

MEDIA RELEASE MEDIA RELEASE MEDIA RELEASE

Ombudsman report on NSW Police Force use of Firearms Prohibition Order search powers

The Acting Ombudsman, Professor John McMillan, has completed a report on the NSW Police Force's use of Firearms Prohibition Order (FPO) search powers. The report has now been tabled in the NSW Parliament.

'This report sets out the results of our review of FPO searches over a two year period' said the Acting Ombudsman. **'We found some issues of concern and have recommended changes to improve the operation of the law.'**

In 2013, the NSW Parliament passed laws to give police stronger powers to prevent and control crime, and gun crime in particular. Parliament authorised police to conduct searches, without a warrant, to ensure firearms control legislation is properly observed.

The new laws built upon a 40 year old provision authorising the Police Commissioner to issue an FPO against a person they consider is unfit in the public interest to possess a firearm. FPO search powers entitle police to look for firearms by searching the body of a person subject to an FPO, and any premises or vehicle the person occupies, controls or manages.

When the proposed FPO search powers were being debated in NSW Parliament, some members expressed concerns that police may use them arbitrarily or unreasonably. The Parliament required the Ombudsman to scrutinise the exercise of the new FPO search powers for the first two years of their operation.

The Ombudsman's review found that police used the new FPO search powers extensively. During the two-year review period, there were approximately 1,500 interactions where police used the FPO search powers. During those interactions, police conducted over 2,500 separate searches, sometimes of the person's body as well as their property.

Police found firearms, ammunition and firearm parts in 2% of these interactions. In the two years, they seized 35 firearms, 26 lots of ammunition and 9 firearm parts.

In total, 400 FPO subjects were searched. The Ombudsman's review found that the profile of these FPO subjects was generally consistent with Parliament's intention.

However, the Ombudsman's review found that police also conducted person searches of more than 200 people who were not FPO subjects.

‘The FPO search powers do not authorise police to search the body of a person who is in the company, or on the premises, of someone who is an FPO subject’ said Professor McMillan. **‘Accordingly, police may have unlawfully searched over 200 people, some of them on more than one occasion.’**

The Ombudsman’s review also found a lack of clarity in police understanding of the circumstances in which they are authorised to search an FPO subject. The law permits an FPO search only when ‘reasonably required’ to determine if an FPO offence has been committed. It is not a roving search power to be used randomly on FPO subjects.

‘Fourteen per cent of all search events on FPO subjects appear to have been conducted for the reason alone that the person is an FPO subject’ said the Acting Ombudsman. **‘Those searches may well have been unlawful.’**

The report recommends changes to legislation and internal procedures and practices that guide the way police use the FPO search powers.

‘Adopting our recommendations will assist police to manage the risk of unreasonable use by clarifying when FPO searches can be conducted and who can be searched’ said the Acting Ombudsman.

Other measures are also proposed to ensure that police use FPO search powers fairly and reasonably, including that FPOs should automatically expire after five years. This will encourage and facilitate the appropriate use of the FPO search power and maintain public confidence in the police.

‘Introducing an expiry date would allow police to continue to target current firearms risks, but limit the potential for people to be subject to arbitrary or unreasonable searches for an indefinite period’ said Professor McMillan. **‘If the circumstances are warranted, the Commissioner could make a further FPO when the earlier one expires.’**

‘It is too early to determine the overall deterrent, prevention or disruption effects of the FPO search powers’ said Professor McMillan. **‘This would require a study over a longer period. Accordingly, we recommend a further review after the FPO search powers have been in place for five years.’**

Read the Ombudsman’s report on the website of the NSW Parliament:

<https://www.parliament.nsw.gov.au/la/papers/Pages/abled-paper-details.aspx?pk=68840>

Media inquiries

Prem Aleema

0477 724835