

2 December 2015

Legal Opinion

I have been asked to comment by various licenced firearms dealers around New Zealand concerning the new firearms mail order processes and form that has recently been distributed by the New Zealand Police.

It seems to me that there are some unresolved issues and problems with the approach taken in the production of these new policies and firearms mail order form. My notes and observations are set out below in no particular order and are designed to promote thought and discussion in regards to these outstanding issues.

Under s 43 (a) of the Arms Act 1983, a purchaser can produce their own form and have any member of police sign it. It does not need to be on a police form; that is quite incorrect.

s 43 (a) does not say "on a form provided by the police" as it does in s 30 (a) (2). It certainly does not say that the police will provide the form.

At no point does s 43 (a) refer to that member of police being an Arms Officer as it does for example in s 29 (1) (b).

It is very clear from s 43 (a) that the onus for compliance is on the seller to be satisfied that the form is a "written order", "signed by the purchaser" and "endorsed by a member of police" as to the fact that 1) the licence has been inspected, and 2) that the person is a fit and proper person to purchase that firearm and/or ammunition.

There is no specific requirement or statutory penalty for a purchaser who wishes to produce their own form and have it signed by a "member of police" and then provide it to the seller directly. The seller, if satisfied, has not committed an offence if they receive the form directly from the purchaser.

There is no lawful requirement in the Arms Act for the seller to have received a form directly from the police and nowhere in s 43 (a) does it use the words "the commissioner may..." at any time, so therefore this section is not open to modification or policy creation by the commissioner. It would appear that it requires legislative change to achieve this.

If that member of police refuses to sign it, not for one of the reasons cited in s 43(a) (1), but for an unlawfully imposed police internal policy, then it would be ultra vires and a breach of statutory duty.

The requirement for dealers to "keep mail order records" or forms seems to be unlawful and does not appear in the Arms Act or Regulations.

This all seems to be a reaction to an issue that was never a real problem.

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