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NSW Police Force Submission

Parliament of Victoria Legislative Council's Committee of Inquiry into Firearms Prohibition legislation

Question 1

Are FPOs an effective tool in preventing gun-violence and unlawful acquisition of firearms?

- a. ***How effective are FPOs in preventing organised crime or terrorist groups acquiring or possessing illicit firearms?***
- b. ***What other statutory tools exist in preventing gun-violence and unlawful acquisition of firearms?***

NSW Police Force response to Question 1:

- (a) In the NSW Police Force's view, Firearm Prohibition Orders (FPOs) are an effective tool in reducing gun-violence. They prevent firearms coming into the possession of individuals who may later use them for gun violence and also facilitate the removal of firearms from individuals previously authorised to hold them but who are no longer deemed suitable. Coupled with the strengthened powers granted in November 2013 to NSW police to conduct, as reasonably required, lawful searches of persons the subject of FPOs (as well as any vehicle or premises that the person occupies, controls or manages), FPOs have proven a key element in suppression strategies used against outlaw motor cycle gangs (OMCGs) and other organised criminal groups. Their imposition can allow for heightened scrutiny of those engaged in criminal enterprise and if breached they provide for serious penalties.
- (b) The *Firearms Act 1996* and the *Firearms Regulation 2017* are the principal pieces of legislation in NSW that govern the illicit and licit firearm environment. The *Firearms Act 1996* mandates the licensing requirements for both individuals seeking to possess firearms for lawful purposes as well as the firearms themselves. There is a range of categories of licenses depending on the type of firearm the firearm owner is seeking to possess as well as requirements relating to the purpose for which the firearm is to be used and the manner in which the firearm is to be stored for safekeeping.

The *Firearms Act 1996* and *Firearms Regulation 2017* also set out requirements for firearms dealers, collectors, shooting ranges, gun clubs, minors, security guards and others. Firearms Prohibition Order provisions are also described in the Act.

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The *Weapons Prohibition Act 1998* complements the *Firearms Act 1996* by providing for Weapons Prohibition Orders (WPOs) which are designed to control the possession of certain knives, crossbows, slingshots, military style weapons and ordinance, batons, knuckle dusters, tasers, mace and other items regularly found in the possession of organised criminal groups and in particular members of OMCGs. WPOs are often served together with FPOs.

NSW works closely with the Australian Federal Police (AFP) and the Australian Border Force (ABF) to identify firearms and firearm parts coming in to the country. The provisions of the *Customs Act 1901* (Cth) are relied on for this purpose.

The *Law Enforcement (Powers and Responsibilities) Act 2002* sets out the legal authority under which NSW Police officers undertake their duties. This includes the powers to stop, search and seize items associated with criminal offences, including prohibited weapons and firearms, with or without warrant. In circumstances in which a person is not the subject of an FPO, police may apply to an authorised justice for a search warrant, pursuant to Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. The threshold for a search warrant is if police believe on reasonable grounds that there is, or within 72 hours will be, in or on premises, a thing connected with: an indictable offence, a firearms offence, a prohibited weapons offence, a narcotics offence, a child abuse material offence, and/or stolen or otherwise unlawfully obtained goods. The *Law Enforcement (Powers and Responsibilities) Act 2002* also provides police in NSW with powers to search for and seize firearms in circumstances of domestic violence.

Other legislation includes the *Crimes Act 1900*, the *Telecommunications (Interception and Access) (New South Wales) Act 1987*, *Terrorism (High Risk Offender) Act 2017*, *Terrorism (Police Powers) Act 2002*, *Terrorism (Commonwealth Powers) Act 2002*, *Surveillance Devices Act 2007*. All are pieces of legislation that comprise a tool kit for police to investigate and prevent the unlawful acquisition of firearms and prevent gun-violence.

Question 2

In your opinion, would cross-jurisdictional recognition and enforcement of FPOs serve to enhance the effectiveness of your scheme?

- a. How could this be achieved?***
- b. Do you have any other suggestions related to this matter?***

NSW Police Force response to Question 2:

- (a) Organised crime, including that which is firearms related, does not operate within defined boundaries nationally or internationally.

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- (b) For cross jurisdictional recognition and enforcement to occur there would need to be legislated jurisdictional recognition of interstate FPOs in each jurisdiction. It would also require the establishment of a national FPO database.

Question 3

The Committee is also seeking statistical data to compare the operation and implementation of FPO orders across jurisdiction as follows:

- a. How long have FPOs been in operation in your jurisdiction?**
- b. How many FPOs have been issued under your scheme?**
- c. How many reviews of an order have taken place? How many of these were successful in overturning a FPO? Were there any subsequent appeals to a higher judicial body?**
- d. In relation to search powers under your scheme, how many searches resulted in charges being laid against an individual?
(i) Can you provide any information on the type of offences for which charges were laid (i.e. how many related to firearms offences? How many were non-firearms related offences?)?**

- (a) Since 1973, the Commissioner of the NSW Police Force has had the power to prohibit any person from acquiring, possessing or using a firearm by way of making an FPO against that person if, in the Commissioner's opinion, the person is not fit in the public interest to possess a firearm. This prohibition extends to the acquiring or possessing a firearm part or ammunition.
- (b) A total of 6,863 FPOs have been issued under the NSW scheme¹.
- (c) Since the inception of the Firearms and Criminal Groups Legislation Amendment Act 2013 in NSW there have been a number of requests for 'internal review' by the Firearms Registry and a proportion of these have been appealed to the NSW Civil and Administrative Tribunal. This information can be provided in confidence.
- (d) FPO searches resulting in police taking legal action are summarised in the table below

Financial Year	Total Legal Actions from FPO Searches	Legal Actions with Firearms Offences*
2013-14	1	
2014-15	56	19
2015-16	178	58

¹ Not all FPOs that are issued are served. As at 30 September 2010, 5,057 FPOs were recorded on the NSW Computerised Operational Policing System.

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2016-17	307	110
2017-18	363	132
2018-19	690	232

**Legal Actions with firearm offences are a subset of Total Legal Actions from FPO searches*