

Regulatory Impact Statement

Reducing Knife Crime

Agency disclosure statement

This Regulatory Impact Statement (RIS) was prepared by the Ministry of Justice.

It provides an analysis of options to reduce knife possession and offences committed with knives, particularly by young people.

Following concerns raised with the Government about young people carrying knives the Minister of Justice directed the Ministry to undertake an analysis of the laws around knife possession, offence trends and actions that could be taken to address the problem. The Minister released the Ministry's report on 11 March and directed the Ministry to undertake further work on all the options referred to in the report and to prepare a paper for consideration by Cabinet on 3 May.

The RIS was prepared within a short timeframe and focuses, for the most part, on the options the Ministry was directed to work on. The level of analysis in the RIS reflects the timeframe. There has only been a short amount of time for consultation with other agencies, but further work will be undertaken with these agencies to implement the options proposed.

There are no options in the RIS that are likely to have effects that the Government has said will require a particularly strong case before regulation is considered. The proposed voluntary accord with retailers to limit the sale of knives to young people will involve close consultation with the Retailers Association and may be limited to a small number of areas where knife crime is a particular problem.

Rajesh Chhana, General Manager, Crime Prevention and Criminal Justice

Signature

Date

EXECUTIVE SUMMARY

1. There is increasing concern by the judiciary and members of the community about the possession and use of knives in New Zealand; young people in particular need to be made aware of the dangers of carrying knives and other weapons.
2. At present, there is little being done to specifically target the possession and use of knives to commit an offence and the Government wishes to address this to ensure knife crime does not escalate, especially by young people.
3. A range of options or approaches are being developed from education initiatives in schools for young people who are not yet entrenched in offending behaviour to increased penalties for the most serious offending. Each option has its own associated costs, benefits and risks. These are to be weighed against the fact that if the status quo is maintained, this is unlikely to, on its own reduce the carrying of knives, and other weapons, by young people and their use in the commission of offences.

STATUS QUO

4. There are currently two offences covering knife possession, one in the Summary Offences Act 1981 and one in the Crimes Act 1961.
5. Section 13A of the Summary Offences Act 1981 makes it an offence for every person who, in a public place, without reasonable excuse, has any knife in his or her possession. This offence provides for a maximum of three months imprisonment or a fine not exceeding \$2,000.
6. Section 202A of the Crimes Act 1961 makes it an offence for every person who, without lawful authority or reasonable excuse, has with him in any public place, any knife or offensive weapon or disabling substance. This offence provides for a maximum of two years imprisonment. In the case of a second conviction within two years for possession of an offensive weapon section 202BA of the Crimes Act 1961 provides that the court must impose a sentence of imprisonment for a conviction under section 202A.
7. Where the Police have reasonable grounds for believing that a person is carrying a knife or offensive weapon in a public place, they have the power to stop and search that person or any vehicle from which the person has alighted.

PROBLEM

8. Knife crime has begun to receive greater attention by the judiciary and members of the community following incidents of crime involving young people and knives. As a result the Government believes it is time to address issues around the possession and use of knives in New Zealand. Young people in particular need to be made aware of the dangers of carrying knives and other weapons and that such behaviour is unacceptable.
9. The rate for apprehensions for knife possession offences under the Summary Offences Act 1981 has been relatively stable over the past 10 years. Police apprehension rates per 10,000 population for possession of a knife in a public place by 14 to 50 year olds during the period of 1999 to 2008 showed that the 17 to 20 and 21 to 30 year old age groups have the highest apprehension rates for this offence. However, their rates declined over the 1999 to

2008 period; from 16.4 to 13.6 per 10,000 population for 17 to 20 year olds, and from 13.2 to 10.4 for 21 to 30 year olds.

10. However, the rates for apprehensions for possession of an offensive weapon under the Crimes Act 1961 have increased, but data limitations mean that we do not know whether there has been a specific increase in the possession of knives. Police apprehension rates per 10,000 population for possession of an offensive weapon, by 14 to 50 year olds during the period of 1999 to 2008 showed that 17 to 20 year olds have the highest apprehension rates for this broader category of possession of an offensive weapon¹, and an estimated 19% of these apprehensions involve knives. Their rates increased over the 1999 to 2008 period; 23.0 to 31.9 per 10,000 population.
11. The 14 to 16 year old age group recorded the second highest rate for possession of an offensive weapon, which increased from 14.0 per 10,000 population in 1999 to 25.2 in 2008.
12. Police apprehensions for those offences where trend information is available on the use of a stabbing/cutting instrument (approximately 95% of which are knives) in the commission of offences show apprehensions have increased over the past 10 years. Those under 21 years of age also have the highest apprehension rates for these offences.
13. The Police apprehension² data provides a guide to offence trends. Crime statistics can only provide a guide to actual offending. The statistics are influenced by factors other than actual offending, such as changes in police numbers, policing practice and changes to the way offences are recorded.
14. One possible explanation for apprehensions remaining relatively stable for the Summary Offences Act 1981 whereas apprehensions for the Crimes Act 1961 offences trending upwards may be down to Police discretion regarding which offence to charge an offender with. Rather than using the Summary Offences Act 1981 charge of possession of a knife in a public place, they may be opting to use possession of an offensive weapon (which includes knives) due to the higher penalty level available.
15. Self-report data from secondary school students shows that a concerning number (9% of males and 3% of females) report carrying a weapon, such as knife in the past 12 months. However, these proportions changed little between the 2001 and 2007 surveys, suggesting that there is not an increasing trend in the number of young people carrying weapons³.
16. The increase in apprehensions for possession of an offensive weapon supports the concerns that have been raised about an emerging knife crime problem in New Zealand. Clearly if the number of people carrying knives can be reduced then one would expect this to have a flow on effect on the use of knives in the commission of offences.
17. At present, there is little being done to specifically target the possession and use of knives to commit an offence. The options in this paper are designed to do this and to address some of the underlying causes that lead young people to carry knives, such as a lack of

¹ An offensive weapon may be an item which is offensive per se or which the person intended to use offensively (such as a brick, screwdriver or knife).

² An apprehension is recorded when a person has been dealt with by the Police in some manner (e.g. prosecuted). The raw number of apprehensions represents the number of alleged offences not the numbers of alleged offenders, as people who are apprehended for more than one offence are counted once for each offence.

³ Youth' 07 the Health and Wellbeing of Secondary School Students in New Zealand. The University of Auckland.

knowledge about alternative ways of resolving conflict. It is important to address these issues to ensure that knife crime does not escalate, especially by young people.

OBJECTIVES

18. The policy intention is to reduce the carrying of knives, and other weapons, by young people in particular, and their use in the commission of offences. The responses however, need to be proportionate to the fact that knife crime is an emerging issue in New Zealand.
19. The objectives of this proposal are to take a range of initiatives proportionate to the scale of the problem in New Zealand:
 - to reduce and/or prevent the incidence of knife crime; and
 - increase the public perception of safety and signal the seriousness of knife crime.

OPTIONS

A range of regulatory and non-regulatory options have been examined and a preferred approach proposed as described below.

Status Quo

20. Maintaining the status quo of relying on the offence provisions in the Summary Offences Act 1981 and the Crimes Act 1961 will not, on their own, reduce the carrying of knives, and other weapons, by young people and their use in the commission of offences.
21. Knife crime has received much attention in the United Kingdom following a series of high profile crimes involving knives in 2007. In response, the United Kingdom government has implemented a range of initiatives ranging from legislative change through to national advertising campaigns. The New Zealand Government wishes to target this problem now to prevent it from escalating here.

Preferred Approach

22. The government has indicated that it wishes to send a clear message that carrying knives and other weapons is unacceptable and that there will be consequence for such behaviour. Increasing the Crimes Act 1961 penalty for possession of an offensive weapon will serve to denounce this type of offending and may have a small deterrent effect. Other regulatory approaches are either not feasible or the scale of the problem does not justify them. Overseas experience seems to indicate that a ban on sales is not particularly effective.
23. As an alternative a voluntary accord with retailers is proposed along with educative initiatives (in schools and through Fresh Start) targeted to young people to improve their understanding of the dangers of carrying knives and to monitor those who have been convicted of offences involving knives.
24. The preferred package would include:
 - Increasing the penalty in the Crimes Act 1961 for possession of an offensive weapon
 - Voluntary accord with retailers to limit the sale of knives to young people
 - Using Fresh Start programmes to prevent knife offending and re-offending
 - Education in schools provided by Police

Increase the penalty in the Crimes Act 1961 for possession of an offensive weapon

25. Rather than making carrying of knives illegal, the preferred option is to increase the current penalty under the Crimes Act 1961 for possession of an offensive weapon. Although only approximately 20% of these offences involve knives an increase in the penalty level would denounce the carrying of weapons and hold the offender more accountable for their actions.
26. The Crimes Act 1961 offence (section 202A) targets the most serious offending. The Government intends to send a clear message that carrying of any weapon is unacceptable. An increase in the penalty would go towards achieving this aim. This option would extend beyond knife crime, as this offence also applies to carrying other offensive weapons.
27. The United Kingdom has increased the maximum sentence for possession of a bladed weapon from 2 years to 4 years. However, the UK legislation does not have the sentencing direction to the Court that is in Section 202BA of the New Zealand Crimes Act 1961.
28. The penalty increase from 2 years to 3 years imprisonment could be considered as this would then align this penalty with the burglary tools possession offence⁴, the main analogous offence in the Crimes Act 1961. Although this would bring these two similar offences in line, the Crimes Act 1961 weapon possession offence already has a harsher element attached to it, given that imprisonment is mandatory upon second conviction for such possession.
29. The increase in the maximum penalty for possession of an offensive weapon is likely to lead to an increase in the prison population. The Ministry of Justice and the Department of Corrections estimate that there will be an increase in average prison sentence length and that a small number of offenders who currently receive Home Detention or community-based sentences will be imprisoned. As a result an additional 15–20 additional prison beds are likely to be needed following the implementation of the law change. Corrections also estimate that around 100 offenders per year who would have received monetary penalties are likely to receive community-based sentences as a result of the change.
30. Prison beds are provided to meet capacity levels established on the basis of forecasts of the prisoner population, produced annually. Funding arrangements reflect capacity requirements, thus capital funding is provided for the construction of complete units of prisoner accommodation, not on a per prisoner basis. The expected increase in prisoner numbers will therefore affect forecasts and consequently capacity development, having a net effect of bringing forward the forecast rate of growth in prisoner numbers. Illustratively, the marginal capital cost of the required beds is \$6m - \$8M, with an annual operating cost of \$1.4m - \$1.8m starting from 2010 - 2011.
31. The costs associated with increased numbers of community-based sentences and Home Detention orders will depend on the actual mix of sentences and orders imposed. The average cost of a sentence or order ranges from about \$2,800 for community work to \$19,000 for Home Detention.
32. The full impacts will be considered as part of the costing of changes to Part 8 of the Crimes Act (to be introduced by the Crimes (Offences Against the Person) Amendment Bill) and will be provided as part of Budget 2011 - 2012.

⁴ Section 233 Crimes Act 1961

Voluntary accord with retailers to limit the sale of knives to young people

33. The development of a voluntary accord, involving retailers, local authorities and Police, is an option available to restrict the sale of knives to young people. This would extend retailers current right to refuse to sell should they have concerns about the use of the knife.
34. An accord would provide guidance to retailers on good practise for the sale of knives and could cover the whole country or be used in those areas where Police intelligence indicates there is a knife problem. An accord could cover matters such as the safe storage and display of knives in shops, signs about the dangers of carrying knives and information sharing between retailers and the Police about knife sales to young people.
35. Work would be required with retailers and Police to develop an appropriate approach as there would be costs associated with the restrictions for retailers and on Police for enforcing a legislative ban, if one was to be introduced. The approach of working with retailers and Police was adopted in developing the anti-graffiti provisions.
36. The Safer Southwark Partnership knife charter launched in 2006 as a voluntary agreement between the Council and retailers set out stricter requirements around knife sales⁵. The Council, between April 2008 and March 2009, completed 100 test purchases and over 90% of retailers refused to sell knives to underage buyers⁶.
37. In February 2009 the UK Government announced a national campaign with retailers to reduce underage sales of knives. Many major retailers have signed up to an accord around the sale of knives, designed to improve the effectiveness of their ban on knife sales to under 18 year olds.

Using Fresh Start programmes to prevent knife offending and re-offending

38. The Government has recently introduced new measures to deal with youth offending. Fresh Start legislation and programmes target the 1000 most serious young offenders under 18 years. Some of this group is likely to be carrying knives and involved in knife crimes. The Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 will give the Youth Court new tools to address these types of offences and reduce re-offending – longer and more intensive supervision orders, parenting, mentoring and drug and alcohol programme orders and judicial monitoring of orders.
39. The Ministry of Social Development's Child, Youth and Family Service is able to work with Fresh Start providers to ensure that the Fresh Start programmes address the dangers of carrying knives, and teach young people alternative ways of dealing with conflict. They can also ensure that where a young person has committed an offence involving a knife that the conditions of any Family Group Conference plan or court order are closely monitored. Where conditions are breached the young person can be brought back before the court. Any additional costs associated with incorporating knife crime education into Fresh Start programmes will be absorbed within existing baseline funding.
40. Fresh Start funding is also being used to increase community youth development programmes targeted to young people who commit low level offences or are at risk of

⁵ This included asking prospective purchasers who look under 21 for proof of age, displaying knives in secure cabinets and staff training.

⁶ House of Commons Home Affairs Committee (June 2009) *Knife Crime: Seventh Report of Session 2008-09*.

offending. Many of these programmes will include mentoring, an approach that has been shown to be promising in reducing weapon related violence⁷. This will however, not guarantee that a change in behaviour will occur.

Education in schools provided by Police

41. The Police already work closely with schools to reduce crime and improve community safety. As a part of their role, Police could provide information to young people about the dangers of carrying knives. Where they have information indicating that there is a particular problem in a school involving knives, or other weapons, the Police could work closely with the school to develop a plan to address the problem. This may involve, for example, specific programmes around weapons, increased Police presence on the school grounds and/or policing places where young people meet after school. This may reduce the risk of serious violence occurring in these areas and provide reassurance to young people and the wider community. Any costs associated with incorporating knife crime education into the education provided by Police will be absorbed within existing baseline funding.
42. The Police's work with schools complements the work the Ministry of Education's Special Education Service does with schools to address student behaviour problems and manage emergencies and traumatic incidents.
43. Police presence in schools may also have other positive effects other than educating young people on the dangers of knives. Police presences may reduce other problems occurring within schools, bullying, graffiti and truancy. It may also be a useful mechanism for gaining intelligence about conflicts that have the potential to spill over outside of the school grounds.

Considered and Discounted Options

Make carrying knives illegal

44. An option could be to make the carrying of knives illegal which would go some way towards reducing the carrying of knives and increase public perceptions of safety. This option is over and above the current status quo, where people can have a reasonable excuse for carrying a knife. This option would remove the 'reasonable excuse' proviso and effectively criminalise those who have a genuine purpose for carrying a knife. This option fails to recognise that knives are a common item found in workplaces and the home and that people often have a legitimate reason for carrying a knife.
45. It is also useful to consider that knife possession does not itself cause harm to any other person, but has the potential to cause harm if the objects are misused.
46. This option will ultimately not eliminate people carrying knives; it could instead result in displacement where some individuals may resort to carrying an alternative weapon if carrying knives were made illegal.

Stop and Search Powers

47. The use of stop and search powers⁸ could be increased similar to changes that have been implemented in Victoria, Australia⁸. Police have been given the power to declare a

⁷ One recent US study concludes that "policies that emphasize the development of mentoring relationships, especially in areas with a high incidence of weapon-related violence, could be quite beneficial to youth." Melissa Fleschler Peskin, Susan R. Tortolero, Robert C. Addy and Nancy F. Weller Weapon Carrying Prevention: Should Adults Spend More Time With Youth. Youth Violence and Juvenile Justice 2009.

designated search area and would then be able to stop and search people without a warrant. The Police would publish a notice of intention to search in various papers a specified time out from the operation and then on the day, they do not require good cause to suspect or believe someone is carrying an offensive weapon, they have the automatic power to search.

48. An increase in weapon searches without warning may have the ability to take a lot of knives out of circulation through detection and deterrence. However, such a measure may be too intrusive and will impede on peoples rights. This power would unfairly target some members of a community and there is currently no evidence to suggest that such a power will achieve a reduction in knife crime.
49. The New Zealand Police already target areas where their intelligence indicates there are high crime levels or problems with particular crimes and have indicated that the current search powers are adequate.

Age restrictions on the sale of knives

50. Knives are a commonly available object; one measure would be to decrease the supply to young people by introducing an age restriction on the sale of knives. The UK legislation makes it illegal to sell knives to those under 18 years, which was raised from 16 years in 2006⁹. New South Wales also prohibits that sale of knives to under 16 year olds and South Australia recently released a discussion paper on knife laws which includes the option of a sales ban for young people.
51. This measure would not prevent young people from acquiring knives from other sources (within the home and workplaces). The Metropolitan Police in the UK have found that the most common knife used in knife crimes is a domestic knife, which if found on a person in a public place falls within existing legislation¹⁰.
52. While there is value in exploring ways to decrease the supply of knives, particularly as a solution for those who carry knives with the intention to use them, this is unlikely to reduce violent offending significantly - those intent on committing violence will find other means to do so.
53. Introducing a legislative prohibition on knife sales to young people would be a new development in New Zealand, but not unprecedented. The recent enactment of legislation around the sale of graffiti implements under the STOP strategy is one example of restricting the sale of materials likely to be used for criminal purposes. However, unlike spray-paint there is a wide variety of knives which are used for legitimate purposes even by young people
54. In the UK the restriction seems to have had little or no impact on public safety and a survey carried out by 11 MILLION found that those who are under 18 but appear older are rarely challenged if they attempted to buy a knife in a shop¹¹.

⁸ Victoria, Australia. The Summary Offences and Control of Weapons Acts Amendment Bill 2009. - Control of Weapons Act 1990

⁹ Section 141A United Kingdom Criminal Justice Act 1988

¹⁰ House of Commons Home Affairs Committee (June 2009). *Knife Crime: Seventh Report of Session 2008-09*

¹¹ 11 Million (2009). *Young people, and gun and knife crime – a review of the evidence* (www.11MILLION.org.uk)

55. The scale of the knife crime problem in New Zealand currently would make it difficult to justify a ban on the sale of knives to young people.

IMPLEMENTATION

56. The option for increasing the penalty for the Crimes Act 1961 offence of possession of an offensive weapon could be achieved in the Crimes (Offences Against the Person) Amendment Bill to amend Part 8 of the Crimes Act 1961, as section 202A is located in that part. That Bill is planned for introduction in May 2010.

57. Measures to ban or limit the sale of knives will require careful consideration and consultation with stakeholders. A longer development and implementation timeframe would be needed.

58. To incorporate a knife crime focus within Fresh Start, Justice Officials will work with the Ministry of Social Development, who in turn will work with Fresh Start providers on ways to reduce the dangers of carrying knives, and teach young people alternative ways of dealing with conflict.

59. The New Zealand Police Youth Education Services are already involved in education in schools. Police Education Officers run programmes in schools, such as Keeping Ourselves Safe programme, where there are crime and community safety matters that relate to that school. If this option of education in schools is pursued, the Ministry of Justice can discuss with the Police how these programmes could be used to educate young people about the dangers of carrying knives.

60. Improvements to information system technology interfaces would enable the Justice sector to routinely share information on weapon types which would assist in identifying problem areas and emerging trends in this area.

61. In July 2008, the Police National Recording standard was implemented requiring the collection of weapons information for all offences. Monitoring of the effectiveness of this standard commenced in July 2009 and the early indication is that this data is now being collected in most instances.

62. Currently, however, this data is not routinely shared across the justice sector. Information technology changes are required for this to occur. The cost of information technology changes are yet to be finalised. The Ministry of Justice is working with the Police to identify the requirements and determine the associated costs and funding options.

MONITORING AND REVIEW

63. The overall impact of these changes on knife offences will be able to be monitored through the data on weapons offences now being collected by Police. Under the proposals in this paper this data would be shared with the Ministry of Justice and other justice agencies to improve our understanding of knife crime.

64. The impact of the specific proposals in the paper will be monitored by agencies implementing them. For example the Police will monitor the number of Police interventions with schools that result from concerns around young people carrying knives.

CONSULTATION

65. The Ministry of Justice has consulted with the Police, the Ministry of Social Development, including Child, Youth and Family, and the Ministry of Education in developing the proposals

around education in schools and Fresh Start. The Department of Corrections has been consulted on the impact of the changes in the penalty for possession of an offensive weapon. The Retailers Association and the Police have been involved in preliminary discussions around the development of a voluntary accord. The Treasury have been consulted and the Department of Prime Minister and Cabinet have been informed.

CONCLUSION

66. If the status quo is maintained, this will not, on its own reduce the carrying of knives, and other weapons, by young people and their use in the commission of offences. None of the options proposed will, in isolation, achieve the overall policy objective of reducing the carrying of knives, and other weapons, by young people in particular, and their use in the commission of offences.
67. A combination of regulatory and non-regulatory options that target different aspects of the problem is needed. For example, education campaigns are useful for young people who are yet entrenched in offending behaviour where-as criminal sanctions are more appropriate for the most serious offending. As a package there are likely to be costs, particularly to Corrections arising from an increase in the penalty for possession of an offensive weapon, but these are likely to be outweighed by the benefits from reduced offending and re-offending and greater community safety.