

## **Destruction of non-Police firearms**

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## Executive summary

This part of the 'Exhibit and property management' chapter details procedures for the disposal and destruction of non-Police firearms.

Key things to note include:

- The part does not include Police firearms. See the 'Police firearms' chapter for separate instructions relating to their destruction
- Non-Police firearms and their parts coming into Police possession must be entered into the Police Register of Property (PROP) system as soon as practicable and thereafter all movements, transport and storage recorded in PROP to maintain chain of custody.
- There are several disposal options for non-Police firearms, with destruction being only one option.
- Authorisation to dispose of non-Police firearms must comply with legislation or Court Order
- Destruction of non-Police firearms that is lawful under legislation or Court Order is the preferred disposal method.
- Non-Police firearms that are:
  - forfeited to the Crown
  - held in Police possession without:
    - an owner
    - a person entitled to possession
    - a person claiming ownership
- and subsequent disposal is lawful, should not be sold, but destroyed.
- There are two phases with destroying non-Police firearms and their parts:
  - initial phase being partial destruction using a horizontal pneumatic press to deform the barrel, action, stock or firearm parts
  - final phase of destruction involves either:
    - the use of a metal shredder
    - cutting the action, barrel and stock or firearm part and compacting within a car body.

## Overview

### Introduction

The focus of these instructions is the authorisation and method of disposal of non-Police firearms by destruction.

### General principles with disposal of non-Police firearms

General principles with disposal of non-Police firearms include:

- Authorisation to dispose of non-Police firearms must comply with legislation or Court Order
- Destruction of non-Police firearms that is lawful under legislation or Court Order is the preferred disposal method.
- Non-Police firearms that are:
  - forfeited to the Crown
  - held in Police possession without:
    - an owner
    - a person entitled to possession
    - a person claiming ownership
- and subsequent disposal is lawful, should not be sold, but destroyed in accordance with the procedures outlined in this chapter.

### Definition of non-Police firearm

Non-Police firearm means:

- anything from which any shot, bullet, missile, or other projectile can be discharged by force of explosive; and
- includes:
  - anything that has been adapted so that it can be used to discharge a shot, bullet, missile, or other projectile by force of explosive; and
  - anything which is not for the time being capable of discharging any shot, bullet, missile, or other projectile but which, by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be a firearm within the meaning of paragraph (a) or subparagraph (i); and
  - anything (being a firearm within the meaning of paragraph (a) or subparagraph (i)) which is for the time being dismantled or partially dismantled; and
  - any specially dangerous airgun; and
  - all firearms that are not owned by Police but come into Police possession. For example, found and exhibit firearms.

### Health and safety duties

#### Responsibility

District Commanders and National Managers are responsible for the safety of all collection, storage, logistical resources and disposal/destruction of non-Police firearms.

The following must be considered:

- the identification of actions that are required to eliminate or mitigate risks associated with the collection, storage, transport disposal/destruction of firearms, ammunition and, possibly, explosives
- the seeking of advice from the [Safer People Workgroup](#) and Police Instructions (Health, Safety and Well-being)
- the calling of timely Safety Briefings and Risk Reviews
- the issuing of appropriate PPE clothing and equipment
- the documenting and timely reporting of Lessons Learned
- the monitoring of collection-related incidents and near-misses
- participation in planning meetings to highlight and advise on firearm matters related to Health & Safety
- the advanced informing of District Command and Communication Centres (DCC's) of events; their locations; staff deployment and, where possible, any risks that might be specifically associated with the storage and movement of firearms.

### Making non-Police firearms in Police possession safe

Non-Police firearms should be made safe for storage and transportation purposes when arranging and prior to destruction by using a chamber safety flag to provide a visual indication that the chamber is blocked and the firearm is safe. To apply the flag:

- insert the flexible rod into the chamber of the firearm
- hang the flag out the side of the firearm
- tape or cable tie the flag to the firearm to avoid its accidental removal.

### **Related health and safety information**

See the following chapters and legislation to maximise safety and eliminate or minimise risk with secure handling, transporting, storing, internal control checking/auditing and disposing of firearms and restricted weapons in Police possession:

- [TENR-Operational threat assessment](#)
- [Hazard management](#)
- [Health, safety and wellbeing](#)
- [Health and Safety at Work Act 2015.](#)

### **Related information**

See these chapters in the Police Manual:

- [Armoury](#)
- [Arms](#)
- [Exhibit and property management](#)
  - [Custody and disposal of exhibits](#)
  - [Disposal of found property](#)
- [Non-Police firearms security management](#)
- [Police firearms](#)
- [Procedures applying to seized and produced things.](#)

## Legislation authorising disposal of firearms

The following legislation authorises the disposal options of firearms:

- [Arms Act 1983](#)
- [Policing Act 2008](#)
- [Search and Surveillance Act 2012](#)

### Disposal options

There are several disposal options for firearms, with destruction being only one option relating to non-Police firearms.

Firearm disposal under legislation, or Court Order may authorise:

- return of firearm to the owner
- return of firearm to person entitled to possession
- sale of firearm
- destruction of firearm
- forfeiture of firearm to the Crown, should generally result in destruction, but in some instances retention by Police for future forensic comparisons, collection or display at Police Armoury or NZ Police Museum premises may occur.

See '[Retention of firearms instead of destruction](#)' in this chapter for information about those Police premises authorised to collect and display firearms.

### Arms Act

The [Arms Act 1983](#) authorises disposal of firearms under:

- section [69](#) (forfeitures)
- section [70](#) (authorising disposal of firearms, etc., detained by Police).

### Forfeitures

When any person is convicted of using, carrying, or being in possession of any:

- firearm
- airgun
- pistol
- restricted weapon
- imitation firearm
- prohibited magazine
- prohibited part
- ammunition
- explosive

in breach of the Arms Act, the convicting Court may, as part of the conviction, order that the firearm etc. be forfeited to the Crown.

The firearm etc. being forfeited to the Crown may be disposed of in such manner as the Commissioner directs.

([s69](#))

### Authorising disposal of firearms, etc., detained by Police

Any firearm, airgun, pistol, restricted weapon, imitation firearm, prohibited magazine, prohibited part, ammunition, or explosive that has been detained for not less than 12 months may be disposed of in such manner as the Commissioner may direct.

Section [70](#) does not limit the authority of a District Court Judge to make an order for the restoration of any firearm etc. on application made under section [65](#) of the Act.

## Search and Surveillance Act

A firearm that has been seized or produced that is not required for investigative or evidential purposes, or is not liable for forfeiture, is generally to be returned to the licensed owner, unless it is an unlawful item under the Act.

Disposal of firearms may be authorised under [Search and Surveillance Act 2012](#), subpart 6, of Part 4 as follows:

- disposal of things seized or produced (s149)
- certain things must be returned (s150)
- custody of things seized or produced (s151)
- extension of time for holding thing seized (s153)
- disputed ownership of thing seized or produced (s154)
- seized or produced property forfeit to the Crown if ownership not established
- disposal of unlawful items (s160)
- application to District Court to dispose of seized property (s163).

## Policing Act

The [Policing Act 2008](#) may authorise disposal of firearms such as follows:

- District Court Judge may determine title to certain property (s40)
- unclaimed property (s41).

# Commissioner's delegations under the Arms Act

## Powers delegated to Inspectors or above

Throughout the Arms Act 1983 reference is made to powers exercised by the Commissioner of Police. Under section [72](#) the Commissioner may from time to time delegate all or some powers to Police employees of a level of position not less than Inspector.

Every Police employee acting under the Commissioner's delegated powers must be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

## Delegation may be revoked

The delegation:

- may be revoked by the Commissioner at will
- does not prevent the exercise of any power by the Commissioner
- until revoked, continues in force even if the Commissioner has ceased to hold office and has effect as if it was made by the successor in office of the Commissioner. Note: The revocation of the delegation does not affect anything done under the delegated authority.

## Who has delegated powers?

Under section [17](#) of the Policing Act 2008 and (where appropriate) section [72](#) of the Arms Act 1983 those powers have been delegated to:

- [National Manager: Response and Operations](#)
- [Business Lead: Firearms Transformation Programme / Officer in Charge: Arms Act Service Delivery Group](#)
- [Operations Manager: Arms Act Service Delivery Group](#) who is of a level not less than Inspector.

## Powers under delegation

The delegations to the National Manager: Response and Operations, [Business Lead: Arms Act Service Delivery Group and Operations Manager: Arms Act Service Delivery Group](#) in relation to the Arms Act 1983 and Arms Regulations 1992 includes:

- all of the Commissioner's powers, functions, and duties under the [Arms Act 1983](#) and the [Arms Regulations 1992](#) **except** for the power to:
  - delegate under section [72](#) of the Arms Act 1983
  - issue a compensation schedule, amend a schedule, issue a replacement schedule or issue a supplementary schedule contained in regulation [28M\(1\)](#) and (2)
  - **Note:** This exception only relates to the Business Lead: Arms Act Service Delivery Group and Operations Manager: Arms Act Service Delivery Group
- all of the Commissioner's powers, functions and duties under the Customs Import Prohibition Order 2014.

## Appeals/applications for disposal determination

### No disposal/destruction of firearms under appeal

Police decisions relating to the disposal of firearms can be subject to an appeal by way of originating application to a District Court Judge for the restoration/return of firearms. Disposal or destruction of firearms must not occur:

- without lawful justification, or
- when an appeal has commenced, and a District Court Judge has not concluded their finding.

### Arms Act

The Arms Act provides a person the right of appeal from official decisions and to seek restoration of firearms seized and detained by Police.

#### Right of appeal from official decisions

A person, by way of originating application, may appeal to a District Court Judge from the determination and service of a notice in writing to surrender:

- airguns or antique firearms (s41)
- unsafe firearms or pistols (s59).

(s62)

#### Restoration of firearms seized

On application by way of originating application, a District Court Judge may make such order as he thinks just and expedient for the restoration of any firearm, airgun, pistol, imitation firearm, restricted weapon, prohibited magazine, ammunition, or explosive seized and detained in pursuance of the right of search, seizure, or detention conferred by the Arms Act.

(s65)

### Search and Surveillance Act

The Search and Surveillance Act, subpart 6 of Part 4 (ss 149-163) contains procedures that apply to things such as firearms that are seized or produced (excluding prisoners' property and privileged material). The procedures are subject to the provisions of any other enactment (e.g. the Arms Act as outlined above).

The owner or person with an interest in the firearm seized or produced may apply to Police for access to it or for its release. Should access to the firearm or its release be declined, the affected person may apply under subpart 6 of Part 4 to the District Court for an appropriate order.

See '[Part 12 - Procedures applying to seized and produced things](#)' of the 'Search' chapter for information about the procedures in the Act applying to things after their initial seizure or production including:

- the rights of owners and others in relation to things seized or produced
- the return and custody of seized or produced things
- applications for access to or release of seized or produced things
- disputed ownership and forfeiture of seized or produced things
- disposal of seized or produced things.

### Policing Act

The Policing Act provides for policing services in New Zealand, such as administering:

- the determination of title to property
- unclaimed property.

See '[Firearms](#)' in the '[Disposal of found property](#)' of the '[Exhibit and property management](#)' chapter for information about the steps to take when firearms are found and handed to Police.

## District Court Judge may determine title to firearms

Section [40](#) applies to property including firearms if:

- it is in the possession of a Police employee; and
- it is not property distrained under the warrant of a judicial officer; and
- there is doubt whether a person claiming it, or which of 2 or more persons claiming it, is entitled to its possession.

A District Court Judge, on the originating application of any Police employee, or of a claimant to a firearm under section [40](#):

- may make an order for its delivery to any person appearing to the District Court Judge to be its owner, or entitled to its possession; or
- if the owner or person entitled to possession cannot be found, may make any order with respect to its possession the Judge thinks fit.

An originating application must be made to the District Court in its civil jurisdiction.

If, after the District Court Judge makes an order in relation to any firearm, an action is commenced against a Police employee or the Crown for the recovery of the firearm or its value, evidence of the order, and the delivery of the firearm in accordance with the order:

- may be given and must be received by the court concerned; and
- if given, is a complete defence to the action.

**Note:** No such order or delivery affects the right of any persons entitled by law to possession of the firearm to recover the firearm.

## Unclaimed lost or found firearms

Section [41](#)(5)(b) provides for firearms that has come into the possession of a Police employee as a consequence of being lost or found, and is not claimed after being held for 6 weeks or more, may, by the direction of the Commissioner, be destroyed or in certain instances given to the Armoury or New Zealand Police Museum for collection purposes.

It is not appropriate to return unclaimed lost or found firearms into the community by means of sale. Selling firearms is not in keeping with:

- ensuring firearms control
- the Police vision “To be the safest country”
- [Our Goals](#) for safe homes and communities.

## Retention of firearms instead of destruction

### Collecting/displaying firearms, pistols, prohibited firearms, or prohibited magazines

Only the following Police premises are authorised to collect and display firearms, ammunition, pistols, prohibited firearms, prohibited magazines or weapons):

- [Police Armoury](#) (collecting for future forensic comparisons)
- [New Zealand Police Museum](#) (collecting for historical and display purposes).

### Police museum

Where the Police museum displays or stores firearms, ammunition, pistols, prohibited firearms, or prohibited magazines in a display case or in a storage room, the museum's director must ensure that the firearms, pistols, prohibited firearms, or prohibited magazines are rendered inoperable, with that facilitated by the National Police Armoury, and secured against theft or loss.

### Related information

See the '[Non-Police firearms security management](#)' chapter for information about ensuring firearms in Police possession are safe and secure.

## Management of non-Police firearms coming into Police possession

### On receipt of non-Police firearm

Follow these steps.

Step	Action
1	<p>Clear non-Police firearm of ammunition to ensure firearm are not loaded.</p> <p><b>Note:</b> This should be completed by Constabulary, Arms Officers or staff who have received familiarisation training. To view an instructional video on handling various types of firearms please click on the <a href="#">link</a>. Where possible firearms should be cleared in a safe and secure area using a Safe Unload Device.</p>
2	<p>Insert chamber safety flag to show the firearm is safe.</p> <p>See '<a href="#">Making non-Police firearms in Police possession safe</a>' in this chapter for guidance.</p>
3	<p>Enter details of non-Police firearm in the Police Register of Property (PROP) system.</p> <p>See the part, '<a href="#">Introduction to exhibit and property management</a>' of the '<a href="#">Exhibit and property management</a>' chapter for further guidance about the PROP system.</p>
4	<p>Ensure the PROP created unique number is clearly written and used on all packaging and labelling of firearms and their parts.</p> <p><a href="#">s.6(c)</a></p>
5	Issue receipt from the PROP system.

### Storage and security of non-Police firearms

See the '[Non-Police firearms security management](#)' for instructions relating to the storage and security of non-Police firearms.

### Destruction of non-Police firearms

Follow these steps.

Step	Action
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1	<p>Ensure destruction of non-Police firearms have been authorised:</p> <ul style="list-style-type: none"> <li>- for exhibit firearms the O/C Case or O/C Exhibits in homicide and serious criminal investigations must confirm destruction is authorised under: <ul style="list-style-type: none"> <li>- <a href="#">Arms Act 1983</a> authorises disposal of firearms under: <ul style="list-style-type: none"> <li>- section <a href="#">69</a> (forfeitures)</li> <li>- section <a href="#">70</a> (authorising disposal of firearms, etc, detained by Police)</li> </ul> </li> <li>- <a href="#">Search and Surveillance Act 2012</a>, subpart <a href="#">6</a>, of Part 4 as follows: <ul style="list-style-type: none"> <li>- disposal of things seized or produced (<a href="#">s149</a>)</li> <li>- certain things must be returned (<a href="#">s150</a>)</li> <li>- custody of things seized or produced (<a href="#">s151</a>)</li> <li>- extension of time for holding thing seized (<a href="#">s153</a>)</li> <li>- disputed ownership of thing seized or produced (<a href="#">s154</a>)</li> <li>- seized or produced property forfeit to the Crown if ownership not established</li> <li>- disposal of unlawful items (<a href="#">s160</a>)</li> <li>- application to District Court to dispose of seized property (<a href="#">s163</a>)</li> </ul> </li> <li>- <a href="#">Policing Act 2008</a> (District Court Judge may determine title to certain property - <a href="#">s40</a>)</li> </ul> </li> <li>- for unclaimed found firearms the destruction must be authorised by a Sergeant or above: <ul style="list-style-type: none"> <li>- <a href="#">Policing Act 2008</a> (unclaimed property <a href="#">s41</a>).</li> </ul> </li> </ul>
2	<p>Record chain of custody (time, date and location) in the PROP system with each:</p> <ul style="list-style-type: none"> <li>- movement, transport of firearms/parts and their storage</li> <li>- partial and full destruction of the firearms/parts.</li> </ul>
3	<p><b>s.6(c) OIA</b></p>
4	<p>Ensure the PROP created unique number remains clearly written and used on all packaging and labelling of partially destroyed firearms and their parts.</p> <p>If the label has fallen off during the partial destruction process, then reattach firmly.</p>
5	<p>Secure the partially destroyed firearms and their parts for storage, transport and later full destruction.</p>

6	s.6(c) OIA
7	Record the final destruction time, date and location in PROP.