ibac independent broad-based anti-corruption commission
Victoria

Firearm Prohibition Order Biennial Ministerial Report

Pursuant to section 174B of the Firearms Act 1996 (Vic)

8 May 2018 to 31 December 2020

Acknowledgement

IBAC acknowledges the Traditional Owners of Country throughout Victoria and pays respect to and recognises the contribution from their Elders past and present

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Chapter 1

Overview

Background

1 Definitions

FC	Field Contact
FPO	Firearm prohibition order
FPO applicant	Victoria Police investigator completing the Form 1486 FPO Application
FPO made	The date the Delegate Approved section 4 of the application
FPO revoked	The date the FPO is no longer in operation
FPO served	The date the FPO is served by a Police Officer to Subject
FPO subject	Individual the subject of an FPO that has been made and served
IBAC	the Independent Broad-based Anti-corruption Commission
IBAC officer	IBAC officers authorised under section 174M(4) to exercise powers of entry and inspection
Interpose	Victoria Police's database used for collecting and analysing intelligence
LEAP	Law Enforcement Assistance Program
Minister	Minister for Police and Emergency Services
Reporting period	9 May 2018 – 31 December 2020
Search Event	Search upon service of FPO or subsequent search conducted on the basis of an FPO
the Act	Firearms Act 1996 (Vic)
FPO Registry	Division of Victoria Police responsible for administering the FPO scheme
VCAT	Victorian Civil and Administrative Tribunal
VPM FPO	Victoria Police Manual – Firearm Prohibition Orders

2. Introduction

On 9 May 2018, amendments to the *Firearms Act 1996* (Vic) (the Act) came into operation to give Victoria Police powers under Part 4A to issue Firearm Prohibition Orders (FPO) and undertake searches without a warrant, and to create offences in relation to individuals to whom an FPO applies.[1]

The Independent Broad-based Anti-corruption Commission (IBAC) was given powers to monitor the Chief Commissioner of Victoria Police's (Chief Commissioner) compliance in relation to making and enforcing FPOs, and record keeping requirements under Parts 4A and 10A of the Act.

In summary, IBAC functions under the Act are to:

(i) Review the making of FPOs by the Chief Commissioner (or delegate) for each three-month period.[2]

(ii) Monitor any exercise of the powers of the Chief Commissioner or the performance of the duties and functions of the Chief Commissioner under Parts 4A and 10A.[3]

Authorised IBAC officers (IBAC officers) may exercise certain powers in undertaking the review and monitoring functions, including entering premises occupied by Victoria Police at which IBAC reasonably believes there are documents relevant to its functions under the Act, and inspecting any document found at those premises.[4]

After completing an FPO review or inspection IBAC may make recommendations in private to the Chief Commissioner on any action IBAC considers appropriate, and the Chief Commissioner must respond within 45 days.[5]

IBAC must report biennially to the Minister for Police and Emergency Services (Minister) in relation to IBAC's monitoring and review functions listed in points (i) and (ii) above. [6] In the report, IBAC may identify and include recommendations to the Minister on possible amendments to Parts 4A or 10A, to improve the operation of those Parts.[7]

IBAC also has a discretionary power to give the Minister, at any time, a report on IBAC's functions, and the Minister may request that IBAC provide a report on the results of its monitoring functions at any time. [8]

The Minister must cause an IBAC Ministerial report to be laid before both Houses of Parliament.[9]

This is IBAC's first biennial report to the Minister and covers the period 9 May 2018 to 31 December 2020 (reporting period).[10]

3 Report timing and format

3.1 Timing of Report

In July 2019, IBAC conducted an inspection, pursuant to section 173 of the Act, of Victoria Police's records for the period 9 May 2018 to 31 December 2018, to determine compliance with the requirements under Parts 4A and 10 A of the Act. On 11 December 2020, a discretionary report on the results of the inspection was submitted to the Minister pursuant to s 174(1) of the Act.

From 31 January 2021 to 4 February 2022, IBAC conducted a further inspection under section 173 of the Act of Victoria Police's records for the period 1 January 2019 to 31 December 2020.

The reporting period consisted of 11 quarters. IBAC undertook a review of a representative sample of the FPOs made by police in each of these quarters. The total number of FPOs made by police in the reporting period was 793 and of these IBAC reviewed 117.

This biennial report provides the results of IBAC's quarterly FPO reviews and inspections in the reporting period, including updates made by Victoria Police to its FPO processes and systems in response to matters raised by IBAC in the course of the inspections.

[1] *Firearms Act 1996 (Vic)* Parts 4A and 10A.
[2] *Firearms Act 1996 (Vic)* s 174F.
[3] *Firearms Act 1996 (Vic)* s 173.
[4] *Firearms Act 1996 (Vic)* s 174M.
[5] *Firearms Act 1996 (Vic)* ss 174A and 174I.
[6] *Firearms Act 1996 (Vic)* ss 174B and 174C.
[7] *Firearms Act 1996 (Vic)* ss 174B(2).
[8] *Firearms Act 1996 (Vic)* s 174.
[9] *Firearms Act 1996 (Vic)* s 174D.
[10] This brings the biennial reporting period into alignment with the calendar year.

In the course of IBAC's FPO reviews and two inspections, IBAC liaised with Victoria Police, provided feedback reports setting out matters for consideration, findings, and private recommendations.

Various COVID-19 pandemic restrictions along with an internal restructure of resources meant that IBAC officers were significantly delayed in conducting the inspection and developing a draft report to Victoria Police. The draft report was submitted to Victoria Police on 6 March 2023, feedback was received on 6 April 2023, after which IBAC conducted its final analysis of information and data and finalised this report.

IBAC's next inspection under s 173 of the Act, covering the period 1 January 2021 to 31 December 2022, will include verifying the effectiveness of updates or changes made by Victoria Police in response to IBAC's recommendations made to the Chief Commissioner in private. The next inspection is scheduled to commence later this year.

3.2 Report format as set out in Chapter 2

Details of IBAC's FPO reviews under section 174F of the Act, including the number of FPOs made by Victoria Police and other data for the reporting period are set out in Part 1 of Chapter 2 of this Report.

The level of compliance of the Chief Commissioner in relation to IBAC's two inspections are set out in Part 2 of Chapter 2.

Findings from IBAC's inspections under section 173 of the Act in relation the Chief Commissioner's exercise of powers or performance of duties and functions under Parts 4A and 10A of the Act, being:

- a summary of inspection results for the period 8 May 2018 to 31 December 2018, as reported to the Minister on 11 December 2020, are set out in Part 3 of Chapter 2.
- the results of IBAC's inspection for the period 1 January 2019 to 31 December 2020, are set out in Part 4 of Chapter 2.

4 Legislative framework

Victoria Police has wide-ranging powers under the Act to manage and oversee licensing, registration and other control measures for the possession, carriage, use, acquisition, disposal, and storage of firearms.

Part 4A of the Act sets out the powers of the Chief Commissioner (or delegate)[11] to make an FPO in relation to an individual, undertake person, premises and other searches without a warrant or consent, and lay charges for FPO breaches and related offending. The provisions are aimed at increasing the protection of the community from firearm-related offending.[12]

Once an FPO is made by a delegate it does not come into force until the day it is served[13] on the individual to whom the FPO applies (FPO subject). The FPO subject is then prohibited from acquiring, possessing, carrying, or using any firearm or firearm related item. The Chief Commissioner must consider a number of criteria and be satisfied it is in the public interest to make the FPO. [14] The subject of an FPO can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the FPO decision.[15]

Pursuant to sections 174F and 174H of the Act, IBAC must review a proportion of FPOs made in each quarter, against the statutory requirements to assess whether or not the FPO should have been made.[16] IBAC's review of an FPO must be based solely on the information that was before the Victoria Police delegate in making the FPO.[17]

After reviewing the making of an FPO, IBAC may recommend, in private, that the Chief Commissioner take any action that IBAC considers appropriate.[18] For example, IBAC may recommend that the Chief Commissioner review an FPO with a view to revoking it. The Chief Commissioner must provide a response in writing to IBAC within 45 days of receiving the recommendation.

IBAC's review of an FPO differs from a VCAT merits review that re-makes the decision based on submissions and evidence from the FPO subject/applicant and the Chief Commissioner, including information that was not before the original decision maker.

[11] All FPOs reviewed by IBAC were made by a delegate of the Chief Commissioner at the rank of Assistant Commissioner, Commander and Superintendent.
[12] Victoria *Parliamentary Debates*, Legislative Assembly, 21 Sept 2017, 2964 (Ms Neville, Minister for Police and Emergency Services).
[13] *Firearms Act 1996* (Vic) s 112J.
[14] *Firearms Act 1996* (Vic) s 112E.
[15] *Firearms Act 1996 (Vic)* s 112L.
[16] *Firearms Act 1996 (Vic)* ss 174F and 174H.
[17] All decisions to make an FPO were by a delegate of the Chief Commissioner of Police.
[18] *Firearms Act 1996* (Vic) s 174I.

Pursuant to section 173 of the Act, IBAC is required to monitor the Chief Commissioner's exercise of powers under Part 4A in relation to making and revoking FPOs, issuing FPOs, conducting searches without warrant or consent in relation to the FPO subject, and dealing with surrendered or seized firearms or related items.

IBAC is also required to monitor the Chief Commissioner's compliance with the requirement in Part 10A of the Act to take all reasonable steps to ensure that records are kept of:

- each FPO made;
- any document received in relation to the FPO from an FPO subject (or their representative);
- any Victoria Police policies, procedures or guidelines about the making of FPOs or the operation of Part 4A; and
- records of searches under that Part.[19]

IBAC may recommend, in private, that the Chief Commissioner take any action that IBAC considers appropriate, and the Chief Commissioner has 45 days to respond.[20]

5 Inspection scope and methodology

5.1 Review of FPOs pursuant to section 174F of the Act

To make an FPO the Chief Commissioner (or delegate) must be satisfied it is in the public interest to do so because of:

- the criminal history of the individual;
- the behaviour of the individual;
- the people with whom the individual associates;
- the threat or risk the individual may pose to public safety on the basis of information known to the Chief Commissioner about the individual.[21]

IBAC reviews a proportion of FPOs made in each three-month period (quarterly review).[22] In doing so, IBAC selects a representative sample and reviews these against the statutory requirements to assess whether or not the FPO should have been made[23]. IBAC's review is based solely on the information that was before the Victoria Police delegate who decided to make the FPO.[24]

On average, IBAC reviewed approximately 15 per cent of FPOs made by Victoria Police in each quarter, taking into account the total number of FPOs made in the period under review and other factors, including the different grounds relied on and the age and sex of the FPO subject.

Number of FPOs reviewed by IBAC in the reporting period	Number of FPOs recommended for consideration of revocation	Number of FPO revocations in response to recommendation
117	7	3

[19] *Firearms Act 1996* (Vic) ss 174O.
[20] *Firearms Act 1996* (Vic) s 174A.
[21] *Firearms Act 1996* (Vic) s 112E.
[22] *Firearms Act 1996* (Vic) ss 174F.
[23] *Firearms Act 1996 (Vic)* ss 174F and 174H.
[24] All decisions to make an FPO were made by a delegate of the Chief Commissioner of Police.

5.2 Monitoring the exercise of powers, duties and functions by the Chief Commissioner pursuant to section 173 of the Act

IBAC conducted two inspections of Victoria Police's records pursuant to section 173 of the Act, to determine compliance with the requirements under Parts 4A and 10 A of the Act, for the following periods:

- 8 May 2018 to 31 December 2018 (2018)
- 1 January 2019 to 31 December 2020 (2019/2020).

On 11 December 2020, IBAC provided the Minister with a report pursuant to s 174 of the Act on the findings of IBAC's inspection for 2018.

6 Victoria Police governance framework

Victoria Police's FPO Registry sits within Victoria Police Crime Command is primarily responsible for facilitating the FPO process. The FPO Registry reports to, and is assisted by, an Inspector and Superintendent, who report through to the Assistant Commissioner (Crime Command).

At the time of IBAC's inspection in January 2022, FPO Registry staff consisted of a:

- VPS4 Research Project Officer
- VPS 3 FPO Registrar (not officially an FPO Registry position);

and the FPO Registry was seeking to confirm a VPS2 and VPS3 position.

The FPO Registry maintains the FPO Register that contains relevant details of FPOs.

FPO applications are completed by police officers (applicant) and reviewed by the FPO Registry before being provided to a delegate for decision. The FPO Registry informs the applicant of the outcome of the FPO decision.

In order for an FPO to come into force it must be served on the FPO subject by a police officer, which is evidenced by an affidavit of service completed by the serving officer.

Once the FPO is in force a relevant warning flag is added to the FPO subject's profile in LEAP to alert police to the FPO that allows for searches to be conducted if reasonably required in accordance with Part 4A of the Act.

Victoria Police are responsible for maintaining documented policies and procedures to ensure there is a methodical approach to the making of FPOs and record keeping pertaining all aspects of FPOs, including searches, seizures, charges and revocations.

The Chief Commissioner must include in the Victoria Police annual report the numbers of FPOs issued in financial year and related statistical information.[25]

[25] *Firearms Act 1996* (Vic) ss 172.

Chapter 2

Review and Inspection Results

Review of Firearm Prohibition Orders

1 IBAC's Review of FPOs made by Victoria Police

The Chief Commissioner (or delegate) may make an FPO only if satisfied that it is in the public interest to do so:

(a) because of the criminal history of the individual; or

(b) because of the behaviour of the individual; or

(c) because of the people with whom the individual associates; or

(d) because, on the basis of information known to the Chief Commissioner about the individual, the individual may pose a threat or risk to public safety.[26]

An FPO may be made based on one or more of the criteria as set out in section 112E(a) to (d) (listed above). Figure 1 below shows the split across these criteria for the 751 FPOs made by a Victoria Police delegate (delegate)[1] in the relevant period.

Figure 1: Number of FPOs made over the reporting period:

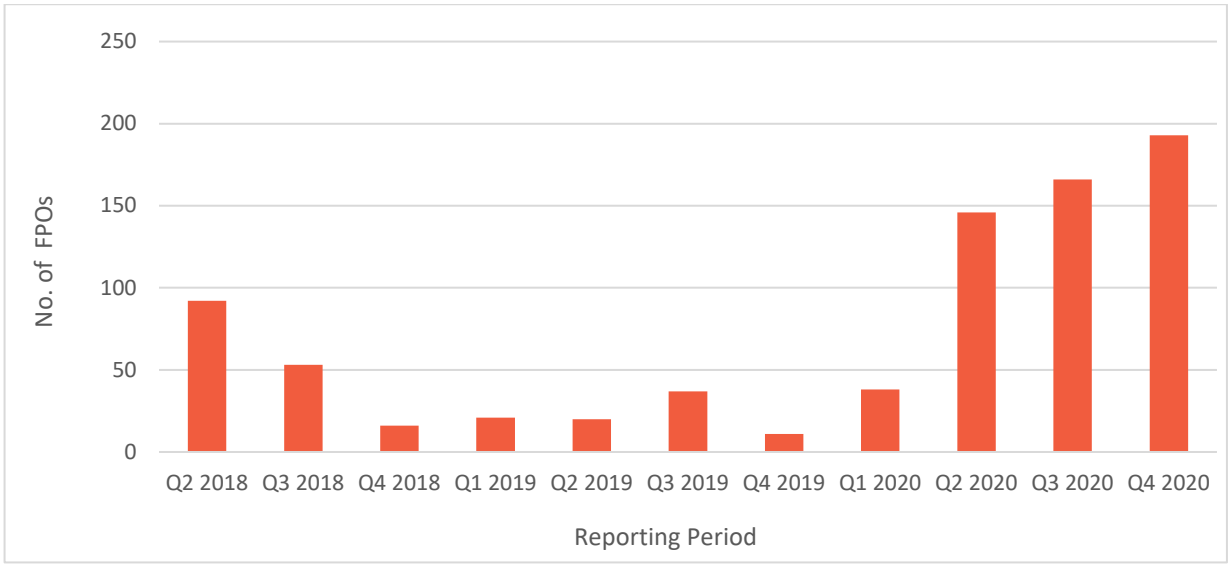
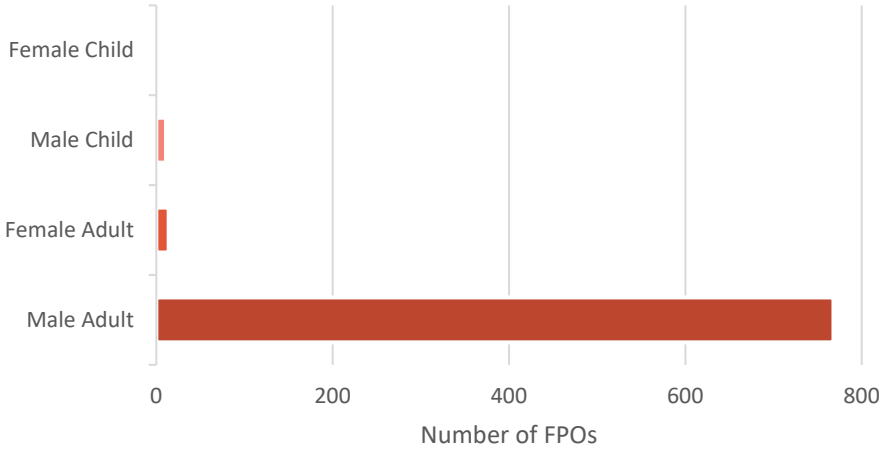


Figure 2: FPO subjects:



[26] *Firearms Act 1996* (Vic) s s112E(a) to (d).

Figure 3: Each of the grounds under s 112E of the Act on which the FPOs were made:

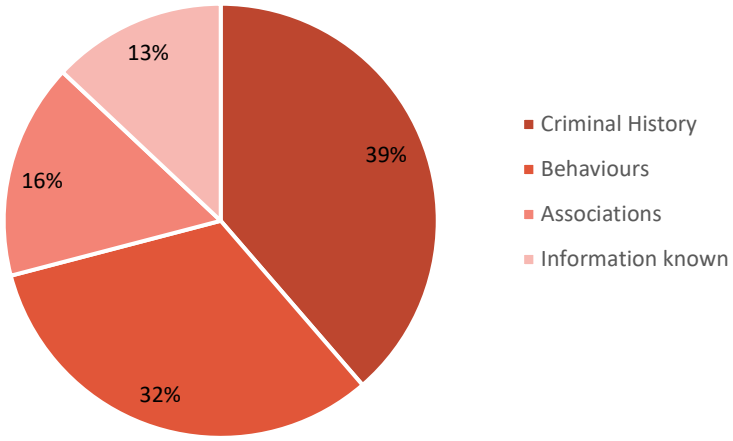
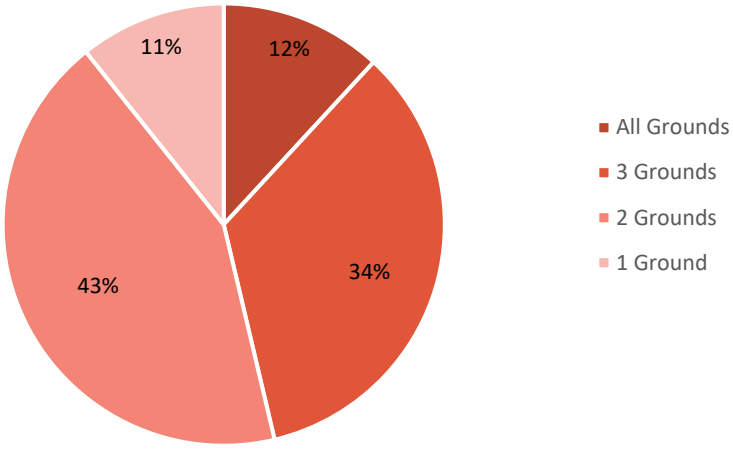


Figure 4: Combined grounds on which the FPOs were made:



After reviewing the issuing of FPOs, in some cases IBAC recommended that the Chief Commissioner review a particular FPO with a view to revoking it. All recommendations were made in private, and a written response was given to IBAC within 45 days.

The below table summarises IBAC's reviews of FPOs made by Victoria Police in the 11 quarters, recommendations made and revocations in response:

Review Period	Date of letter to Chief Commissioner	Number of FPOs reviewed	Number of FPO's recommended to be considered for revocation	Revocations
9 May to 30 June 2018	10 December 2018	10	-	-
1 July to 30 September 2018	2 March 2019	10	-	-
1 October to 31 December 2018	27 May 2019	10	-	-
1 January to 31 March 2019	2 July 2019	10	1	1
1 April to 30 June 2019	13 November 2019	10	-	-
1 July to 30 September 2019	16 December 2019	10	-	-
1 October to 31 December 2019	30 April 2020	5	-	-
1 January to 31 March 2020	16 October 2020	6	1	1
1 April to 30 June 2020	18 December 2020	10	-	-
1 July to 30 September 2020	30 March 2021	17	-	-
1 October to 31 December 2020	24 June 2021	19	5	1

Summary of IBAC's inspections under s 173 of the Act

2 Level of compliance

Compliance ratings are based on IBAC's inspections of Victoria Police's records to determine the Chief Commissioner's compliance with Parts 4A and 10A of the Act, in the two inspection periods.

The following ratings are used to describe the level of statutory compliance achieved by the Chief Commissioner:

Compliant: full compliance with statutory requirements, or any degree of non-compliance was relatively minor and in the nature of an occasional mistake or oversight.

Substantially Compliant: generally compliant with statutory requirements, but there were material compliance problems or issues identified.

Not Compliant: a failure to meet statutory requirements entirely, or a pattern of fundamental compliance problems or issues identified.

Inspection results for the period 8 May 2018 to 31 December 2018

Compliance Category	Compliance Rating
Part 4A	
Persons authorised to make and revoke FPOs	Compliant
Issuing of FPOs	Compliant
Searches pursuant to sections 112Q, 112R and 112S	Substantially Compliant
Dealing with firearms (or related items) surrendered or seized	Compliant
Part 10A	
Records to be kept	Compliant

Inspection results for the period 1 January 2019 to 31 December 2020

Compliance Category	Compliance Rating
Part 4A	
Persons authorised to make and revoke FPOs	Compliant
Issuing of FPOs	Compliant
Searches pursuant to sections 112Q, 112R and 112S of the Act	Substantially Compliant
Dealing with firearms (or related items) surrendered or seized	Compliant
Part 10A	
Records to be kept	Compliant
Annual reporting requirements under section 172 of the Act	Compliant

Inspection results

3 Inspection for the period 8 May 2018 to 31 December 2018

In July 2019, IBAC's conducted an inspection pursuant to section 173 of the Act, to monitor the Chief Commissioner's exercise of powers and performance of duties and functions under Parts 4A and 10A of the Act. The results of the inspection are set out in IBAC's report to the Minister dated 11 December 2020.

Subsequent to IBAC's second inspection (set out below) Victoria Police provided IBAC with an update which related to IBAC's 2018 recommendations as well as issues identified by IBAC in its 2019/2020 inspection, set out in 4 below.

4 Inspection for the period 1 January 2019 to 31 December 2020

4.1 Inspection overview

Between 31 January 2022 to 4 February 2022, IBAC conducted an inspection pursuant to section 173 of the Act, that evaluated the Chief Commissioner's exercise of powers under Part 4A in relation to the making, serving and revocation of FPOs, conducting searches without warrant or the consent of an FPO subject, and dealing with surrendered or seized firearms or related items. The inspection also assessed compliance with record keeping requirements placed on the Chief Commissioner under Part 10A.

On 11 December 2020, IBAC provided Victoria Police with IBAC's inspection results and findings and made five recommendations to the Chief Commissioner in private pursuant to section 174A of the Act. On 6 April 2023, Victoria Police provided IBAC with responses and updates on actions taken.

The inspection results and actions or proposed changes by Victoria Police are set out below.

4.2 Persons authorised to make and revoke FPOs

The Chief Commissioner may delegate the power to make an FPO to:

- a Deputy Commissioner;
- an Assistant Commissioner;
- a person employed by the Chief Commissioner under Division 5 of Part 3 of the *Public Administration Act* 2004 at an executive level in the Victorian public service;
- a person who has the rank of commander; or
- a person who has the rank of chief superintendent or superintendent who has responsibility over one or more of the following portfolio types:
    - crime;
    - transit and public safety;
    - intelligence and covert support;
    - licensing and regulation;
    - family violence;
    - counter terrorism;
    - operational support.[27]

Otherwise, the Chief Commissioner has a general power under section 176 of the Act to delegate all powers under Parts 4A and 10A of the Act (except the power to delegate) to any police officer or Victoria Police employee.

IBAC inspected the rank and responsibility of 88 delegates as well as the relevant Instruments of delegation.

[27] *Firearms Act 1996* (Vic) s 112F (version as at 1 July 2020)

IBAC is satisfied that Victoria Police officers who made decisions in relation to FPOs held the appropriate rank and responsibility, and that the Chief Commissioner has appropriate delegations in place.

Compliance assessment: In relation to persons authorised to undertake relevant duties, functions and powers under Part 4A of the Act, the Chief Commissioner is assessed as being **Compliant**.

4.3 Making of FPO

The Chief Commissioner cannot make an FPO in relation to a person under 14 years of age.[28]

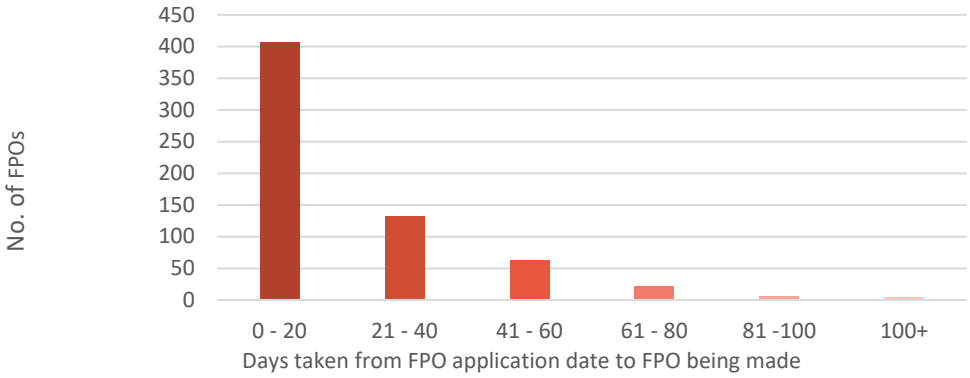
IBAC reviewed the ages of all FPO subjects and is satisfied that no FPOs were issued to persons under the age of 14 years.

An FPO comes into force at the time it is served.[29] An FPO remains in force for a specified period (5 or 10 years) from the day on which it is served on the individual.[30] An FPO that applies to an individual under the age of 18 years of age remains in force for five years.[31]

As at the end of the reporting period, Part 4A of the Act had been in effect for under 3 years and therefore IBAC are yet to review whether FPOs remained in force for the appropriate time as required under the Act.

Figure 5 details the number of days taken from the FPO application date to the date the FPO was made by a delegate.

Figure 5: Number of days taken from FPO application date to the FPO made date

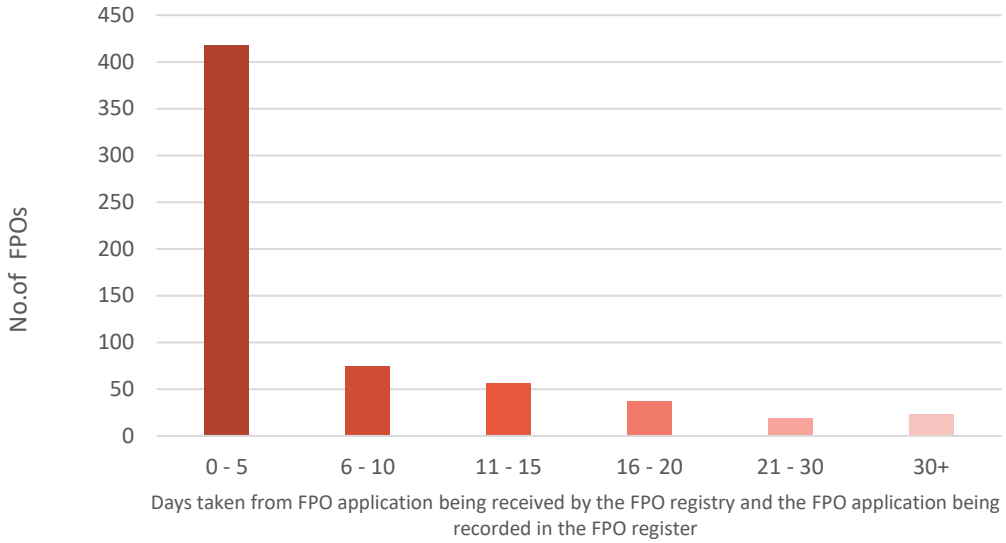


- 134 days was the longest time taken from application date to FPO being made.
- The average number of days from application date to made date was 20.

Figure 6 details the number of days taken from the FPO application being received by the FPO Registry to the application being recorded in the FPO register.

[28] *Firearms Act 1996* (Vic) s 112D(2).
[29] *Firearms Act 1996* (Vic) s 112J.
[30] *Firearms Act 1996* (Vic) s 112J.
[31] *Firearms Act 1996* (Vic) s 112J.

Figure 6: Days taken from receipt of FPO application to recording of FPO application



- 83 days was the longest time taken from application receipt date to recording date.
- The average number of days from application receipt date to recording date was 7.

4.4 Form and content of FPO

An FPO must contain certain information, including a statement of the effect of the FPO, conduct that is prohibited by the FPO and the powers for its enforcement.

The FPO must also contain information identifying the individual to whom the order applies, a statement that the order takes effect on the day it is served, the expiry date, and the provisions of the Act that empower the making of the order.[32]

IBAC inspected a sample of FPOs and is satisfied that these requirements were met.

4.5 Service of FPOs

An FPO must be personally served on the FPO subject by a 'police officer'[33]. If the FPO subject is located interstate a Victoria police officer can personally serve the FPO or arrange for service to be undertaken by a special constable (being an officer or member of the police force of another jurisdiction appointed by the Chief Commissioner of Victoria Police).[34]

Although there no legislative time frame as to when an FPO must be served, given that the basis for making an FPO is to mitigate or control risk to public safety, it is reasonable to expect that service of an FPO would occur as soon as possible.

The relevant Victoria Police procedure states that if an FPO remains unserved for 28 days, where the FPO subject is unlocatable the officer who applied for the FPO must inform the FPO Registry of the incomplete service, reasons and anticipated service date.

Of the 631 FPOs made within the 2019/2020 inspection period, 15 were yet to be served at the time IBAC received the data, representing 2% of FPOs made.[35]

- The average number of days from the day the FPO was made to the FPO being served was 38 days.
- The longest number of days from the day of the FPO made to the FPO being served was 579 days.

IBAC provided Victoria Police with the service timeframe findings for their comments on reasons for delay.

[32] *Firearms Act 1996* (Vic) s 112G.
[33] *Firearms Act 1996* (Vic) s 112I.
[34] The definition of 'police officer' in s 3 of the *Victoria Police Act 2013* (Vic) (VP Act) does not include a person who is a member of a police force of another jurisdiction. However, under s 193 of the VP Act a 'special constable' is taken to be a 'police officer' for the purpose of … any other Act and has the powers conferred on a police officer under … any other Act. This gives Victoria Police the option of having a special constable in another State serve an FPO on the individual located interstate.
[35] IBAC received the data from the FPO Registry on 22/12/2021 and therefore the figures do not account for FPOs that may have been served after extracting the data for provision to IBAC.

Victoria Police informed IBAC that that the following factors may impact the timely and efficient service of an FPO:

- Difficulty locating the FPO subject due to subject being transient, having no fixed address or actively avoiding police, etc. despite proactive attempts being made to locate the person.
- Service of an FPO on an incarcerated person is often suspended until close to their release date, as during a prison sentence the person's risk to public safety is lowered, and the FPO's duration will be maximised when the person is in the community.
- If an FPO subject moves interstate prior to service this requires significant resources as a Victoria Police member has to travel interstate to serve the FPO personally, or arrangements have to be made for an interstate Special Constable of Victoria Police to serve the FPO. Otherwise, police must wait for the FPO subject to return to Victoria.
- Limited resources available due to competing priorities and often complex planning and resource co-ordination due to identified risks associated with locating and attending on an FPO subject.
- Service may be intentionally withheld until the resolution phase of a planned operation.

IBAC accepts that the reasons for delay in service of an FPO are justified in certain circumstances. However, IBAC is of the view that, once an FPO is made, its service must be given priority. This is because an FPO is made on the basis of an affirmative conclusion by the decision-maker that there is a risk that the FPO subject will come into possession of a firearm in circumstances where the firearm may be used to endanger the peace and safety of the public.[36]

Compliance assessment: In relation to the making of FPOs, content within FPOs and service under Part 4A of the Act, the Chief Commissioner is assessed as being **Compliant**.

4.6 Searches conducted without warrant or consent under Division 5, Part 4A of the Act

Victoria Police can exercise the following powers pursuant to sections 112Q and 112R of the Act, without warrant or consent:

- enter and search any premises occupied by, or under the control or management of, the individual
- search any vehicle, vessel or aircraft which the individual is in charge of or is a passenger in
- search the individual and any item in his or her possession
- seize any firearm or firearm related item
- stop and detain the vehicle or individual for so long as is reasonably necessary to conduct the search.

These powers may be exercised:

- by a police officer if the exercise of the power is reasonably required to determine whether an FPO subject has acquired, possesses or is carrying or using a firearm or related item in contravention of the Act;
- in relation to adult FPO subjects and children aged between 14 and 17 years who are an FPO subject.

Police also have the power under section 112S of the Act, to search a person who is in the company an FPO subject, if police reasonably suspect that the person:

- is committing or is about to commit an offence against the Act
- has a firearm or related item in his or her possession.

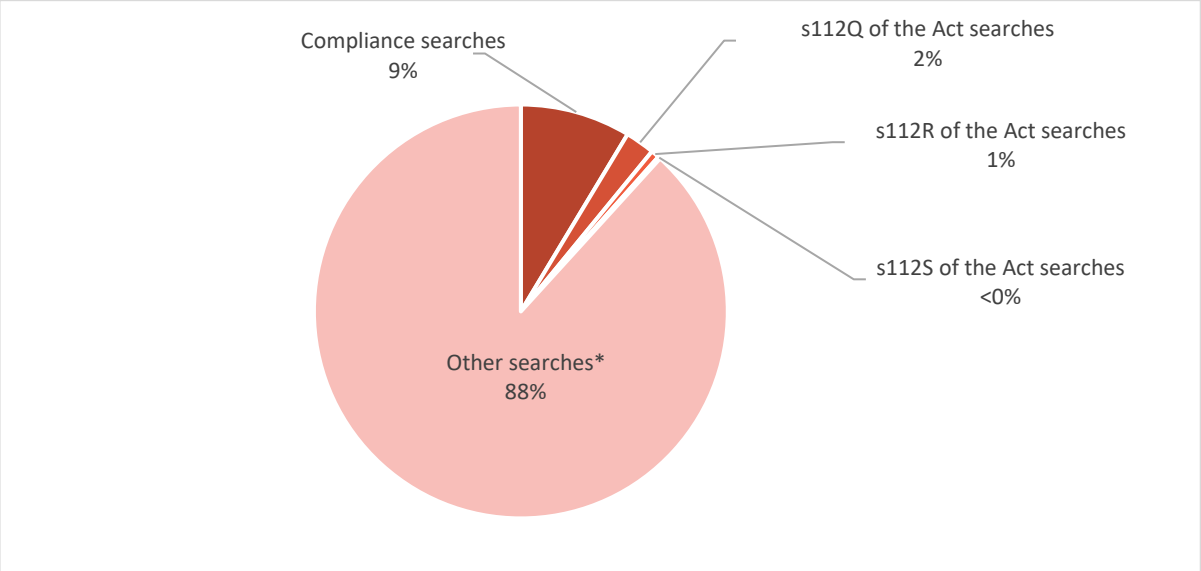
The Chief Commissioner must ensure that records of any searches under Part 4A are kept.[37] The VPM governing FPOs requires that as soon as possible after an FPO related search has been conducted, the members must record the search including the justification for the exercise of the particular power. The manual also provides detail as to where the information is to be recorded to ensure compliance with the Act and that search information is appropriately available to other areas within Victoria Police.

IBAC's desktop inspection of information recorded in spreadsheet format (provided by the FPO Registry) shows that 1089 searches were conducted within the period 1 January 2019 to 31 December 2020.

Figure 7 provides a breakdown of the types of searches conducted on FPO subjects or persons in the company of an FPO subject.

[36] See - *Chief Commissioner of Police v Colin Websdale* [2019] VSCA 305 [at 36].
[37] *Firearms Act 1996* (Vic) s 174O.

Figure 7: Types of searches



*Other searches conducted that were linked to FPO subjects but which were not related to the exercise of powers under Part 4A related to a vehicle searches, person checks, drug/drink driver bans and other drug searches under warrant.

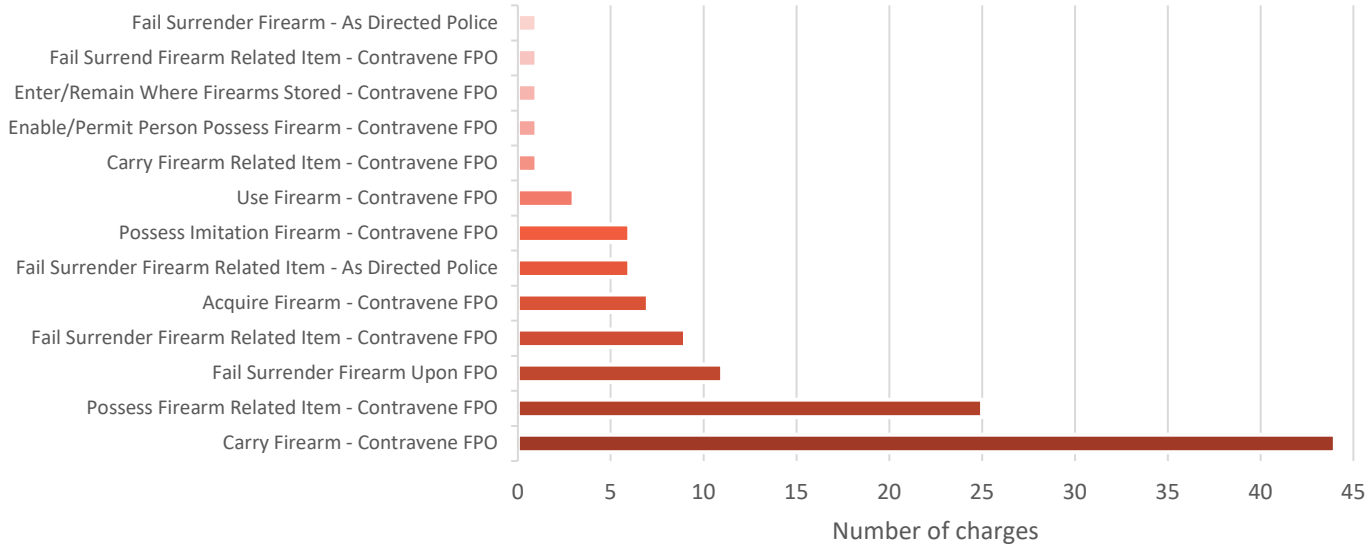
IBAC conducted an on-site inspection of a sample of 20 searches undertaken and reviewed information from the FPO Registry database as well as several other Victoria Police systems outside of the FPO Registry, where the grounds for searches are also recorded.

IBAC was informed that FPO data quality is reliant on users (outside of the FPO Registry) accurately selecting the type of search and inputting required details. The FPO Registry also relies on monthly corporate statistics and conducts checks on data extracted from LEAP to ensure data captured is complete. Awareness of these limitations have been raised by the FPO Registry via the FPO Implementation Working Group.

FPO Specific Offences

Figure 8 shows the number of charges laid for offences under the Act connected with searches conducted under Part 4A.

Figure 8: Offences under the Act laid in connection with searches under Part 4A

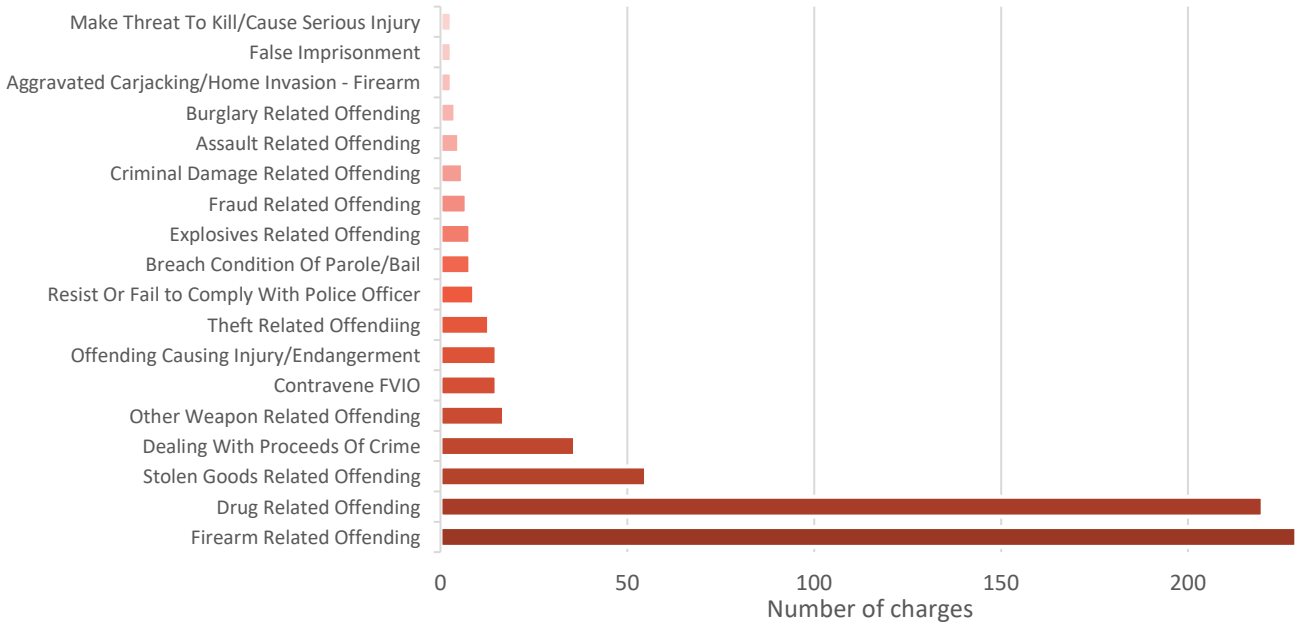


*For the purposes of this chart, data is collected from 1 January 2019 – 31 December 2020

Other Charged Offences

Figure 9 shows the number of charges laid for other offences connected with searches conducted under Part 4A.

Figure 9: Other offences charged in connection with searches under Part 4A



*For the purposes of this chart, data is collected from 1 January 2019 – 31 December 2020

In some cases, IBAC was unable to verify whether Victoria Police had complied with each of the requirements governing the particular search under Part 4A of the Act, due to the lack of specific notes or recorded observations containing the required detail. Therefore, IBAC could not be satisfied that in each FPO case involving the exercise of search powers that all compliance obligations had been met.

IBAC raised with Victoria Police the importance of having records kept centrally and readily available to enable IBAC officers to determine whether all information is recorded as required by the Act, and that requisite IT enhancements could facilitate the issues identified.

Overall, IBAC finds that Victoria Police has in place a record keeping system (albeit made up of multiple record keeping repositories and systems) as well as instructions in the VPM governing FPOs which, if adhered to, will ensure compliance with Parts 4A and 10A of the Act. However, the current process has a number of limitations and does not easily or efficiently allow the FPO Registry or IBAC full visibility of records relating to FPO search details and related matters.

IBAC made two recommendations in private to the Chief Commissioner in relation to record keeping pertaining to searches under Part 4A of the Act.

Victoria Police advise that proposed IT enhancements are needed to build into the current system (outside of the FPO Registry) a 'tick box' method to easily record the relevant section of the Act pertaining to searches, which have not been proceeded with due to estimated costs being beyond budgetary allowance. Victoria Police have also advised that a more permanent solution is preferred to resolve the recording issue moving forward.

However, Victoria Police stated that the current system (overall) does allow for the recording of the required search details and corresponding seizures within a single spreadsheet, which is adequate for the purposes of a centralised location and provides readily available access for IBAC's inspection purposes.

This will be an area of focus for IBAC's next on-site inspection.

Compliance assessment: In relation to searches conducted under Part 4A of the Act, the Chief Commissioner is assessed as being **Substantially compliant**.

4.7 Dealing with firearms (or related items) surrendered or seized under section 112T

Any firearm or firearm related item that is seized or surrendered under Part 4A may be retained for as long as required if it is evidence of an offence under the Act, or if it is reasonably necessary to test the firearm or firearm related item to determine if it is evidence of an offence under the Act or other legislation. [38] Provision is also made for the forfeiture of firearms or firearm related items to the Crown or return of these to the person who is lawfully entitled to possess them.

Where firearms or related items are seized by police as a result of an FPO search, a notification is sent to the FPO Registry by email and the items are managed through another system. The FPO Registry is provided with a copy of the receipt from that system, for retention within the central FPO records.

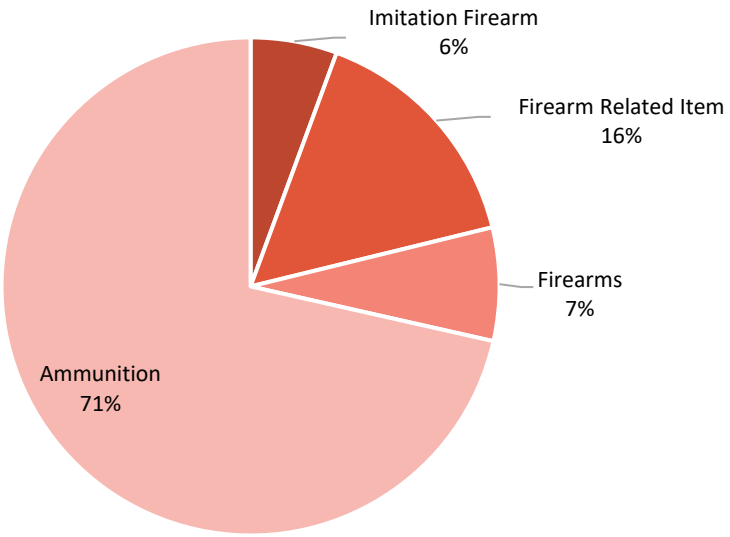
The FPO Registry relies on police members to provide relevant information in relation to items being seized during an FPO search.

IBAC inspected a list of FPO items that were seized in the course of FPO searches, together with 111 associated receipts for firearms or firearm related items surrendered or seized in the reporting period.

IBAC is satisfied that Victoria Police is meeting its obligations in relation to retention of firearms and related items.

Figure 10 shows the break down of types of items seized during the exercise of powers under Part 4A.

Figure 10: % of firearms and firearms related items seized during any exercise of powers under Part 4A:



*For the purposes of this chart, data is collected from 1 January 2019 – 31 December 2020

Compliance assessment: In relation to dealing with retention of firearms and firearm related items that are seized or surrendered under section 112T, the Chief Commissioner is assessed as being **Compliant**.

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[38] *Firearms Act 1996* (Vic) s 112T.

4.8 Revocation of FPOs

An FPO will only cease to have effect if it expires or is revoked.

The Chief Commissioner (or delegate) has the power to revoke an FPO, which must be at the sole discretion of the decision maker, as another person cannot 'apply' to have an FPO revoked.[39] This power is delegated to Assistant Commissioners and Deputy Commissioners.

The three primary causes that prompt a delegate to consider revocation of an FPO are:

- an IBAC recommendation;
- a Victoria Police recommendation as a result of a VCAT application by the FPO subject; or
- if an FPO subject has been identified as deceased.

IBAC brought to the attention of the FPO Registry several administrative errors in relation to recording the date of an FPO revocation.

Victoria Police advise that there is currently a centralised revocation process in place and that a proposed upgrade to the FPO Registry's database has been designed to include relevant fields that record FPO revocation date, reasons, and the delegate's details.

Of 631 FPOs made within the period 1 January 2019 to 31 December 2020 five were revoked, one of which was subject to VCAT review.

Compliance assessment: In relation to the revocation of FPOs, the Chief Commissioner is assessed as being **Compliant**.

4.9 Record keeping requirements under Part 10A of the Act

Under Part 10A of the Act, the Chief Commissioner must take all reasonable steps to ensure that records are kept of:

- each FPO made;
- any document received in relation to the FPO from an individual the subject of the order (or their representative);
- any Victoria Police policies, procedures or guidelines about the making of FPOs or the operation of Part 4A; and
- records of searches under that Part.[40]

IBAC inspected a sample of FPO files and identified a number of administration errors in the recording of FPOs in the FPO Registry's database. Noted errors related to the recording of dates, a duplicated record, incomplete fields and errors in fields completed. The FPO Registry subsequently corrected all identified errors.

IBAC notes that populating the FPO database requires manual entry of information and data retrieved from other systems (which do not communicate with each other). The process is time consuming for FPO Registry staff and the information sourced from other systems may contain errors or incomplete detail, which leads to data errors within the FPO database.

The FPO Registry attempts to eliminate errors through quality control and educating members responsible for submitting FPO applications with identified errors or missing information.

In IBAC's view, enhancements to the FPO Registry database are required to reduce or eliminate manual entry errors, for example, adding parameters to prevent conflicting dates being entered, i.e., 'date of service' occurring before 'date of issue'.

This update is expected to occur during the development of the upgraded FPO Registry database.

The FPO Registry has otherwise observed that since the commencement of the FPO provisions, the quality of FPO applications and data entry continues to improve as there are more experienced members in work units who are regularly involved in the FPO application process and provide guidance and quality control within the work units.

Compliance assessment: In relation to record keeping requirements under Part 10A of the Act, the Chief Commissioner is assessed as being **Compliant**.

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[39] *Firearms Act 1996* (Vic) s 112K.
[40] *Firearms Act 1996* (Vic) ss 174O.

4.10 Applications to Victorian and Civil Administrative Tribunal for review of FPO decision

An FPO subject can apply to VCAT for a review of the Chief Commissioner's decision to make the FPO.[41] An FPO subject has a further VCAT right of review at the half-way mark of the FPO's duration.[42]

The FPO Registry is notified of VCAT applications and related matters by Victoria Police's Legal Services Division (LSD), and applications are then recorded in the FPO Registry database together with records of communication with LSD. All communications from FPO subjects that relate to a VCAT matter are managed through the LSD.

At the time of the inspection, there were 19 FPOs subject to VCAT applications with the following status:

- 3 FPOs - active
- 6 FPOs - active - VCAT proceeding stayed (until further notice due to COVID 19)
- 8 FPOs - active - pending VCAT review
- 1 FPO - active - pending VCAT review appeal.
- 1 FPO - revoked

VCAT consider the information and material on which the decision was originally based as well as subsequent information, material, and the facts as they exist at the time of the VCAT proceedings. This enables an FPO subject to demonstrate that the basis for making the FPO is no longer warranted.

The following table sets out the number of FPOs made in the relevant period subject to VCAT review:

	No. of FPOs
Number of VCAT applications made	19
Number of VCAT application with a status of "Active"	18
Number of FPOs revoked	1
Number of people under the age of 18 subject to an FPO who applied to VCAT	0

IBAC is satisfied that Victoria Police are adequately administering and recording VCAT applications and related information.

4.11 Chief Commissioner's annual reporting obligations under section 172 of the Act

The Chief Commissioner is required to report to the Minister annually, and include in Victoria Police's annual report, certain statistics in relation to FPOs made and in operation, FPO subjects under 18 years of age, and the firearms and related items seized from FPO searches, charges laid for offences under the Act and the number of charges laid for other offences.[43]

IBAC reviewed the relevant Victoria Police 'Governance and Internal Audit Arrangements' procedure, and notes that the FPO Registry undertakes audits at daily, weekly and quarterly intervals, as well as on an ad hoc basis as necessary. Based on a review of the guidance material, IBAC considers that these audits include all information required to be reported under section 172 of the Act.

FPO searches resulting in the seizure of any item must be reported to the FPO Registry, including details of the item(s) seized, quantities and details of any resulting charges.

IBAC is satisfied that Victoria Police has a process in place for identifying whether charges laid fall under section 172(1)(e) and 172(1)(f) of the Act. However, it is noted that the process relies heavily on manual checks by the FPO Registry, is time-consuming and open to error.

IBAC made one recommendation in private to Victoria Police in relation to process improvements.

Compliance assessment: In relation to annual reporting requirements under section 172 of the Act, the Chief Commissioner is assessed as being **Compliant**.

[41] *Firearms Act 1996* (Vic) s 112L.
[42] *Firearms Act 1996* (Vic), s 112M.
[43] *Firearms Act 1996* (Vic), ss 172(1)(a) to (f)).

Conclusion

IBAC recognises the significant role of the FPO Registry in ensuring the overall effective and efficient operation and management of the FPO Register and related matters.

IBAC encourages Victoria Police to ensure that the FPO Registry is appropriately resourced including to allow for necessary IT enhancements or upgrades to the FPO Registry database in order to mitigate risks of error and incomplete data and to provide for efficiencies within the FPO Registry.

FPO Registry staff were courteous to and cooperative with IBAC officers undertaking the inspection under the Act. The engagement between the FPO Registry and IBAC was positive and constructive throughout and I take this opportunity to thank the FPO Registry staff for their assistance.

In the reporting period IBAC did not identify any provisions within Parts 4A or 10A of the Act that it considered as needing to be the subject of recommendations to the Minister for possible amendments to improve the operation of those Parts.



Stephen Farrow

Acting Commissioner

Independent Broad-based Anti-corruption Commission

Date: 17 October 2023

ibac independent broad-based anti-corruption commission
Victoria

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