

The applicant by its solicitor says:

### **The Parties**

1. The applicant is a New Zealand political party constituted as an incorporated society.
2. The respondent is the legal representative of the Government of New Zealand, hereafter the “Government”.

### **Background**

3. 21 March 2019, by Order in Council 2019/55, the Government purported to declare *inter alia* that all semi-automatic pistols were military style semi-automatic firearms ‘MSSA’s’ by including them in the Order in Council’s new definition of MSSA’s, being all semi-automatic firearms “capable of being used in combination with a detachable magazine that is capable of holding more than 5 cartridges:”. It is noted that all removable magazines are capable of being modified to hold more than 5 cartridges.
4. 1 April 2019 Arms (Prohibited Firearms, Magazines, and Parts) Amendment Bill 2019, ‘the Bill’ introduced to Parliament.
5. 2 April 2018, first reading of the Bill.
6. 3 April 2019 submissions open.
7. 4 April 2019 submissions close.
8. 4 April 2019 Select Committee heard selected and invited submitters only.
9. 8 April 2019 Select Committee meeting, Bill approved and referred back to Parliament.
10. 9 April 2019 Second Reading of the Bill.
11. 10 April 2019 third Reading of the Bill.

12. 11 April 2019, Royal assent given to bill, purportedly Bill enacted as the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 ‘the Act’.

**First cause of action      ultra vires      Order in Council 2019/55**

13. The Arms Act 1983, at s74A provides:

Orders relating to military style semi-automatic firearms

The Governor-General may by Order in Council do any or all of the following things:

- (a) describe a kind of component as a pistol grip for the purposes of the definition in [section 2](#) of military style semi-automatic firearm:
- (b) declare semi-automatic firearms (other than pistols) of a stated make and model to be military style semi-automatic firearms for the purposes of this Act:
- (c) declare semi-automatic firearms (other than pistols) of a stated description to be military style semi-automatic firearms for the purposes of this Act:
- (d) define or describe features of a semi-automatic firearm (other than a pistol) as features of a military style semi-automatic firearm for the purposes of this Act.

14. On 21st day of March 2019 the Government issued Order in Council 2019/55, which purported:

Certain semi-automatic firearms declared to be military style semi-automatic firearms

For the purposes of the [Arms Act 1983](#), the following firearms are declared to be military style semi-automatic firearms:

- (a) a semi-automatic firearm that is capable of being used in combination with a detachable magazine (other than one designed to hold 0.22-inch or less rimfire cartridges) that is capable of holding more than 5 cartridges:
- (b) a semi-automatic firearm that is a shotgun and that is capable of being used in combination with a detachable magazine that is capable of holding more than 5 cartridges.

15. A pistol is a firearm.

16. Order in Council 2019/55’s purported deeming of semi-automatic pistols, capable of being used with detachable magazines capable of holding more than

5 cartridges, to be “military style semi-automatic firearms”, ‘MSSAs’ was not empowered by s74A of the Arms Act.

17. In the premise that the Government has no power to act by Order in Council beyond legislative empowerment, the Government has acted unlawfully.

**THE APPLICANT SEEKS:**

A declaration that Order in Council 2019/55 was unlawfully promulgated;

Costs.

**Second cause of action Mistake of Fact**

18. On 3 April 2019 the Chairman of the Select Committee delegated to consider the Bill stated:

"Across the 250,000 or so licenced firearm owners the vast majority will not actually be impacted. The ban specifically deals with military-style assault weapons and that is a much smaller subset."

19. The Bill prohibited firearms and firearms parts owned by 30-35% of licenced firearm owners in NZ, as estimated in the affidavit of Paul Clark filed in support of this proceeding.

20. In the premise that the Chairman of the select Committee made an error of fact, which bore on a central feature of the Select Committee process being the number of persons impacted by the proposed legislation, the Select Committee process was invalid and hence unlawful.

**THE APPLICANT SEEKS:**

A declaration that in comprehending the scope of the powers being envisaged by the Act the Chairman of the select Committee has made a mistake of fact[g1] and that the legislative process has miscarried;

An order directing that the Act does not have force of law;

Costs.

### **Third cause of action inadequate consultation**

21. The applicant repeats and affirms paragraphs 14-16 of this statement of claim.
22. The Government only allowed from 1 April 2019, the date of the introduction of the Bill until 4 April 2019, that date of the hearing of the Select Committee, for public consultation.
23. Public submissions opened on 3 April 2019 and closed 4 April 2019.
24. This was inadequate time for those opposed to the Bill to appraise themselves of the proposed changes to the law and to make cogent submissions.
25. It is understood that there were approximately 13,000 submissions to the Select Committee.
26. Submissions were skewed by the Chairman of the Select Committee's mistake as set out in paragraphs 18 and 19 above.
27. The Select Committee only allowed oral submissions by invitation.
28. The Select Committee only allowed 1 day for oral submissions.
29. On 8 April 2019 the Select Committee approved the Bill.
30. There was no real urgency for the Select Committee to conduct its process in such haste.
31. In the light of the numbers of person affected by the Act, the issues at large as set out in this statement of claim and the lack of real urgency, the Select Committee consultation process was inadequate.
32. In the premise that the Select Committee consultation process was inadequate the checks and balances necessary in a free and democratic society have not been properly engaged and the determination of the Select Committee was unlawful.

#### **THE APPLICANT SEEKS:**

A declaration that the Select Committee process was inadequate due to a failure of proper consultation;

An order that the Act has no force of law until validated by a subsequent general election or by referendum;

Costs.

#### **Fourth cause of action    Predetermination**

33. The applicant repeats and affirms paragraphs 19-22 of this statement of claim.

34. On 3 April 2019 the Chairman of the Select Committee, the Hon. Michael Wood stated:

"I think that the public of New Zealand has demanded that the Parliament take action on this issue".

35. The Chairman of the Select Committee made the above statement on the day the submission process commenced.

36. The Chairman of the Select Committee made the above statement before he had heard any oral submissions.

37. In the premise that the Chairman of the Select Committee has predetermined the decision of the Select Committee, the Select Committee has been conducted unlawfully.

#### **THE APPLICANT SEEKS:**

A declaration that the decision of the Select Committee was predetermined;

An order that the Act has no force of law until validated by a subsequent general election or by referendum;

Costs.

**Fifth cause of action      Fettering of the Select Committee’s discretion**

38. The Select Committee process is purportedly a bi-partisan process whereby Bills are objectively considered, as part of the checks and balances which maintain a free and democratic society.
39. The Party system and the division of the bulk of the electorate into safe seats for the majority parties, together with the MMP system, has generally resulted in the pre-selection of those whose allegiance is to the party leadership and not to the electorate.
40. The Select Committee process was a sham as party leadership had determined that the Bill should be approved by the Select Committee and this indicated to the members of the Select Committee that if they disobeyed party leadership their parliamentary careers would be over.
41. The Select Committee failed in their duty to objectively consider the Bill, as part of the checks and balances which maintain a free and democratic society.
42. In the premise that the Select Committee process was a sham, the parliamentary process which provides the checks and balances necessary to maintain a free and democratic society have failed and the process has become unlawful.

**THE APPLICANT SEEKS:**

A declaration that the Select Committee failed in their duty to provide the checks and balances necessary to maintain a free and democratic society;

An order that the Act has no force of law until validated by a subsequent general election or by referendum;

Costs.

**Sixth cause of action      Irrelevant considerations**

43. The Government took into account, as a determinative consideration, the UN “Arms Trade Treaty” and the UN policy of general civilian disarmament.

44. In the premise that a foreign treaty is not part of the law of NZ and the UN policy of general civilian disarmament was never part of any electoral mandate held by the majority Parties in Government, it's consideration as a determinative factor, was irrelevant and hence unlawful.

**THE APPLICANT SEEKS:**

A declaration that the Select Committee took account of an irrelevant consideration as being determinative and so its determination was unlawful;

An order that the Act has no force of law until validated by a subsequent general election or by referendum;

Costs.

**Seventh cause of action Mandatory relevant considerations**

45. A Select Committee is a body appointed by Parliament to properly consider whether a Bill should be enacted.

46. The Magna Carta is foundational to our development as a free and democratic society, it is a part of the common law of NZ and as such the Select Committee was obliged to consider it.

47. Article 61 of the Magna Carta<sup>1</sup> provides:

**Article 61**

But since we have granted all these things aforesaid, for GOD, and for the amendment of our kingdom, and for the better extinguishing the discord which has arisen between us and our Barons, we being desirous that these things should possess entire and unshaken stability for ever<sup>[1]</sup>, give and grant to them the security underwritten<sup>[2]</sup>;

...

and they, the twenty-five Barons, with the community of the whole land<sup>[8]</sup>, shall distress and harass us by all the ways in which they are able<sup>[9]</sup>; that is to say, by the taking of our castles, lands, and possessions<sup>[10]</sup>, and by any other

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<sup>1</sup> Magna Carta § 61; McKechnie, Magna Carta, 465 (2d ed.)

means in their power[11], until the excess shall have been redressed[12], according to their verdict; saving harmless our person, and the persons of our Queen and children; and when it hath been redressed[13], they shall behave to us as they have done before[14].

48. Article 61, by necessary implication, entails that the Barons and the “community of the whole land” have the right to bear arms, as the ultimate “security” against arbitrary power.
49. The Select Committee did not consider Article 15 of the Magna Carta and the necessary implication that as “security” against absolutism the leading Barons together “with the community of the whole land” must have arms sufficient to withstand executive power.
50. The right to bear arms, as a safeguard for liberty, is a political idea within the discourse of firearms control.
51. The Select Committee did not properly consider the right to bear arms, as a safeguard for liberty, in coming to its determination that the Bill should be enacted.
52. In the premise that the Select Committee failed to consider either Article 61 of the Magna Carta, or properly consider the right to bear arms as a safeguard for liberty, it did not consider mandatory relevant considerations and so its determination was unlawful.

#### THE APPLICANT SEEKS:

A declaration that the Select Committee failed to take account of mandatory considerations and so its determination was unlawful;

An order that the Act has no force of law until validated by a subsequent general election or by referendum;

Costs.

**Eight Cause of action Ultra vires**

53. As set above in paragraphs 13 to 16 above, the Government, by Order in Council 2019/55, purported to include semi-automatic pistols in its definition of prohibited MSSA's.
54. The Order in Council constituted a repeal of a section of the empowering legislation, as s74A Arms Act 1983 specifically excluded pistols.
55. The Select Committee, in endorsing the Act and its provision for delegation of broad powers by Order in Council, did so in the knowledge that the Orders in Council had immediately prior been used in a manner which constituted a repeal of a part of the extant empowering legislation.
56. The Select Committee could not abdicate from its legislative responsibility and endorse a *de facto* delegation of legislative powers to repeal legislation, to the Executive.
57. In the premise that the Select Committee has abdicated from its responsibility and endorsed the delegation of *de facto* legislative powers to repeal legislation to the Executive, the Act is unlawful.

**THE APPLICANT SEEKS:**

A declaration that the Select Committee abdicated from its responsibility, by endorsing *de facto* legislative powers to repeal legislation upon the Executive

An order that the Act has no force of law until validated by a subsequent general election or by referendum;

Costs.

**Ninth cause of action Breach of the Treaty of Waitangi**

58. The Treaty of Waitangi is a Constitutional agreement by which Maori surrendered sovereignty in return for British citizenship and the retention of their extant property rights, such as the right to their Taonga.
59. In the Maori - English dictionary compiled at Cambridge, in discussion with the Nga Puhi Chief Hongi Hika, 'Taonga' was defined as "that which is obtained by the spear".
60. Taonga was understood by all parties to the Treaty to include firearms of a nature which enabled effective self-defence and effective resistance to any exercise of arbitrary power by the Crown.
61. The Act, together with the scope of any subsequent Orders in Council promulgated under the Act, prohibit Maori from possessing firearms of a nature which enable effective self-defence and effective resistance to any exercise of arbitrary power by the Crown.
62. In the premise that the Act constitutes a breach of the Treaty of Waitangi it is unlawful.

**THE APPLICANT SEEKS:**

A declaration that the Act is in breach of the Treaty of Waitangi;  
Costs.

**Tenth cause of action breach of the constitutional right to private property**

63. The applicant repeats and affirms the above averments.
64. The rights conferred on Maori by the Treaty of Waitangi were no more or less than those common law rights subsisting in the English people.

65. The right to private property operates as a fundamental English common law limitation of the prerogatives of the Executive and is a constitutional boundary mechanism which prevents absolutism.
66. The Act purports to allow the Executive to prohibit and confiscate private property.
67. In the premise that the Act subverts constitutional norms it is unlawful.

**THE APPLICANT SEEKS:**

- A declaration that the Act breached the right to private property;
- An order that the Act has no force of law until validated by a subsequent general election or by referendum;
- Costs.

**Eleventh cause of action      breach of the Bill of Rights 1688**

68. The 1688 Bill of Rights has Constitutional status in NZ law and cannot be abrogated by Parliament.
69. The Bill of Rights states:

...  
The subjects' rights

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled, in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare—

...

That the subjects which are Protestants may have arms for their defence suitable to their conditions, and as allowed by law ...

70. The provision, “may have arms for their defence” relates to both self-defence and defence of the liberty of the subject, in the context of a struggle which

commenced with the English Civil War and stretched through to the Glorious Revolution.

71. The provision, “suitable to their conditions” relates to such Statutes as the “Assize of Arms” which allocated militia duties based on economic status.
72. The provision, “as allowed by law” relates to prior law, as if the Rights could be subordinated to later legislation the Rights could have been nullified. Accordingly the provision relates to the laws of the time, which prohibited concealed weapons.

**THE APPLICANT SEEKS:**

A declaration that the Act breaches the Bill of Rights 1688 and so is unconstitutional;

Costs.

**Twelfth cause of action Breach of the constitutional right to bear arms**

73. It is a fundamental principle of law that “no power is unfettered”.
74. The above principle is the legal basis for the common law constitutional right to bear arms, which is the ultimate fetter on arbitrary power.
75. The right to bear arms is a right co-incident with the balance of power in English society, which has subsisted from its origins and hence is a part of the common law of New Zealand.
76. In the premise that the Act contravenes constitutional rights it is unlawful.

**THE APPLICANT SEEKS:**

A declaration that the Act is unconstitutional;

An order that the Act has no force of law until validated by a subsequent general election or by referendum;

Costs.

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Documents for service on the Applicant may be:

- (a) Left at the solicitor's offices at 3 Totara Ave, New Lynn, Auckland
- (b) Posted to P O Box 121464, Henderson, Auckland; or
- (c) Transmitted by e-mail to: [graeme@minchin.nz](mailto:graeme@minchin.nz)