuse re-licensing on the grounds of recent family violence, threats or harassment. Police could approve new referees for the re-licensing application with a view to canvassing the opinion of those most able to judge the applicant/respondent's current risk to the community if armed. The testimony of the applicant for the protection order would play an important part in any decision.

The procedure has the potential to fit seamlessly into the existing police re-licensing system, assisted by established confiscation routines already used in cases where guns are seized on the grounds of insecure storage, then held at the station while owners upgrade their security to required standards.

Accordingly I ask that the Bill provide for mandatory revocation of licence wherever a protection order is issued, followed by the right of the respondent to apply immediately to police (and by extension to the court) for re-licensing within the existing regime.

The Workload

This may have been overestimated by police, who predict that 1,600 to 3,000 protection orders each year will involve licensed gun owners.¹⁵ Although at the end of 1994 there were 300,000 licensed gun owners in New Zealand,¹⁶ the current police relicensing programme is progressively reducing that number. In the early months of this year alone, 20,000 licences were revoked for failure to renew.¹⁷ Police have predicted that by the end of 1997, perhaps only 200,000 to 250,000 licensed gun owners will remain.¹⁸

In New Zealand, female perpetrators of firearm-related family violence are extremely rare. Only 0.8% of women of licensing age held a firearms licence in 1993.¹⁹ The base population from which almost all respondents to protection orders will come is this country's 1.3 million males of firearm licensing age.²⁰ Taking the midpoint of the police prediction for licensed gun

owners in 1998 (225,000), this means that the proportion of adult males who hold a firearms licence is likely to be only 17% in the year in which protection orders may reach a peak of 9,000 applications per annum.

Unless gun owners are more likely than others to be cited as respondents in protection orders, this implies that only 1,530 of the 9,000 predicted applicants per year will be licensed for firearms in 1998. Of these, some will not currently own a gun and seizure will not be required.

With nearly 400 police stations in New Zealand, the average number of mandatory firearm seizures would be less than one every three months for each station.

Police currently process up to 60,000 firearms licensing applications each year. Even if 50% of respondents re-applied for their licence the added demand would be just 1.2%.

Conclusion

The myth still holds in our society that there are good guns in the hands of good people and bad guns in the hands of bad people, and that only the latter should be inconvenienced.

In reality, a “good” (legal) gun is *more* likely to be used in lethal family violence than any other firearm -- if only because there is one legally owned gun for every home in New Zealand.²¹ There are no more risk-free guns and gun-owners than there are risk-free cars and drivers.

To recognise this, the Domestic Violence Bill should incorporate mandatory seizure of firearms following protection orders -- because it's too much of a risk not to.

Thank you for the opportunity to make this submission.

Yours sincerely,

Philip Alpers
Auckland

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- ² Gardiner J, Norton R & Alpers P. *Firearm Misuse in New Zealand: Licence Status of Perpetrators and Legality of Firearms*. Paper presented to the Public Health Association of NZ conference, 28 June 1995.
- ³ Bradley D, Nolan T & Sutton J. *The Police Response to Violence in the Private Domain*. Australian Institute of Criminology, 16 June 1993, Annexure 1, p14-15.
- ⁴ *Domestic Homicides Involving the Use of Firearms*. Department of Justice, Canada & Dansys Consultants Inc. March 1992 p26.
- ⁵ Boyd, N. Bill C-68: *Simple Problem, Complex Solutions*. In: Control of Firearms. Canadian Journal of Criminology, April 1995; 37:2:217.
- ⁶ *Committee takes stand on firearms confiscation*. The Dominion, 11 October 1995.
- ⁷ NZ Police advice to the Minister of Justice, November 1995.
- ⁸ Although Brian Schlaepfer killed six members of his family then himself, and David Bain killed five, two of Schlaepfer's family died of knife wounds. These victims were excluded from both sets of figures.
- ⁹ Police National Headquarters have advised that data from their National Homicide Monitoring Programme will no longer be provided to the author. Access is now refused even to a list of dates and locations of 1995 homicides. (Durville C, O/C Research & Statistics Section, Police National Headquarters, personal communication, 10 November 1995). Accordingly this year's firearm homicides were located from media reports and the details confirmed during interviews with prosecutors, defence counsel, court reporters and/or police officers involved in each case. If homicide charges have been laid against an offender but not reported in the press, that case will have been omitted.
- ¹⁰ Thompson, K. Deputy Commissioner, NZ Police. *NZ Listener* 28 May 1983.
- ¹¹ Two squads declined to provide data and referred the request to Police National Headquarters. However PNHQ's centrally issued AOS statistics continue to vary widely from those provided directly by Police Districts. The figures quoted here were all provided in writing by officers in charge of each of the 15 squads responding.
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- ¹³ Macdonald R N. Commissioner of Police. *What you need to know about the new firearms laws*. Police leaflet to all households, NZ Police National Headquarters, Wellington 1993.
- ¹⁴ Arms Act 1983, Arms Amendment Act 1992 and Arms Regulations 1992.
- ¹⁵ NZ Police advice to the Minister of Justice, November 1995.
- ¹⁶ Coote, Inspector J. Firearms Licensing Coordinator, New Zealand Police National Headquarters, Wellington. Personal communication, 19 June 1995.
- ¹⁷ Coote, Insp J. *Police Cancel 20,000 Firearm Permits*. NZ Herald, 7 August 1995.
- ¹⁸ Coote, Insp J. Personal communication, 30 June 1995.
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- ²⁰ *Demographic Trends 1994*. Males >16 yrs. Dept of Statistics/NZ Census, 1995.
- ²¹ Alpers P & Morton B. *Firearm Homicide in New Zealand*, 28 June 1995 p1.