# Review of police use of Firearms Prohibition Order search powers: Issues Paper – Template for submission

## **Introduction**

We have published an issues paper which called for submissions to our review of police use of Firearms Prohibition Order search powers. This document is designed to assist you in preparing a submission to the review. It contains some optional questions about you; and a summary of the questions for consideration presented in the issues paper.

You are welcome to respond to as many of these questions as you like. You are also welcome to raise any other issues, and provide any other information you would like us to consider. If you would prefer to provide your comments through a telephone call or a meeting with the review team, please contact us on (02) 9286 1000.

Parliament required that the Ombudsman keep under scrutiny the exercise of the new FPO search powers for the first two years of their operation (from 1 November 2013 to 31 October 2015).[[1]](#footnote-1) At the end of this period, we will report our findings and any recommendations to the Attorney General, the Minister for Police and the Commissioner of Police. The Minister for Police is then required to table our report in Parliament as soon as practicable. We may mention or quote your submission in this report. Please advise us if you do not want to be identified in this report.

Please provide us with your submission by **Monday, 31 August 2015**.

Your submission may be sent:

By email: review@ombo.nsw.gov.au
 (please include ‘FPO search powers review’ in the subject line)

By mail: FPO search powers review

 NSW Ombudsman

 Level 24, 580 George Street

 SYDNEY NSW 2000

## **Background**

On 1 November 2013, police in New South Wales obtained new search powers to enforce a Firearms Prohibition Order (FPO). The new search powers[[2]](#footnote-2) allow police to search (without a warrant) any person subject to an FPO and any premises or vehicle that the person occupies, controls or manages. These powers were introduced to help police find and seize firearms and related items (such as a firearm part or ammunition) that the person is prohibited from having. Police can conduct an FPO search at any time, as long as the search is ‘reasonably required’ to determine whether the person has committed an offence by using a firearm, or by acquiring or possessing a firearm, a firearm part or ammunition.[[3]](#footnote-3)

# Submission to the NSW Ombudsman’s review of police use of Firearms Prohibition Order search powers

## **Questions about you (optional)**

Name and/or organisation name:

Contact details:

Are you now or have you ever been subject to an FPO?

Are you related to or residing with an FPO subject?

Have you been subject to an FPO search?

If an organisation, have any of your clients or stakeholders been subject to an FPO search?

## **Why and when should police conduct a search?**

## **When is a search ‘reasonably required’?**

1. In developing guidelines, what criteria or principles should police consider when determining whether a search is ‘reasonably required’?

Type your response here

## **Searches conducted within the 28-day internal review period**

1. How do you think the apparent conflict between the police practice of conducting an immediate search upon service of an FPO and the person’s right to seek a review of the decision to issue the order should be resolved?

Type your response here

1. Should police introduce guidelines to wait until the period of 28 days has expired before conducting an FPO search (and use other search powers in the meantime if they have reasonable grounds to do so)?

Type your response here

## **Time of day at which the search is conducted**

1. Is it appropriate that police are able to conduct a search of premises under the FPO search powers at any time, day or night?

Type your response here

1. Should police be required to seek permission from a police officer of a particular rank in order to conduct an FPO search of premises at night?

Type your response here

## **Expiry of search powers**

1. To ensure that the use of the FPO search powers is targeted and effective, should an FPO expire after a certain period of time and/or should there be a process for the mandatory review of an FPO, to ensure that the reasons for issuing the FPO remain current?

Type your response here

## **What and how should police search?**

## **Person searches**

1. Should person searches conducted under the FPO search powers be subject to legislative, policy or procedural safeguards? What should those safeguards be?

Type your response here

1. Should the Act be amended to include a provision providing police with an ancillary power to search people not subject to an FPO in order to find firearms, firearm parts or ammunition?

Type your response here

## **Premises searches**

1. Should premises searches conducted under the FPO search powers be subject to legislative, policy or procedural safeguards? What should those safeguards be?

Type your response here

1. Should the NSW Police Force develop guidelines to assist police to determine whether or not the premises they wish to search under the FPO search powers are occupied by or under the control or management of an FPO subject? If so, what is relevant for police to consider in making this decision?

Type your response here

1. Should police have the power to search all vehicles or vessels in or on premises subject to an FPO search?

Type your response here

1. Should there be a legislative requirement that police provide a notice to occupier when conducting an FPO premises search?

Type your response here

1. Should the FPO subject be required to inform other adult residents of the fact that the person is subject to an FPO?

Type your response here

1. Should the FPO subject be required to inform other adult residents that police can conduct a search of the premises for firearms, firearm parts or ammunition, at any time?

Type your response here

1. Should police be required to explain the nature and extent of the FPO search powers to all adult residents before conducting each FPO search? If so, should this be in the form of a written notice?

## **Other comments or additional information**

Type any additional comments/suggestions in relation to the new legislation here

1. *Firearms Act* *1996*, s. 74B(1). [↑](#footnote-ref-1)
2. The powers are contained in section 74A of the *Firearms Act 1996*, as inserted by the *Firearms and Criminal Groups Legislation Amendment Act 2013*. [↑](#footnote-ref-2)
3. *Firearms Act 1996*, s. 74A(1). [↑](#footnote-ref-3)