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Submission cover sheet

Inquiry into Legislation on proposed firearms reform

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Standing Committee on Legal Affairs| 196 London Circuit, CANBERRA ACT 2601, AUSTRALIA
(+61) 02 620 70524 • lacommitteelegal@act.gov.au • parliament.act.gov.au

ACT HUMAN RIGHTS COMMISSION
Australian Capital Territory

Ms Chiaka Barry MLA
Chair, Standing Committee on Legal Affairs
Legislative Assembly for the Australian Capital Territory
Via LACommitteeLegal@parliament.act.gov.au

2 April 2026

Dear Ms Barry

Inquiry into Legislation on Proposed Firearms Reform:
Submission on Firearms (Firearm Prohibition Orders) Amendment Bill 2026

The ACT Human Rights Commission ("the Commission") refers to the above inquiry, which we note relates to two bills: the Firearms (Firearm Prohibition Orders) Amendment Bill 2026 ("FPOs Bill"), presented to the Legislative Assembly on 24 February 2026,[1] and the Firearms (Public Safety) Amendment Bill 2026. We provide this submission to inform the Committee's consideration of the FPOs Bill. We will not comment on the Firearms (Public Safety) Amendment Bill 2026.

We have no objection to the Committee publishing this submission or otherwise disclosing its contents to anyone, provided that the Committee removes or redacts the Commission staff contact information in the final paragraph.

The Commission does not support the FPOs Bill in its current form

The Commission is not opposed in principle to the enactment of an FPO scheme in the ACT, provided that such a scheme includes all safeguards necessary to protect against unreasonable and unnecessary limitations of human rights.

However, the Commission does not support the FPOs Bill in its current form. As we explain in detail below, our primary concern is the extraordinary police "enforcement" powers included in proposed new Division 12A.10 within this bill. We do not consider that the proposed safeguards in the FPOs Bill suffice to remedy the underlying risk that these powers will unlawfully limit the right not to be subjected to unlawful or arbitrary interferences with privacy, family, home or correspondence, or other rights protected by the *Human Rights Act 2004* ("Human Rights Act").

We recommend that instead, the exercise of search and other "enforcement" powers concerning an FPO be premised on a "reasonable suspicion" that the subject has contravened the FPO, or otherwise occur in accordance with a warrant.

[1] Available at Firearms (Firearm Prohibition Orders) Amendment Bill 2026 | Bills.

Extraordinary nature and anticipated effects of the proposed "enforcement" powers

Proposed new Division 12A.10 of the *Firearms Act 1996* ("Firearms Act") within section 14 of the FPOs Bill, entitled "Enforcement", would bestow extraordinary and broad powers on police. These include powers under proposed Subdivision 12A.10.2 to search a person who is subject to an FPO, detain that person, enter and search their residence, their vehicle, and various other premises, and seize things – all without a warrant or a reasonable suspicion that any offence has been committed. Instead, all that would be needed, for a police officer to be able to exercise any of those powers, is that that officer be satisfied that exercising the power(s) is "reasonably required" to determine that a person subject to an FPO has acquired, possesses or is using a firearm or firearm-related item, in contravention of that FPO (proposed new section 183ZW(2)).

The "enforcement" actions just described would be intrusive and have the potential to limit various human rights. To highlight just some key matters in this regard: any of those actions would generally interfere with the privacy of a person who is subject to an FPO. Depending on the circumstances, they would also interfere with that person's home, family and/or correspondence and the security of their person, and constrain their liberty, their right to freedom of movement[2] and their right to protection of their family.[3] People living with that person or present at the time of the relevant actions would be similarly affected.

Further human rights that these actions could limit include the right to work,[4] of both people subject to FPOs and others (for example, if a search prevented a person from going to work or if police seized an item the person needed to do their work) and the right of a child to special protection[5] (for example, if a child was present at the time of a search).

Moreover, if police applied the proposed powers in a discriminatory way they would likely breach rights to equality and non-discrimination under section 8 of the Human Rights Act, as well as the *Discrimination Act 1991*. As we discuss below, there is a real prospect of such discriminatory application.

The Explanatory Statement to the FPOs Bill acknowledges a number of these anticipated effects of the proposed extraordinary "enforcement" powers. It asserts that the provisions setting out these powers limit a series of human rights, of people subject to FPOs and of third parties, including their rights not to have their privacy, family or home interfered with unlawfully or arbitrarily and their rights to liberty and security of person.[6]

Yet the Explanatory Statement also claims in effect that all limits that these provisions will or may impose on human rights are reasonable, set by laws and demonstrably justified, as required by section 28 of the Human Rights Act, and therefore are consistent with that act. For the following reasons, we are not convinced that this is so.

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[2] See Human Rights Act s 13.
[3] See Human Rights Act s 11(1).
[4] See Human Rights Act s 27B(1).
[5] See Human Rights Act s 11(2).
[6] Under the Human Rights Act s 12 and 18. Legislative Assembly for the ACT, Eleventh Assembly, *Firearms (Firearm Prohibition Orders) Amendment Bill 2026: Explanatory Statement and Human Rights Compatibility Statement,* presented by Marisa Paterson MLA, Minister for Police, Fire and Emergency Services, February 2026 ("Explanatory Statement'), pp 31-32.

Usual threshold for exercise of such powers and inadequacy of other safeguards

Requiring police to have either a warrant or reasonable suspicion of commission of an offence before they may exercise search or other powers of the kind that the FPOs Bill would confer, are fundamental safeguards for ensuring that such powers are exercised solely in connection with their stated aim, are justified by reference to objective evidence, and are not subject to misuse for ulterior purposes (e.g. for "disruption" or to obtain suspected evidence of other offences without a warrant). As the Explanatory Statement itself mentions, there is a wide range of both domestic and international jurisprudence emphasising this fact.[7]

For example, the European Court of Human Rights has found various powers under domestic law that were unfettered by a "reasonable suspicion" requirement to be inconsistent with human rights. These powers have included police powers under United Kingdom (UK) law to stop and search people in specified areas for articles that could be used in connection with terrorism, without a requirement for reasonable suspicion of those articles' presence. In the *Gillan and Quinton v UK* case, to which the Explanatory Statement refers, the European Court found that those police powers violated the provision of the European Convention on Human Rights on the right to private life (the Convention equivalent of the right to non-interference with privacy, family, home and correspondence under section 12 of the ACT's Human Rights Act).[8]

While the Court noted that UK law incorporated certain safeguards against abuse of the relevant powers, including a process of independent review, it concluded that those safeguards were not adequate, nor were the powers "sufficiently circumscribed".[9] It specifically rejected a UK government argument that entitlements to seek judicial review or bring an action in damages afforded protection against the abuse of the powers, observing that **"in the absence of any obligation on the part of the officer to show a reasonable suspicion, it is likely to be difficult if not impossible to prove that the power was improperly exercised"**.[10] The Court also took into account the risk of discrimination in the exercise of the powers, stating:

> **there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer.** While the present cases do not concern black applicants or those of Asian origin, **the risks of the discriminatory use of the powers against such persons is a very real consideration [...] The available statistics show that black and Asian persons are disproportionately affected by the powers**, although the Independent Reviewer has also noted [...] that there has also been a practice of stopping and searching white people purely to produce greater racial balance in the statistics.[11]

The Explanatory Statement refers to several subsequent European Court decisions which, it suggests, have "confirmed" that a reasonable suspicion requirement is not necessary to avoid breaching human rights.[12] The European Court did accept in principle in some of those decisions that the lack of a reasonable suspicion or warrant requirement, on its own, will not necessarily make a measure unlawful. However, what these decisions primarily underscore is that in practice,

[7] See Explanatory Statement, p 34, referring to Canadian, United States and New Zealand jurisprudence and European Court of Human Rights, *Gillan and Quinton v the United Kingdom* (Application No 4158/05), Judgment, 12 January 2010 ("ECtHR Gillan and Quinton v UK Judgment"), further discussed below.
[8] ECtHR Gillan and Quinton v UK Judgment, para 87.
[9] ECtHR Gillan and Quinton v UK Judgment, para 87.
[10] ECtHR Gillan and Quinton v UK Judgment, para 86, emphasis added.
[11] ECtHR Gillan and Quinton v UK Judgment, para 85, emphasis added.
[12] Explanatory Statement, p 34.

a reasonable suspicion or warrant requirement are still key safeguards and in the absence of either, there is a high risk of breach of human rights.

Addressing each of those decisions in turn:

- The *Beghal v UK* case cited in the Explanatory Statement concerned "no-suspicion" powers under UK anti-terrorism law that permitted stops, searches and questioning (examination) at border points such as airports. Similarly to its decision in *Gillan and Quinton v UK*, in *Beghal v UK* the European Court found that **"the absence of any obligation on the part of the examining officer to show "reasonable suspicion" has made it difficult for persons to have the lawfulness of the decision to exercise the power judicially reviewed."**[13] Based in part on this difficulty, although on this occasion the Court did not "consider the absence of any requirement of "reasonable suspicion" alone to have been fatal to the lawfulness of the regime",[14] it held that the relevant power of examination was neither sufficiently circumscribed, nor subject to adequate legal safeguards against abuse, to be lawful for the purpose of article 8 of the Convention.[15] In other words, the power unlawfully interfered with the exercise of the right to respect for private life.

- In the *Ivashchenko v Russia* case cited in the Explanatory Statement, the European Court of Human Rights reached a similar conclusion concerning seizure by customs officers of data from an electronic device. In explaining its decision that that seizure had breached the applicant's human right to respect for his private life,[16] among other relevant observations, the Court affirmed:

> As regards specifically searches and seizures or similar measures (essentially in the context of obtaining physical evidence of certain offences), it is pertinent to assess whether the reasons adduced to justify such measures were relevant and sufficient and whether the proportionality principle has been adhered to [...] As regards the latter point, **the Court must firstly ensure that the relevant legislation and practice afford individuals "adequate and effective safeguards against abuse";** notwithstanding the margin of appreciation which the Court recognises the Contracting States have in this sphere, **it must be particularly vigilant where the authorities are empowered under national law to order and effect searches without a judicial warrant [...] If individuals are to be protected from arbitrary interference by the authorities with the rights guaranteed under Article 8, a legal framework and very strict limits on such powers are called for.** Secondly, the Court must consider the particular circumstances of each case in order to determine whether, in the concrete case, the interference in question was proportionate to the aim pursued.[17]

- The *Grande Oriente D'Italia v Italy* case cited in the Explanatory Statement concerned a search of the applicant association's premises ordered by a parliamentary commission of inquiry and the seizure of documents. The inquiry related to the Mafia, and it was undisputed that "the search and seizure had served a legitimate aim, namely the interests

[13] European Court of Human Rights, *Beghal v the United Kingdom* (Application no 4755/16), Judgment, 28 February 2019 ("ECtHR Beghal v UK Judgment"), para 105, emphasis added.
[14] ECtHR Beghal v UK Judgment, para 109; see further paras 94-98.
[15] ECtHR Beghal v UK Judgment, paras 100-109.
[16] European Court of Human Rights, *Ivashchenko v Russia* (Application no 61064/10), Judgment, 13 February 2018 ("ECtHR Ivashchenko v Russia Judgment"), paras 93-95.
[17] ECtHR Ivashchenko v Russia Judgment, para 76, emphasis added.

of national security, public safety and the prevention of crime".[18] Further, the European Court noted that it had found in other cases that "the absence of a prior judicial warrant **may** be counterbalanced" in some circumstances "by the availability of an *ex post* judicial review".[19] Notwithstanding this, once again, the Court concluded that the impugned measures breached the human right to respect for private life under the European Convention on Human Rights. In summary, this was because of:

> the lack of evidence or a reasonable suspicion of involvement in the matter being investigated, capable of justifying the measure [...], its wide and indeterminate content [...], and the absence of sufficient counterbalancing guarantees, in particular of an independent and impartial review.[20]

- The sole European Court of Human Rights case cited in the Explanatory Statement in which a majority of that Court did not consider human rights to have been breached is *Ships Waste Oil Collector B.V. and others v The Netherlands*.[21] That case concerned an issue that was comparatively discrete and substantially different to the issue of police powers to "enforce" FPOs against individuals without a warrant or reasonable suspicion of commission of an offence. Specifically, it concerned the transmission of intercept data from one law-enforcement agency to another, for the purpose of competition law proceedings,[22] where the interception itself had been authorised by a judge and it was undisputed that that interception was lawful.[23] The breach complained of was of companies' not natural persons' (that is, individuals') rights. Moreover, a large minority of judges disagreed with the outcome, concluding instead that the data transmission did breach those companies' rights to respect for private life.[24]

This and other relevant jurisprudence also suggests – and the Explanatory Statement explicitly acknowledges[25] – that there would need to be other, stringent safeguards in order for police powers of search and seizure without a warrant or "reasonable suspicion" requirement not to breach human rights, and that relevant matters in this regard may include the powers' geographic and temporal scope, the breadth of discretion afforded to police, the possibility of judicial review, and the availability and quality of other independent oversight.

As to scope, we note that the FPOs Bill "enforcement" powers would be broader in both geographic and temporal scope than the suspicion-less search and seizure powers that were found to breach human rights in several of the cases discussed above. The powers in the above-mentioned European Court of Human Rights cases against the UK, for instance, applied temporarily in designated zones or were available solely within ports and border controls. By

[18] European Court of Human Rights, *Grande Oriente d'Italia v Italy* (Application no 29550/17), Judgment, 19 December 2024 ("ECtHR Grande Oriente d'Italia v Italy Judgment"), para 104.
[19] ECtHR Grande Oriente d'Italia v Italy Judgment, para 110, bold emphasis added.
[20] ECtHR Grande Oriente d'Italia v Italy Judgment, para 147.
[21] European Court of Human Rights, *Ships Waste Oil Collector B.V. and others v The Netherlands* (Application no 2799/16 and 3 others), Judgment, 1 April 2025 ("ECtHR Ships Waste Oil Collector and others v Netherlands Judgment").
[22] See, for example, ECtHR Ships Waste Oil Collector and others v Netherlands Judgment, paras 10, 145-150.
[23] ECtHR Ships Waste Oil Collector and others v Netherlands Judgment, para 166.
[24] Five out of seventeen judges disagreed with the finding concerning two of the applicant companies and seven out of seventeen disagreed with the finding concerning the other three applicant companies. See ECtHR Ships Waste Oil Collector and others v Netherlands Judgment, Disposition, pp 67-68 and annexed separate opinions.
[25] Explanatory Statement, pp 34-35.

contrast, the FPOs Bill would permit police to conduct warrantless searches and other "enforcement" actions anywhere in the ACT that a relevant person, residence, vehicle or other premises is located, and at any time in the period that a person is subject to an FPO. That period could be many years in duration: the FPOs Bill not only provides for each final FPO to be in force for three years,[26] but also permits the Magistrates Court to make an unlimited number of further final FPOs.[27]

The Explanatory Statement places significant emphasis on a variety of other safeguards said to be incorporated in the FPOs Bill. It claims in effect that these either remove or sufficiently address human rights deficiencies encountered in other Australian FPOs schemes.

We recognise and welcome, for instance, that the FPOs Bill provides for FPOs to be made by the Magistrates Court[28] not police; subject to review (albeit only with leave, not as of right, unless the party seeking review is the chief police officer);[29] and capable of appeal to the ACT Supreme Court.[30]

However, these and other features of the FPOs Bill said to operate as human rights safeguards cannot fully address the lack of a threshold protection directed at ensuring that all searches and other "enforcement" actions, over the many years that a person may be subject to an FPO,[31] are circumscribed and not arbitrary. Concerning judicial review, as earlier noted, the European Court of Human Rights has pointed out that, absent an obligation to show reasonable suspicion, it is likely to be difficult, if not impossible, to prove the improper exercise of a power.[32] The low bar that proposed new section 183ZW(2) would set for the exercise of such powers and the breadth of the discretion that that section would afford to a police officer, alongside requirements to obtain leave for review, significantly impede a subject or affected person being able to meaningfully challenge these powers' lawful exercise.

The Explanatory Statement claims that:

> It is not intended that a police search will always be reasonably required merely because an FPO is in place in relation to the person. The police officer needs to turn their mind to the factors in section 183ZW(3) and form a contemporaneous view that the search is reasonably required at that time to ensure compliance with the FPO.[33]

With respect, in the Commission's view, this and other comments on this issue in the Explanatory Statement downplay the extent of the discretion that proposed section 183ZW would leave to police officers. The reality is that that section would require only that an officer "take [...] into account" the factors listed in 183ZW(3), such as the effect on people other than the FPO's subject and "the importance of" relevant people's privacy. In the case of 183ZW(3)(f) (how often and recently the power has been used previously), an officer need not take the factors into account in

[26] Proposed new section 183I(4) of the Firearms Act.
[27] Proposed new section 183H(3)-(5) of the Firearms Act.
[28] Proposed new Division 12A.2 of the Firearms Act.
[29] Proposed new Division 12A.6 of the Firearms Act.
[30] Proposed new Division 12A.9 of the Firearms Act.
[31] As earlier noted, not only may each final FPO be in force for three years (proposed new section 183I(4) of the Firearms Act), but the court may also make an unlimited number of further final FPOs (proposed new section 183H(3)-(5)).
[32] ECtHR Gillan and Quinton v UK Judgment, para 86 and ECtHR Beghal v UK Judgment, para 105, as quoted above.
[33] Explanatory Statement, p 36.

some circumstances.[34] It is not mandatory for them to consider the further factors listed in 183ZW(4).[35] Most importantly, proposed section 183ZW does not preclude an officer from proceeding with the search or other action regardless of the conclusion they reach about any of the listed factors.

The Explanatory Statement correctly observes that police officers will be legally obliged to exercise their FPOs-related entry, search and seizure powers consistently with section 40B of the Human Rights Act.[36] That section requires public authorities, including police officers exercising functions under ACT laws,[37] to act consistently with human rights and give proper consideration to human rights when making a decision.

While this is a welcome acknowledgement that police in the ACT have these obligations, it is also the case that police have actively, and successfully, sought to limit avenues for their accountability for potential wrongdoing in this jurisdiction. In particular, we note the absence of jurisdiction with respect to ACT Policing officers under the *Discrimination Act 1991* or the *Human Rights Commission Act 2005* complaints provisions. This heightens the concerns we raise in this submission about the amount of discretion and power the FPOs Bill would give to police.

We note additionally that even if it were somehow established that police had exercised their "enforcement" powers arbitrarily, the FPOs Bill would not afford the Magistrates Court any scope to amend the conditions attaching to an FPO beyond those relevant to access to prohibited places.[38] Similarly, the capacity of the appeal process to remedy an arbitrary exercise of these powers would be limited, among other reasons because decisions to exercise those powers would not themselves be subject to appeal;[39] the filing of an appeal against the making of an FPO would not affect the operation of an FPO;[40] and police could undertake an arbitrary search or other "enforcement" action before that appeal is filed or before the appeal decision (which could be a decision to set aside completely the FPO) is made.

Less rights-restrictive options are available

Further, the proposed reliance on warrantless search powers does not appear to realise the least rights-restrictive means reasonably available to achieve the scheme's objective, including in light of similarly serious preventative schemes that rely on warrant applications. Examples include the *Crimes (Child Sex Offenders) Act 2005*, Part 3.11 (for verification of a registered child sex offender's compliance with a prohibition order) and the *Crimes Act 1914* (Cth), sections 3ZZKA-3ZZKC (in the context of preventive monitoring of terrorism suspects).

It is relevant, in this regard, that the FPOs Bill itself envisages, in proposed section 183ZZB, a pathway for a police officer to apply to the Magistrates Court for a warrant to search other premises, including by phone or other communication in urgent circumstances (section 188ZZC), where reasonably required to ascertain compliance with an FPO.

[34] Proposed new section 183ZW(5).
[35] See proposed new section 183ZW(4), stating an officer "may" take account of matters including those listed there.
[36] Explanatory Statement, p 3.
[37] See Human Rights Act s 40(1)(e).
[38] Proposed new Division 12A.5 of the Firearms Act.
[39] See proposed new section 183ZQ of the Firearms Act.
[40] Proposed new section 183ZU of the Firearms Act.

The experiences of other Australian jurisdictions

Our concerns about the extraordinary powers contained in the FPOs Bill also take into account the experiences of other Australian jurisdictions that have already introduced FPOs schemes.

We recall firstly that the Victorian Minister who introduced the FPOs legislation in Victoria accepted that the equivalent provisions of that legislation were incompatible with human rights. Those provisions afforded extraordinary search powers to Victorian police where "reasonably required" to determine whether a person was contravening an FPO.

Relevantly, the Victorian FPOs search powers were incompatible with the right not to be subjected to unlawful or arbitrary interferences with privacy, family, home or correspondence.[41] That right under Victoria's human rights charter is identical in substance to the right in section 12(a) of the ACT's Human Rights Act.

The Explanatory Statement essentially argues that the ACT's proposed extraordinary police "enforcement" powers scheme is sufficiently different to Victoria's scheme for the former not to be incompatible with human rights. But the two schemes still have critical features in common, including what could fairly be described as their defining features. Namely, in the Victorian Minister's own words:

- the exercise of the powers would constitute a "significant interference" with privacy;[42] and
- this may occur without a warrant or "reasonable suspicion" requirement and instead merely when "reasonably required", which "constitutes a departure from the existing and generally accepted position on the minimum requirements for a search power to be regarded as not arbitrary and consequently compatible with the right to privacy".[43]

Victoria's assessment that the powers in question were incompatible with the right to non-interference with privacy, family, home or correspondence also relevantly took into account the "long duration" of FPOs[44] and the fact that "there are likely less restrictive measures that could arguably be adopted".[45] For the reasons earlier stated, both of these descriptions would also apply to the proposed ACT scheme.

In both Victoria and other Australian jurisdictions, independent review mechanisms, representative bodies of the legal profession, and various others have raised significant concerns about the extraordinary search powers that FPOs schemes give to police. Again, the problems that they have identified are **not** confined to features that the ACT FPOs Bill does not replicate.

These problems include the inherent potential for misuse of these powers, evidence that they have in fact been misused, their reported disproportionate effect on members of certain minorities and vulnerable people, and a lack of evidence that they are effective.

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[41] Victoria, *Parliamentary Debates (Hansard), Legislative Assembly: Fifty-Eighth Parliament, First Session, Thursday, 21 September 2017 (Extract from book 12)* ("Victoria 21 September 2017 Statement"), pp 2958-2960. There was also an incompatibility arising from imposing FPOs directly on children (which the ACT's FPOs Bill would not do).
[42] Victoria 21 September 2017 Statement, p 2959.
[43] Victoria 21 September 2017 Statement, p 2959.
[44] Victoria 21 September 2017 Statement, p 2959.
[45] Victoria 21 September 2017 Statement, p 2960.

For example, as summarised in 2019 by a Victorian parliamentary committee that reviewed Victoria's FPOs scheme, in 2016 the New South Wales (NSW) Ombudsman "found there had been misuse of [FPOs] search powers by police officers in that State".[46] The NSW Ombudsman's more specific findings included that it was too soon to tell whether the powers were operating effectively, but that in the first two years' of the provisions' operation, police may have searched a significant number of people unlawfully using those powers; that police discovered a firearm or related item in only 2% of all search events; that nothing was seized in 90% of search events; and that the remaining 8% uncovered mostly small amounts of drugs and drug paraphernalia.[47]

More recently, Legal Aid NSW reported that it is aware of continued misuse of the FPO-related police powers in that jurisdiction.[48] Specifically, it:

> has experience with several cases involving searches of FPO subjects and third parties where the concerns raised by the Ombudsman in 2016, including the use of orders to search third parties and failure to comply with [NSW's *Law Enforcement Powers and Responsibilities Act 2002*], continue to occur.[49]

As an example, Legal Aid NSW described a frisk search of an Aboriginal woman whose brother was subject to an FPO, which Legal Aid NSW considered was not authorised by law and failed to respect the woman's privacy and dignity.[50]

The NSW and ACT Aboriginal Legal Service reported that in its experience, FPOs:

- 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; and
- are often imposed against individuals with no history of convictions for weapons offences.[51]

In a June 2025 submission to NSW's Attorney-General, the Law Society of New South Wales raised the same concerns, among others, about the operation of the NSW FPOs search powers and further stated:

> In 2022-23, statistics obtained by the [Justice and Equity Centre] 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 [*sic*], in our view, calls into question the effectiveness of FPO search powers against their invasiveness and

[46] Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into firearms prohibition Legislation*, November 2019 ("Victorian Parliamentary Committee Report"), p 51, referring to NSW Ombudsman, *Review of police use of the firearms prohibition order search powers: Section 74A of the Firearms Act 1996*, 2016 ("NSW Ombudsman Report").
[47] NSW Ombudsman Report, Executive Summary, pp 9-10.
[48] Legal Aid NSW, *NSW Sentencing Council Review of firearm, knife and other weapon offences: Legal Aid NSW Submission to the NSW Sentencing Council*, December 2023 ("Legal Aid NSW Submission"), p 29.
[49] Legal Aid NSW Submission, p 30.
[50] Legal Aid NSW Submission, p 30.
[51] Aboriginal Legal Service (NSW/ACT) Limited*, Submission to NSW Sentencing Council: Firearms, Knives and Other Weapons Offences*, 22 December 2023, p 17.

> disproportionate impact, especially on vulnerable groups, and raises serious questions about whether the FPO regime is fit for purpose.[52]

As for Victoria – notwithstanding that the Explanatory Statement to the ACT's FPOs Bill contends that Victoria incorporated measures in its FPOs scheme "to prevent" the "concerns" raised by the NSW Ombudsman "from arising in Victoria"[53] – the above-mentioned parliamentary committee found that the search powers in the two schemes presented common risks of misuse:

> Given Victoria has modelled significant components of its FPO scheme on the New South Wales legislation, including the search powers, the Committee considers there is potential for the scheme to be similarly vulnerable to such misappropriation. [...]
>
> The Committee is mindful that the similarities between the Victorian and New South Wales search provisions leave the Victorian scheme vulnerable to similar arbitrary use, as has been found under the New South Wales scheme.[54]

That committee went on to find:

> due to a lack of research or review of the exercise of search powers in Victoria to date, and the subsequent lack of data, it is difficult to draw inferences about the way police utilise these powers.
>
> The Committee believes that the FPO search powers should be monitored by relevant authorities [...] to ensure that they are used appropriately. In particular, to prevent similar misuse as has been the case in New South Wales, it should be assessed if, and to what extent, police might use FPO search powers to circumvent normal search procedures. The lower threshold of 'reasonably required' under ss 112Q and 112R may allow some officers to bypass the more usual and higher threshold of 'reasonable suspicion' in order to gain initial access to a subject, property or associate for a matter not connected with either an FPO or other offence against the [NSW] Firearms Act. In the Committee's view this would constitute a misappropriation of the significant powers granted to the police under the scheme and appropriate steps should be taken to avoid such an occurrence.[55]

Civil society organisations continue to be concerned about the misuse of these powers in Victoria, including their disproportionate use against members of certain minorities. For example, Liberty Victoria's Rights Advocacy Project reported in 2025 that:

> In 2023, according to Victoria Police's annual report, there were 210 weapons seized through FPO searches, including 49 "imitation firearms". According to police, 30% of the total seizures under the FPO scheme were illicit drugs, despite the scheme being introduced to combat rising firearm crimes. According to data obtained by the Racial Profiling Data Monitoring Project, the hit rate of FPOs is almost half of the hit rate of searches conducted where reasonable grounds are required. This provides evidence that they are being used on spurious grounds. Furthermore, the Project's data revealed that in 2024, people who police perceived to be African, Middle-Eastern and Pacifica were more likely to be searched without finding anything than people perceived to be White.[56]

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[52] Law Society of New South Wales, *The Firearms Prohibition Order Scheme*, Letter to the Hon. Michael Daley MP, Attorney General, 16 June 2005, p 5.
[53] Explanatory Statement, p 35.
[54] Victorian Parliamentary Committee Report, pp 51, 53.
[55] Victorian Parliamentary Committee Report, p 53. See also Finding 7 on the same page.
[56] Denham Sadler, Joey Cook and Britney Aguirre, Liberty Victoria's Rights Advocacy Project, *Unreasonable Grounds: Reforming Victoria Police's stop and search powers*, February 2025 ("Liberty Victoria Rights Advocacy Project Report"), p 27, footnotes omitted.

That project has recommended raising the threshold for Victorian police to be able to conduct an FPO-related search, to require police to have reasonable grounds to suspect that a person has a firearm.[57]

Lawyers have expressed similar concerns about the equivalent powers in Queensland's FPOs legislation,[58] as well as about extraordinary warrantless police powers under other laws in the ACT.[59]

A higher threshold would be consistent with best practice guidance and the common law

As the Commission has previously noted,[60] the European Commission against Racism and Intolerance recommends that governments adopt a "reasonable suspicion" standard for **all** personal search powers. It recommends this approach to be consistent with human rights, and particularly to counter the potential for racial and other discrimination and intolerance in such powers' exercise.[61]

Adopting such a standard in the ACT for searches and other "enforcement" actions relating to FPOs would also be consistent with the common law protection against searches without a reasonable suspicion.[62]

Additionally, we draw the Committee's attention to the recently published best-practice guidance from a United Nations (UN) human rights expert on restrictive administrative measures aimed at preventing terrorism,[63] including search-and-seizure measures.[64] This detailed guidance, from the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, recommends *inter alia* that such measures be imposed only on the balance of probabilities (which the expert explains is a "a **higher** standard than reasonable

[57] Liberty Victoria Rights Advocacy Project Report, p 28.
[58] See, for example, Terry O'Gorman, *Firearm Prohibition Order – Further Observations and Criticisms*, 16 May 2024, available at https://www.linkedin.com/pulse/firearm-prohibition-order-further-observations-criticisms-rqgqe, section entitled "Warrantless Search and Detention Powers".
[59] See, for example, ACT Bar Association and ACT Law Society, *Joint Media Release: Traditional protections under threat by new police powers*, 2017, regarding the Crimes (Police Powers and Firearms Offence) Amendment Bill 2017.
[60] In submissions to the ACT Government about other search powers in the ACT, for detection of knives and other metal objects.
[61] See European Commission against Racism and Intolerance General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing, 29 June 2007, available at https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf, especially recommendation para 3 and explanatory para 44. The Glossary defines "reasonable suspicion" as "A suspicion of an offence that is justified by some objective criteria before the police can initiate an investigation or carry out control, surveillance or investigation activities." "Control" is defined in para 36 to include personal searches and searches of homes and other premises, among various other activities.
[62] See, for example, *Ghani v Jones* [1970] 1 QB 693, Judgment of Lord Denning MR, stating "The common law does not permit police officers […] to search [anyone's] person, simply to see if he may have committed some crime or other" and listing specific "reasonable grounds" police must have before taking an article from a person, with reference to the "underlying" "principle" that a person's "privacy and his possessions are not to be invaded except for the most compelling reasons" (paras 706, 708-709).
[63] *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul – Best practices to protect human rights while using administrative measures to prevent terrorism: restrictive orders, terrorist listings, security detention and compulsory interventions*, 31 July 2025 (A/80/284) ("UN Special Rapporteur Best Practices Report").
[64] See UN Special Rapporteur Best Practices Report, para 10(d).

suspicion, belief or grounds"),[65] and only when a number of conditions specified in the guidance are met. The expert also recommends that orders banning the possession of weapons,[66] as well as search-and-seizure measures themselves, expire after six – but "preferably three" – months.[67]

Recommendations

In light of the matters outlined above, the Commission recommends that the exercise of search and other enforcement powers concerning an FPO instead be premised on a "reasonable suspicion" that the subject has contravened the FPO, or otherwise occur in accordance with a warrant (as in proposed section 183ZZB).

If such amendments are not made, the Commission recommends that the Legislative Assembly does not proceed to adopt the FPOs Bill.

We would be happy to provide further information and to appear before the Committee if that would be of assistance. The contact in our office concerning this matter is , who may be reached on .

Yours sincerely

Dr Penelope Mathew	Karen Toohey
President and Human Rights Commissioner	Discrimination, Health Services, and Disability and Community Services Commissioner

[65] UN Special Rapporteur Best Practices Report, paras 6(d), 12, emphasis added.
[66] See UN Special Rapporteur Best Practices Report, para 10(e).
[67] UN Special Rapporteur Best Practices Report, para 16.