

HELD AT THE HIGH COURT
AT AUCKLAND

CIV 2025-404-0012562

IN THE MATTER

of an appeal pursuant to
section 64 of the Arms Act
1983

BETWEEN

GREGORY CARVELL

of Howick, Auckland

Appellant

AND

THE COMMISONER
OF POLICE

Respondent

SUBMISSIONS OF COUNSEL FOR THE APPELLANT

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MAY IT PLEASE THE COURT:

INTRODUCTION

1. Mr Carvell is a licenced firearms dealer.
2. Mr Carvell is licenced and holds endorsements to possess and sell all categories of firearms and ammunition in accordance with the Arms Act 1983.
3. Mr Carvell owns and operates a retail store in Penrose and in addition runs and operates the largest collector firearm auction house in New Zealand “Carvell's Auctions”.
4. This auction house has been owned and operated by the Carvell family for 35 years.
5. As a firearms dealer for 20 years, Mr Carvell is very well known throughout New Zealand.

BACKGROUND

6. Mr Carvell filed an Originating Application of Appeal pursuant to s 62B of the Arms Act 1983, reviewing a decision made by the Respondent to refuse an application to possess arms items, being a number of prohibited magazines.
7. Mr Carvell was self-represented at the hearing.
8. The hearing occurred at the Auckland District Court on 12 February 2025.
9. The decision was issued on 14 April 2025 [Gregory Carvell v The Commissioner of Police (2025) NZDC4894].

THE APPEAL ON QUESTIONS OF LAW

Part 1

10. Was the Judge incorrect in ‘expanding’ the meaning of “appropriate” in s35A(2) to examine the ‘appropriateness’ of matters not directly related to the Applicant’s fitness to possess the said items?

Part 2

11. Has the Judge erred in accepting the words “compensate” and “amnesty” can form a reasonable part of the police’s discretion when they are not contained in sections 35A, 59A or Regulation 29B?

Part 3

12. Has the Judge erred by stating that a dealer failing to make a disclosure about the identification of the person surrendering the arms items, can then be used as a reasonable factor in the exercise of the police’s discretion in s 35A(2), or is this contrary to the anonymity contained in s 59A(2) making it an unreasonable exercise of discretion?

PART 1

13. Was the Judge incorrect in ‘expanding’ the meaning of “appropriate” in s35A (2) to examine the ‘appropriateness’ of matters not directly related to the Applicant’s fitness to possess the said items?

14. Section 35A states:

35A Issue of permit to possess prohibited firearm or prohibited magazine

(1) A permit to possess a prohibited firearm or prohibited magazine may be issued only by a member of the Police acting under a direction of the Commissioner.

(2) A permit to possess a prohibited firearm or prohibited magazine may be issued if the applicant holds a dealer’s licence or firearms licence that bears an endorsement made under section 30B permitting the applicant to possess a prohibited firearm or prohibited magazine and the member of the Police is satisfied that it is appropriate for the applicant to possess the prohibited firearm or prohibited magazine.

(2A) A permit may not be issued under this section to an applicant acting in their capacity as an employee of a licensed dealer.

(3) Unless sooner revoked, a permit issued under this section remains in force for the period specified in the permit, which must not exceed 1 month.

(4) A permit may at any time be revoked by a commissioned officer of Police.

15. The purpose of the Arms Act 1983 should be considered in regards to the interpretation of the word “appropriate”.
16. The purpose of the Arms Act is for the safe use and control of firearms, as they exist today and is outlined in section 1A:

1A Purposes of this Act

(1) *The purposes of this Act are to—*

- (a) promote the safe possession and use of firearms and other weapons; and*
- (b) impose controls on the possession and use of firearms and other weapons.*

(2) *The regulatory regime established by this Act to achieve those purposes reflects the following principles:*

- (a) that the possession and use of arms is a privilege; and*
- (b) that persons authorised to import, manufacture, supply, sell, possess, or use arms have a responsibility to act in the interests of personal and public safety.*

17. All concerns expressed in section 1A are in the present and future possession and control of various arms items.
18. Nothing in section 1A suggests prima facie that it is concerned with the Arms Item's¹ history and past life.
19. It primarily concerns itself with vital questions to answer, such as, who is a fit and proper person? Who may possess certain categories of firearms, pistols, prohibited firearms, restricted weapons and prohibited magazines and parts.
20. Because the law in regard to firearms control has changed approximately 39 times in the last 5 years², numerous items that were previously held lawfully by individuals are now no longer lawful to possess without a specific endorsement on that persons firearms licence.
21. Some items, such as the prohibited magazines which are the central items of this appeal, were totally unregulated prior to 2019 (October 2018).
22. The Arms Act at any one given point in time cannot and does not apply retrospectively. Because of this it is axiomatic that the Arms Act provisions are concerned with the “now”, the “present” and the “future” of the possession of firearms and arms items, moving forward and not backwards.
23. A simple example is that prior to the 1992 amendment it was lawful to buy sell and possess military-style semi-automatic firearms with large capacity magazines on a standard firearms licence. In 1992 this changed and these firearms were categorised as MSSA's (military-style semi-automatic) and for the first time required a special endorsement, special security and a permit to possess issued each time the item was bought

¹ Arms Item, as defined in s2 of the Arms Act 1983.

² Arms Act 1983 - 20 times when taking into account changes, amendments and rolling commencements of sections of the Arms Legislation Act 2020, and 18 amendments to the Arms Regulations 1992.

or sold. However Hi Capacity magazines were still unregulated.

24. The word “appropriate” is referring to the prohibited magazine (or prohibited firearm) as it exists now and how that item must now be dealt with in an appropriate manner.
25. That is, to ensure that the prohibited magazines’ future is secured and lawfully dealt with.
26. The word “appropriate” should not and cannot reasonably mean that any previous state or event in the items history, in some case going back over 100 years³ or more, can be seen as a reason to declare that it is not “appropriate” for an endorsed and licenced person to take possession of that item.
27. It is important to note that in s 35A it seems to focus on the applicant themselves for the appropriateness, rather than on the object being applied for, as it states “*that it is appropriate for the applicant*” to possess the prohibited firearm or restricted weapon etc.
28. This section is generic in nature, and refers to both a licenced dealer and also a general member of the public who holds an endorsement.
29. While a licenced dealer can, in effect, possess all arms items under their licence, a licenced and endorsed member of the public cannot.
30. A person may hold a firearms licence with an endorsement for being a member of a pistol club and competing in pistol shooting competitions.
31. These “B” endorsements only allow them to own, possess and use pistols approved by Pistol New Zealand for competitions.
32. In this case, and before they as the applicant for a permit are granted one, an assessment is made as to whether the item is appropriate for that person with that licence and endorsement to possess.
33. For example, if this general member of the public who only held this “B” endorsement applied for a restricted weapon or a sub machine gun, then clearly it would not be appropriate for this person to be granted a permit to possess this item.

³ As an example, a Winchester 1866 lever action firearm (Yellowboy), due to its magazine capacity being 15 rounds, it is now defined as a prohibited firearm.

34. Whereas a general member of the public who holds a “C” endorsement (Collector) can possess these items, and so it would be appropriate for them to possess the items (rocket launcher , sub machine gun etc).
35. Mr Carvell has been a licenced firearms dealer for the last 20 years and has endorsements made for him as an appropriate person to possess prohibited magazines and firearms pursuant to s30B of the Arms Act 1983⁴

30B Power to make endorsement in respect of prohibited firearm or prohibited magazine

(1) On receiving an application under section 30A, a member of the Police may, subject to any direction of the Commissioner, make an endorsement on the applicant’s firearms licence or dealer’s licence permitting the applicant to possess a prohibited firearm or prohibited magazine if the member of the Police is satisfied that—

- (a) the applicant is a fit and proper person to possess a prohibited firearm or prohibited magazine to which the application relates; and*
- (b) it is appropriate for the applicant, in their capacity as an exempt person, to possess a prohibited firearm or prohibited magazine.*

36. There is no dispute that Mr Carvell is already considered an “appropriate” person to possess prohibited magazines and firearms as in s 30B (1) (b) above.
37. The same test applies (fit and proper and appropriate) when a person (any licenced person) applies for an endorsement (s30B) or a permit to possess a prohibited item (s 35A).
38. Mr Carvell is not treated differently than any other member of the public who has an endorsement and applies for a permit to possess under s 35A.
39. It can be argued that ‘appropriateness’ of the person who is to take possession of that prohibited item should take into account:
- i) if the person applying has the correct endorsement (s30B);
 - ii) if they have the necessary security for that category of firearm⁵ they are applying for.
 - iii) if the firearm in questions fits within their requirements⁶.
 - iv) if the firearm is properly marked with an identifying serial number and recorded.⁷

⁴ Also endorsed for all other categories of firearms, collectors, pistols and manufacturing.

⁵ Arms Regulations 1992, Regulation 28.

⁶ Being a bona fide collector, theatrical armourer, pest controller etc.

⁷ Regulation 27, Arms Regulations 1992.

40. Mr Carvell has been a licenced and endorsed holder for 20 years. He holds an endorsement made under s 30B for the possession of prohibited magazines.
41. It would therefore appear that Mr Carvell is exactly the lawfully entitled person who has been identified as being, and accepted as, an “appropriate” person to possess these items by the Respondent.
42. The use of the word “appropriate” first appeared in this section after 2019.
43. There were numerous changes to the arms legislative regime after the Christchurch mosque shootings in 2019.
44. This saw changes to many parts of the Arms Act 1983.
45. The police had, for 20 years previously, an Arms Manual (2002)⁸ which was an internal document for their policies, and guidance and requirements to the numerous arms officers throughout New Zealand.
46. This was a living document and changed through that time as policies changed.
47. Many of the policies and lessons contained in the Arms Manual were incorporated into the Arms Act (via the Arms Legislation Act 2020).
48. To this point it is important to note that the only reference to “appropriate” in the police Arms Manual appears in section 4 at ‘4.1 Permits to Procure’. This outlines the requirements and guidance for the issue of a permit to procure (possess).
49. At paragraph 4.1 (4) it states “*permits to procure may only be issued to persons with the appropriate endorsements*”. At no other point in the police Arms Manual is the word “appropriate” referred to in any context.
50. It is submitted that the addition of the word appropriate to s 35A reflects the main requirement for the issue of an endorsement under s 30A. In this way it is a further check on the licencing status, endorsements and their requirements of the person who is applying for the permit, rather than the history of the item itself.

⁸<https://fyi.org.nz/request/5014/response/16479/attach/html/9/Arms%20Manual.pdf.html>

51. This is supported also by the fact the s 35 does not contain the word “appropriate” as a requirement for the granting of permit to possess for a pistol and restrict weapon, at all.
52. As outside of a person holding a prohibited firearm or restricted weapon as a bona fide collector, certain categories of prohibited firearm holders, specifically pest control endorsement holders, can still use prohibited firearms.
53. However the firearms for pest control operations must be suitable for the specific purposes to which those individuals have received their endorsement for.
54. The addition of the word “appropriate” in s 35A is a further check to make sure that an individual who is actually live firing these prohibited firearms are doing so within the confines of their endorsement for culling animals or pest control of rabbits goats, deer and possums.
55. As not all prohibited firearms and magazines⁹ would be necessary and suitable for the execution of their employment.¹⁰

PART 2

56. Has the Judge erred in accepting the words “compensate” and “amnesty” can form a reasonable part of the police’s discretion when they are not contained in sections 35A, 59A or Regulation 29B?
57. The Judge has erred in allowing the Inspector’s discretion to take into consideration the fact that “these items should have been handed in during the “*buyback period*” and “*compensation during the buyback period is no longer available*”.
58. Nowhere in sections 35A or 59A or regulation 29B is any reference at all made to the right of the person applying for an endorsement or a permit to be limited in any way by past compensation or buyback schemes.
59. At paragraph 84 the Judge states “ *there is also merit in Inspector Crawford’s evidence that if the intent of Parliament was to compensate owners of prohibited items during a specified buyback period, then it is quite wrong for owners to be compensated through the dealer acting as an intermediary for the owner*”.

⁹ For example, an AK47 or a 100 round drum magazine, would not be necessary “appropriate” for pest control operations.

¹⁰ For example, employed by the department of conservation.

60. The concept of “they have missed their chance for compensation” therefore they should not be able to “profit” from their “illegal possession”¹¹ seems contrary to parliament’s intention in passing s 59A and regulation 29B.
61. The intention is to encourage the removal of unlawful items from the population by any means necessary.
62. Regulation 29B contemplates this very scenario:

29B Provisions relating to surrender of firearms

- (1) *If a firearm, airgun, pistol, pistol carbine conversion kit, prohibited item, or restricted weapon is surrendered by a dealer under section 59A of the Act, the Police, after establishing that there is no lawful owner of the item and that it has not been involved in a crime, may return the item to the dealer if appropriate in the circumstances.*
- (2) *The return of any item is subject to any conditions imposed by a member of the Police by notice in writing and agreed to by the dealer.*
- (3) *In the case of a prohibited firearm, pistol, pistol carbine conversion kit, or restricted weapon, the return of an item is also subject to the condition that the dealer holds the necessary permit to possess the item and is subject to any conditions of that permit.*

Regulation 29B: inserted, on 1 February 2022, by regulation 42 of the Arms Amendment Regulations 2021 (SL 2021/434).

63. The “appropriate under the circumstances” must relate directly to the type of item it is, its categorisation, and an assessment that the dealer has the appropriate licence and endorsements for this item to be returned to them.
64. This return of items to the dealer contemplates that they are the next best owner of the property.
65. This also must contemplate that the dealer will be selling or disposing of the item as they choose within the confines of the law to the legitimate, licenced market. This movement is highly desirable as it is away from a Grey or Black market to a lawful and legitimate one.
66. Regulation 29B does not mention or discuss the restriction on a future sale of the item by the dealer. It certainly does not have any cross reference to the buyback or compensation scheme run by the police in 2020-2022.
67. For most dealers in New Zealand who receive these “hand ins” from the public, often 2-3 times a week, there is a real and actual cost for them to then transport the firearm to a suitable police station, as not all police stations have the facility to store received firearms and parts.

¹¹ Paragraph 22 of Inspector Crawford’s Notice of Refusal.

68. This can result in a staff member of the dealer spending up to ½ a day each week to process hand ins from the public.
69. Regulation 29B clearly acknowledges this by allowing the dealer to sell the item and potentially recoup the cost to his/her business in doing what can be seen fairly as a public service.
70. Without this ability licenced dealers will not be in a position to accept dealer hand-ins, resulting in those prohibited firearms, pistols and parts staying at large within the unlicenced and uncontrolled “Black” or “Grey” marketing portion of society.
71. This is a serious public safety concern.
72. The expression used by the police and the Judge was the word “*to compensate the owners*” of the magazines (para 84).
73. If by the lawful sale in the open and fluctuating market to licenced and endorsed persons, and after the recovery of costs (employee time etc.) is paid to the dealer for the sale, the remaining proceeds of sale get given to the owner, this appears to be incorrectly termed as “*being compensated*”.
74. It is confusing the terms, as it appears to link the previous buyback scheme and compensation provisions (contained in schedule 1 of the Arms Act 1983) with a genuine sale of a personal property item (owned by the dealer).
75. The use of the word “compensation” in this context appears to be incorrect and a mis-statement by police.
76. The Judge has focused on this word “compensation” in his decision, allowing it to form a part of the Inspector’s discretion to refuse.
77. For the purposes of the Act’s requirement, the licenced firearms dealer is the “best lawful owner” of the items. If, as laid out in regulation 29B, another lawful owner cannot be established then the item may be returned to the dealer.
78. It is impossible to establish the “owner” of items like these magazines, as they have no serial number or identifying marks at all, unlike an actual firearm.
79. The law has not kept up with the changes in status of these items.

80. The Judge has allowed the compensation and amnesty provisions, long passed, to form an intrinsic and critical part of the exercise of the Inspector's discretion.
81. Parliament has not chosen to make any reference or amend section 59A or 29(b) so that the previous amnesty and buyback scheme are a hindrance to the functionality and workability of the dealer hand in process.

PART 3

82. Has the Judge erred by stating that a dealer failing to make a disclosure about the identification of the person surrendering the arms items, can then be used as a reasonable factor in the exercise of the police's discretion in s 35A(2), or is this contrary to the anonymity contained in s 59A(2) making it an unreasonable exercise of discretion?
83. The Judge at paragraph 82 states "*the difficulty with Mr Carvell's argument is it ignores the clear discretion which is given to police and attempts to intervene as a dealer in the process of assessment of the owner and history of the prohibited items.*"
84. The Judge appears to be referring to the enquiries that the police make as outlined in section 59A and in regulation 29A.
85. However this "intervention" is a protected statutory right, as Mr Carvell has no obligation and does not need to identify the owner or "history" of the items being handed into him, and so there is not an attempt on his behalf to "intervene" in the police's enquiries.
86. The Judge has erred in referring to "history"; this is not what section 59A or 29B require the police to examine.
87. This term "history" has a different meaning and is much broader and unfettered than the restriction envisaged by parliament in using the specific words in s 59A.
88. Parliament has wisely limited the enquiries by police to "whether it has been used in a crime" and what is the "ownership".
89. This relates to enquiries by police to check simply that the firearms (now arms items) are not stolen or used in the commission of an offence.

90. To add the word “history” is an entirely different level of enquiry and parliament has purposefully limited that enquiry, as a firearm’s “history” could go back over 150 years (eg. a 1860 Henry rifle now defined as a prohibited firearm).

The wording in section 59A and regulation 29

91. A vital component long recognised by parliament is the anonymity guaranteed to persons handing firearms to a licenced dealer.

92. It however appears the Judge has accepted the exercise of Inspector Crawford’s decision to refuse to issue a permit to Mr Carvell on the basis that “*he has chosen not to disclose the identity of the persons*” and has “*failed to identify*” and “*has satisfied himself as to the origins of the items*”.

93. The Judge has erred in finding the fact that Mr Carvell did not disclose the identity of the person handing in the prohibited items as a justifiable reason for the Inspector to refuse to issue the permit to possess.

94. At paragraph 83 of the judgment the Judge states “*Where vital information is not provided such as the history of the prohibited items including details of the owner, it is difficult to understand, in these circumstance it would be appropriate for the police to grant permits and endorsements.*”

95. This appears to be contrary to law as the entire purpose of s 59A, working with section 10 of the Arms Act 1983¹², is to allow the dealer to receive items handed in to them without providing a “history” or any ownership details to the police at all.

96. Once again the word “*history*” is too broad a term, as it is limited to past criminal use or if it has been stolen, and who is the best owner.

97. In reality for un-serialised and unmarked magazine is impossible to ascertain.

98. The anonymity contained in the Arms Act for the purposes of s 59a are contain in s 59A (as above) sections 10 and 12.

99. Section 12 of the Arms Act 1983 states:

¹² Condition and requirements for dealers to keep records in a dealer’s book.

12 Record of dealings by licensed dealers

(1) A licensed dealer must keep at the place of business referred to in their licence a book that records the particulars prescribed by regulations made under this Act relating to—

- (a) the transactions conducted in the course of carrying on a dealer activity; and*
- (b) the arms items and ammunition received, sold, supplied, or manufactured in the course of carrying on their business.*

(1A) A licensed dealer who keeps their book under subsection (1) in hard copy form must retain the book for at least 10 years from the date of the last entry in the book.

(1B) A licensed dealer who keeps their book under subsection (1) electronically must retain each electronic record for at least 10 years from the date on which the record is entered.

(2) Every licensed dealer shall at all times—

- (a) permit any member of the Police to inspect and make copies of any entries in the book so kept by him pursuant to subsection (1); and*
- (b) afford, on demand, to any member of the Police all further information in his possession with respect to any dealings by him relating to firearms, airguns, pistols, pistol carbine conversion kits, prohibited items, or restricted weapons; and*
- (c) permit any member of the Police to inspect—*
 - (i) any firearms, airguns, pistols, pistol carbine conversion kits, prohibited items, or restricted weapons in his possession; and*
 - (ii) the premises in which, and the conditions under which, his stock of firearms, airguns, pistols, pistol carbine conversion kits, prohibited items, or restricted weapons is kept.*

(3) Despite subsection (1), a licensed dealer need not record particulars under that subsection if—

- (a) the particulars are declared by regulations made under section 74 to be exempt from the requirement in that subsection; or*
- (b) the dealer provides the particulars to the Police for inclusion in the registry in accordance with the regulations.*

(4) A licensed dealer commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding \$10,000, if the dealer, without reasonable excuse, contravenes this section.

(5) Subsection (4) is subject to section 59A(2).

100. Section 10 of Arms Act 1983 states:

10 Restriction on possession of prohibited firearms, prohibited magazines, pistols, restricted weapons, and pistol carbine conversion kits

(1) A licensed dealer may not take an arms item that is a prohibited firearm, prohibited magazine, pistol, restricted weapon, or pistol carbine conversion kit into their possession for the purpose of carrying on a dealer activity unless the licensed dealer—

- (a) is the holder of a dealer's licence that—
 - (i) specifies that the dealer may carry on that activity in respect of a prohibited firearm, prohibited magazine, pistol, restricted weapon, or pistol carbine conversion kit; and
 - (ii) bears an **appropriate** endorsement made under section 30 or 30B; and
- (b) either—
 - (i) obtains the arms item under—
 - (A) a permit to import issued under section 18 or 18AA; or
 - (B) a permit to possess issued under section 35, 35A, or 35AAA; or
 - (ii) manufactures it with the written approval of the Commissioner under section 6B(2).
- (2) A licensed dealer may not take a prohibited part into their possession for the purpose of carrying on a dealer activity unless the dealer obtains it—
 - (a) from a holder of a firearms licence that bears an endorsement made under section 30B permitting the holder to possess a prohibited firearm; or
 - (b) under a permit issued under section 18; or
 - (c) from another licensed dealer whose dealer's licence bears an endorsement made under section 30B permitting the dealer to possess a prohibited firearm.
- (3) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding \$10,000, if the person, without reasonable excuse, contravenes subsection (1) or (2).
- (4) Subsection (3) is subject to section 59A(1).

101. There is no statutory requirement for Mr Carvell to provide any information about the arms items handed into to him when these items are surrendered to police “for inspection and enquiries” to be made.
102. For restricted weapons, prohibited firearms (previously MSSAs) and pistols there is a serial number which can be examined in records such as past dealers records, import permits, and permits to procure (now possess).
103. The law has now expanded to require that magazines that did not previously require a firearms licence to possess now need a firearms licence, and a large capacity magazine requires a serial number to be placed on the magazine and a permit to possess it.
104. Mr Carvell does not get serialised magazines handed to him via section 59A at any time.
105. This makes the inspection and enquiries to be made by police very limited on these unmarked magazines.
106. The specifics of the enquiries made by police are contained in Regulation 29B.

29B Provisions relating to surrender of firearms

(1) If a firearm, airgun, pistol, pistol carbine conversion kit, prohibited item, or restricted weapon is surrendered by a dealer under section 59A of the Act, the Police, **after establishing that there is no lawful owner of the item and that it has not been involved in a crime**, may return the item to the dealer if appropriate in the circumstances.

(2) The return of any item is subject to any conditions imposed by a member of the Police by notice in writing and agreed to by the dealer.

(3) In the case of a prohibited firearm, pistol, pistol carbine conversion kit, or restricted weapon, the return of an item is also subject to the condition that the dealer holds the necessary permit to possess the item and is subject to any conditions of that permit.

DISCUSSION

107. The exercise of discretion must be reasonable and based within the reasonable confines of the law.
108. The words “*is appropriate*” for the use of a discretion in determining what is or is not considered relevant to that determination must have reasonable limits.
109. One would think that the confines would include the restriction of considering irrelevant, obscure, non-factual, fantastical, emotive and personal matters in the exercise of a discretion.
110. In this matter the exercise of Inspector Crawford’s discretion has in the majority, if not exclusively, been based on matters that are contrary to the protection and requirements in the law.
111. “*Mr Carvell and his clients*”(para 87) did not choose not to disclose their identify. This ignored totally that this is not a legal requirement for him to do so under the provision relating to dealer hand ins.
112. The Judge concluded that “*in failing to make this disclosure placed them at the risk police would exercise their discretion by declining the applications*” (para 87).
113. Is the take away from this that unless a dealer provides details of the owner and the item’s history to police it is unlikely that a permit will be issued?
114. There is no obligation or requirement for Mr Carvell to provide this information to police for their consideration under the Act.
115. The overlying principle of the Arms Act is to increase public safety and the control of firearms and their use.
116. This decision appears to be contrary to this.

117. Parliament has allowed anyone for whatever reason to walk into a licenced firearms dealers premises and hand them an unlawfully held firearm or arms item.
118. Parliament has allowed this to occur anonymously.
119. The anonymity has been legislated in the form of the dealer not having to record any details or provide any detail to police about its history or ownership.
120. It is not reasonable for police to make the disclosure of this information a requirement before the granting of a permit to possess and the return of the item to the dealer.
121. It appears that parliament is concerned primarily with getting unlawfully held items off the street and black market.
122. There appears to be no concern about a person receiving payment for the item once sold into a lawful market.
123. The risk to public safety comes from the fact that, if the licenced dealers who invest time, staff wages and expenses to take in and surrender these firearms and parts to police, are not able to recoup this expense to their business they will refuse to accept hand ins from the public via section 59A.
124. The result is that the prohibited item or arms item remains in the black market and unlawfully held.
125. People who hold unlawfully held items are unlikely to want to hand them directly to police as they fear being prosecuted or 'interrogated'.
126. Parliament's intention was to encourage by any means the reduction of firearms and firearms items for the public as the main priority.
127. The police's view¹³ is different and contrary in some ways to this, in that they wish to investigate and potentially prosecute the persons who have been holding these items illegally, as is their job.
128. However, that very fact will prevent persons from handing in unlawfully held items if their identities are going to be known.
129. It is curious that the legislature has focused on the dealer not having to provide information held about the person surrendering the item. It does not in any way limit the fact the

¹³ Inspector Crawford's letter of refusal at para 22.

dealer may know or have the identity of the person, but they do not have to disclose it.

130. In all accounts, the operation of regulation 29B indicates that to all effects and purposes the licenced dealer is the “best owner” of the item.
131. What and how that item is dealt with by the dealer at that point in time is not considered by the legislation.
132. In paragraph 85 of the judgement the Judge states “*I still reject Mr Carvell’s submission a dealer is suitable to carry out an assessment of the history of the items and their owners.*”
133. There is no statutory requirement at all for the dealer to conduct this type of enquiry and certainly no requirement to share that information with the police.
134. It is not clear why the Judge has referred to this in the context of affirming the Inspector’s decision to refuse Mr Carvell’s application for permits to possess as being not appropriate.
135. There is no other reason or description given as to why it would not be appropriate for these permits to possess to be issued for the prohibited magazines, in that no other reasons for refusal were given apart from the matters contained in this appeal.
136. The applicant should be considered therefore to be an appropriate person to take possession of these prohibited magazines.¹⁴

Summary – Public safety, Section 1A

137. All points of appeal relate back to the primary concern of the Act, one of which is public safety and the control of firearms.
138. Mr Carvell deals with a great number of deceased estates, dealing with a widow or family member, or executors of a will, who find themselves responsible for the disposal of the estate.
139. This can be hundreds of firearms or a single item found under a bed or in the back of a cupboard.
140. Mr Carvell will receive the items under the provisions of 59A often multiple times a week.

¹⁴ As he has on numerous occasions by police for the possession of prohibited firearms and magazines.

141. Mr Carvell will then surrender the items for “enquiries to be made” in accordance with the provisions in s 59A.
142. Parliament wants to encourage people who have come into possession of these now prohibited items (for whatever reason) to be able to hand them in without fear of prosecution.
143. Licenced firearms dealers are often seen as the best option.
144. Objectively, whether or not that individual gets or receives some payment for an item handed to a dealer, would seem of little importance to the public at large, whose primary concern is to have these potentially dangerous items removed from the grey or black market to a lawful and controlled place by any means necessary.
145. The possibility of that member of the public receiving some payment for the item¹⁵ may in fact encourage people who hold these items to hand them to a licenced dealer. Parliament fully considered and envisaged this would in fact occur by the inclusion of the provisions in Regulation 20.

CONCLUSION

146. The Judge erred in ‘expanding’ the meaning of “appropriate” in s35A(2) to examine the ‘appropriateness’ of matters not directly related to the Applicant’s fitness to possess the prohibited magazines.
147. That the word appropriate is focused on the future of the arms items rather than its past.
148. The item, be it a firearm or in this case a prohibited magazine, is in the ‘here and now’, so the primary consideration for its future is ‘what shall we do with it now’? how do we make sure it is secured in a lawful framework?
149. Any consideration of the “past or “history” of the item is statutorily limited to “inspection and enquiries”, which are in turn limited by the anonymity protection contained in the Act.
150. The judge erred in accepting the words “compensate” and “amnesty” can form a reasonable part of the police’s discretion when they are not contained in sections 35A, 59A or Regulation 29B?

¹⁵ Payment only after dealer’s costs for the physical transporting, time taken, handing in to police, paper work processing, collecting from police, marketing, the sale itself, recording in dealers book and registry, paying GST and commission for the sale.

151. The Judge erred in placing reliance and emphasis on past and previous amnesty and compensation schemes now well finished and no longer available in his interpretation of the word “appropriate”.
152. The Judge erred by stating that a dealer failing to make a disclosure about the identification of the person surrendering the arms items can then be used as a reasonable factor in the exercise of the police’s discretion in s 35A(2) to find that it is not appropriate for the applicant to be granted a permit to possess these prohibited magazines.
153. The Judge erred in allowing the Inspector’s exercise of discretion to be based on a reason and is contrary to the anonymity contained in s 59A(2) making it an unreasonable exercise of discretion by the Inspector.
154. The applicant therefore must be an appropriate person, but for the reasons that are unreasonable and unlawfully cited by Inspector Crawford and then in error considered by the Judge in his decision that the Inspector was entitled to refuse for these reasons.
155. The applicant seeks that the appeal on these grounds be allowed.

DATED this 18th day of September 2025



N J B Taylor
Counsel for the Appellant

TO: The Registrar at the Auckland High Court (Civil Appeals)

AND TO: The Commissioner of Police (Firearms Safety Authority)