# Review of Restricted Premises Act police search powers and offence provisions: Issues Paper – Template for submission

## Introduction

We have published an issues paper which calls for submissions to our review of additional police search powers and new offence provisions in the Restricted Premises Act. This document is designed to assist in preparing a submission to the review. It contains some optional questions about you and a list 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 review the use of the search powers and offence provisions 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 publicly.

Please send us your submission by **Friday, 2 October 2015**.

Your submission may be sent:

By email: review@ombo.nsw.gov.au
 (please include ‘Restricted Premises Act review’ in the subject line)

By mail: Restricted Premises Act review

 NSW Ombudsman

 Level 24, 580 George Street

 SYDNEY NSW 2000

## Background

On 1 November 2013, changes to the Restricted Premises Act, intended to help combat gun crime and target premises used by serious criminals, entered into force. The Supreme Court or District Court can make a declaration under the Act in relation to premises on which proscribed activities take place. Police are empowered to search suspected premises under a warrant and to search declared premises at any time without a warrant.

Police previously had powers to search for alcohol and drugs. After the 2013 amendments, police can also search for firearms, weapons and explosives.[[2]](#footnote-2) New offences were introduced for premises subject to a ‘reputed criminal declaration’, which can be made if reputed criminals attend, control or manage the premises. The owner or lessee of such premises commits an offence if a reputed criminal attends, controls or manages the premises while the declaration is in force.[[3]](#footnote-3) These offences are punishable by up to three years’ imprisonment and/or a $16,500 fine.

# Submission to the NSW Ombudsman’s review of police powers and offence provisions of Restricted Premises Act

## Questions about you (optional)

Name and/or organisation name:

Contact details:

Are you now or have you ever been subject to a search under the Restricted Premises Act?

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

## The additional section 13 search powers

1. What are your views on the way police have used the section 13 powers during the review period?

Type your response here

1. What are your views on whether the expansion of section 13 to allow police to search for weapons and explosives is necessary, given the existing powers available to search for and seize these items and the way that police have used the section 13 search powers in practice?

Type your response here

1. What are your views on the need for clarification around the meaning of the items described in section 10(e)? If clarification is required, what should that be?

Type your response here

1. Should the definition of ‘weapon’ in the Restricted Premises Act be amended to explicitly include firearm parts?

Type your response here

1. Should the Restricted Premises Act be amended to give police a separate ancillary power to seize particular items, similar to section 49 of LEPRA?

Type your response here

1. Should the legislation be amended to allow a Magistrate to consider the nature of each item and its connection with the proscribed activities that occurred on the premises, when determining applications for the return of items seized under a section 13 warrant?

Type your response here

1. Should police be required to inform the owner of property seized during a section 13 search that they are required to apply to a Magistrate within 21 days if they want their property returned? If so, what procedures should police be required to follow?

Type your response here

1. Should police have ancillary powers to search people and vehicles on the premises when executing a section 13 warrant, and, if so, what should be the threshold for conducting such searches?

Type your response here

1. Should police be given an additional distinct power to require a person who is present at premises being searched under the Restricted Premises Act to provide information about their identity?

Type your response here

## The additional section 10 search powers

1. What are your views about the need, if any, for the Restricted Premises Act to be amended, or police to develop guidelines, to include a threshold for the use of the additional section 10 search powers?

Type your response here

1. Should any additional legal requirements apply to the conduct of section 10 searches?

Type your response here

1. What are your views on whether any or all of Part 5, Division 4 of LEPRA should apply or be adapted to the conduct of section 10 searches?

Type your response here

1. What are your views on whether the Act should be amended to include an avenue to apply for the return of an item seized under section 10, similar to the provisions in section 13A(2)?

Type your response here

## The new offence provisions

1. What are your views on whether reputed criminal declarations and the related offences under sections 8(2A) and 9(3) are necessary to achieve the objective of targeting premises used by people involved in serious organised criminal activity and/or gun crime?

Type your response here

1. What checks and balances, if any, are required to ensure that the new offences do not apply in relation to premises that were not intended by Parliament to be targeted?

Type your response here

1. What are your views on whether, for example, police use of the new offence provisions should be explicitly limited to premises used for organised criminal activity and/or gun crime by:
2. inserting an objects clause into the Restricted Premises Act
3. changing the definition of ‘reputed criminal’, and/or
4. changing the definition of ‘premises’?

Type your response here

1. Should the Restricted Premises Act, or regulations under the Act, prescribe the form and content of a section 6 notice and, if so, what information should be included in this notice?

Type your response here

1. What steps should be taken, if any, to reduce the practical obstacles faced by owners and occupiers in attempting to comply with the obligations effectively imposed by the new offence provisions?

Type your response here

1. Should the Restricted Premises Act be amended so that:
2. police are required to advise owners or occupiers about particular reputed criminals whom they are required to exclude from the premises, and
3. owners and occupiers will only commit an offence if they fail to exclude those named individuals?

Type your response here

1. Should the new offence provisions be amended to make it clear that the prosecution must prove that owners and occupiers had knowledge, or were reckless, as to whether a particular person:
2. was a reputed criminal, and
3. was attending, controlling or managing premises?

Type your response here

1. To ensure that use of the new offence provisions and additional section 10 search powers is targeted and effective, should there be a process requiring police to review each declaration, periodically or on receipt of new information, to ensure that the reasons for the declaration remain current?

Type your response here

1. What are your views on whether any processes should be in place to ensure that prospective and new owners and occupiers of declared premises are made aware of declarations?

Type your response here

1. Should the Restricted Premises Act be amended so that owners and occupiers of declared premises can apply for a rescission on a different basis and, if so, what should they be required to prove?

Type your response here

## Other comments or additional information

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

1. *Restricted Premises Act* *1996*, s. 20A(1). [↑](#footnote-ref-1)
2. *Restricted Premises Act 1996,* ss. 10, 13. [↑](#footnote-ref-2)
3. *Restricted Premises Act 1943*, ss. 8(2A), 9(3). [↑](#footnote-ref-3)