

Response to recommendations made to the Victorian Government by the Legislative Council Legal and Social Issues Committee in its 2019 report, *Inquiry into Firearms Prohibition Legislation*

Background

The Victorian Government thanks the Legal and Social Issues Committee for its report and its comprehensive review of Firearms Prohibition Legislation in Victoria.

The Government notes the Victorian Court of Appeal decision in *Chief Commissioner of Police v Colin Websdale* [2019] VSCA 165 on 17 December 2019 and believes the decision provides necessary guidance regarding concerns raised by the Committee in defining the public interest and determining the class of persons against whom a Firearms Prohibition Order (FPO) can be applied.

The Government has carefully considered the Committee’s recommendations, best practice principles and stakeholder feedback in developing this response.

Response

The Government’s response to each of the Committee’s recommendations to the Government follows.

Committee recommendation	Government Response	Consideration
1. That the Victorian Government amend the legislation to include an additional public, open and consultative review of the operation of Part 4A of the <i>Firearms Act 1996</i> to take place 2 years after commencement of the recommended amendment. When conducting this review, the appointed body should consider the operation of search powers and the appropriateness of the	Support in principle	<p>The Government is satisfied that the Independent Broad-based Anti-corruption Commission (IBAC) already provides comprehensive oversight of the FPO scheme, including the operation of search powers and the timeframes for which orders are in force. The recommendation of the committee aligns with the existing integrity oversight framework in place and conducted by IBAC, and therefore the Government believes that further legislative change is not necessary.</p> <p>Under section 174E of the <i>Firearms Act 1996</i> (the Act), the Chief Commissioner of Police (Chief Commissioner) must report to IBAC listing the FPO’s issued in the period and setting out specified details of the individual to whom the order applies, grounds set out in section 112E</p>

<p>timeframes for which orders are in force.</p>		<p>that were relied on to issue the order and whether or not an application for VCAT review has been applied for.</p> <p>The Act then includes three layers of oversight by IBAC of the FPO scheme under sections 173, 174B and 174F. Section 173 of the Act allows IBAC to monitor any exercise of powers of the Chief Commissioner or a performance of the duties and functions of the Chief Commissioner under Parts 4A or 10A. IBAC may recommend that the Chief Commissioner take any action that the IBAC considers appropriate, to which the Chief Commissioner must respond within 45 days of receiving the recommendation. The Act does not appear to place any constraints on how IBAC is to conduct monitoring under sections 173 and 174B.</p> <p>IBAC is due to provide a Ministerial report pursuant to section 174B of the Act as soon as possible after the end of the first 2-year period from the commencement of the FPO scheme, and every two years thereafter. The Ministerial Report must report on matters for or with respect to - the administration of Parts 4A and 10A; the exercise of powers of the Chief Commissioner and the performance of the duties and functions of the Chief Commissioner under Parts 4A and 10A; and the exercise of any other powers under Part 4A. In its report, IBAC has the power to identify and include recommendations to the Minister on possible amendments to Parts 4A or 10A to improve their operation. The Ministerial Report is to be tabled in both Houses of Parliament.</p> <p>The <i>Independent Broad-based Anti-corruption Commission Act 2011</i> also provides IBAC with oversight jurisdiction for Victoria Police, making it the appropriate body to oversee the FPO scheme. An individual can make a complaint to IBAC regarding the actions of a Victoria Police officer at any time and this complaint can be investigated individually or used as</p>
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<p>2. That the Victorian Government through the Council of Australian Governments (COAG) work to introduce provision for cross-jurisdictional recognition of Firearms Prohibition Orders. This process should aim to achieve cross-jurisdictional alignment and address discrepancies between existing Firearms Prohibition Order schemes that could impede the operation of orders in any jurisdiction.</p>	<p>Support in full</p>	<p>The Government will continue to pursue cross jurisdictional recognition of FPO's through COAG committees including the Ministerial Council for Police and Emergency Management (MCPPEM) and the Firearms and Weapons Policy Working Group (FWPWG) which provides expert advice to MCPPEM.</p> <p>The FWPWG has a standing action item to look at ways of interoperability between jurisdictions and improving legislation and the alignment of legislation. Furthermore, the FWPWG has established a legislation sub-working group which has the remit of achieving legislative consistency by addressing cross-jurisdiction gaps and differences. The Government will use this forum to further pursue cross-jurisdictional recognition of FPO's, and to consider barriers to greater interoperability such as the establishment costs of systems to allow law enforcement bodies to check whether an FPO is in place in a different jurisdiction.</p> <p>It is noted that the New South Wales (NSW) Government introduced the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020 which proposes recognition of other jurisdictions' FPO's in NSW. This will extend the NSW offences and search powers to subjects of interstate FPOs when they are in NSW. The Government is consulting with NSW counterparts on the implementation of this amendment and its effectiveness.</p>

<p>3. That the Victorian Government amend the legislation to include a requirement that a person subject to a Firearms Prohibition Order must provide notification of change of address to the Chief Commissioner.</p>	<p>Support in full</p>	<p>The Government will work with Victoria Police to settle a suitable legislative amendment to require a person subject to a FPO to provide notification of change of address to the Chief Commissioner.</p> <p>The Government believes this recommendation is consistent with the current FPO framework to ensure law enforcement know where an FPO subject is residing to facilitate enforcement and monitoring of an order and will increase the operational effectiveness of the FPO scheme by enabling law enforcement to more easily locate FPO subjects.</p>
<p>4. That the Victorian Government amend the Firearms Prohibition Order legislation to include a provision to enable the Chief Commissioner to grant an exemption (either with or without conditions) from certain requirements of a Firearms Prohibition Order to ensure its enforceability.</p>	<p>Not supported</p>	<p>The granting of exemptions from certain requirements of an FPO was considered during the development of the Victorian scheme but was not included. This is because the inclusion of exemptions has the potential to undermine the operational effectiveness of the FPO scheme by bringing about perceptions that FPO's are orders that are accommodating to people Victoria Police consider to be of a heightened risk to public safety. Furthermore, it would make enforcement of FPO's by Victoria Police challenging at a practical level and create additional administrative burden and costs.</p> <p>The Committee cites the NSW and South Australian FPO schemes as examples where there is the option of Chief Commissioner exemptions. However, these schemes have lower thresholds for the issuing of FPOs than the Victorian scheme and are not subject to the same oversight or review measures. For example, the NSW scheme does not have the VCAT equivalent review mechanism. Rather the review mechanism sits with the Chief Commissioner of the New South Wales Police force. Victoria's FPO scheme is robust and subject to intensive and comprehensive oversight from IBAC and the Act enables an individual who has an FPO issued against them to seek an independent VCAT Review.</p>

<p>5. That the Victorian Government regulate the possession of digital blueprints and necessary parts of the manufacture of 3D printed firearms under the <i>Firearms Act 1996</i> including outlawing the possession of this material where there is a corresponding intent to use them to manufacture firearms.</p>	<p>Support in Principle</p>	<p>In 2018, the Victorian Government amended section 59A of the <i>Firearms Act 1996</i> to make it an offence to manufacture firearms or to possess parts for the purpose of manufacturing firearms. It is also an offence to possess any equipment for the purposes of manufacturing firearms or firearms parts. The legislation was framed broadly to ensure it would capture emerging technologies over time, including the use of 3D printers.</p> <p>There are also concerns with the increasing availability of computer-controlled lathes that could be used to manufacture (metallic) firearms. Such technology is easily transferable between jurisdictions and it is preferable to regulate it through nationally consistent legislation.</p> <p>The Government will continue to work with Victoria Police and consult with all states and territories and the Commonwealth through the FWPWG to encourage a national approach to any necessary regulation of digital blueprints and necessary parts to facilitate a consistent approach across jurisdictions.</p>
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