



## High Court of New Zealand

25 June 2020

**MEDIA RELEASE – embargoed until 1.30 pm**

***NEW ZEALAND COUNCIL OF LICENSED FIREARMS OWNERS INC v MINISTER OF POLICE***  
**[2020] NZHC**

**MEDIA RELEASE**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

The High Court at Wellington has dismissed the judicial review challenge brought by the New Zealand Council of Licensed Firearms Owners Inc in a judgment released today.

### **Background**

The Council asked the Court to review the lawfulness of some of the decisions and measures introduced as part of changes made to New Zealand’s firearms laws following the mass shootings in two Christchurch Mosques on 15 March 2019.

The changes to firearms laws were made at speed via the Arms (Prohibited Firearms, Magazines and Parts) Amendment Act (the Amendment Act) which amended the Arms Act 1983. The legislation received almost unanimous support from Parliament and came into force on 11 April 2019, within a month of the massacre.

The Amendment Act introduced a prohibition on semi-automatic and similar firearms, together with associated parts. It also introduced an amnesty period and a buy-back scheme providing compensation for those who owned and surrendered these weapons and parts.

The Amendment Act also created a prohibition on certain types of ammunition, described as “prohibited ammunition” which was to be identified by an Order in Council to be made after the Act came into force. Unlike the firearms and associated parts, the measures concerning ammunition did not involve a buy-back scheme or compensation, but did contemplate an amnesty period. This was the focus of the judicial review challenge.

## **The nature of the claims**

The role of the court was to hear argument about, and ultimately determine, the proper interpretation of the relevant powers given by the Arms Act 1983 and to determine whether those powers had been exercised lawfully in the particular instance.

The Council, an incorporated society made up of 12 organisations involved in the use, ownership and regulation of firearms advanced three claims:

- (a) That the failure to extend the buy-back scheme to those who possessed prohibited ammunition was in breach of the common law right to be compensated by the Crown for compulsory acquisition of property. It sought declarations to this effect and a declaration that such compensation now be paid.
- (b) That the recommendation of the Minister of Police that no compensation be paid for prohibited ammunition was unlawful. It sought declarations that the recommendation, and consequently the Order in Council were invalid.
- (c) That the Order in Council defining “prohibited ammunition” was unlawful. It sought declarations that both the relevant decision and consequential Order in Council were invalid.

## **The Court’s decision**

### *The issue of compensation*

The High Court accepted that the decision not to compensate those required to surrender prohibited ammunition to the Crown was contrary to the common law right to compensation. It was also inconsistent with the decision to provide compensation to those surrendering prohibited weapons and parts.

In the judgment Justice Cooke noted:

“There does not appear to be much justification for the different treatment of prohibited firearms and equipment for which compensation was payable, and the prohibited ammunition, which was not. That is particularly so given that there is no association between the newly defined prohibited ammunition and criminal activity, let alone the mosque shooting.”

However, the Court ultimately held that Parliament was entitled to make such policy distinctions and that such decisions, including the recommendation of the Minister of Police were not subject to review by the Court:

“Ultimately these decisions were made by Parliament rather than through discretionary decision-making subject to judicial review. The criticisms do not provide a basis for a successful judicial review challenge.”

The claims for a declaration, and the challenge to the Minister’s recommendation were accordingly dismissed.

### *Challenge to definition of Prohibited Ammunition*

The Court also rejected the Council's challenge to the definition of "prohibited ammunition" established by Order in Council.

It accepted that there was no apparent connection between prohibited ammunition and the mosque shootings, or with criminal activity, but it found that it was still consistent with the purposes of the Arms Act to prohibit the ammunition as part of wider firearms control. Justice Cooke said:

“[T]he categories of prohibited ammunition in question were not assessed in terms of their relative harm compared with conventional ammunition, and ... the evidence establishes that the categories of prohibited ammunition in issue can be seen as not more harmful.

“But there was no requirement for the Minister to conduct such an analysis before the categories of prohibited ammunition were determined by way of Order in Council. It was consistent with the purposes of the Act to take a more general view that particular ammunition designed for specific military purposes should not be permitted to be possessed for civilian use under New Zealand's firearms legislation.”