



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC/CLIC/IIC:JBjf160625

16 June 2025

The Hon. Michael Daley MP
Attorney General
GPO Box 5341
Sydney NSW 2001

Dear Attorney,

THE FIREARMS PROHIBITION ORDER SCHEME

Community safety is a key concern of the Law Society, and we support the restriction and strict regulation of access to firearms and indeed, appropriate measures to prevent and respond to unauthorised and dangerous use of firearms and weapons, including heavy penalties in particular circumstances.

However, we are concerned that the way the Firearms Prohibition Order (**FPO**) scheme is currently designed may not adequately serve to protect the community from firearm-related crime and does not operate in a way that is consistent with good public administration or the rule of law. These concerns have also been expressed in recent media articles, particularly the number of FPOs against Indigenous children in NSW.¹

Our members report that the sweeping search and surveillance powers attached to FPOs, combined with the broad discretion to issue them, the lack of expiry and limited review mechanisms, are resulting in adverse and unjust outcomes, including for children and young people, contrary to the purpose of the legislation as intended by Parliament.

We understand that the NSW Police Force (**NSWPF**) have recently implemented a number of procedures which mitigate, to some extent, potential injustice arising from the scheme. As explored further below, this includes periodic review of FPOs, independent review of applications for a FPO in respect of children under 18, dip sampling of new FPOs and the creation of an FPO Dashboard enabling Commands to review FPOs. While we commend these positive developments, we are concerned that the systemic issues arising from the broader FPO legislative scheme persist.

We support prompt, comprehensive review and legislative reform of the FPO scheme, including:

- Clarification and legislative certainty in relation to when the Commissioner of Police may appropriately make a FPO against a person, pursuant to section 73 *Firearms Act 1996* (NSW) (**Firearms Act**);
- Clarification and legislative certainty in relation to when police search powers may appropriately be exercised, pursuant to section 74A *Firearms Act*, as suggested by the NSW Ombudsman;²
- Consideration of a default expiry period for FPOs, as suggested by the NSW Ombudsman;³ and
- Reform of statutory appeal and review mechanisms, ensuring that children subject to FPOs are afforded the same procedural fairness as adults subject to FPOs.⁴

¹ Ariel Bogle and Sarah Collard, '[NSW police's 'extraordinary' search powers a 'blank cheque' to target Indigenous youth, lawyers say](#)' *The Guardian* (19 May 2025); Bronte Charles, '[Advocates allege police are using coercive powers to target Aboriginal youth](#)' *SBS NITV* (3 June 2025).

² See: Ombudsman, Review of police use of the firearms prohibition order search powers, (August 2016) p. 71-72, online: <https://www.ombo.nsw.gov.au/reports/report-to-parliament/review-of-police-use-of-the-firearms-prohibition-order-search-powers-august-2016>

³ *Ibid*, p. 88-89.

⁴ *Ibid*, p. 29.

We offer the following details on what are, in our view, the key issues associated with FPOs to assist in your consideration of the issue.

Background: FPOs and the *Firearms and Criminal Groups Legislation Act 2013* (NSW)

Since 1973, the Commissioner of Police has had the power to make an FPO in respect of a person they believe is 'not fit, in the public interest, to have possession of a firearm'.⁵ For 40 years, the effect of FPO legislation was to 'prohibit any FPO subject from owning or using a firearm'⁶ and did not involve special police search powers.

In 2013, in the context of political concern over organised crime and criminal groups in NSW, the *Firearms and Criminal Groups Legislation Act 2013* was passed, amending the *Firearms Act 1996* to expand the scope of FPOs. The reforms, which remain in force today, enabled police to, without a warrant and without reasonable suspicion:

- detain a person who is subject to a FPO;
- enter any premises occupied by such a person;
- stop and detain a vehicle occupied or controlled by such a person; and
- conduct a search of the person, premises or vehicle, for the purposes of determining whether the person has committed an offence in respect of the order.⁷

Concern was expressed by public interest groups that the reforms, and in particular, the broad search powers attached, were 'oppressive' in nature⁸ and may be open to abuse.⁹

The then Premier, Barry O'Farrell, said, "nothing in this legislation should concern innocent citizens of this state. This legislation will concern those who are involved in criminal activities involving guns",¹⁰ and Parliament indicated that, as a safeguard, the amendments would also require the NSW Ombudsman to monitor and report on the exercise of the amended powers.¹¹

We are concerned that, since the introduction of sweeping search and surveillance powers under the *Firearms and Criminal Groups Legislation Act 2013*, FPOs have been utilised in a way that is at odds with Parliament's intent and is resulting in unintended consequences, including adverse and unjust outcomes for children and young people.

Concerningly, NSW Ombudsman recommendations made in 2016 to address, and guard against, such unjust outcomes have not been implemented, including a recommendation for a further independent and objective evaluation of the FPO search powers to be conducted after at least five years of operation. Particularly in light of the below issues, we consider a further review and appropriate legislative reform of the FPO scheme a high priority.

⁵ *Firearms and Dangerous Weapons Act 1973* (NSW), s 69; *Firearms Act 1989* (NSW), s 39; *Firearms Act 1996* (NSW), s 73.

⁶ McElhone, Megan, 'Now they're extraordinary powers: Firearms Prohibition Orders and Warrantless Search Powers in NSW' (2017) 28(3) *Current Issues in Criminal Justice* 329, online: [https://classic.austlii.edu.au/au/journals/CICrimJust/2017/5.html#:~:text=Since%201973%2C%20the%20New%20South,39\(1\)%3B%20Firearms%20Act](https://classic.austlii.edu.au/au/journals/CICrimJust/2017/5.html#:~:text=Since%201973%2C%20the%20New%20South,39(1)%3B%20Firearms%20Act)

⁷ The Hon. Michael Gallacher MLC, NSWPD, (Hansard), Legislative Council, 15 October 2013, online: <https://www.parliament.nsw.gov.au/bill/files/1182/2R%20Firearms%20and%20Criminal%20Groups.pdf>.

⁸ David Shoebridge MLC, NSWPD, (Hansard), Legislative Council, 15 October 2013, p. 23903.

⁹ Correspondence from NSW Bar Association to the Hon. Michael Gallacher MLC, the then Minister for Police and Emergency Services, (30 September 2013).

¹⁰ The Hon. Barry O'Farrell MP, NSWPD, (Hansard), Legislative Assembly, 17 September 2013, online: <https://www.parliament.nsw.gov.au/bill/files/1182/2R%20Firearms.pdf>.

¹¹ Ibid; see *Firearms Act 1996* (NSW), s 74B.

Persons subject to FPOs

When the *Firearms and Criminal Groups Legislation Act 2013* was introduced, Parliament expressed that the laws, including the extensive search powers, were intended to be used in a way that targeted:

- 'those who are involved in criminal activities involving guns',¹²
- 'those who should not, by virtue of their pre-existing criminal record or some other matter, have access to a firearm',¹³ and
- people who police 'have good reason to believe are members of organised criminal groups and thereby have access to firearms ... to check whether the order is being observed'.¹⁴

In our view, these are appropriate objectives, but notwithstanding this intent, section 73 of the *Firearms Act 1996* (NSW) gives police broader discretion to make FPOs, including in respect of persons unconnected to organised crime or gun-related offending. Section 73(1) simply states 'the Commissioner may make a firearms prohibition order against a person if, in the opinion of the Commissioner, the person is not fit, in the public interest, to have possession of a firearm.' Our members report that FPOs are made in a broad range of circumstances, including where the subject individual:

- Has no criminal history, or suspected association with any criminal group or organisation.
- Has never had any involvement with, or inclination toward, using or possessing firearms or other weapons.
- Has not been charged with, or suspected of, any violent offences.
- Is a child or young person with little or no criminal record, withdrawn offences, or a record with a low level firearm offence arising because the child was playing with a toy gun.

Indeed, in their submission to the Sentencing Council's Review of firearms, knives and other weapons offences, Legal Aid NSW advised that, 'anecdotally, [Legal Aid NSW] lawyers report orders being made against children in circumstances where they have no history of firearms charges or convictions.'¹⁵ Similarly, the Aboriginal Legal Service NSW/ACT Limited advised the Sentencing Council that FPOs 'are often imposed against individuals with no history of convictions for weapons offences.'¹⁶

One example of this is the case of *Hamid*.¹⁷ In this case, the person subject to the FPO had no criminal history, previous criminal charges or cautions, or any details recorded in relation to an offence or investigation involving a firearm. The FPO was issued on the basis of the person's close relationships with two people with criminal histories. Notwithstanding this, given the breadth of the discretion available to the Commissioner, NCAT upheld the making of the FPO against her.

Further, we note that FPOs appear to be 'disproportionately imposed against Aboriginal children.'¹⁸ While Indigenous people make up just 3.4% of the population in NSW,¹⁹ data provided by NSW Police during Budget Estimates confirming that in 2022/23, '45% of children against whom FPOs were imposed identified as

¹² The Hon. Barry O'Farrell MP, NSWPD, (Hansard), Legislative Assembly, 17 September 2013, p. 23564.

¹³ The Hon. Michael Gallacher MP, NSWPD, (Hansard), Legislative Assembly, 15 October 2013, p. 23904.

¹⁴ David Shoebridge MLC, NSWPD, (Hansard), Legislative Council, 15 October 2013, p. 23889.

¹⁵ Legal Aid NSW, Submission to the NSW Sentencing Council review of weapons-related offences, (2024) p. 41, online: <https://sentencingcouncil.nsw.gov.au/documents/our-work/firearms-knives-and-other-weapons/submissions-to-cp-and-ip/WE11.pdf>

¹⁶ ALS NSW/ACT, Submission to the NSW Sentencing Council review of weapons-related offences, (2024) p. 17, online: <https://sentencingcouncil.nsw.gov.au/documents/our-work/firearms-knives-and-other-weapons/submissions-to-cp-and-ip/WE18.pdf>

¹⁷ *Hamid v Commissioner* [2018] NSWCATAD 43.

¹⁸ ALS NSW/ACT, Submission to the NSW Sentencing Council review of weapons-related offences, (2024) p. 17, online: <https://sentencingcouncil.nsw.gov.au/documents/our-work/firearms-knives-and-other-weapons/submissions-to-cp-and-ip/WE18.pdf>

¹⁹ Australian Bureau of Statistics, New South Wales: Aboriginal and Torres Strait Islander population summary (Webpage, accessed on 8 August 2024, [New South Wales: Aboriginal and Torres Strait Islander population summary | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/new-south-wales-aboriginal-and-torres-strait-islander-population-summary)).

Aboriginal or Torres Strait Islander.²⁰ According to statistics obtained by the Justice and Equity Centre (the **JEC**), of the 7,990 FPOs currently in force in NSW, 40% are made in respect of Aboriginal people. 109 of those FPOs are in respect of people under the age of 18 years, of whom 63 are Aboriginal.²¹ We are concerned that this practice significantly undermines the NSW Government's commitment to Closing the Gap, and in particular Targets 10 and 11.

We understand that the NSWPF has put in place some operational safeguards on the wide discretion to impose an FPO. We commend the Commissioner's Executive Team for recently ratifying improvements to the NSWPF Standard Operating Procedures (**SOPs**) to improve processes, including to implement additional safeguards in applications for FPOs, such as:

- Requiring Authorised Delegates to forward FPO applications to a Quality Assurance Officer to review the application and supporting data prior to a final decision being made by the delegate. We also note that the NSWPF system records amendments made to an application and provides for the recording of additional notes including rationales.
- Requiring review of any application for an FPO in respect of children under 18 and delegates decision by the Commander of the Firearms Registry prior to any such FPO being made.

While we welcome the implementation of additional safeguards in the NSWPF process for FPOs, we are mindful of the limitations of these procedures, including that they remain internal to the NSWPF and therefore do not provide any independent oversight of their application, and are not codified in legislation.

We are concerned that, notwithstanding NSWPF SOPs, the highly discretionary legislative powers in relation to FPOs can enable FPOs to be used in a way that does not effectively protect the community from firearm-related offending but instead causes adverse and discriminatory impacts against vulnerable groups. We consider this at odds with the original intent of the legislation and are of the view that comprehensive review and reform is required to improve firearms protection in NSW.

Extensive search powers

Once an FPO has been imposed on a person, the search powers available to police are significantly broad in scope, enabling police to conduct searches of the person, premises (including a person's home and workplace) and vehicle, without warrant or suspicion. We are concerned about the disproportionate and adverse impact of these search powers, particularly as people the subject of an FPO, including low-risk and vulnerable people, are usually subject to these significant search powers for their entire lives, and without access to sufficient review mechanisms (discussed further below).

In the 2016 report, *Review of police use of the firearms prohibition order search powers*, the NSW Ombudsman found that in the two years following the introduction of these broad search powers, notwithstanding the 'extensive' use of FPO search powers by police, no items were seized in 90% of search events and in the remaining cases, the majority of items seized involved small quantities of drugs and drug paraphernalia.²² The NSW Ombudsman reported:

Over the two years, there were approximately 1,500 interactions where police used the search powers. During those interactions, police conducted over 2,500 separate searches, sometimes of the person's body as well as their property. The police were sometimes able to use the FPO search

²⁰ Parliament of NSW, Portfolio Committee No 5, Responses to Questions Taken on Notice in Budget Estimates Hearing 7 November 2023, Tab A, Table 2.

²¹ Justice and Equity Centre, Submission to the Inquiry into Australia's youth justice and incarceration system, (10 October 2024) p. 12, online: <https://jec.org.au/wp-content/uploads/2024/10/24.10.10-Submission-Justice-and-Equity-Centre.pdf>

²² Ombudsman, Review of police use of the firearms prohibition order search powers, (August 2016) p. 10, online: <https://www.ombo.nsw.gov.au/reports/report-to-parliament/review-of-police-use-of-the-firearms-prohibition-order-search-powers-august-2016>

powers in circumstances where general search warrant powers were unlikely to apply. **Police found firearms, ammunition and firearm parts in 2% of these interactions.**²³

In 2022-23, statistics obtained by the JEC show that almost 10,000 FPO searches were conducted under the FPO regime, with just 9 resulting in the location of firearms or firearms accessories/attachments.

These findings cause the Law Society to have significant concerns about the utility of these search powers in protecting the community from firearm-related crime. This data, in our view, calls into question the effectiveness of FPO search powers against their invasiveness and disproportionate impact, especially on vulnerable groups, and raises serious questions about whether the FPO regime is fit for purpose.

Our members report that these extensive search powers:

- Lead to frequent searches of individuals and their property in circumstances where there is no basis to suspect they are in possession of a firearm.
- Lead to charges being laid for non-weapon related offences, such as low-level drug possession for personal use.
- Can be highly disruptive, destabilising and traumatic for children and their families whose homes are regularly searched, including residential care facilities.

We are particularly concerned about the impact of these search powers on children. Search powers attached to an FPO do not differentiate between subjects who are children and subjects who are adults, which we suggest does not appropriately recognise the vulnerability of children in their interactions with law enforcement.

Our members are concerned that police may use FPOs as a proactive policing tool, akin to the now-discontinued Suspect Targeted Management Plan (**STMP**), causing increased interaction between young people and police, which may increase the likelihood of their incarceration. The Law Enforcement Conduct Commission noted that under the STMP, police were using statutory powers to increase their interaction with the target, including FPO checks.²⁴ We note that the STMP was discontinued after being found by the Law Enforcement Conduct Commission to have the 'insignia of being unreasonable, unjust or oppressive'.²⁵ We hold similar concerns in respect of the FPO scheme.

No expiration

FPOs do not expire. This means that a person is subject to an FPO and the broad search powers that attach for their lifetime, regardless of factors including their age at the time the FPO was made and any subsequent criminal activity (or lack thereof). Under legislation, the power to revoke an FPO rests solely with the Commissioner, who holds complete discretion to revoke FPOs 'at any time for any or no stated reason'.²⁶ There is no legislative process for expiry or routine review of FPOs to ensure that the FPO remains appropriate. We note that some FPOs remain active against people over 100 years old.²⁷

Compared to other relevant legislative schemes that involve the imposition of an order or significant search powers, the lack of expiry is highly irregular. For example, in respect of an apprehended domestic violence order (**ADVO**), legislation prescribes a default period of 2 years before expiry, or 1 year for defendants under the age of 18.²⁸ Unlike the FPO scheme, there are significant safeguards attached to making an ADVO of an indefinite

²³ Ibid, p. iv.

²⁴ LECC, *Operation Tepito Final Report*, (October 2023) pp. 2 and 68, online: <https://www.lecc.nsw.gov.au/publications/publications/operation-tepito-final-report.pdf>

²⁵ Ibid, p. 62

²⁶ *Firearms Act 1996* (NSW), s 73(3).

²⁷ Tara Moriarty, (Hansard), Legislative Council, 16 April 2025, p. 5044, online: <https://www.parliament.nsw.gov.au/lc/papers/pages/ganda-tracking-details.aspx?pk=103157>

²⁸ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 79A.

duration. Importantly, only the Court has the power to make an ADVO of indefinite duration, and in making such an order, particular circumstances must be met, including that:

- (a) the applicant has sought an indefinite order, and
- (b) the order relates to a defendant who was 18 years of age or older when the application for the order was first made, and
- (c) there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependants of the protected person, and
- (d) that risk cannot be adequately mitigated by an order of limited duration.²⁹

Defendants subject to an indefinite ADVO have access to appeal rights in NSW courts and may make an application for variation or revocation with leave of the Court, unlike those subject to an FPO.

Another comparison may be made to police search powers otherwise prescribed under the *Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA)*. As noted by the Ombudsman (citations omitted):

Police search powers usually have an expiration period. For example, police powers to search on the basis of a reasonable suspicion require that the search be conducted as quickly as reasonably practicable. A warrant to search premises typically expires within 72 hours of being authorised. If police want an extension of the warrant, they can apply to the authorising officer for an additional 72 hours. The maximum time allowed for the expiry of a search warrant is six days.³⁰

By contrast, FPOs comprehensive police search powers can be utilised for the lifetime of the person subject to the order.

In the 2016 report, the NSW Ombudsman ultimately recommended that FPOs should expire after five years, concluding that:

This recommendation, if implemented, will allow police to continue to target current firearms risks, while reducing the potential for people to be subject to arbitrary or unreasonable searches for an indefinite period. If the circumstances warranted, the Commissioner could make a further FPO against that same person at the expiry of five years.³¹

We note with concern that the NSW Ombudsman's recommendation has not been implemented, and no further review conducted.

NSWPF measures to implement review procedures

We understand that the NSWPF has taken positive steps to implement internal review processes for FPOs. We understand that a recent resourcing determination and update to the Computerised Operational Policing System (**COPS**) has enabled the Technology and Communications Services Command, which manages the COPS system, to approve enhancements that will enable internal review of FPOs to be undertaken every five years by the Command which requested the FPO. We understand that once this enhancement is functional in the COPS system, the reviews will be distributed by the Firearms Registry.

²⁹ Ibid, s 79B(1).

³⁰ Ombudsman, Review of police use of the firearms prohibition order search powers, (August 2016) p. 86, online: <https://www.ombo.nsw.gov.au/reports/report-to-parliament/review-of-police-use-of-the-firearms-prohibition-order-search-powers-august-2016>

³¹ Ibid, p. V.

We consider this a positive step, in particular noting that the SOPs now set out details of a comprehensive internal review process. This includes setting out the purpose of the review as to ensure the grounds for the original FPO are still valid and the order still required and assess any compliance action undertaken pursuant to the order. If no compliance action (searches) were undertaken to determine if there is reason for the order to continue, the Command's recommendation is to be then forwarded to the Authorised Delegate to affirm or revoke the order. If a delegate recommends the order be revoked it is forwarded to the Commander, Firearm Registry for review.

In addition to this process, we note that the Commissioner's Executive Team has recently ratified other improvements to support review of FPOs, including:

- a requirement for the Firearms Registry to undertake dip sampling of all new orders and decisions to affirm orders following a review. We understand that this function will be undertaken by the Review and Advisory Team with a reporting function being built into the system.
- an FPO Dashboard, created with the assistance of the State Intelligence Command, enabling all Commands to review the orders their command is responsible for including those unserved, orders in respect of children and those issued to persons over 70 years old or deceased.

We commend the NSWPF for taking steps to develop and implement review processes in absence of legislative protections.

Notwithstanding these developments, we note limitations of the approach (including that all reviews are conducted internally) and remain conscious that the legislative framework itself falls short of the recommendation of the NSW Ombudsman to amend FPO legislation to ensure FPOs expire after five years. These issues may be mitigated to some degree through a public reporting obligation, such as to the Bureau of Crime Statistics and Research, to aid transparency. However, we ultimately consider the NSW Ombudsman recommendation a preferable approach, particularly in view of the extensive search powers attached to FPOs and limited appeal rights available.

Limited appeal rights

We are also concerned about the limited appeal rights attached to FPOs, and the procedural fairness implications arising.

Within 28 days of being served with an FPO, a person may request that the Commissioner conduct an internal review of an FPO. If internal review is denied, a person can apply to the NSW Civil and Administrative Review Tribunal (**NCAT**) for administrative review of an FPO. There are otherwise no mechanisms of appeal, including no method of appealing to the Supreme, District or Local Courts of NSW. We are concerned that these appeal pathways are unduly limited, especially in view of the serious and onerous nature of FPOs resulting from an exercise of executive power.

We are particularly concerned that the operation of section 75(1A) of the *Firearms Prohibition Act 1996*, effectively prohibits any child from appealing to NCAT in respect of an FPO, as children are not permitted to hold a firearms licence and considered a 'disqualified person'. NCAT has confirmed that it does not have jurisdiction to hear applications for review of a decision to make an FPO against a person who is under the age of 18.³²

In our view it is essential that there be wholesale legislative review and reform to the FPO regime, and at a minimum, that appeal and review mechanisms for FPOs be urgently amended, including to ensure that children are accorded the same procedural fairness as adults subject to FPOs.

We look forward to engaging with you in respect of these concerns, and any review or reform processes arising.

³² *DWK v Commissioner* [2019] NSWCATAD 135.



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The Law Society would also be pleased to meet with you in respect of this topic. Should this be of interest, or if you have any questions in relation to this letter, please contact Jade Fodera, Policy Lawyer on (02) 9926 0218 or by email: jade.fodera@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

President