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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELEVENTH ASSEMBLY

FIREARMS (FIREARM PROHIBITION ORDERS) AMENDMENT BILL 2026

REVISED EXPLANATORY STATEMENT

Presented by
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FIREARMS (FIREARM PROHIBITION ORDERS) AMENDMENT BILL 2026

The Bill **is** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

This Bill amends the *Firearms Act 1996* to establish a Firearms Prohibition Order scheme (the 'FPO scheme').

FPO schemes are used in all other Australian jurisdictions, including New South Wales (since 1973, although the current model was introduced in 2013) and Victoria (since 2018). They consist of three distinguishing elements:

1. The order is made deliberately (rather than occurring automatically through the operation of law);
2. The order prevents a person from acquiring, possessing, or using a firearm; and
3. Police officers are granted extraordinary search powers in order to determine compliance with the order.

The ACT currently operates a scheme under the *Firearms Act 1996* ('the Act') to provide for the lawful acquisition, possession, and use of firearms. Firearm possession and use is a privilege that is conditional upon the overriding need to ensure public safety. The Act places strict controls on the possession and use of firearms, and on the safe and responsible storage of firearms.

For the vast majority of people in the ACT, the Act provides a suitable framework for allowing those who have a lawful and legitimate reason to acquire, possess, and use firearms and for protecting the wider community against the unlawful acquisition, possession, and use of firearms. That framework relies upon making it unlawful to acquire, possess, and use a firearm without a licence (or other exemption), and by restricting licences only to people who have a genuine reason to have a licence and who meet the suitability criteria.

There remains, however, a small group of individuals where the possibility of their acquisition, possession, or use of a firearm presents a significant risk to the wider community, and there is a need to have positive confirmation that they are not acquiring, possessing, or using a firearm. This Bill proposes to achieve this through a tailored FPO scheme.

All Australian jurisdictions currently have an FPO scheme and provide police with extraordinary powers. Evidence in NSW and Victoria suggests that the search

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powers have enabled police to respond in situations where they may not have had sufficient evidence to obtain a search warrant.[1]

The overarching objective of the FPO scheme is to enhance community safety by responding to the threat of high risk individuals using clandestine means to acquire firearms. It does this by providing police with additional tools to respond to, and prevent, gun crime, including by enhancing their search powers to conduct regular searches to ensure the person does not have access to a firearm or firearm-related item. This provides for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage thereby reducing the threat of firearm-related violence and crime. An FPO may also have a deterrent effect on individuals from engaging in illicit firearms activity and may consequently disrupt the illicit firearms trade.

Policy Intent of the FPO scheme

There is a group of people who, if they were to acquire, possess, or use a firearm, the results are likely to be major or severe, including loss of life. Examples include people who present very high risks of engaging in domestic violence, who have established criminal connections with organised crime groups, or who have expressed extreme and violent views towards public figures and agencies.

For this group of people, it is insufficient only to deny them a licence to acquire, possess, or use a firearm lawfully. Instead, there is a legitimate public interest in positively ensuring that these people are not acquiring, possessing, or using a firearm. An FPO scheme provides police with an additional tool to manage the risk to the community and makes it an offence for a person who is subject to an FPO to acquire, possess or use a firearm.

The current framework requires a police officer or an issuing officer (for a warrant) to form a belief or suspicion on reasonable grounds that an offence has been or is being committed before an entry, search, or seizure power may be used. In the ordinary situation, there will be some reasonable ground to suspect that a person has unlawfully obtained a firearm without a licence. This ordinary framework is insufficient for positively establishing that the person is not acquiring, possessing, or using a firearm, especially if the person is using clandestine methods to avoid detection.

An example of this is where a person has previously engaged in domestic violence involving a firearm. Although the person cannot lawfully obtain a firearm, there may be rational reasons to require police to confirm that the person is not in possession of a firearm, even if there is no reasonable ground to support the suspicion that they have acquired a firearm. For example, they might have issued serious and menacing threats to an ex-partner but might not have disclosed in those messages that they will

[1] Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into firearms prohibition legislation*, November 2019; NSW Ombudsman, *Review of police use of the firearms prohibition order search powers: section 74A of the Firearms Act 1996*, August 2016.

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use a firearm. The FPO is designed to provide alternative grounds to enter, search, and seize materials related to a firearms offence.

Although under the new FPO scheme the police officer does not need to suspect or believe that the order has been breached, use of powers to enter, search, and seize must not be used arbitrarily, and must be used exclusively for the policy purpose of ensuring compliance with the order. The powers cannot be used to investigate crime generally.

In making an FPO, the magistrate is expressly required to consider how the FPO limits the human rights of the person subject to the order. In making the decision to exercise a power to enter, search, or seize, the police officer must be satisfied the exercise of power is reasonably required to determine whether the person has acquired, possesses or is using a firearm or firearm-related item in contravention of the FPO. The police officer is also expressly required to consider the importance of the person's privacy (and the privacy of any person who may be present during the exercise of the power), and is required to exercise the power consistently with the *Human Rights Act 2004* (per section 40B of the *Human Rights Act 2004*).

The FPO is not a general warrant for police officers to investigate criminal activity.

Overview of the FPO Scheme

An FPO is a court order which prohibits the person subject to the order from acquiring, possessing or using a firearm or firearm-related item and attending premises where firearms or firearm-related items may be located.

New Part 12A of the Act establishes the FPO scheme. The key functions of the proposed FPO scheme include:

a. an FPO may only be made in relation to an adult;

b. a Magistrate, on application by the Chief Police Officer (CPO) after consideration of matters in any Ministerial guideline, may make an FPO if satisfied that it is in the public interest to make the order and the making of the order is reasonable and justifiable in all the circumstances;

c. in considering whether to make an FPO, the court is required to consider a list of factors, including the person's criminal history, their behaviour, their circumstances (including cultural and social needs), the limits the order would have on the human rights of the respondent and any person affected by the order, and the extensive police search powers which would be available for the duration of the FPO;

d. before making an FPO, the Magistrate must be satisfied that the person has unlawfully acquired, possessed, or used (or unlawfully attempted to acquire, possess, or use) a firearm or firearm-related item;

e. the court may make a short interim FPO on a higher threshold than a final order, requiring the court to be satisfied of additional criteria, including that the order

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must be urgently made to reduce a significant risk of serious harm to another person;

f. a final FPO remains in force for a period of three years unless revoked earlier;

g. the police can make an application to the court to determine whether information proposed to be provided in support of the application is security sensitive information;

h. the respondent may apply to the court for leave to apply for a review of an FPO, including on the grounds that the order limits the human rights of the person in any way that is not reasonable and justifiable;

i. either party may apply to the Supreme Court for an appeal against a decision made in FPO proceedings;

j. any licence, permit or authorisation held by the person is cancelled when a final FPO takes effect;

k. a number of offences apply to a person who is subject to an FPO including acquiring, possessing or using a firearm or firearm-related item; failing to surrender a firearm or firearm-related item; entering and remaining at a prohibited premises (including premises where a firearm is stored, sold, repaired, or manufactured, shooting clubs, and premises prescribed by regulation); and failing to notify a change in address or other premises;

l. the police may undertake a search of a person subject to an FPO, a vehicle occupied by the person or under the person's control, the person's residence, or a storage facility owned, leased, or occupied by the person, and may seize firearms and firearm-related items. Before exercising powers of search and seizure, the officer must be satisfied that the use of the power is reasonably required for the purpose of ensuring compliance with the FPO (that is, to ensure that the person is not in possession of a firearm or firearm-related item). In determining whether the search is reasonably required, the officer must take into consideration several factors, including whether the officer has credible information suggesting the person has acquired, possesses or is using a firearm or firearm-related item, the impact on other people likely to be present during the search, the impact on privacy, and the number, frequency and recency of any previous searches;

m. a police officer must make a written record of the reasons for determining that the exercise of search powers was reasonably required and include in the record the particular matters that the police officer had taken into account;

n. the CPO must report annually to the Minister for Police, Fire and Emergency Services (MPES) and the ACT Ombudsman in relation to the number of FPOs made and powers exercised under the framework; and

o. the MPES must review the FPO scheme after it has been in operation for three years, with a report to be presented to the Legislative Assembly.

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CONSULTATION ON THE PROPOSED APPROACH

Full consideration has been given to the views of stakeholders in finalising the FPO scheme provided for in the current Bill.

The safeguards included in the Bill—many of which are not present in the FPO schemes of other jurisdictions—are sufficient to address the concerns raised by stakeholders. It would not be possible to make significant further changes without compromising the operation of the scheme.

CLIMATE IMPACT

This Bill will not have a climate impact.

CONSISTENCY WITH HUMAN RIGHTS

The Bill amends the Act to introduce a Firearm Prohibition Order (FPO) scheme in the ACT. An FPO is a court order which prohibits the person subject to the order from acquiring, possessing or using a firearm or firearm-related item and attending premises where firearms or firearm-related items may be located.

The Magistrates Court may only make an FPO if satisfied that it is in the public interest to make the order and the making of the order is reasonable and justifiable in all the circumstances after considering a number of criteria. The mandatory matters the court must consider include:

- the respondent's criminal history
- their behaviour
- their circumstances such as their health, cultural and social needs
- whether the respondent associates with a person who has a conviction for a serious offence
- the limits the order would have on the human rights of the respondent and any other person affected by the order
- whether the respondent poses a serious risk to a person or property if no order is made, and
- that, if the order is made, police may exercise the new search powers provided for in the scheme.

FPOs will be sought by police for those individuals who pose a significant risk to the community facilitated by their ability to access, use or possess firearms, either licit or illicit, where traditional policing methods have been insufficient to reduce the risks. Some of these individuals may have previously been subject to police intervention and investigation and prosecution, and continue to pose risks to the community by their continued access, use or possession of firearms. Without limiting the scope of persons to whom the orders may apply, it is envisaged by police that these orders may be sought against the following people:

- those involved in criminal activities involving firearms
- have a history of family violence, or

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- are members of organised criminal groups.

This Bill allows for the Minister to make guidelines about matters the CPO must consider before making an application for an FPO. This is intended to provide an additional human rights safeguard to ensure the FPO scheme is being appropriately targeted to high risk individuals, such that the restrictions on human rights entailed in an FPO are reasonably justified.

The Bill provides police with new search powers to enforce an FPO allowing police to search persons subject to an FPO, their vehicle, and any premises where the subject is residing for the duration of the three year order. The three year order is required to disrupt and change behaviour relating to possession and use of firearms of those who continue to pose risks to the community despite previous intervention. Police are able to exercise the search powers without a warrant where the police officer is satisfied that the search is 'reasonably required' to determine whether the person has committed an offence by acquiring, possessing or using a firearm or firearm-related item. The powers are not designed to be a general warrant. The police officer cannot use the powers under an FPO in order to investigate crime unrelated to the Act (for example, drug offences or general theft).

The purpose of the new entry, search, and seizure powers is to address the community safety risk posed by high-risk individuals using clandestine methods to acquire and possess firearms. These firearms can have catastrophic effects if used in the community. Existing search powers based upon reasonable grounds to suspect or belief a firearm offence has been committed are insufficient for this high-risk cohort.

The introduction of the FPO search powers will add to the powers police already have to conduct a search for firearms, firearm parts and ammunition. The existing powers for police to search for these items generally require police to have sufficient evidence to form a 'reasonable suspicion' that the person has something unlawful in their possession, had committed a crime, or was about to commit a crime. The FPO search powers will provide police with a direct power to conduct a search to enforce an FPO where reasonably required for the purpose of ensuring compliance with the FPO, reflecting a preventive approach, and does not require them to obtain a warrant or to form a 'reasonable suspicion'.

The overarching objective of the FPO scheme is to protect the community from risks associated with a small cohort of high risk individuals having access or possession to a firearm. Examples include people who present very high risks of engaging in domestic violence, who have established criminal connections with organised groups, or who have expressed extreme and violent views towards public figures and agencies.

This will be achieved by providing police with additional tools to respond to, and prevent, gun crime, including by enhancing their powers to conduct searches where

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reasonably required to ensure the person does not have access to a firearm or firearm-related item. This provides for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage thereby reducing the threat of firearm-related violence and crime. An FPO may also have a deterrent effect on individuals from engaging in illicit firearms activity and may consequently disrupt the illicit firearms trade.

Firearm-related violence is a serious national problem. The Australian Criminal Intelligence Commission conservatively estimates the size of the Australian illicit firearm market at more than 200,000 firearms.[2] The nature and extent of the illicit firearm market in Australia is complex and difficult to assess, particularly as owners of these firearms are difficult to trace. The Australian Criminal Intelligence Commission also notes that firearms enable organised crime groups to be more lethal in their activities, stating that 'it only takes one firearm in the hands of a person with malicious intent to be of great concern to the community.'[3] Firearms that exist within such markets, as well as those that enter the market, remain a threat unless a targeted, coordinated and continuous effort is made by law enforcement to locate these firearms.

Technological advancements have seen individuals and organised crime increasingly able to purchase illegal firearms and components anonymously facilitated through the use of darknets, encrypted communications and digital currencies.[4] Trends indicate there is a market for the increasing use of 3D printing to print parts and re-assemble to create firearm-type items. These methods reduce the ability of authorities to detect the production, sale, and distribution of illicit firearms.

In the ACT between 2018 and 2024, a total of 368 apprehensions occurred where the offender was charged with at least one firearms offence. Since the emergence of a second Outlaw Motorcycle Gang (OMCG) in the ACT in 2014, there has been an increase in offences involving firearms reported to ACT Policing, increasing from 37 offences in 2014, to 67 in 2015, and peaking at 126 in 2019. In 2024, ACT Policing took possession of 519 firearms which includes unregistered firearms.

OMCGs are involved in criminal activities across Australia such as drug production and trafficking, firearms offences, money laundering, extortion and serious assaults. These groups are known to coordinate a network of criminal associates responsible for the interstate transportation, storage and distribution of illicit drugs and firearms.

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[2] Australian Criminal Intelligence Commission, *Illicit Firearms in Australia,* 2016; see also, Parliament of Victoria, Legislative Council, Legal and Social Issues Committee, *Inquiry into firearms prohibition legislation,* 2019.

[3] Australian Criminal Intelligence Commission, *Illicit Firearms in Australia,* 2016.

[4] Australian Criminal Intelligence Commission, *Illicit Firearms in Australia,* 2016.

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OMCG activity poses a risk to public safety and creates fear in the community. ACT Policing anticipate the number of OMCGs in the ACT may escalate OMCG-related violence.

The prevalence of multiple OMCGs operating in the ACT prior to 2021 saw ACTP Taskforce Nemesis investigate a significant number of OMCG-related violent incidents, often involving targeted drive-by shootings, home invasions, arson attacks and serious assaults. Taskforce Nemesis executed hundreds of warrants on ACT-based OMCG members and criminal associates, seizing approximately 60 firearms as well as ammunition and other prohibited weapons including knuckle dusters, ballistic vests, knives and even a hand-grenade and explosives. Since the emergence of multiple OMCGs in 2014, the ACT community experienced approximately 80 shooting and/or arson attacks on premises and vehicles that were directly linked to OMCG members, criminal associates and family members. Several shooting incidents targeted the wrong premises, further placing members of the community at risk. In 2017 three shooting incidents occurred in a two week timeframe. These incidents were related to a rivalry between two OMCGs established in the ACT. ACT Policing executed a number of search warrants at premises across Canberra to obtain evidence relating to those incidents and other OMCG criminal activities. Police seized firearms, prohibited weapons, drugs and money during the searches.

ACT Policing understand violence often began as territorial conflicts over illicit markets, but soon escalated as intra-club tensions grew, and rivals engaged in retaliatory violence. Increased OMCG activity has previously driven an overall increase in demand for firearms with criminal entities seeking to arm themselves for protection against the increased threat. An increased demand for firearms provides opportunities for criminal networks to supply the grey and black markets through targeted and opportunistic thefts from registered firearm owners.

In mid-2023, a number of shootings in NSW received significant media coverage. Sydney's south-west saw five shootings in five days, with two individuals dying as a result of gun-wounds. Taskforce Magnus was established and tasked with investigating all shootings arising from the alleged supply of illegal drugs since June 2023.

It is noted that approximately 50 per cent of stolen firearms recovered in the ACT in 2022 were stolen from NSW. Given the large number of rural properties surrounding the ACT, these locations are often targeted by criminal entities for the purpose of acquiring firearms and ammunition.

Accordingly, while the ACT overall has high levels of safety, the availability of illicit firearms remains a problem that continues to pose risks to community safety, especially in high risk cohorts such as members of OMCGs engaged in criminal activity, despite significant policing activity under existing powers.

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All Australian jurisdictions currently have an FPO scheme and provide police with extraordinary powers. National consistency in the firearms space reduces the ability for offenders to evade action or disruption by law enforcement through 'jurisdiction shopping' and concentrating their activities in a state or territory that has lesser enforcement measures available to authorities.

Rights Promoted

The scheme engages and promotes the following rights pursuant to the *Human Rights Act 2004* (HR Act):

- Section 9 – Right to life
- Section 12 – Right to privacy

Section 9 of the HR Act provides that everyone has a right to life and no-one may be arbitrarily deprived of life. In the words of the United Nations Committee on Human Rights: 'the right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights.'[5]

The right to life includes a positive obligation on government to take reasonable actions to safeguard life and protect individuals to address specific threats or pre-existing patterns of violence that may give rise to direct threats to life, such as by taking steps to reduce firearm-related crime and violence.

The Bill promotes the right to life by introducing a scheme that prohibits an individual, who has been assessed as posing a significant risk to the community facilitated by their ability to access, use or possess firearms, from acquiring, possessing or using a firearm or firearm-related item and attending premises where firearms or firearm-related items may be located. Police will have additional tools to be able to respond to, and prevent, gun crime, including by enhancing their search powers. This provides for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage.

The right to privacy protects individuals from unlawful or arbitrary interference with privacy and encompasses the protection of personal or confidential information. The FPO scheme promotes the right to privacy by including provision in relation to security sensitive information (section 183ZZP) and providing the court discretion to allow a hearing, or part of a hearing, to be heard in private and to make orders restricting the publication or disclosure of evidence (section 183ZH). 'Security sensitive information' is currently defined in the Act as including information that may

[5] UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, accessed 28 October 2023, available at: https://www.refworld.org/docid/5e5e75e04.html, [2].

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enable the existence or identity of a confidential source of information or endanger a person's life or physical safety if it is disclosed. The court can limit the way security sensitive information is used and disclosed. The court may make an order pursuant to section 183ZH for the court to be closed where satisfied that it is in the public interest or the interests of justice. These provisions promote the right to privacy of the respondent and other individuals who may be affected by the proceedings or who have provided information to police which is relied upon in proceedings by ensuring that the court deals with the information in a special manner.

Rights Limited

The scheme engages and limits the following rights pursuant to the HR Act:

- Section 8 – Recognition and equality before the law
- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
- Section 15 – Peaceful assembly and freedom of association
- Section 18 – Liberty and security of person
- Section 21 – Right to a fair trial
- Section 22 – Rights in criminal proceedings

Conditions of an FPO – prohibited premises

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

The Bill limits the right to protection of the family, the right to privacy and home, the right to freedom of movement, and the right to freedom of association by the introduction of FPO orders which attach a set of conditions as set out in Division 12A.3.

A person subject to an FPO commits an offence if they enter or remain at a prohibited premises (section 183T). The definition of 'prohibited premises' includes premises where a firearm or firearm-related item is stored.

The person does not commit an offence if the Magistrates Court imposes a condition on the FPO under section 183P that a person may enter or remain at prohibited premises. The Court may impose this condition if satisfied that the person has a genuine reason for entering or remaining at the premises.

The offence provision does not apply if the person has a reasonable excuse for entering or remaining at a prohibited premises.

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Relevantly, the Bill includes safeguards to ensure that the home of the person subject to the FPO will not be a prohibited place. An application for an FPO must state if a registered firearm or firearm-related item is stored at the person's home (section 183C). This includes firearms or firearm-related items that are lawfully owned by people who share the residence with the person.

If there is a firearm or firearm-related item owned by a person other than the person subject to the order, the Magistrates Court must impose a condition on the FPO that the firearm or firearm-related item be removed from the premises of the person subject to the order by a stated time.

The definition of 'prohibited premises' also includes premises where a firearm or firearm-related item is sold, repaired or manufactured. It also includes collectors, hunting or shooting clubs, shooting ranges and recreational sporting venues where firearms and firearm-related items are located.

The condition not to enter or remain at prohibited premises limits rights under sections 11, 12, 13 and 15 of the HR Act.

Section 11 of the HR Act recognises the importance of the family unit and that families should not be subject to arbitrary interference or separation. The scope of 'prohibited premises' may result in circumstances where the normal social life of the family unit is disrupted. For example, some families have long, intergenerational traditions of going hunting together, or competing at shooting ranges.

Beyond the family unit, the offence provision may affect the individual's ability to form and maintain close or enduring relationships, limiting the right to privacy and reputation under section 12 of the HR Act. Depending upon the circumstances of friends, colleagues, or new romantic partners, the broad definition of 'prohibited premises' may limit the person's engagement in social activities.

In addition, the condition not to enter or remain at prohibited premises limits the freedom of movement of a person subject to an FPO. Section 13 of the HR Act recognises the right to freedom of movement within the ACT. As a result of an FPO, the person may be prohibited from attending locations such as shooting ranges or recreational sporting venues where firearms and firearm-related items are stored.

If an individual is a member of a collectors, hunting or shooting club, this may prevent them from meeting with the group or create a disincentive for membership, thereby limiting the right to freedom of association. The right to freedom of association in section 15 of the HR Act protects the right of all persons to group together voluntarily for a common goal and to form and join an association.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime by high risk individuals. The FPO scheme will provide for proactive intervention and action by police by preventing and

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deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of including the condition as set out in sections 183O-183P on an FPO is to reduce the ability of an FPO subject to readily access firearms by entering or remaining at premises where firearms may be located and limit the risk of committing firearm-related offences. This restriction is intended to promote the overall purpose of the FPO scheme.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

FPOs are legal orders that restrict a person's ability to acquire, use and possess firearms and firearm-related items. They will generally be made against individuals considered to be a high-risk of perpetrating gun violence and jeopardising public safety. Including a condition that prohibits a person entering and remaining on prohibited premises provides a direct and important step to reduce an individual's access to firearms that are otherwise readily available at these locations.

The Bill also creates an offence in section 183T for a person subject to an FPO to enter or remain at prohibited premises. This will provide a mechanism for police to charge an individual if they are in breach of the order.

4. Proportionality (s 28 (2) (e))

The Bill aims to strike a balance between the need to protect individual and community safety from firearms-related crime and adopting the least rights restrictive approach for an individual who may be subjected to an FPO.

Importantly, the FPO scheme includes a mechanism under section 183P for the Magistrates Court to permit a person subject to an FPO to enter or remain at prohibited premises if satisfied that the person has a genuine reason for entering and remaining on the premises. The legislation provides that a genuine reason includes if the premises are owned, leased or occupied by a relative of the person. The definition of 'relative' has a broad definition which recognises kinship ties. A genuine reason may also include if the person is required to enter or remain on premises in the course of lawful occupation, business or profession. This provides a person subject to an FPO with prior certainty that they can enter and remain in certain prohibited places.

The FPO scheme also disapplies the offence provision of entering or remaining at a prohibited premises where the person has a reasonable excuse.

The approach also includes several safeguards to minimise the limitations on the right to protection of the family, the right to privacy and home, the right to freedom of movement, and the right to freedom of association:

- only a court can make an FPO after considering a range of matters in section 183B, including the limits the order would have on the human rights of the respondent, the

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circumstances of the respondent (e.g. their housing, employment and social needs) and whether the respondent poses a serious risk to a person or property if no order is made (section 183B),

- FPOs will only be made in circumstances where the court is satisfied that it is in the public interest to make the order and the making of the order is reasonable and justifiable in all the circumstances (sections 183F and 183H),

- if firearms or firearm-related items are stored at the residence of the FPO subject (and owned by someone other than the FPO subject) or another place where the person frequents (e.g. their relative's home), those items must be removed or surrendered (section 183O),

- the court may include a condition that the person subject to the order may enter or remain at prohibited premises if satisfied there is a genuine reason and a person subject to an FPO may also seek an amendment of an FPO pursuant to section 183X(3) to add or change a condition to enter or remain at prohibited premises (section 183P),

- review of an FPO can be sought on the basis of the order limiting the human rights of the person in a way that is not reasonable or justifiable (section 183ZA),

- the Ombudsman has oversight of the FPO scheme, and

- the FPO scheme will be subject to a statutory review of the scheme, and a review of the human rights impacts of the scheme, after three years of operation (section 183ZZR).

A condition that the person subject to the order may enter or remain at prohibited premises is focused on the risks of particular places, not the association of the person subject to an FPO or other persons that may be on those premises. In order to effectively limit such person's access to firearms, it is essential that such individuals be excluded from places that are likely to store firearms or related items or provide access to firearms or related items.

Effect of an FPO – offence of failing to report change of address

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

Division 12A.4 sets out offences which apply to a person who is subject to an FPO. This includes the offence of failure to notify change of address (section 183V).

The offence of failing to notify a change in address limits the right to privacy by requiring a person to disclose personal information to the CPO. The right to privacy in section 12 of the HR Act encompasses the right to protection from unlawful or arbitrary interference with personal and confidential information and the idea that individuals should be free from excessive government intervention and unsolicited intrusion by other individuals. A person commits an offence if they are subject to an FPO and do not notify the CPO of a change in address of their residence or any

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other premises owned, leased or occupied by them within seven days. On being notified of a change of address, the CPO must apply to the court to amend the FPO under section 183X.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of the reporting requirements in section 183V is to ensure that police are able to locate persons subject to an FPO and are aware of any premises which are owned, leased or occupied by them where firearms or firearm-related items may be located.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

Including an offence that requires a person to notify the CPO of a change in address will ensure that police are capable of monitoring access to firearms and firearm-related items by a person subject to an FPO and ensuring compliance with the order. The rationale of the reporting requirement is to reduce the likelihood that a person subject to an FPO could acquire, possess or use a firearm without detection, and requiring a person to notify of a change of address is crucial to that end. Powers which are exercisable without a warrant are linked to premises which are mentioned in the order, including as amended following a notification of a change in address.

In Victoria, the Victorian Legislative Council Legal and Social Issues Committee recommended that the Victorian Government amend its legislation to include a requirement that a person subject to an FPO provide notification of change of address.[6] The Committee noted that this amendment would better equip police officers to be appropriately informed and capable of policing access to firearms by improved monitoring of FPO subjects, and ensuring that the purpose of the scheme to protect community safety was not undermined. Victoria subsequently introduced a provision by which it is an offence to fail to notify police of a change in residential address within 24 hours. The South Australian scheme also requires a person who is subject to an FPO to notify the police of a change of address within seven days. In addition, the notification requirement and the attached maximum penalty in section 183V is similar to the system which is in place for a registerable offender under the *Crimes (Child Sex Offenders) Act 2005* (ACT).

4. Proportionality (s 28 (2) (e))

[6] Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into firearms prohibition legislation*, November 2019

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This specific reporting requirement of the Bill does not authorise arbitrary interferences with privacy. The limitations on the right to privacy are considered proportionate to the legitimate purpose and equip police officers to be appropriately informed and capable of policing access to firearms.

The reporting requirement does not apply to any address where the person frequents, but is limited to the person's residence and any other premises owned, leased or occupied by the person. These are locations where the individual may spend considerable time and have the ability to store or hide any firearms prohibited by the order.

There is not considered to be any less restrictive means to achieve the outcome sought, which is ensuring compliance with all of the conditions attached to an FPO. In turn, including the reporting requirement may also limit the need for police to exercise their powers at other locations which may infringe on another person's right to privacy.

The person subject to an FPO can rely on a defence of reasonable excuse in relation to the offence for failing to notify a change in address in section 183V.

Offences – penalties of imprisonment

1. ***Nature of the right and the limitation (s 28 (2) (a) and (c))***

The Bill provides that the following offences carry a maximum penalty of imprisonment:

- acquire, possession or use of firearm etc (section 183Q) – maximum penalty: imprisonment for 10 years,
- surrender of licence or permit (section 183R) – maximum penalty: imprisonment for 5 years,
- surrender of firearm and firearm-related items (section 183S) – maximum penalty: imprisonment for 5 years,
- enter or remain at prohibited premises (section 183T) – maximum penalty: imprisonment for 1 year (or 100 penalty units, or both),
- dispose of firearm to person subject to order (section 183U(1)) – maximum penalty: imprisonment for 7 years,
- dispose of firearm-related item to person subject to order (section 183U(2)) – maximum penalty: imprisonment for 3 years,
- fail to notify change of address (section 183V) – maximum penalty: imprisonment for 5 years, and

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- fail to comply with a closed court order or order prohibiting or restricting the publication of evidence or information (section 183ZH) – maximum penalty: imprisonment for 1 year (or 100 penalty units, or both).

These offence provisions engage and limit the right to liberty and security of person. The right to liberty encompasses the right not to be arbitrarily arrested or detained. Deprivation of liberty through arrest or detention, must not only be lawful, in accordance with pre-established legal procedures, but must not be 'arbitrary'. Detention may be 'arbitrary' if it is unreasonable, unjust, inappropriate or disproportionate in all the circumstances of the case or not in accordance with due process.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of Division 12A.4 is to reduce the ability of an FPO subject to readily access firearms and limit the risk of committing firearm-related offences. The offences are intended to promote the effectiveness of the overall scheme by creating a mechanism by which police can enforce the order.

The purpose of section 183ZH is to ensure the protection of information that, if disclosed, may interfere with the public interest or administration of justice and community safety.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

Imprisonment terms are included in specific provisions of the Bill to reflect the serious nature of the conduct captured by the offences, deter this conduct and provide adequate powers in support of enforcement. The inclusion of offences which carry penalties of imprisonment is essential to ensuring the enforceability of the orders by police and ensuring that these individuals are deterred from engaging in firearm-related activities.

The specified maximum penalties are consistent with the existing framework of offences in the Firearms Act, except where a higher penalty is appropriate to reflect that a breach of an FPO should be considered more serious than other conduct. For example:

- a maximum of 10 years imprisonment for acquiring, possessing or using a firearm (section 183Q) applies the same penalty as the existing offence of unauthorised possession or use of one or two prohibited firearms (section 42(a)(c)),

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- a maximum of five years imprisonment for surrender of licence or permit (section 183R) and surrender of firearm and firearm-related items (section 183S) is higher than the penalty that applies for the existing offences of failing to surrender firearms or licence when suspended or cancelled (sections 48 and 49) to reflect the seriousness of this conduct in the context of the FPO scheme, and

- a maximum of seven years imprisonment for disposing of a firearm to a person subject to an FPO and three years imprisonment for disposal of a firearm-related item to a person subject to an FPO (section 183U) is higher than the existing offence of unlawful disposal of firearms (section 226) to reflect the seriousness of this conduct in the context of the FPO scheme and the gravity of risk the person has been assessed as posing to individuals and the community.

In addition, the maximum penalties are comparable to those in similar schemes in other jurisdictions.

Further, maximum terms of imprisonment are used in the ACT in other contexts where non-compliance could have serious consequences. For example, under the *Crimes (Child Sex Offenders) Act 2005* (ACT) the offence of failing to report a wide range of personal information (e.g. place of residence, details of any travel outside the ACT) attracts a maximum penalty of five years imprisonment. These requirements were determined to be reasonable in circumstances where the reporting requirement ensures police are able to evaluate and manage the ongoing risk to safety of children.

The penalty for a failure to comply with a court order is mirrored on the penalty set out in section 310 of the *Magistrates Court Act 1930* (ACT).

4. Proportionality (s 28 (2) (e))

The FPO scheme is intended to be used in relation to those individuals who pose a significant risk to the community facilitated by their ability to access, use or possess firearms. Offences for failing to comply with the conditions of an FPO which carry penalties of imprisonment are necessary to reflect the serious nature of the conduct that is captured and the significant risk of harm that contravention may pose to the community.

The Bill includes several safeguards to minimise the limitations on the right to liberty and security of person to ensure that it is the least restrictive approach. This includes that a person subject to an FPO can rely on a defence of reasonable excuse in relation to the offences in sections 183R, 183S, 183T, 183V and 183ZH.

The FPO includes timeframes to allow a person subject to the FPO to comply with their new obligations before criminal penalties apply. The Chief Police Officer is required to inform the Court if there are registered firearms or firearm-related items at the premises (including those belonging to third parties; section 183C(2)(vi)). If the Court is informed that firearms belonging to a third party are at the premises where the person subject to the FPO intends to live, the Court must set a condition that the

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firearm or firearm-related item be removed by a stated time from the residence (section 183O). The Court may also impose a condition that firearms or firearm-related items owned by the person subject to the FPO must be surrendered by a stated time (if the Court does not impose this condition, the relevant timeframes in section 183S apply). The Court may set a condition that the person themselves be afforded a period of time to surrender their licence, permit, firearm or firearm-related item.

The offence provisions in sections 183R and 183S provide that, if the person is unable to comply immediately with the requirement to surrender a licence, permit, or firearm and the Court has not set a condition for compliance by a certain time, a person has 24 hours to comply before criminal penalties apply.

The offence in section 183ZH concerns a failure to comply with a court order, which may include disclosure of personal information in relation to the person subject to an FPO or other third parties. Prior to making an order in relation to the hearing of the application and disclosure or publication of any material or evidence, the court must be satisfied that it is in the public interest or the interests of justice. This may include the court making an assessment whether the order is required to protect the privacy of the personal life of a respondent to an FPO or another person, or whether it is required to avoid prejudice to justice.

The courts retain a discretion in sentencing to determine the appropriate penalty to impose in each individual case, guided by the maximum penalty set out in legislation. Courts have discretion not to apply a term of imprisonment, or to apply a lesser term. The maximum term is expected to only apply to the most serious incidents. Although a lesser term of imprisonment may be considered a less restrictive means to address this behaviour, considering the serious harm the offence can entail, any lesser maximum term of imprisonment is not considered appropriate.

Offences – strict liability

1. ***Nature of the right and the limitation (s 28 (2) (a) and (c))***

The offences in sections 183Q-T and 183V (listed above) each provide that strict liability applies in relation to proving the element that the person was subject to an FPO at the time of the relevant conduct. As a result, to establish these offences it will not be necessary for the prosecution to establish that the person knew or was reckless about whether they were subject to an FPO.

The Bill also makes it an offence for a person to interfere with an item seized by police to which access has been restricted during the execution of search powers under section 183ZZF(2). Strict liability applies to the person interfering with a seized thing, or anything containing a seized thing, to which access has been restricted. This means the prosecution will not be required to establish that the person intended to interfere with an item that was seized.

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The use of strict liability elements for these offences limits the right to be presumed innocent until proven guilty under section 22 of the HR Act. The presumption of innocence means that the prosecution has the burden of proving 'beyond reasonable doubt' that the accused committed the charged offence, including all physical and mental elements. The scheme limits this right because it allows for the imposition of criminal liability without the need to prove fault for some elements of these offences.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of Division 12A.4 is to reduce the ability of an FPO subject to readily access firearms and limit the risk of committing firearm-related offences.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The inclusion of strict liability elements in offences in the FPO scheme supports the overall objectives of the Bill, enhances the effectiveness of the scheme and ensures that relevant offences operate as effective deterrents to misconduct by:

- improving the mechanism by which police can enforce an order by streamlining prosecution processes for offences related to a person's failure to comply with an FPO; and

- improving the ability to investigate an offence under the Firearms Act by streamlining prosecution processes for interfering with police seizures.

Strict liability elements typically arise in a regulatory context where the defendant can reasonably be expected, because of their involvement in the regulated activity, to know what the requirements of the law are. The strict liability offences in the Bill (with the exception of section 183ZZF) apply to remove the *mens rea* in relation to a person knowing they are subject to an FPO.

In relation to an offence under section 183ZZF(2), strict liability applies such that the prosecution does not need to establish that the person intended to interfere with an item that was seized. This is considered appropriate given the potentially significant implications for an investigation where there is interference with an item that may later be used as evidence. By providing that a person may be convicted of the offence without the prosecution needing to prove fault, the application of strict liability encourages the person to take active steps to avoid interference with a seized item.

However, the prosecution does still need to prove that the person knew that access to the seized thing had been restricted and that the person did not have a police

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officer's approval to interfere with the thing. Ultimately this satisfies the desire for a defendant to know what the requirements of the law are (in that they knew it was seized) for strict liability offences. By removing the requirement to demonstrate intention to interfere with the seized thing, it will enhance the effectiveness of the FPO scheme by improving the ability to investigate an offence under the Firearms Act by streamlining prosecution processes for interfering with police seizures.

4. Proportionality (s 28 (2) (e))

The limitations on rights in criminal proceedings are considered proportionate to the legitimate purpose, given the need to ensure the effectiveness of the FPO scheme and deter unauthorised behaviour to protect members of the community from gun-related violence.

As noted above, strict liability only attaches to single physical elements of the relevant offences. The prosecution will still be obliged to establish fault in relation to core physical elements (for example, whether a person has acquired a firearm or related item, or failed to surrender a licence) before a person may be convicted. The application of strict liability to an element of an offence may be justified where requiring proof of fault would undermine deterrence and there are legitimate grounds for penalising persons lacking fault in respect of the element. Legitimate grounds may include where the person would be placed on notice to guard against the possibility of a contravention.

For an offence to operate as an effective deterrent, there must be a real possibility that a person, once charged, will be convicted. Requiring the prosecution to prove that a defendant knew or was reckless as to whether they were the subject of an FPO could substantially reduce the likelihood of successful prosecution, particularly if a defendant were able to assert that they were unaware that an FPO had been issued.

Strict liability elements in the Bill relate to whether the person *was subject* to an FPO at the time of the relevant conduct and not to the other elements of the offences (with the exception of section 183ZZF) A person subject to an FPO will be aware of their obligations under the order and the effect of the order. Pursuant to section 183L, an FPO must include a statement about the effect of an FPO, including offences and related penalties.

While an interim FPO is made in the absence of the respondent and a final FPO can be made in the absence of the respondent, an FPO only commences if the person has been personally served with the order (section 183I). If the person is before the court when the FPO is made, the court must explain to the respondent the terms and effect of the order and the consequences that may follow if the respondent fails to comply with the order and provide a copy of the order to the person (section 183J).

Accordingly, the risk of an inadvertent breach of these offences is considered low.

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The defendant's state of mind in regarding the issue of an FPO is also largely irrelevant to the offences. Rather, the valid issue of an FPO will determine if the offence *applies* to a defendant. Whether the defendant is then guilty of an offence will turn on proving beyond reasonable doubt that the defendant intentionally engaged in the relevant conduct. A similar position is taken to breaches of orders under family violence and personal violence legislation, albeit that a different drafting approach has been adopted.[7]

As outlined above in relation to the Bill's engagement with the right to liberty and security of person, custodial penalties for offences in sections 183Q, 183R, 183S, 183T and 183V reflect the serious risks to public safety associated with the conduct the offences seek to prohibit and are considered essential to ensuring that individuals subject to FPOs are deterred from engaging in firearm-related activities. The penalties are also broadly consistent with the framework of offences in the Firearms Act and with penalties for FPO-related offences in other jurisdictions.

Given the very serious risks associated with the prohibited conduct, the custodial penalties are considered proportionate, including by reference to the additional justification demanded where strict liability applies to an element of an offence. The application of strict liability in combination with a custodial penalty also increases the offences' deterrent value.

As outlined above, strict liability applies only to the question of whether a person is subject to an FPO. For the custodial penalties to apply, the prosecution must prove fault in relation to other core elements, such as whether a person acquired a firearm or related item, entered or remained in prohibited premises, or failed to notify a change in residence. With the exception of the offence of failing to surrender a firearm or a licence, the fault element of intent applies.

The custodial penalties are also the maximum a court may impose. Courts have discretion not to apply a term of imprisonment, or to apply a lesser term. The maximum term is expected to only apply to the most serious incidents. Although a lesser term of imprisonment may be considered by some to be a less restrictive means to address this behaviour, considering the serious harm the offence can entail, any lesser maximum term of imprisonment is not considered appropriate.

The inclusion of a strict liability offence in relation to section 183ZZF(2)(a) is also considered proportionate. A person would be put on notice not to interfere with a seized item, and it is considered unlikely that they would interfere with it out of mere inadvertence. The offence provision also requires that the person knows access to

[7] See, for example, *Personal Violence Act 2016* (PV Act), s 35; *Family Violence Act 2016* (FV Act) s 43. The provisions are drafted such that the sections *apply* to a person who was present when the order was made or has been personally served with a copy of the order. Sections 35(2) of the PV Act and 43(2) of the FV Act then provide that a person to whom the section applies commits an offence if they engage in conduct that contravenes an order (including a condition).

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the seized thing has been restricted and that the person does not have a police officer's approval to interfere with the thing.

The defence of reasonable mistake of fact is also available in relation to each element of an offence where strict liability applies. If a person is under a mistaken but reasonable belief about certain facts; and the conduct would not have constituted an offence if those facts existed, then the person will have a defence to a charge. This may, for example, protect individuals who mistakenly but reasonably believed an order had expired and they were no longer subject to an FPO.

In addition, the person subject to an FPO can rely on a defence of reasonable excuse in relation to the offences in sections 183R, 183S, 183 and 183V.

Requirements for making an FPO – prior unlawful conduct in relation to firearms

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

Before making an FPO, a Magistrate must be satisfied that the respondent has, at any time, unlawfully acquired, possessed or used or attempted to acquire, possess or use a firearm or firearm-related item. The Magistrate may be satisfied of this regardless of whether the respondent has previously been found guilty of a relevant offence.

'Unlawful' for the purpose of proposed section 183B generally contemplates behaviour that is criminalised under the *Firearms Act 1996* (ACT) (Firearms Act) or an equivalent law of another jurisdiction. Behaviour that is criminalised under other laws (for example, the *Crimes Act 1900* and *Criminal Code 2002)* may also be captured, to the extent that the behaviour involves the acquisition, possession, or use of a firearm or related item. Importantly, 'unlawful' refers to the conduct as set out in a relevant law. It is not necessary to establish to the criminal law standard that a respondent has engaged in the conduct. A Magistrate must only be satisfied that this has occurred. . This is broadly consistent with the power for the Registrar to cancel a firearms licence for a contravention of the Firearms Act, albeit that the issue of an FPO requires judicial consideration.

Examples of 'unlawful' conduct under the Firearms Act include the acquisition, possession, or use of a firearm otherwise than in accordance with a licence or permit,[8] and the use of a firearm in a dangerous or irresponsible manner.[9] Examples in other ACT legislation may include discharging a firearm at a building or conveyance,[10] and going equipped with an offensive weapon for theft.[11]

[8] See, for example, Firearms Act, ss 42 (Offence—unauthorised possession or use of prohibited firearms); 43 (Offence—unauthorised possession or use of firearms other than prohibited firearm); 45 (Offence—contravention of condition by licensee, etc).

[9] See, for example, Firearms Act, ss 221 (Discharge etc of firearm—public place etc); 222 (Discharge of firearm—general).

[10] See *Crimes Act 1900,* s 28B (Discharging firearm at building or conveyance).

[11] See *Criminal Code 2002,* s 316 (Going equipped with offensive weapon for theft, etc).

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It is not proposed that the measures would expand the types of conduct that are considered unlawful. Rather, they would allow the Magistrate's Court to consider past conduct even where the conduct has not lead to a conviction. Examples of where a Magistrate could be satisfied that unlawful conduct has occurred, despite there being no conviction or finding of guilt, include the following:

- A person may be investigated for an offence involving the acquisition of a firearm, but charges may not ultimately be laid. In those circumstances, there may be sufficient evidence to satisfy a Magistrate that the person has unlawfully acquired the firearm, and that (taking into account other relevant matters) the making of an FPO is in the public interest, notwithstanding that police ultimately determine not to seek a conviction.
- A person is charged with an offence involving acquisition, possession, or use of a firearm, and is granted bail pending trial. In those circumstances, there may be sufficient evidence to satisfy a Magistrate that unlawful behaviour has occurred (noting in this regard that police are likely to have determined that there is sufficient evidence to lay charges). The Magistrate may also consider that making an order is justified to ensure that the person does not acquire a firearm or related item while they are in the community.
- A person is convicted or found guilty of an offence involving the possession, acquisition, or use of a firearm or related item but the offence is quashed. In many cases, a quashed conviction will not be a finding of innocence or an acquittal, but will occur due to miscarriage of criminal procedure, with charges returned for determination at a later date. In such cases, there may be sufficient evidence for a Magistrate to be satisfied that unlawful conduct occurred. The Magistrate may also consider it justified to make an FPO to address risks to public safety pending a later hearing of criminal charges.

Allowing the Magistrate's Court to take into account prior unlawful conduct without also requiring that a person be convicted of an offence engages the right to recognition and equality before the law (section 8 of the HR Act) and rights in criminal proceedings (presumption of innocence) (section 22 of the HR Act).

Section 8 protects the right to equal protection of the law without discrimination. Section 8 is given effect in the ACT primarily through the *Discrimination Act 1991*. The Discrimination Act protects people against unfavourable treatment or disadvantage on account of an irrelevant criminal record, which is defined to include circumstances where a person was acquitted of a criminal charge or the proceeding against them lapsed or was struck out etc.

Taking into consideration the respondent's prior unlawful activity (or attempted unlawful activity) regardless of whether or not the respondent has been found guilty of an offence engages this right by subjecting respondents to disadvantage (that is, exposing them to the risk of being subject to an FPO) where they have no prior criminal record in relation to firearms or an irrelevant criminal record (e.g. a conviction that was quashed).

Section 22 protects a person's rights when charged with a criminal offence. Although the respondent is not charged with an offence when an FPO application is made, this

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right may apply in civil or administrative proceedings that could be characterised as criminal under international human rights law. This ensures that people are not unjustifiably subjected to punitive measures.

The FPO scheme limits the right to be presumed innocent because it envisages that the Magistrate may be satisfied of past unlawful conduct in relation to firearms in circumstances where the respondent has not been found guilty of a relevant offence.

2. Legitimate purpose (s 28 (2) (b))

Requiring a Magistrate to be satisfied that the respondent has unlawfully acquired, possessed or used or attempted to acquire, possess or use a firearm or firearm-related item reduces the scope of who can be subject to an FPO. Reducing the scope in this way ensures that only those who have or who have attempted to acquire, possess, or use a firearm or firearm-related item unlawfully can be subjected to an FPO, strengthening the link between the purpose of the FPO scheme (to ensure positive confirmation that high risk people are not in possession of firearms) and the rational evidence needed to support the making of an FPO.

Allowing the Magistrate to reach this state of satisfaction where a person does not have a prior conviction ensures that public safety can be protected through the making of an FPO where police hold information reliably indicating unlawful activity but the person has not yet come into contact with the justice system or has not been prosecuted to final conviction. Such persons may still pose future risk.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The prior unlawful activity (or attempted unlawful activity) is a relevant and rational consideration for determining the risk a person presents when subjecting them to an FPO. The Magistrate is required to consider the future risk of a person acquiring, possessing, or using a firearm. Requiring a Magistrate to be satisfied that the respondent has previously engaged in (or attempted to engage in) unlawful activity before issuing an FPO is an important safeguard – it decreases the likelihood of subjecting a person who is a lower risk to the requirements of an FPO.

Ensuring that an FPO can be made in the absence of a prior conviction strikes a balance between this safeguard and the need to ensure that ACT Policing's ability to bring FPO proceedings where they have cogent information of future risk is not prohibitively limited.

4. Proportionality (s 28 (2) (e))

This measure seeks to balance the significant threat that a person might present to the wider community with the need to ensure that FPOs do not interfere with the rights of people who pose a lower risk. Requiring a Magistrate to be satisfied that a respondent has previously engaged (or attempted to engage in) relevant unlawful activity before issuing an FPO makes it less likely that an FPO will be made in respect of a person who presents a reduced risk to the community.

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Allowing the Magistrate to consider all relevant information about past conduct (even where illegality has not been proved to the criminal standard) is proportionate, because the broad discretion afforded to the Magistrate when making an FPO is exercised independently and impartially in the overarching interest of public safety. A Magistrate is also required to consider a range of other matters in determining whether to make an FPO, including whether the respondent poses a serious risk to another person or to property if an FPO is not made, and the impact of making an FPO on the respondent's human rights.

Interim FPOs

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

The making of interim orders in the absence of the respondent limits the right to a fair trial under section 21 of the HR Act. Section 183E(2) provides that an interim order must be made in the absence of the respondent. In addition, applications for interim orders will not be served on the respondent.

Section 183ZG provides that the hearing of an application for an interim order must take place in private and in the absence of the respondent, the respondent's representatives and any other interested party. These provisions limit the respondent's right to a fair trial as the proceedings are ex parte and they are not provided with an opportunity to respond to the application for an interim FPO.

The right to a fair trial extends to all proceedings in a court or tribunal and at all stages of proceedings. The right is concerned with procedural fairness and ensuring that all parties in proceedings have the right to be heard and respond to any allegations made against them prior to a decision being made that will affect their rights and interests. The requirement that courts be competent, independent, and impartial is fundamental to the integrity of the decision-making process.

While public hearings are generally fundamental to the transparency and accountability of courts, some exceptions to the principle of open justice are permitted. The press and public may be excluded from all or part of a hearing: to protect morals, public order or national security in a democratic society; or if the interest of the private lives of the parties require the exclusion; or if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal

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activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of interim orders is to allow orders to be made by the court in urgent circumstances for a short period of 30 days where there is a significant risk of serious harm to another person. Closed court proceedings will ensure the protection of any intelligence material or other information which is relied upon by police in their application and which may not be possible to declassify in urgent timeframes.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The FPO scheme will achieve its objective of ensuring the safety of the community from the risk of firearm violence through the ability to obtain interim FPOs in urgent circumstances where the person subject to the application is absent from the proceedings. The court must set a return date for the hearing of an application for an interim order no later than two days after the application is filed.

The purpose of allowing the interim order application to be made on an ex parte basis is to ensure that applications can be made by police in a very short period of time in response to emerging and immediate threats.

Public hearings would potentially compromise police investigations and the safety of individuals.

Consideration of the application on an ex parte basis will alleviate concerns that giving an individual notice of an intention to seek an order against them may trigger a response and create a significant risk that the person would cause serious harm to another person or persons before the hearing of the application for a final order.

4. Proportionality (s 28 (2) (e))

The FPO scheme strikes an appropriate balance between the right to a public hearing and procedural fairness, with the need to protect both the community from a significant and urgent risk of harm from firearm-related violence and the confidentiality of criminal intelligence. There are no reasonably available alternatives which would achieve this same balance.

It is not envisaged that interim orders will be sought in all cases where an FPO application is made but rather that they will be limited to circumstances where there is a significant danger that must be addressed more quickly than ordinary hearing timeframes allow as reflected in the higher threshold applicable to an interim order. As part of routine processes, police will consider the range of other criminal justice and regulatory responses that are available to them prior to seeking an interim order.

Safeguards have been built into the Bill to minimise the frequency and extent of the limitation on the right to a fair trial.

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Significantly, the threshold for obtaining an interim order is high and requires the court to be satisfied that:

- it is in the public interest to make the order,
- the order must be urgently made to reduce a significant risk of serious harm to another person,
- the making of the order in the absence of the respondent is reasonable and justifiable, and
- the making of the order is reasonable and justifiable in all the circumstances.

In deciding whether to make an interim order, the court must consider the same range of matters for a final order. This includes:

- the respondent's criminal history and behaviour
- their circumstances such as their health, cultural and social needs
- the limits the order would have on the human rights of the respondent and any other person affected by the order, and
- the search powers that would apply to enforce the order.

The test set out in section 183F(1)(d) for the making of an interim order requires the court to turn its mind to the intrusion of the order on a person's rights and subsequently form the view that it is reasonable and justifiable.

Additionally, the court must be satisfied that the making of the order in the absence of the respondent is reasonable and justifiable.

Pursuant to section 183I, an interim order only commences on the day that it is personally served on the person. An interim order may only be made for a maximum of 30 days and may not be extended.

There is also a period of grace following service of an FPO made in the absence of the person for the offences in sections 183R and 183S to ensure that a person is aware of their obligations before criminal liability applies. If the person is unable to surrender their firearm, firearm-related item, licence or permit at the time when police requests it (or at a later time ordered by the Court), a 24-hour grace period is provided in the Bill.

Other safeguards included in the Bill to minimise the limitations on the right to a fair trial include:

- the power for police to enter premises that are a storage facility owned, leased or occupied by the person without a warrant is not available when a person is subject to an interim FPO (section 183ZY),

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- the Court must record its reasons for making an interim FPO (section 183L)
- review of an FPO, including an interim FPO, can be sought on the basis of the order limiting the human rights of the person in a way that is not reasonable or justifiable (section 183Z),
- the Ombudsman has oversight of the FPO scheme, and
- the FPO scheme will be subject to a statutory review after three years of operation(section 183ZZR).

Procedural matters – closed court and non-publication orders

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

Under Division 12A.8 of the Bill, the court can close the court in special circumstances. This includes the ability to order:

- the hearing, or part of a hearing, take place in private,
- that only stated people be present at the hearing,
- prohibiting or restricting the publication of evidence given or received at the hearing or other material filed with the court, and
- prohibiting or restricting the disclosure of evidence or material filed with the court to some or all of the parties to the proceeding.

Section 183ZH provides that a court hearing an application for an order or decision may make an order that the hearing, or part of the hearing, take place in private, if satisfied that it is in the public interest or the interests of justice.

This limits the right to a public hearing and fair trial protected by section 21 of the HR Act.

The right to a public hearing recognises, among other things, that everyone has the right to have 'rights and obligations recognised by law' decided by a competent, independent and impartial tribunal after a fair and public hearing.

While public hearings are generally fundamental to the transparency and accountability of courts, some exceptions to the principle of open justice are permitted. The press and public may be excluded from all or part of a hearing:
to protect morals, public order or national security in a democratic society; or
if the interest of the private lives of the parties requires the exclusion; or
if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.

The right is also concerned with procedural fairness and ensuring that all parties in proceedings have the right to be heard and respond to allegations made against them prior to a decision being made that will affect their rights and interests.

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Section 183ZO additionally limits the right to a fair trial protected by section 21 of the HR Act as it permits the court to make a decision in proceedings which affect a person against whom an FPO is sought without providing them with the opportunity to respond to the allegations made against them. This only applies if the person has been served with a copy of the application and timing notice and is not present, personally or by a representative, at the return of the application. The court has a number of options available to them which includes deciding the application in the person's absence.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

Closed court provisions and the ability to limit the use and disclosure of evidence will support the objective of the FPO scheme by providing the court with discretion as to how it handles sensitive information that may be needed to protect public order, avoid prejudice to justice, or to preserve the privacy of the personal life of a respondent or any other person affected by a proceeding.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

Providing the court with a discretion to allow a hearing, or part of a hearing, for a final FPO to be heard in closed court or restricting the publication or disclosure of evidence ensures that the information is dealt with in a special manner to protect the privacy and safety of those involved as well as any ongoing investigations. It is anticipated that some information to be relied on in applications will be intelligence material. The limitation is rationally connected to achieving the purpose of maintaining the confidentiality of criminal intelligence, which is essential to the proper discharge of police functions.

These provisions will protect the right to privacy of the respondent and other individuals. It will also provide the court with the ability to protect sensitive details and prejudicial material from access by members of the public, the press, and others as necessary. In some circumstances, this may include the respondent.

Moreover, the objective of public safety will be achieved by allowing an FPO application to be heard in the absence of the respondent, where the respondent has been made aware of the application and the hearing date, by ensuring that the court can progress the matter in reasonable timeframes and without undue delay. The purpose of section 183ZO is to ensure that a person against whom an FPO application is brought does not deliberately avoid attending court to obstruct the progress of the application and avoid an order being made against them.

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4. Proportionality (s 28 (2) (e))

The ability for the court to order private hearings and limit the publication or disclosure of evidence is an appropriate balance between the conflicting right to a public hearing and need to promote the right to privacy and protect public safety. The only reasonably available alternative is a public hearing, but this would not guarantee the same protections.

The court is granted discretion to determine how it deals with an application made under section 183ZH. The court's discretion in this respect is not novel, with section 183ZH modelled on section 310 of the *Magistrates Court Act 1930*.

Before making an order under section 183ZH the court must be satisfied that it is in the public interest or interests of justice. This will include consideration of whether it relates to public order, national security, the privacy of an individual, or prejudice to justice.

Section 183ZH does not exclude all members of the public as a blanket rule. Pursuant to section 183ZF the default position is that hearings for FPOs are generally to be held in public. The court ultimately retains the power as to how the proceedings are conducted and the evidence before it is handled. This will allow the court to weigh the potential harm of disclosing information or having a public hearing against any frustration or impairment to the administration of justice should the information be withheld or the proceedings be conducted privately in each case.

The limitations on the rights of the respondent are reasonable and proportionate as the court may only make an order in these circumstances when the person has been served with a copy of the application, supporting affidavit and timing notice. This provision provides the court with the discretion to determine whether a direction or summons should instead be given requiring the respondent to appear before the court on the day the hearing is adjourned to. In addition, section 183ZK allows the court to dismiss an application for an FPO if satisfied that the application cannot be served and the person has not intentionally avoided service.

Review of an FPO during its term can be sought (with leave of the court) on the basis of the order limiting the human rights of the person in a way that is not reasonable or justifiable (section 183Z). The making of an FPO is also an appealable decision under section 183ZQ, and an individual can also lodge an appeal in relation to a decision to refuse to give leave to a person to apply for the review of an FPO.

<u>Security Sensitive Information</u>

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

Section 183ZZP provides the ability for the CPO to make an application to the court about whether information intended to be used in an FPO proceeding is 'security

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sensitive information'. Upon application by the CPO, the court must decide whether the information is 'security sensitive information'.

'Security sensitive information' is defined in the Dictionary to the Firearms Act as information held by a law enforcement agency that relates to actual or suspected criminal activity, the disclosure of which could reasonably be expected to prejudice a criminal investigation, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or endanger a person's life or physical safety. This mirrors how the term is defined in other schemes across the ACT statute book.

Section 183ZZP(4) provides that, unless the CPO otherwise agrees, the application must be heard in closed court including in the absence of the person to whom the proceeding relates or their representative. The application by the CPO is not required to be served on anyone, including the person to whom the proposed proceeding relates, unless the court orders otherwise (section 183ZZP(2)). The court has the discretion under section 183ZZP(6) to determine whether security sensitive information used in proceedings is to be disclosed to the person to whom the proceeding relates or their representative, and if so, whether the information is to be disclosed as a summary of the information.

These provisions limit the right to a fair trial in section 21 of the HR Act as a person may not be provided with the opportunity to consider or respond to allegations in security sensitive information which is put before the court in proceedings for an FPO.

The right in section 21 recognises, among other things, that everyone has the right to have 'rights and obligations recognised by law' decided by a competent, independent and impartial tribunal after a fair and public hearing. The right to a fair hearing is concerned with procedural fairness, and encompasses notions of equality in proceedings. Equal access to a fair hearing means that each party must have a reasonable opportunity to present their case.

In addition, as the proceedings about whether information can be classified as security sensitive information are closed, there is no public oversight to ensure transparency and impartiality of the decision-making process. Further, if the court decides that all or part of the information is security sensitive information, it must ensure that information is not disclosed in any reasons for the decision. While public hearings are generally fundamental to the transparency and accountability of courts, some exceptions to the principle of open justice are permitted. The press and public may be excluded from all or part of a hearing: to protect morals, public order or national security in a democratic society; or if the interest of the private lives of the parties require the exclusion; or if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.

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2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of section 183ZZP regulating how security sensitive information is dealt with by the court and disclosed is not only for the purpose of protecting police investigative techniques and intelligence, but also protecting those informants who work with police whose life or physical safety may be endangered by their identification.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The ability to obtain an FPO with the use of security sensitive information is essential to the FPO scheme achieving its objective of ensuring the safety of the community.

It is anticipated that some information to be relied on in an application for interim and final FPOs will be security sensitive information. Providing the court with the discretion to determine whether the information is security sensitive, whether the application for security sensitive information be served on the respondent, and whether (and how) it is to be disclosed, ensures the information is dealt with in a special and sensitive manner. Limiting the provision of security sensitive information in appropriate circumstances will ensure that ongoing investigations and the safety of those involved are not compromised.

Police intelligence may come from a variety of sources and have varying levels of classification and protections required to access and disclose. Release of such intelligence could place an informant or the wider community at imminent risk of serious harm, or impair law enforcement's ability to obtain similar intelligence in future.

The use of criminal intelligence or security sensitive information in proceedings and withheld from the respondent is not a novel practice. The High Court of Australia[12] unanimously upheld the validity of withholding the disclosure of criminal intelligence to an affected party and their legal representative, so long as the court or tribunal retains discretion to independently assess classified information and determine whether it should be admitted in secret. It was held that while this departs from the usual procedures and judicial processes, a court retains its capacity to act fairly and impartially.

4. Proportionality (s 28 (2) (e))

[12] *Assistant Commissioner Michael James Condon v Pompano Pty Ltd & Anor* [2013] HCA 7.

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The requirement for private hearings and withholding disclosure of information is an appropriate balance between the conflicting right to a public hearing and the need to protect police investigative techniques and intelligence to preserve ongoing investigations and the safety of those involved. The confidentiality of intelligence is essential to the discharge of police functions.

The only reasonably available alternatives are for public hearings and including service requirements (of both the application ahead of judicial consideration, and or service of the security sensitive information as a whole) but this could compromise police investigations and the safety of individuals.

The approach also includes several safeguards to minimise the limitations on the right to a fair trial, including:

- judicial discretion in relation to service and disclosure of the information, including whether the information should be disclosed to the person to whom the proceedings relate or their representative or any other interested party to reduce any limitation on this right,

- providing the ability for the court to decide that a summary of the information should be disclosed, and

- a decision about whether the information is security sensitive is appealable under section 183ZS.

Enforcement powers

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

The enforcement powers in Division 12A.10 provide police with new search and seizure powers to enforce an FPO. These powers allow police to search persons subject to an FPO, their vehicle, and any premises where the subject is residing for the duration of the three year order.

The powers provided to police under the Bill are as follows:

- conduct an ordinary search or frisk search of a person subject to an FPO without a warrant (section 183ZX),

- enter and search premises where the person is residing, which may include the person's domestic partner or relative's residence if they live there for at least 7 days in a 12 month period, as mentioned in the order without a warrant (section 183ZY(2)(a)),

- for a final order, enter and search premises that are a storage facility owned, leased or occupied by the person as mentioned in the order without a warrant (section 183ZY(2)(b)),

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- enter and search premises that are a vehicle, vessel or aircraft in the charge of the person, or in which the person is a passenger without a warrant (section 183ZY(2)(c)),

- enter and search premises not mentioned in section 183ZY without a warrant if the officer believes on reasonable grounds that the exercise of the power is necessary to prevent the person concealing, losing or destroying a thing connected with an offence against the Firearms Act, or committing, continuing or repeating the commission of an offence against the Firearms Act (section 183ZZ), and

- enter and search other premises not mentioned in section 183ZY with a warrant (section 183ZZB). This could include the person's workplace or other residences where the person visits.

The provisions also allow a police officer to seize items including any firearm or firearm-related item, and any other thing connected with an offence against the Firearms Act where the seizure is necessary to prevent the thing from being concealed, lost or destroyed or used to commit, continue or repeat the offence.

These powers limit the right to protection from unlawful or arbitrary interference with privacy, family and home pursuant to section 12 of the HR Act, the right to freedom of association pursuant to section 15 and the right to liberty and security of person pursuant to section 18 of the HR Act.

Section 12 of the HR Act protects individuals from unlawful or arbitrary interference with privacy, family, and home. The right encompasses the idea that individuals should have a separate area of autonomous development, interaction and liberty, free from excessive government intervention and unsolicited intrusion by other individuals. This includes the protection of individuals living their private life without government interference, protection of the family home, place of residence from trespass, harassment, nuisance, searches and surveillance, and the protection of family life. The search and seizure powers limit the right to privacy of a person subject to an FPO and home as they allow police to search their person, vehicle and premises. These powers limit the right to privacy of other individuals such as children or other relatives who may reside at the premises or be present in a vehicle which is searched using these powers.

In addition, vehicles of a third party can be searched without a warrant if the FPO subject is a passenger. Searches of premises, including the subject's workplace and possibly residences of a person other than the FPO subject, can be authorised under a warrant issued by a judicial officer. The right to freedom of association protects the right of all persons to group together voluntarily for a common goal and to form and join an association. This may limit the right to freedom of association and the right to privacy as being in the presence of a person subject to an FPO, with the person in your vehicle or at your home, may enliven a police power of search. A person may

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be discouraged or inhibited from exercising a legitimate right to associate with others for fear of the legal repercussions associated with an FPO.

The powers also limit the right to personal privacy and the right to liberty and security of the person under the FPO and affected third parties as they allow a police officer to conduct a personal search of the person and property (including property shared or co-habited with a third party) and detain the person for as long as reasonably necessary to conduct the search. The right to liberty under the HR Act prohibits the arbitrary and unlawful deprivation of liberty. It imposes a negative duty on public authorities to respect the right. Temporary deprivation of liberty through the exercise of search powers, must not only be lawful, in accordance with pre-established legal procedures, but must not be 'arbitrary'.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of the enforcement powers in division 12A.10 is to promote the effectiveness of the overall scheme by creating mechanisms by which police can enforce and ensure compliance with the order.

The FPO search powers will provide police with a direct power to conduct a search to enforce an FPO where reasonably required reflecting a preventive approach, and does not require them to obtain a warrant or to form a 'reasonable suspicion'. The distinction between the thresholds, as they may apply to the breach of an FPO, is broadly as follows:

- The threshold of 'reasonable suspicion' generally requires an officer to have genuine cause to suspect that there has been a breach of the FPO. This would require credible evidence that, at a point in time, there is more than a possibility that the person has acquired, possesses or is using a firearm or related item. The threshold to obtain a warrant typically requires reasonable grounds for suspecting that there is or will shortly be evidential material on premises or in the possession of a person.

- The requirement that the exercise of enforcement powers be 'reasonably required' is broader. Importantly, this threshold captures the need for positive confirmation that a person has not acquired a firearm. This may be required even if there is limited evidence that acquisition of a firearm has occurred, but the person's behaviour indicates a risk that acquisition may occur and/or the person's acquisition of a firearm or related item may pose elevated risks to public safety.

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3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The new search powers are rationally connected to, and carefully designed to achieve, the purpose of reducing the threat of firearm-related offending and unlawful access to firearms.

FPOs are legal orders that restrict a person's ability to acquire, use and possess firearms and firearm-related items. They will be made against individuals considered to be a high-risk of perpetrating gun violence and jeopardising public safety.

The enhanced powers provided to police under the scheme upon the making of an order enable police to conduct searches where reasonably required to ensure the person is complying with the FPO and does not have access to a firearm or firearm-related item. With final FPOs in force for a period of three years, and interim orders in force for 30 days, this will provide the ability to police to monitor the person's compliance with the order.

These enforcement powers may be exercised by police on the threshold of whether it is reasonably required to determine that the person has acquired, possesses or is using a firearm or firearm-related item in contravention of an FPO to which the person is subject.

The FPO search powers will add to the powers police already have to conduct a search for firearms, firearm parts and ammunition. The existing powers for police to search for these items are provided to police on a case-by-case basis through the warrant system, and through a range of common law and legislative search-without-warrant powers. Generally, this will require police to have sufficient evidence to form a 'reasonable suspicion' that the person has something unlawful in their possession, had committed a crime, or was about to commit a crime.

High risk individuals may use clandestine methods to avoid presenting reasonable grounds to suspect that they are acquiring or possessing a firearm. There is a legitimate need to obtain positive confirmation that these individuals are not acquiring or possessing a firearm. In these circumstances, the existing protections and measures in the Act and other legislative frameworks are not sufficient to protect the community from the risk of harm associated with firearm-related offending.

The departure from the conventional standard of suspicion or belief is necessary to ensure operational flexibility in enforcement of compliance with FPOs and to achieve the policy intent of the scheme: to have positive confirmation that at-risk individuals have not acquired, possessed, or used a firearm.

Examples of where a power may be 'reasonably required' to determine compliance with an FPO even where an officer may not be able to obtain 'reasonable suspicion' of a breach (that is, of the acquisition, possession, or use of a firearm or related item) include the following:

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- An officer receives credible intelligence that a person subject to an FPO harbours and may act on racist or hate-motivated ideology—for example they are seen shouting menacing or threatening comments towards a place of worship or post hate-motivated content on social media. The intelligence may not give rise to reasonable suspicion that the person has acquired a firearm. However, the exercise of enforcement powers may be reasonably required to ensure that the person subject to an FPO has not acquired a firearm, given the elevated risks to public safety.

- An officer receives credible intelligence that a person subject to an FPO is meeting with people who have a history of serious armed offences. The intelligence may not give rise to reasonable suspicion that the person has acquired a firearm. However, association with individuals with a history of serious offences indicates an elevated risk that the person will come into possession of a firearm, as well as an elevated risk of organised criminal activity. The exercise of enforcement powers may accordingly be reasonably required to confirm ongoing compliance with the FPO.
- A person subject to an FPO has been identified via evidence-based family violence risk factors as being a high-risk to their ex-partner. They may be suspected of a range of criminal family violence offences but not necessarily suspected of a firearms related offence. Noting access to firearms is itself a serious risk factor for domestic violence lethality, and there has been sufficient concern about a person's access to firearms for them to be issued with an FPO, it would be prudent (and therefore reasonably required) to confirm that the person does not currently have access to a firearm.

Searches by police are a critical tool in detecting the unlawful possession or use of firearms or firearm-related items contrary to the terms of an FPO. It is essential for police to have the operational flexibility to be able to act quickly and proactively by having the ability to search without a warrant, to ensure the ongoing protection of community safety. The FPO search powers are intended to be used where existing search powers cannot be used, such as where the threshold of a reasonable suspicion cannot be established because the need for intervention is based on criminal intelligence.

Evidence in NSW and Victoria suggests that the search powers in similar FPO schemes have enabled police to respond in situations where they may not have had sufficient evidence to obtain a search warrant on the basis of 'reasonable suspicion'.[13]

[13] Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into firearms prohibition legislation*, November 2019; NSW Ombudsman, *Review of police use of the firearms prohibition order search powers: section 74A of the Firearms Act 1996*, August 2016.

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Search powers for third party residences and vehicles are also necessary in order to prevent the purpose of the scheme being frustrated by persons subject to FPOs using third party homes or vehicles to conceal firearms or render police searches unworkable.

4. Proportionality (s 28 (2) (e))

As a starting point, for a police search to be compatible with the right to privacy, human rights jurisprudence in jurisdictions such as Canada, United States and New Zealand have held that there must be reasonable grounds to suspect or believe an offence has been committed, or the search must be authorised by an impartial judicial officer (usually in the form of a warrant). Warrantless searches of individuals, premises and vehicles by police premised on less than "reasonable suspicion" have been regarded as extraordinary powers that raise a real risk of arbitrary or disproportionate exercise of power.[14]

Some jurisdictions recognise that there are exceptions to the requirement to seek a warrant, which are based on scenarios where it is impractical to seek a warrant and a search is considered reasonable in the circumstances.

Recent European human rights jurisprudence has confirmed that a requirement to show reasonable suspicion is not, in itself, necessary to avoid arbitrariness. However, its absence must be counter-balanced by sufficiently stringent legislative safeguards that ensure adequate protection against arbitrary interferences with a person's right to privacy.[15] Such assessment must have regard to the scheme as a whole, including the geographic and temporal scope of the powers, breadth of discretion afforded to police in when and how they exercise the powers, the possibility of judicial review of the exercise of the powers (both prior to their exercise, and by way of *ex post facto* challenge), and the availability and quality of any other independent oversight.

As outlined above, the purpose behind these new powers relates to pressing and substantial social concerns arising from offending involving the use of firearms and the threat this poses to public safety and wellbeing. The privacy of an individual subject to an FPO may be significantly interfered with due to the person being subject to discretionary search powers.

In the 2016 review of the FPO powers in NSW, the NSW Ombudsman identified three factors in the structure of the NSW scheme that gave rise to a risk of the search powers being used arbitrarily and unreasonably, including that NSW FPOs

[14] For example, *Gillan and Quinton v The United Kingdom* (European Court of Human Rights, Fourth Section, Application No 4158/05, 21 January 2010), [83].

[15] *Ivashchenko v Russia* (European Court of Human Rights, Third Section, Application No 61064/10, 13 February 2018), [94]-[109]; *Beghal v The United Kingdom* (European Court of Human Rights, First Section, Application No 4755/16, 28 February 2019), [103]. *Grande Oriente D'Italia v Italy* (European Court of Human Rights, 19 December 2024 (referred to GC) Application no. 29550/17) § 87-146; *Ships Waste Oil Collector B.V. and Others v. the Netherlands* (European Court of Human Rights, 1 April 2025 Application no. 2799/16 § 166-201).

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did not contain an expiry date, there was inconsistency regarding police interpretation of the 'reasonably required' test, and there was no regulation regarding searches of third parties accompanying an individual subject to an FPO.[16]

The Victorian model adopted a range of measures to prevent these concerns from arising in Victoria, including specifying a maximum duration of the orders for 10 years, the right to apply for a periodic review of the order after 5 years, and regulating searches of third parties. In addition, in Victoria, a police officer must also give consideration to a person's right to privacy when determining if a search is 'reasonably required' in a given circumstance.

In the compatibility statement for the Victorian Firearms Amendment Bill 2017, the Minister for Police found that the powers were incompatible with the right to privacy. This was on the basis that searches may occur in circumstances that could constitute an arbitrary interference with privacy, particularly in light of the broad grounds on which an order may be made, the long duration of FPOs, the order's immediate effect upon service and the limited rights to seek review 'after the fact'. In addition, the Victorian powers apply to children aged between 14 and 17 years.

This ACT FPO scheme has been developed to ensure that the limitations on the right to privacy as a result of the enforcement powers are the least restrictive means available to ensure the operational viability of the scheme and the protection of community safety. The enforcement powers are set out in a clearly defined framework and are only exercisable after a court has made an FPO. The threshold for the court in deciding to make an FPO is high to reflect that the intrusive nature of the enforcement powers that attach to an order should only be available where it is in the public interest to make the order and the making of the order is reasonable and justifiable in all the circumstances. This approach differs to that in comparable FPO schemes in other jurisdictions where an FPO is made by a senior police officer on a lower test and there is no overarching judicial oversight. Under the Bill, an FPO can only be made against an adult.

The court must consider a range of matters in section 183B, including the limits the order would have on the human rights of the respondent, the circumstances of the respondent (e.g. their housing, employment and social needs) and whether the respondent poses a serious risk to a person or property if no order is made (section 183B).

In making an FPO, the court is also required to consider that, if the order is made, a police officer may exercise a power mentioned in division 12A.10 (Enforcement) (section 183B(1)(g)).

The powers are subject to a threshold test of 'reasonably required' to determine whether the individual has committed offences in contravention of the FPO. Although the standard differs from comparative thresholds for searches in the ACT and

[16] NSW Ombudsman, *Review of police use of the firearms prohibition order search powers: section 74A of the Firearms Act 1996*, August 2016.

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internationally (such as 'reasonable grounds to believe' or 'reasonable grounds to suspect'), the 'reasonable' aspect of ‘reasonably required’ imports a need for an objective, rational basis upon which to exercise powers, and a direct link between the use of the search powers and the purpose for which the search powers are to be used. Whether a search is reasonably required is to be informed by the mandatory criteria set out in section 183ZW(3). These factors are intended to ensure, objectively, that the search powers are used proportionately to the risk presented by the person. The power is not a general warrant, and section 183ZW imposes a genuine constraint on police power and a safeguard against arbitrariness. 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.

The Bill also provides a number of additional limits and safeguards on the exercise of the search powers to reduce the potential for these interferences to be arbitrary in nature:

- a tiered approach that allows police to conduct some types of searches without a warrant and requires police to seek a warrant from the court to conduct other types of searches, including third party homes (other than in the limited circumstances under s183ZZ),
- before exercising search powers without a warrant, the police officer must be satisfied that the exercise of the power is reasonably required to determine that the person has acquired, possesses or is using a firearm or firearm-related item in contravention of an FPO to which the person is subject (section 183ZW(2)),
- in determining whether it is reasonably required, the police officer must consider mandatory criteria set out in section 183ZW(3) including:
    - whether the police officer has credible information that suggests the person has acquired, possesses or is using a firearm or firearm-related item,
    - if searching a residence between 9pm and 7am, whether it is necessary to enter at that time, impractical to enter at another time and whether another person, including a child, is likely to be present at that time,
    - the impact on another person likely to be present,
    - the importance of any affected person’s privacy,
    - the person’s circumstances to the extent known including cultural and social needs,
    - the number, frequency and recency of any previous searches,
- the premises which the police may enter without a warrant must be listed in the order unless the premises are a vehicle, vessel or aircraft or the entry of premises is necessary to prevent the concealment of or commission of an offence against the Firearms Act or to prevent the person committing, continuing or repeating the commission of an offence against the Act (sections 183ZY(2) and 183ZZ),

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- a police officer is required to notify a person about the search and the reasons for the search (sections 183ZX(4) and 183ZZA),
- the court, in determining whether to issue a warrant, must be satisfied that it is reasonably required to determine that the person has acquired, possesses or is using a firearm or firearm-related item in contravention of an FPO to which the person is subject and must consider the same criteria as police mentioned above (section 183ZZB), and
- as soon as possible after exercising a search without a warrant, the police officer must record in writing the reasons for deciding the search was reasonably required and the matters that were taken into account (section 183ZZK).

The protections in section 183ZW operate as a safeguard to ensure that the powers in section 183ZX, 183ZY, and 183ZZ are used enlivened where an officer is satisfied that they are reasonably necessary to ensure compliance with an FPO. This is notwithstanding that police may, in the course of exercising the powers, seize or secure items that are unconnected to an FPO, so long as the item is connected to a serious offence and seizing or securing the item is necessary to prevent it being lost, concealed or destroyed or used in the commission of an offence. This is discussed further below. The protections also inform the need for rational, genuine reasons to use the powers; the powers cannot be used arbitrarily but only when reasonably required. The protections also inform the way in which the powers are used. For example, the use of the power is oppressive if used frequently without reason.

These safeguards reflect the adoption of a least restrictive approach in the ACT scheme.

Other important safeguards built into the FPO scheme include:

- review of an FPO can be sought on the basis of the order limiting the human rights of the person in a way that is not reasonable or justifiable (section 183Z),
- the Minister must report to the Legislative Assembly annually on the use of the powers (section 183ZZM);
- the Ombudsman has oversight of the FPO scheme. Under section 183ZZO, within 7 days after the making of an order, the CPO must give the Ombudsman a copy of the application for the order and a copy of the order. Amendments are made to the *Ombudsman Act 1989* by this Bill to provide the Ombudsman with the function of monitoring compliance with Division 12A.10 by the CPO and other officers exercising functions under that Division. The Ombudsman may give the Minister a written report at any time on compliance under Division 12A.10. To monitor compliance, amendments by this Bill require police to provide the Ombudsman with any assistance reasonably required and powers for the Ombudsman to enter police premises to inspect documents related to the exercise of police enforcement powers, and

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- the FPO scheme will be subject to a statutory review of the scheme, and a review of the human rights impacts of the scheme, after three years of operation (section 183ZZR).

Having regard to the totality of the scheme, the safeguards included are sufficient to ensure that the limitation on the right to privacy entailed by searches is reasonable and proportionate, and therefore not arbitrary. In making this assessment, it is also relevant that the nature of the limitation is temporary (interference occasioned by search) and the harm the scheme is intended to mitigate (firearm-related violence) is serious.

Seizure powers

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

The provisions in Division 12A.10 (Enforcement) allow a police officer to seize and secure items which are unrelated to offences for breach of the FPO when exercising FPO search powers. Police may then use these items to inform criminal investigations or as evidence in criminal proceedings.

For an ordinary or frisk search without a warrant (section 183ZX), the police officer may seize any firearm or firearm-related item and any other thing that is found on the person or in any thing in the person's possession if satisfied on reasonable grounds that the thing is connected with an offence against the Firearms Act or a serious offence punishable by more than five years, and the seizure is necessary to prevent the thing from being concealed, lost or destroyed, or used to commit, continue or repeat the offence.

For a search of premises without a warrant (sections 183ZY and 183ZZ) and a search of premises with a warrant (section 183ZZE), the police officer may only seize any firearm or firearm-related item and any other thing that is found on the person or in any thing in the person's possession if satisfied on reasonable grounds that the thing is connected with an offence against the Firearms Act. The seizure power does not extend to a thing connected with a serious offence.

Section 183ZZI allows a police officer to secure any thing found during a search if satisfied on reasonable grounds that it is a thing connected with a serious offence punishable by more than five years imprisonment and securing the thing is necessary to prevent the thing from being concealed, lost or destroyed or used to commit, continue or repeat the offence. The police officer may apply to a magistrate for an order to seize the thing secured and in considering the application the magistrate must be satisfied on reasonable grounds that the thing is evidence connected with the commission of a serious offence.

These seizure powers limit the right to a fair trial pursuant to section 21 of the HR Act and the right against self-incrimination pursuant to section 22 as they may permit

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police to obtain information and evidence to use in unrelated criminal investigations proceedings which, without the FPO powers, would not have been available to police. The right to a fair trial is concerned with procedural fairness and encompasses notions of equality in proceedings. The right against self-incrimination encompasses derivate use immunity.

2. Legitimate purpose (s 28 (2) (b))

The overarching objective of the FPO scheme is to provide police with additional tools to respond to, and prevent, gun crime. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

The purpose of the seizure powers is to ensure that police are able to seize firearms and firearm-related items that are in the person's possession or on relevant premises, as well as any other thing that is associated with an offence against the Firearms Act where that seizure is necessary to prevent the concealment or commission of the offence. This purpose is related to the overall objective of the scheme and provides for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage thereby reducing the threat of firearm-related violence and crime.

The powers for police to seize and secure items connected with a serious offence is incidental to the operation of the FPO scheme. The powers seek to ensure that the investigation and prosecution of serious offences are not unduly hampered. In that regard, the powers protect multiple rights—including the right to life (section 9 HRA) and the rights of children.

The right to life includes a duty to adopt appropriate laws or measures to protect life from reasonably foreseeable threats, including from private actors,[17] while the rights of the child include a duty to protect the child from all forms of violence, abuse, mistreatment or exploitation.[18] These duties contemplate effective legal measures to protect individuals from harm.

The ACT and the Commonwealth have enacted multiple offences that aim to protect the community—including children—from foreseeable harms. Relevant examples include offences for the possession and distribution of a controlled drug,[19] prohibited weapons,[20] and child exploitation material.[21] For offences to function effectively—

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[17] See UN Human Rights Committee, *General Comment No. 36, Article 6, Right to life,* 124th session, UN Doc CPR/C/GC/36 (3 September 2019), [18]-[21].

[18] See *Convention on the Rights of the Child*, Article 19(1).

[19] See, for example, *Criminal Code 2002,* s 603 (Trafficking in controlled drug).

[20] See, for example, *Prohibited Weapons Act 1996*, s 5 (Offence—unauthorised possession or use of prohibited weapons).

[21] See, for example, *Crimes Act 1900*, s 65 (Possessing child exploitation material).

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including as deterrents to harmful behaviour—there must be a real possibility that a person will be charged and ultimately convicted.

Powers for police to seize or secure items connected to a 'serious offence' while exercising the new powers in the Bill helps ensure such offences can be effectively investigated by reducing if not eliminating the opportunity for a criminal actor to remove key evidence from premises. For example:

- If during the search of a person or premises police uncover a prohibited weapon or a significant quantity of a prohibited drug, powers in the Bill may be used to prevent concealment or destruction. This may allow police to remove high-risk items from the community and support investigation and disruption of organised criminal activity—thereby protecting the right to life.

  If during the search of a person or premises police uncover child pornography, powers in the Bill may be used to allow an officer to seize the material to prevent it being altered or destroyed. This may support the ability of police to investigate and disrupt child exploitation activity and protect the rights of children.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The seizure powers will help to ensure that the FPO scheme achieve its objective of ensuring the safety of the community from the risk of firearm violence through the power for police to seize items which are connected with firearm-related offences and other offences against the Firearms Act.

Seizure powers are critical to allowing police to remove dangerous items or evidential material from a person or premises. This will apply to people who have been assessed by the court at the time of the FPO being made as posing a grave risk to the community. These powers and the associated limitation on rights are essential to the ongoing protection of community safety and support the administration of justice.

The power for police to also be able to seize items connected to a serious offence in limited circumstances is critical to ensuring that confidence in the policing system is upheld and to protecting the community from serious criminal activity.

One example of how section 183ZZI may operate in practice is if police conduct a search of a premises and find trafficable quantities of cocaine or child pornography they have the power, subject to the court granting an order, to seize the material. Without this power, police would only be able to note that there is serious illegal activity and leave without being able to take any action.

4. Proportionality (s 28 (2) (e))

The FPO scheme has been developed to ensure that the limitations on the right to a fair trial and the right against self-incrimination are reasonable and proportionate. The seizure powers are set out a clearly defined framework. These powers may only

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be exercised after a court has made an FPO and search powers have been exercised on the basis that it is reasonably required to determine that the person has acquired, possesses or is using a firearm or firearm-related item in contravention of an FPO to which the person is subject. Police officers cannot use the search powers under Division 12A.10 for the purposes of investigating offences unrelated to the Act. Police can only seize materials using section 183ZX if they relate to an offence under the Act or if they relate to a serious offence (defined in section 183A as an offence punishable by a maximum penalty of at least 5 years).

Seizure powers are not novel in the ACT. For a search warrant in relation to a person or premises, police are generally empowered to seize items which are related to a serious offence where seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence (sections 194 and 195 of the *Crimes Act 1900*). For a personal search without a warrant, police are generally empowered to seize material connected with a serious offence where seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence, and it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent (section 207 of the *Crimes Act 1900*). Under the *Crimes Act 1900*, a serious offence means an offence punishable by imprisonment for longer than 12 months (section 185).

In comparison, in the FPO scheme, the power for police to seize items connected with a serious offence is limited to where the item is found during a personal search without a warrant or where the police have secured the item and subsequently applied to the court for an order to seize the item. ‘Serious offence’ is defined in section 183A as an offence punishable by imprisonment for five years or longer which applies a higher threshold than the *Crimes Act 1900*.

The threshold for police exercising seizure powers in relation to items which are not firearms or firearm-related items is an objective test of ‘reasonable grounds’. The officer must also be satisfied that the seizure is necessary for one of the listed reasons including to prevent the commission of an offence. These safeguards ensure that the limitation on rights as a result of these powers is reasonable and proportionate.

Where a police officer secures an item pursuant to section 183ZZL and subsequently applies to the court for an order to seize the item, there are restrictions on the admissibility of that item as evidence in criminal proceedings. The court must grant leave to admit the item as evidence and in deciding whether to grant leave, must have regard to whether the exercise of the powers under Division 12A.10 was lawful (section 183ZZI(4)). This safeguard ensures that the approach to seizure powers promotes the safety of the community from serious offences while limiting the impact on the rights of the person subject to an FPO in future criminal proceedings.

The safeguards that have been included in the overarching framework and for enforcement powers are set out above under ‘Enforcement powers’. This includes

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the need for the police officer to be satisfied that a search is reasonably required. In forming this satisfaction, the police officer must consider whether they have credible information that suggests the person has acquired, possesses or is using a firearm or firearm-related item, the importance of any affected person's privacy, and the number, frequency and recency of any previous searches. Review of an FPO can be sought on the basis of the order limiting the human rights of the person in a way that is not reasonable or justifiable (section 183ZA).

Nature of the right and the limitation (s 28 (2) (a) and (c))

The right to privacy (section 12 of the HRA) protects individuals from unlawful or arbitrary interference with the home, family, and property. The right to liberty and security of person (section 18 of the HRA) includes freedom from arbitrary and unlawful deprivation of liberty.

By allowing police to use reasonable force in the execution of proposed search and seizure powers, measures in the Bill limit those rights. This is because the measures allow police to use reasonable force in relation to property in the search of premises or use reasonable force to detain a person while a search is being conducted, including to prevent the person from destroying or concealing evidence.

Legitimate purpose (s 28 (2) (b))

As outlined in the Explanatory Statement, the FPO scheme aims to give police additional tools to respond to, and prevent, gun crime, thereby protecting the community from threats of firearm-related violence and crime. This protects multiple human rights, including the right to life and the rights of the child.

The power to use such force as is reasonable in the exercise of police powers pursues these same objectives.

Rational connection between the limitation and the purpose (s 28 (2) (d))

The power to use reasonably necessary force aims to assure the effectiveness of new police powers to monitor and enforce compliance with an FPO and accordingly to ensure that the FPO scheme functions as intended. If police were not permitted to use reasonable force in the execution of enforcement powers, the effectiveness of the FPO scheme would be undermined.

Proportionality (s 28 (2) (e))

The measures are a proportionate means of achieving their legitimate objective. They provide for use of force in the execution of search and seizure powers while ensuring that force is only used as is reasonable and necessary.

Police officers conduct ongoing risk assessments of operational circumstances to inform the most appropriate approach to minimise harm and achieve the relevant operational purpose. This ensures that force is used in the least rights-restrictive way possible in the relevant circumstances—including that force is only used after exploring other options. For example:

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- An officer may need to detain a person while a search of premises is being conducted. Under ACT Policing's use of force mode, in the first instance, the officer should communicate with the person and provide clear instructions regarding lawful requirements. Where a person actively resists lawful detention, attempts to leave when lawfully required to remain, or otherwise interferes with the execution of the search, the officer may only use such force as is reasonably necessary and proportionate in the circumstances.
- A person subject to an FPO may refuse to allow a police officer entry to premises. Noting officers are trained to use communication and negotiation to gain entry where practicable, in the first instance, the officer may communicate with the person, explain the authority to enter and seek voluntary compliance. Where the officer is authorised by law to enter the premises and entry is refused, the officer may consider further de-escalation strategies and whether the use reasonable and proportionate force against property is appropriate. This may include circumstances where a person is deliberately preventing lawful entry or where there are reasonable grounds to believe that prohibited items may be concealed, removed or destroyed.

Police also record uses of force in case management systems, with more significant uses of force also subject to more rigorous reporting obligations.

The FPO scheme includes safeguards which limit the circumstances in which force will be used and provide for oversight of the enforcement powers. These include:

- A requirement that the relevant enforcement powers may only be exercised if an officer is satisfied that their use is reasonably necessary to determine if a person is in contravention of an FPO (section 183ZW(1)).
- A requirement for an officer to consider a range of matters before exercising the powers, including impacts on the privacy of any person who may be affected by the power (section 183ZW(2)).
- A requirement to inform the person subject to an FPO, as well as any other person on relevant premises, about the search of the premises (section 183ZZA).
- A requirement to record the use of the relevant enforcement powers, including the reasons for deciding that the exercise of the power was reasonably required, and the grounds relied on in making the decision (section 183ZZK).

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FIREAMS (FIREARM PROHIBITION ORDERS) AMENDMENT BILL 2026

DETAIL

Par1 1 – Preliminary

Clause 1 Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Firearms (Firearm Prohibition Orders) Amendment Act 2026*.

Clause 2 Commencement

This clause provides that the Act will commence 12 months after its notification day.

Clause 3 Legislation amended

This clause lists the legislation amended by the Act. The primary piece of legislation amended by the Act is the *Firearms Act 1996*.

The Act also makes consequential amendments to the *Court Procedures Act 2004,* the *Magistrates Court Act 1930,* and the *Ombudsman Act 1989*.

Part 2 – Firearms Act 1996

Clause 4 Offences against Act—application of Criminal Code etc Section 4, note 1, new dot point

This clause inserts a new dot point into Note 1 to section 4, to clarify that Chapter 2 of the *Criminal Code 2002* applies to offences against part 12A (Firearm prohibition orders).

Clause 5 Principles and objects of Act New section 5(2)(g)

This clause inserts a new section 5(2)(g) into the *Firearms Act 1996*, to provide that an object of the Act is to provide for orders that prohibit the acquisition, possession, or use of a firearm or firearm-related item.

Clause 6 Meaning of *acquire* New section 8 (1A)

This clause inserts a new section 8(1A) to provide that the existing definition of ‘acquire’ in section 8 does not apply to new Part 12A (Firearm prohibition orders).

Clause 7 Meaning of *possession* New Section 10 (3)

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This clause inserts a new section 10(3) to provide that, for new Part 12A (Firearm prohibition orders), the definition of 'possession' in section 10(1) also applies in relation to a firearm-related item.

Clause 8 Evidence of possession – firearms at premises
New Section 11 (1A)

Current section 11(1) of the *Firearms Act 1996* provides that a person is not taken to have possession of a firearm only because the firearm is at premises owned, leased, or occupied by that person in specified circumstances. The circumstances include:

- Under section 11(1)(b), someone else who is authorised to possess the firearm is also at the premises, or has the care, control, or management of the firearm.
- Under section 11(1)(c), someone else who is not authorised to possess the firearm has the care, control or management of the firearm.

This clause inserts a new section 11(1A). New section 11(1A)(a) provides that, for the purposes of new Part 12A (Firearm prohibition orders), evidence of possession under section 11(1) (as varied by section 11(1A)(b)) applies to a firearm-related item in the same way that it applies to a firearm.

New section 11(1A)(b) provides that sections 11(1)(b) and 11(1)(c) do not apply in relation to a person subject to a firearm prohibition order to the extent that the order is subject to a condition imposed under section 183P(1).

Section 183P(1) is inserted by clause 14 and provides that the Magistrates Court may impose a condition on a firearm prohibition order that the person subject to the order may enter or remain at prohibited premises, if satisfied that the person has a genuine reason for doing so.

Clause 9 Evidence of possession – care, control or management of firearm
New Section 12 (1A)

This clause inserts a new section 12(1A) to provide that, for new Part 12A (Firearm prohibition orders), mandatory considerations relating to whether a person has the care, control or management of a firearm apply to a firearm-related item in the same way they apply to a firearm.

Clause 10 Assessing suitability of individuals – discretionary criteria Section 18 (2), definition of law enforcement agency

This clause omits the definition of ***law enforcement agency*** from section 18(2).

A new definition of ***law enforcement agency*** is inserted by clause 17.

Clause 11 Protection of security sensitive information
Section 18A (3)

This clause omits section 18A(3), which provides for definitions of ***law enforcement agency*** and ***security sensitive information*** for the purpose of section 18A.

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New definitions of ***law enforcement agency*** and ***security sensitive information*** are inserted by clause 17.

Clause 12 ACAT or court review – decision on security sensitive information Section 18B (5)

This clause omits section 18B(5), which provides for the definition of ***security sensitive information*** for the purpose of section 18B.

The definition of ***security sensitive information*** is provided by reference to section 18A(3). That section is removed by clause 11, with a new definition of ***security sensitive information*** inserted by clause 17.

Clause 13 ACAT or court review – dealing with security sensitive information Section 18C (4), definition of security sensitive information

This clause omits the definition of ***security sensitive information*** from section 18C(4).

The definition of ***security sensitive information*** is provided by reference to section 18A(3). That section is removed by clause 11, with a new definition of ***security sensitive information*** inserted by clause 17.

Clause 14 New Part 12A

This clause inserts a new Part 12A (Firearm prohibition orders) into the *Firearms Act 1996*.

Division 12A.2 Making firearm prohibition orders

This Division provides for matters relating to the making of firearm prohibition orders, including matters that must be considered before an order may be made, making of interim and final orders, and relevant procedural matters.

Division 12A.1 Preliminary

Section 183A – Definitions—pt 12A

This section provides for the definitions of the following terms for the purpose of new Part 12A (Firearm prohibition orders):

- ***amend***
- ***final order***
- ***firearm prohibition order***
- ***interim order***
- ***prohibited premises***
- ***relative***
- ***residence***

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- ***return date***
- ***serious offence***
- ***timing notice***
- ***vary***

Section 183B – Matters to be considered

This section provides for the following matters that the Magistrates Court must consider when deciding whether to make a firearm prohibition order:

- The respondent's criminal history, behaviour, and circumstances (to the extent that these matters relate to the order sought)
- The respondent has, at any time, unlawfully acquired, possessed, or used or attempted to acquire, possess, or use a firearm or firearm-related item.
- The likelihood of the respondent acquiring, possessing or using a firearm or firearm-related item if no order is made.
- Whether the respondent associates with a person who has been convicted of a serious offence, or associates with a person for the purpose of planning, organising, facilitating, supporting, or engaging in the commission of a serious offence.
- The limits the order would have on human rights of the respondent or any other person affected by the order.
- Whether the respondent poses a serious risk to anyone else or to property if no order is made.
- That, if the order is made, a police officer may exercise a power mentioned in new Division 12A.10 (Enforcement).
- Whether the person was or is subject to an interim order (for final orders)
- Any other information given in support of the application for the order

The court may consider anything else it considers relevant in deciding whether to make a firearm prohibition order.

A failure to consider the matters specified in section 183B in relation to a firearm prohibition order does not affect the validity of the order.

Section 183C – Application for firearm prohibition order

This section provides that the chief police officer may apply to the Magistrates Court for a firearm prohibition order in relation to an adult.

Subsection (2) requires the chief police officer to consider any matter set out in the guideline made by the Minister under subsection (4) before making an application. Subsection (4) provides that the Minister may make guidelines about matters the

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chief police officer must consider before making an application, and subsection (5) notes that a guideline is a notifiable instrument.

The section also provides that the following information must be provided with the application, to the extent that the information is known by the chief police officer:

- Details relating to the respondent, including the respondent's name, date of birth, and the address of any resident of the respondent.
- The address of any premises owned, leased, or occupied by the respondent.
- Details of any firearm prohibition order to which the respondent is or has been subject, including any similar order in another jurisdiction
- Whether a registered firearm or firearm-related item is stored at a place where the respondent is residing.

The application must also set out the grounds on which the order is sought and provide supporting information. The application must be accompanied by a supporting affidavit.

Section 183D – Interim order not sought

This section provides for the actions that must be taken by the registrar of the Magistrates Court and the chief police officer if the Magistrates Court receives an application for a final order and an interim order is not sought at the same time the application is filed.

Section 183E – Interim order sought

This section provides for the actions that must be taken by the registrar of the Magistrates Court and the chief police officer if the Magistrates Court receives an application for a final order and an interim order is sought at the same time the application is filed.

An interim order is made in closed court, in the absence of the respondent.

Section 183F – Making interim orders

This section provides that the Magistrates Court may, on application, make an interim firearm prohibition order if satisfied in relation to the following matters:

- It is in the public interest to make the order.
- The order must be urgently made to reduce a significant risk of serious harm to another person.
- The making of the order in the absence of the respondent is reasonable and justifiable.
- The respondent has, at any time, unlawfully acquired, possessed, or used or attempted to acquire, possess, or use a firearm or firearm-related item.

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- The making of the order is otherwise reasonable and justifiable in the circumstances.

In deciding whether to make an interim order, the Magistrates Court must consider the matters set out in section 183B.

The Court may be satisfied that the person has, at any time, unlawfully possessed or attempted to possess a firearm or firearm-related item without the person having been found guilty of an offence of unlawfully possessing or attempting to possess a firearm or firearm-related item. For example, an application for an FPO might be made in respect of a person who has been charged with unlawful possession and has been granted bail awaiting trial. An FPO might be appropriate in this instance if the other criteria are satisfied.

Section 183G – Notice of response – final order

This section provides that a respondent to an application for a firearm prohibition order may file a notice of response not later than five days before the day of hearing of the application.

The notice must set out the facts on which the respondent intends to rely at the hearing of the application and must be accompanied by a supporting affidavit. The registrar of the Magistrates Court must serve a copy of the notice of response on the chief police officer.

The section also that the respondent does not waive any right of objection they may have in relation to the relevant application only because they do not file a notice of response.

Section 183H – Making final orders

This section provides that the Magistrates Court may, on application, make a final firearm prohibition order if satisfied in relation to the following matters:

- The respondent is an adult.
- It is in the public interest to make the order.
- The respondent has, at any time, unlawfully acquired, possessed, or used or attempted to acquire, possess, or use a firearm or firearm-related item.
- The making of the order is reasonable and justifiable in the circumstances.

The court must consider the matters set out in section 183B in making the order.

The section also provides that the Magistrates Court may make another final order (a ***further final order***) in relation to a respondent who is subject to a current final order at the time the application is made.

The court may only make a further final order within 90 days before the end of any current order, or after the end of the current order. An application for such an order is a *de novo* application. It does not have the effect of extending a current order.

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A final order may be made even if the respondent has never acquired, possessed, or used a firearm or firearm-related item.

If the respondent is not present at the hearing when a final order is made, the chief police officer must ensure a copy of the order is personally served on the respondent.

Section 183I – Period firearm prohibition order in force

This section provides for commencement and duration of firearm prohibition orders.

The section provides that an **interim order:**

- begins on the day it is served on the respondent; and
- remains in force until the earliest of the following:
    - The day the interim order is revoked
    - The day the application for a final order in relation to the interim order is made is withdrawn or dismissed.
    - They day a final order in relation to the interim order begins.
    - 30 days after the day the interim order begins.

The section provides that a **final order:**

- begins on the day when the order is made (if the respondent is present when the order is made), or the day on which the order is personally served on the respondent (if the respondent is not present); and
- is in force in force for three years after it begins, or until revoked, whichever is earlier

The section provides that a **further final order**:

- begins on the day after the current final order ends (if the respondent is present when the further order is made or the order is served on the respondent before the current order ends); or
- begins on the day on which the order is served on the respondent (if the further order is served on the respondent after the current order ends); and
- is in force for three years after it begins, or until revoked, whichever is earlier.

A final order cannot be extended beyond three years If it is intended that a person be subject to an order for more than 3 years, a fresh application must be made.

Section 183J – Explaining orders if respondent present

This section provides that if the Magistrates Court intends to make a firearm prohibition order and the respondent is present at the hearing, the court must explain the following to the respondent in language they are likely to readily understand:

- The purpose, terms and the effect of the order.

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- The consequences of failing to comply with the order.
- How the order may be amended or reviewed.

The court must also give the respondent a copy of the firearm prohibition order.

If the court fails to comply with the requirements in this section, this does not affect the validity of the order.

Section 183K – Contents of firearm prohibition order

This section provides that the following information must be included in a firearm prohibition order:

- A statement as to when the order begins and the period for which the order is in force.
- Any conditions imposed on the order under Division 12A.3.
- The address of any residence of the person subject to the order.
- The address of any other premises owned, leased, or occupied by the person subject to the order;
- The effect of the order, including prohibitions on the acquisition, possession or use of firearms and firearm-related items, and the suspension or cancellation of licences and permits.
- Offences and penalties under Part 12A which apply in relation to persons subject to a firearm prohibition order.
- The powers of police under Division 12A.1010 (Enforcement).
- The person's right to seek amendment of an order
- The person's right of review and appeal.

Section 183L – Reasons for order

This section provides that where the Magistrates Court makes a firearm prohibition order, the court must record the reasons for doing so.

This provides an additional layer of oversight in relation to the making of firearm prohibition orders and helps ensure transparency in the operation of the scheme.

Division 12A.3 Conditions of firearm prohibition order

This Division provides for the consequences of making a firearm prohibition order, as well as for conditions to which an order may be subject.

Section 183M – Prohibition on acquiring, possessing or using firearm or firearm-related item prohibited

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This section provides that a person subject to a firearm prohibition order must not acquire, possess or use a firearm or firearm-related item while the order is in force.

Section 183N – Suspension and cancellation of licences and permits

This section provides that if a firearm prohibition order is made against a person, any licence or permit held by that person is suspended (for an interim order) or cancelled (for a final order).

Section 183O – Conditions in relation to licenses, permits and firearms and firearm-related items

This section requires the Magistrates Court to impose a condition on a firearm prohibition order that a firearm or firearm-related item be removed from the residence of the person subject to the order by a stated time if the court is satisfied in relation to the following matters:

- A firearm or firearm-related item owned by a person other than the person subject to the order is stored at the respondent's residence.
- The persons subject to the order intends to live at the residence while the firearm prohibition order is in force.

The section also allows the Magistrates Court to impose a condition on a firearm prohibition order that the person subject to the order surrender a licence, permit, firearm or firearm-related item to a police officer by a stated time.

Section 183P – Enter or remain at prohibited premises

This section allows the Magistrates Court to impose a condition on a firearm prohibition order that the person subject to the order is permitted to enter or remain at prohibited premises if satisfied the person has a genuine reason for entering or remaining at the premises.

The condition may specify prohibited premises, state conditions about entering or remaining at premises, and have effect for a period that is shorter than the length of the relevant order.

The section also defines ***genuine reason*** for entering or remaining at prohibited premises.

Division 12A.4 Effect of firearm prohibition orders

This division creates offences which apply to the subject of firearm prohibition orders, as well as to persons who facilitate access to firearms and firearm-related items by the subject of a firearm prohibition order.

Section 183Q – Offence – acquire, possess or use firearm or firearm-related item

This section provides that a person commits an offence if they are subject to a firearm prohibition order and they acquire, possess or use a firearm or firearm-related item.

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The maximum penalty for this offence is 10 years' imprisonment.

Strict liability applies to whether a person is subject to a firearm prohibition order.

Section 183R – Offence – fail to surrender licence or permit

This section provides that a person commits an offence if they are subject to a firearm prohibition order and recklessly or negligently fail to surrender any licence or permit to a police officer within a specified time.

The length of time to surrender the licence or permit will depend on whether the person has access to the licence or permit at the time the firearm prohibition is served, and whether the order is subject to a condition imposed under section 183O(2).

The maximum penalty for this offence is five years' imprisonment.

Strict liability applies to whether a person is subject to a firearm prohibition order.

The defence of reasonable excuse is available. The defendant bears an evidential burden in relation to that matter.

The offence in this section applies in relation to a person irrespective of whether the person was present when the firearm prohibition order was made, or a police officer personally served the order on the person.

Section 183S – Offence – fail to surrender firearm or firearm-related item

This section provides that a person commits an offence if they are subject to a firearm prohibition order and recklessly or negligently fail to surrender any firearm or firearm-related item to a police officer within a specified time.

The length of time to surrender the firearm or firearm-related item will depend on whether the person has access to the firearm or firearm-related item at the time the firearm prohibition is served, and whether the order is subject to a condition imposed under section 183O(3).

The maximum penalty for this offence is five years' imprisonment.

Strict liability applies to whether a person is subject to a firearm prohibition order.

The defence of reasonable excuse is available. The defendant bears an evidential burden in relation to that matter.

The offence in this section applies in relation to a person irrespective of whether the person was present when the firearm prohibition order was made, or a police officer personally served the order on the person.

Section 183T – Offence – enter or remain at prohibited premises

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This section provides that a person commits an offence if they are subject to a firearm prohibition order and they enter or remain at prohibited premise. ***Prohibited premises*** is defined in section 183A.

The maximum penalty for this offence is 100 penalty units, 1 year imprisonment, or both.

Strict liability applies to whether a person is subject to a firearm prohibition order.

The section provides for offence-specific defences, which apply where the person:

- enters or remains in premises in accordance with a condition of the firearm prohibition order imposed under section 183P(1);
- enters or remains in premises to comply with a court order;
- enters or remains in premises while in lawful custody; or
- enters or remains in premises in accordance with a condition of the firearm prohibition order imposed under section 183O(1).

The defence of reasonable excuse is also available.

The defendant bears an evidential burden in relation to the defences.

Section 183U – Offences – dispose of firearm or firearm-related item to person subject to firearm prohibition

This section establishes two offences relating to the disposal of firearms and firearm-related items to persons subject who are to a firearm prohibition order. The offences are distinguished by whether they relate to a firearm or a firearm-related item.

- Aa person commits an offence if they dispose or take part in the disposal of a firearm to another person, knowing that the other person is subject to a firearm prohibition order.

  The offence carries a maximum penalty of 7 years' imprisonment
- A person commits an offence if they dispose or take part in the disposal of a firearm-related item to another person, knowing the other person is subject to a firearm prohibition order.

  The offence carries a maximum penalty of 3 years' imprisonment.

The section also provides for the meaning of ***takes part*** in the disposal of a firearm or firearm related item for the purposes of the offence.

Section 183V – Offence – fail to notify change of residence or other premises

This section provides that a person commits an offence if they are subject to a firearm prohibition order and fail to notify the chief police officer of a change in the person's residence, or a change in any other premises the person owns, leases, or occupies within seven days of the change occurring.

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The maximum penalty for the offence is five years' imprisonment.

Strict liability applies to whether a person is subject to a firearm prohibition order.

The defence of reasonable excuse is available. The defendant bears an evidential burden in relation to that matter.

On being notified of a change in address in accordance with this section the chief police officer is required to amend the firearm prohibition order under section 183X.

Division 12A.5 Amendment of firearm prohibition orders

This Division deals with amending a firearm prohibition order.

Section 183W – Meaning of *amend* – pt 12A

This section defines the term ***amend*** in relation to a firearm prohibition order.

Section 183X – Application for amendment of firearm prohibition order

This section provides that the Magistrates Court may amend a firearm prohibition order on application by the chief police officer or the person subject to the order.

An application for amendment to a firearm prohibition order must be made before the original order ends.

The section also provides for grounds on which an application for amendment to an order may be made, as follows:

- An application by the chief police officer may only be made on the grounds of a change in the residence of the subject of the order, or a change in any other premises that the subject owns, leases, or occupies.
- An application by the subject of the order may only be made to impose or change a condition to enter or remain at prohibited premises.

Section 183Y – Amendment of firearm prohibition order

This section provides that where the Magistrates Court receives an application to amend a firearm prohibition order under section 183X, the registrar of the court must set a return date for a hearing of the application, give the applicant a timing notice for the hearing, and if the respondent is the chief police officer, personally serve on the respondent a copy of the application and a copy of the timing notice.

If an application is made by the chief police officer in accordance with section 183V(5), the Magistrates Court may, with the agreement of the person subject to the order, amend the order on the basis of documents without a hearing.

The section further provides for the actions to be taken by the registrar of the Magistrates Court and the chief police officer on receiving other applications for the amendment of a firearm prohibition order, to facilitate the hearing of the application.

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In addition, the section provides that the Magistrate Court may amend an order only if satisfied that the order as amended could be made on application for an order.

Division 12A.6 Review of firearm prohibition orders

The division deals with the review of firearm prohibition orders.

Section 183Z – Application for review

This section provides that the chief police officer, the person subject to a firearm prohibition order, and any other person affected by the order may apply for a review of the order. The person subject to the order and other person affected by the order may only make an application for review with the court's leave.

The section also provides for the procedural actions to be taken by the registrar of the Magistrates Court and the chief police officer on receiving an application for review of an order, to facilitate the hearing of the application.

Section 183ZA – Application for leave to review

This section sets out the grounds on which the Magistrates Court Magistrate may grant leave for an application to review a firearm prohibition order:

- The court may grant leave to the person subject to the order only in relation to an administrative defect or error in the order, a change in the circumstances of the person, or where the effect of the order (including any conditions or the exercise of enforcement powers) limits the human rights of the person in a way that is not reasonable or justifiable.
- The court may grant leave to a person affected by the order only where the effect of the order (including any conditions or the exercise of enforcement powers) limits the human rights of the person in a way that is not reasonable or justifiable.

The Court may grant leave only if satisfied it is in the interests of justice to do so.

The court may hear an application to review a firearm prohibition order immediately following the granting of leave.

Section 183ZB – Determination of review of firearm prohibition orders

This section provides that on hearing an application for review of a firearm prohibition order under section 183Z, the Magistrates Court must:

- dismiss the application; or
- make an order to:
    - confirm the original order (only if satisfied that it continues to be in the public interest and is reasonable and justifiable in the circumstances for the order to be in force);

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- revoke the original order;(only if no longer satisfied that it continues to be in the public interest and is reasonable and justifiable in the circumstances for the order to be in force); or
- vary the original order (only if satisfied that the order as varied could be made on application for a firearm prohibition order).

Before confirming or revoking the original order, the court must consider the matters set out in section 183B. The court may also consider any other matter it considers relevant on hearing the application.

Division 12A.7 Revocation of firearm prohibition orders

This division deals with the revocation of firearm prohibition orders.

Section 183ZC – Application for revocation

This section requires the chief police officer must apply to the Magistrates Court for revocation of a firearm prohibition order in relation to a person if the chief police officer no longer believes it is necessary for the person to be subject to the order.

The section also provides for procedural actions to be taken by the chief police officer and the registrar of the Magistrates Court to facilitate a hearing on the application.

Section 183ZD – Determination of application for revocation

This section states that on hearing an application to revoke a firearm prohibition order under section 183ZC, the Magistrates Cour must:

- dismiss the application; or
- make an order to:
- confirm the original order (only if satisfied that it continues to be in the public interest and is reasonable and justifiable in the circumstances for the order to be in force); or
- revoke the original order (only if no longer satisfied that it continues to be in the public interest and is reasonable and justifiable in the circumstances for the order to be in force).

Before confirming or revoking the original order, the court must consider the matters set out in section 183B. The court may also consider any other matter it considers relevant on hearing the application.

Section 183ZE – Revocation by consent

This section provides that the court may revoke a firearm prohibition order with consent of the parties.

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Revocation may occur irrespective of whether parties to the order have attended the court in relation to the application, whether any ground under section 183ZD has been made out, and whether the court has considered the matters mentioned in section 183B.

Division 12A.8 Procedural matters

This division provides for key procedural matters relating to firearm prohibition orders, including hearings, service of documents, and non-attendance by parties at proceedings.

Subdivision 12A.8.1 Hearings

Section 183ZF – Hearings usually in public

This section provides that the hearing of an application for a firearm prohibition order or decision must be public unless section 183ZG (Closed court for interim order hearings) or 183ZZP (Court must decide whether information is security sensitive information) applies, or the court makes an order under section 183ZH (Closed court in special circumstances).

Section 183ZG – Closed court for interim order hearings

This section provides that the hearing of an application for an interim order must take place in private and in the absence of the respondent, the respondent's legal representative, and any other interested party.

Section 183ZH – Closed court in special circumstances

This section enables a court hearing an application for an order or decision under Part 12A (Firearm prohibition orders)—other than an application for an interim order—to make the following orders, if the court considers that it is in the interests of justice to do so:

- That the hearing, or part of the hearing, take place in private, and that only stated people be present at the hearing.
- Prohibiting or restricting the publication of evidence given at or received for the hearing, or a matter mentioned in a document filed for the proceeding
- Prohibiting or restricting the disclosure to some or all parties to the proceeding of evidence given or received at the hearing, or a matter in a document filed for the proceeding.

A person commits an offence if they fail to comply with an order under this section.

The maximum penalty for the offence is 100 penalty units, 1 year imprisonment or both.

The defence of reasonable excuse is available. The defendant bears an evidential burden in relation to that matter.

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Subdivision 12A.8.2 Service of documents

Section 183ZI – Firearm prohibition order to be given to registrar

This section provides that if the court makes a firearms prohibition order, the chief police officer must give a copy of the order to the registrar of firearms.

Section 183ZJ – Alternative service

This section provides that if a personal service of a document is not reasonably practicable, the court may order that the document be served in a way that the court considers is likely to bring the document to the attention of the person.

Section 183ZK – Dismissal of application for non-service

The section allows the court to dismiss an application for a final order if satisfied that copies of the application and of relevant documents cannot be served on the respondent, that no alternative way of service would be effective, and that the respondent has not intentionally avoided service.

Section 183ZL – Affidavit of service of documents by police

This section provides that in circumstances where a police officer has served a document under new Part 12A, an affidavit of service may be sworn or affirmed before another police officer of or above rank of sergeant.

Subdivision 12A.8.3 Non-attendance by party at proceeding

Section 183ZM – Definition – sdiv 12.A.8.3

This section defines the terms ***order*** for the purposes of Subdivision 12A.8.3.

Section 183ZN – Applicant not present at return of application

This section provides that if the applicant is not present at the return of an application for an order before the Magistrates Court, the court must either dismiss the application or adjourn the proceedings for the application.

Section 183ZO – Respondent not present at return of application

This section provides that if the respondent has been served with a copy of an application, supporting affidavit (if relevant) and timing notice, and is not present at the return of the application before the Magistrates Court, the court must:

- decide the application in the absence of the respondent; or
- adjourn the hearing.

The section further provides that if the court adjourns the hearing, the court must give a direction or issue a summons requiring the respondent to appear before the court on an adjourned date.

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Section 183ZP – Neither party present at return of application

This section provides that if neither party to an application is present at the return of an application before the Magistrates Court, the court may dismiss the proceedings.

Division 12A.9 Appeals

This division provides for appeal procedures in relation to firearm prohibition orders.

Section 183ZQ – Appealable decisions

This section provides that the following decisions and orders by the Magistrates Court under new Part 12A (Firearm prohibition orders) are appealable:

- The making, amending, confirming, varying or revoking of a firearm prohibition order.
- A refusal to make, amend, confirm, vary or revoke a firearm prohibition order.
- A refusal to give leave to a person to apply for the review of a firearm prohibition order
- A decision about whether information is security sensitive information.

Section 183ZR – Appeals to Supreme Court

This section provides that a person may appeal to the Supreme Court against a decision or order listed in section 183ZQ (Appealable decisions).

This section also provides for when a notice of appeal must be filed, including the circumstances in which the court may allow for later filing.

Section 183ZS – Evidence on appeal

This section provides that the Supreme Court must consider the evidence given in the proceeding from which the appeal arose and empowers the court to draw interferences of facts and to receive further evidence.

Section 183ZT – Powers of Supreme Court on appeal

This section provides that the Supreme Court may, on an appeal:

- confirm, reverse or vary the original decision or order;
- make the decision or order it considers appropriate in the circumstances, or refuse to make an order; or
- set aside the original decision or order partially or in its entirety and remit the proceedings to the Magistrates Court for further hearing, subject to the directions the Supreme Court considers appropriate.

Section 183ZU – Effect of filing appeal

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This section provides that the filing of an appeal against the following decisions does not affect the operation of the original decision or order to which the appeal relates:

- The making, amending, or varying of a firearm prohibition order
- A decision about whether information is security sensitive information.

Division 12A.10 Enforcement

This division provides for the enforcement powers that may be exercised by police officers in relation to firearm prohibition orders.

Subdivision 12A.10.1 Powers of police officers

Section 183ZY – Disapplication of pt 14

This section provides that Part 14 of the *Firearms Act 1996* (Enforcement), does not apply to Division 12A.10 unless otherwise stated.

Subdivision 12A.10.2 Powers of police officers

Section 183ZW – Requirements before certain powers can be exercised

This section provides for matters a police officer must consider prior to exercising the following powers in relation to a person subject to a firearm prohibition order:

- Searching a person under section 183ZX.
- Entering a premises without a warrant under section 183ZY.
- Entering premises without a warrant under 183ZZ.

The police officer must not exercise the power unless satisfied it is reasonably required for the purposes of ensuring compliance with the firearm prohibition order.

The section further provides that a police officer must consider the following matters for the purposes of reaching the state of satisfaction required to exercise a power in relation to a person subject to a firearm prohibition order.

- Whether the officer has credible information that suggests the person has acquired, possesses or is using a firearm or firearm-related item;
- If exercising a power of entry between 9 pm and 6 am into premises that are the residence of the person, whether it is necessary to enter the premises at that time, whether it is impractical to enter the premises at another time, and whether another person is likely to be present at the premises at that time
- The effect on another person who is likely to be present during the exercise of the power.
- The importance of the person's privacy, and the privacy of any other person who may be affected by the exercise of the power.

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- The person's circumstances, to the extent they are known to the officer.
- the number, frequency and recency of any previous exercises of a power in relation to the person (unless the power is intended to be exercised because of unplanned and urgent circumstances, and it is unreasonable for the officer to obtain the information required to take this matter into account).

The police officer may take any other matter into account when considering whether the exercise of the power is reasonably required, including the person's criminal history, their behaviour, and the other people with whom the person associates.

Section 183ZX – Power to search person and seize things

This section provides that a police officer may conduct a frisk search or an ordinary search of a person subject to a firearm prohibition order, subject to the requirements in section 183ZZ. The section further provides that:

- The police officer may stop and detain the person for so long as reasonably necessary to conduct the search,
- The police officer may seize any firearm or firearm-related item in the person's possession or that the person has acquired, possesses or is using.
- The police officer may seize any other thing found on the person if satisfied on reasonable grounds that the thing is connected with an offence against the *Firearms Act 1996* or any serious offence, and that seizure is necessary to prevent the thing being concealed, lost or destroyed or used to commit, continue or repeat the offence.

The section also provides for guardrails in relation to the exercise of the power, including that—if practicable—the search must be carried out by a police officer of the same sex as the person being searched, and that the officer must also inform the person about the search and the reasons for the search.

The section also defines ***frisk search, ordinary search,*** and ***personal property.***

Section 183ZY – Power to enter and search certain premises and seize things without warrant

This section provides that a police officer may exercise the following powers in relation to a person subject to a firearm prohibition order, subject to the requirements in section 183ZZ:

- Enter any residence mentioned in the order of the person (see section 183K(1)(d)); and
- If the person is subject to a final order, enter other premises that are owned, leased or occupied mentioned in the order by the person (see section 183K(1)(d);

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- Enter premises that are vehicle, vessel or aircraft in the charge of the person or in which the person is a passenger, wherever the vehicle, vessel, or aircraft is located.

The section further provides that a police officer who enters premises may:

- search the premises;
- seize any firearm or firearm-related item;
- stop and detain a vehicle, vessel, or aircraft for so long as reasonably necessary to conduct the search and seizure;
- seize any other thing, if satisfied on reasonable grounds that the thing is connected with an offence against the *Firearms Act 1996* and that the seizure is necessary to prevent the thing being concealed, lost or destroyed or used to commit, continue or repeat the offence; and
- use such force as is reasonably necessary to exercise the powers of search and seizure.

Section 183ZZ – Power to enter and search other premises an seize things without warrant

This section provides that a police officer may, at any time, enter premises not listed in section 183ZY(2) if the officer believes on reasonable grounds that the exercise of the power is necessary to prevent a person subject to a firearm prohibition order from concealing, losing, or destroying a thing connected with an offence against the *Firearms Act 1996,* or from committing, continuing or repeating the commission of an offence against the Act.

A police officer who enters premises may seize any firearm or firearm-related item. The officer may also seize any other thing if satisfied on reasonable grounds that the thing is connected with an offence against the *Firearms Act 1996*, and the seizure is necessary to prevent the thing being concealed, lost or destroyed, or used to commit, continue or repeat the offence.

A police officer may use such force as is reasonably necessary to exercise powers of search and seizure.

Section 183ZZA – Notification of intended exercise of power for certain powers

This section provides that before entering premises for the purpose of exercising powers under sections 183ZY or 183ZZ—or as soon as possible after entering premises--a police officer must inform the person subject to the firearm prohibition order and any other person present at the premises of the following matters:

- That the officer intends to search the premises
- How long the search is intended to take
- The reason for exercising the power
- The provisions of the *Firearms Act 1996* authorising exercise of the power.

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The officer must communicate the matters in a way that the officer believes the person will understand.

If a person is not present at premises at the time the police officer intends to enter premises, the officer must take reasonable steps to notify the person of the entry and search and of the matters listed above as soon as possible after exercising the power.

Subdivision 12A.10.3 Warrants

Section 183ZZB – Warrant required for entry to other premises

This section provides that a police officer may apply to a magistrate for a warrant to enter premises not mentioned in section 183ZZY(2) and provides for the matters that the court must consider in issuing a warrant. The application must be sworn and must state the grounds on which the warrant is sought.

Before issuing a warrant, the magistrate must be satisfied that it is reasonably required to ensure compliance with a firearm prohibition order.

The section provides that the must consider the following matters into account in considering whether the issue of the warrant is reasonably required:

- There is credible information that suggests the person has acquired, possesses or is using a firearm or firearm-related item.
- If the officer is applying for a warrant to enter premises that are the residence of another person between 9pm and 6am, whether it is necessary to enter premises at that time, whether it is impractical to enter the premises at another time, and whether another person is likely to be present at the premises at that time
- The effect on another person likely to be present during the execution of the warrant.
- The importance of the person's privacy and the privacy of any other person who may be affected by the execution of the warrant.
- the person's circumstances, to the extent they are known to the Magistrate.
- the number, frequency and recency of any previous exercises of power in relation to the person.

The magistrate may also take any other matter into account when considering whether the issue of the warrant is reasonably required, including the person's criminal history and behaviour, and the people with whom the person associates.

The section further provides for matters that must be stated in a warrant, including the powers which the officer may exercise, the reasons for the issue of the warrant, the things that may be seized, the hours when premises may be entered, and the date—within seven days after the day the warrant is issued—that the warrant ends.

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Section 183ZZC – Application for warrant in urgent or special circumstances

This section provides that a police officer may apply for a warrant by phone, fax, radio or other form of communication to enter premises if the officer considers it necessary because of urgent circumstances or other special circumstances.

The section also sets out procedural requirements for the application for a warrant, powers authorised by the warrant, and the circumstances in which powers exercised by a police officer will be taken not to be exercised under warrant.

Section 183ZZD – Requirements in executing warrant

This section provides that Division 14.3 of the *Firearms Act 1996* (Search warrants) —other than sections 211 and 212—apply in relation to the execution of a warrant issued under section 183ZZB or 183ZC as if the warrant were issued under section 211 or 212.

Section 183ZZE – Execution of warrant at premises

This section provides that a police officer who enters premises in accordance with a warrant issued under section 183ZZB or 183ZZC may search the premises and seize any firearm or firearm-related item found on the premises.

The section also provides that a police officer may seize any other thing found on the premises if satisfied on reasonable grounds that the thing is connected with an offence against the *Firearms Act 1996,* and the seizure is necessary to prevent the thing being concealed, lost or destroyed, or used to commit, continue or repeat the offence.

Subdivision 12A.10.4 Seizure of things

Section 183ZZF – Seizure of things

This section provides that a police officer who seizes a thing under Division 12A.10 may:

- remove the thing from the premises where it was seized to another place; or
- leave the thing at the place but restrict access to it.

The section further provides that a person commits an offence if they interfere with a seized thing—or anything containing the seized thing—to which access has been restricted, if the person knows that access to the thing has been restricted and does not have a police officer's approval to interfere with the thing.

The maximum penalty for the offence is 50 penalty units.

Strict liability applies to whether a person has interfered with a seized thing, or anything containing a seized thing, to which access has been restricted.

Section 183ZZG – Receipt for things seized

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This section provides that as soon as practicable after seizing a thing under Division 12A.10, a police officer must give a receipt to the person from whom it was seized.

If it is not practicable to give a receipt to the person from whom the thing was seized, the officer must leave the receipt conspicuously secured at the premises where the thing was seized.

The section provides details of what must be included on the receipt. These include a description of the thing seized, an explanation of why it was seized, the officer's name and contact details, the address of any place to which the thing was removed, and information to the effect that it is an offence to interfere with a thing to which access has been restricted without a police officer's approval.

Section 183ZZH – Access to things seized

This section provides that a person is entitled to inspect a seized thing and, if the thing is a document, take extracts from it or make copies of it.

Section 183ZZI – Securing things

This section provides that a police officer, in exercising powers under Division 12A.10, may secure any thing if the officer believes on reasonable grounds that the thing is connected with a serious offence, and that securing the thing is necessary to prevent it from being concealed, lost or destroyed, or used to commit, continue or repeat the offence.

The police officer may apply to a magistrate for an order to seize the secured thing.

A magistrate may make an order to seize a thing only if satisfied on reasonable grounds that the thing is evidence connected with the commission of a serious offence.

The section further provides that the thing secured and seized is only admissible as evidence in a proceeding for an offence with the leave of the court. In deciding whether to grant leave, the court must have regard to whether the exercise of the power was lawful.

Section 183ZZJ – Return or forfeiture of things seized

This section provides that a thing seized under Division 12A.10 must be returned to its owner, or else reasonable compensation must be paid by the ACT to the owner for the loss of the thing, if a prosecution for an offence relating to the thing is not started within one year of the date the thing is seized.

The section also provides that if a prosecution is started within one year after the thing is seized, but is not successful, the thing must be returned to its owner.

In addition, the section provides that things seized under Division 12A.10 are forfeited to the ACT if there is no requirement to return the thing to the person from

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whom it was seized, or to pay reasonable compensation. Things forfeited to the ACT may be destroyed or otherwise disposed of as the firearms registrar directs.

Provisions in section 183ZZM do not apply where the thing seized is a firearm or a firearm-related item and the owner is the subject to a firearm prohibition order.

Subdivision 12A.10.5 Miscellaneous

Section 183ZZK – Written reasons required after exercising certain powers

This section provides that where a police officer exercises a power under section 183ZX, 183ZY or 183ZZ, the officer must make a written record of the reasons for deciding that the exercise of the power was reasonably required, the matters in section 183ZW that were taken into account in making the decision, and—for powers under section 183ZZ—the specific grounds outlined in section 183ZZ(2).

This provision is intended to provide an additional level of oversight on the use of powers of search and seizure relating to firearm prohibition orders, to guard against the arbitrary use of those powers.

Division 12A.11 Destruction or disposal of surrendered or seized firearms or firearm-related items

Section 183ZZL – Destruction or disposal of surrendered or seized firearms or firearm-related items

This section allows a police officer or the owner of the firearm or firearm-related item that has been surrendered or seized by a police officer under this part to apply to the Court to seek that the firearm or firearm-related item is:

- forfeited to the ACT;
- returned to the owner;
- destroyed; or
- otherwise disposed of.

On receipt of an application, the court may make the order it considers appropriate.

The section also provides that owner of the firearm or firearm-related item may not make an application if the firearm or firearm-related item was not possessed lawfully by the owner prior to it being surrendered or seized.

Division 12A.12 Annual reporting and ombudsman oversight

This division provides for reporting obligations to the Minister and the Ombudsman.

These provisions provide an additional layer of oversight in relation to the operation of the firearm prohibition order scheme and help ensure that powers are exercised fairly and in accordance with the policy intent of the scheme.

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Section 183ZZM – Report to Minister

This section requires the chief police officer to provide a written report to the Minister at the end of each calendar year, setting out the following matters in relation to the use of the firearm prohibition order scheme:

- The number of applications made for a firearm prohibition order.
- The number of firearm prohibition orders made.
- Demographic information in relation to each person subject to a firearm prohibition order.
- The number of times a power under Division 12A.10 (Enforcement) was exercised, and the number of times each power was exercised.
- The number of firearms and firearm-related items seized during the exercise of a power under division 12A.10.
- The number of charges laid for offences under this Act connected with searches conducted under division 12A.10;
- The number of charges laid for any other offences connected with searches conducted under division 12A.10.
- The number of times a person was found guilty of an offence against Part 12A.

The Minister must present this report to the Legislative Assembly as soon as practicable after receipt of the report.

Section 183ZZN – Report to Ombudsman

This section requires the chief police officer to provide a written report to the Ombudsman at the end of each calendar year, setting out the following matters in relation to the use of the firearm prohibition order scheme:

- The number of firearm prohibition orders made;
- The number of times a power under division 12A.10 (Enforcement) was exercised, and the number of times each power was exercised.
- The kinds of things seized during the exercise of a power under division 12A.10;
- The number of firearms and firearm-related items seized during the exercise of a power under division 12A.10
- The number of charges laid for offences under the *Firearms Act 1996* connected with searches conducted under division 12A.10;
- The number of charges laid for any other offences connected with searches conducted under division 12A.10

Section 183ZZO – Chief police officer to give application and firearm prohibition order to ombudsman

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

This section requires the chief police officer to advise the Ombudsman each time a firearm prohibition order is made and to give the Ombudsman a copy of order and the associated application within 7 days after the order is made.

Division 12A.13 Miscellaneous

Section 183ZP – Court must decide whether information is security sensitive information

This section provides that the chief police officer must apply to the Magistrates Court for a decision about whether information is security sensitive information if the chief police officer intends to use the information in proceedings and believes on reasonable grounds that the information is security sensitive information.

On receiving an application, the court must decide whether the information is security sensitive information.

The section further provides that unless the chief police officer otherwise agrees, the application must be heard in closed court and in the absence of the person to whom the proposed proceeding relates, their representative, or any other interested party.

If the court decides that all of part of the information is security sensitive information, the court must ensure the information is not disclosed in reasons for its decision.

If security sensitive information is to be used in the proposed proceedings, the court must decide whether the information is to be disclosed to the person to whom the proposed proceedings relates, their representative, or any other interested party. If the information is to be disclosed, the court must also decide whether the information is to be disclosed as a summary of information.

Section 183ZZQ – Delegation by chief police officer

This section provides that the chief police officer may delegate a function under new Part 12A (Firearm prohibition orders) to a deputy chief police officer.

Section 183ZZR – Review of pt 12A

This section requires the Minister to review the operation of new Part 12A (Firearm prohibition orders) as soon as practicable after its third year of operation. This section also requires the Minister to review whether or not this part is operating in a way that is consistent with human rights.

The section requires the Minister to present a report of the review to the ACT Legislative Assembly within 12 months after the day the review is started.

Clause 15 Destruction or disposal of seized or surrendered firearms New section 262 (6A)

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

This clause inserts a new section 262(6A), to provide that section 262 (relating to the destruction or disposal of seized or surrendered firearms) does not apply in relation to part 12A (Firearm prohibition orders).

The firearm prohibition order scheme in Part 12A includes specific provisions relating to dealings with firearms and firearm-related items seized under that Part.

Clause 16 Dictionary, definition of *acquire*, paragraph (a)

This clause amends the definition of ***acquire*** a firearm or ammunition in the Dictionary in the Firearms Act 1996, to provide that the definition does not apply to new part 12A (Firearm prohibition orders).

Clause 17 Dictionary, new definitions

This clause inserts definitions of the following terms relating to the firearm prohibition order scheme into the Dictionary in the *Firearms Act 1996*.:

- ***amend***
- ***final order***
- ***firearm prohibition order***
- ***firearm-related item***
- ***interim order***
- ***law enforcement agency***
- ***order***
- ***present***
- ***prohibited premises***
- ***relative***
- ***residence***
- ***return***
- ***return date,***
- ***security sensitive information***
- ***serious offence***
- ***timing notice***
- ***vary***

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Schedule 1 – Consequential amendments

Part 1.1 – *Court Procedures Act 2004*

[1.1] New Section 41(2)(da)

Section 41 of the *Court Procedures Act 2004* provides that a person has the right to enter and remain in an area of court premises that is open to the public in specified circumstances. This right is subject to specified provisions of other legislation.

This clause inserts a new subsection 41(2)(da), to provide that the right of entry in section 41 is subject to sections 183ZG (Closed court for interim order hearings), 183ZH (Closed court in special circumstances), and section 183ZZP (Court must decide whether information is security sensitive information) of the *Firearms Act 1996.*

This creates a qualifying exception to the right of entry to court premises in relation to certain proceedings relating to firearm prohibition orders.

Part 1.2 – *Magistrates Court Act 1930*

[1.2] New Section 256(ba)

Section 256 of the *Magistrates Court Act 1930* (Magistrates Court Act) provides that Chapter 4 of that Act, relating to civil proceedings, does not apply in relation to specified proceedings.

This clause inserts a new subsection 256(aa) to provide that Chapter 4 of the Magistrates Court Act does not apply to a proceeding under Part 12A of the *Firearms Act 1996* (Firearm prohibition orders).

Part 1.3 – *Ombudsman Act 1989*

[1.3] New Section 4C(g)

Section 4C of the *Ombudsman Act 1989* (Ombudsman Act) provides for the functions of the Ombudsman. Among other matters, these include monitoring compliance with provisions of the *Crimes (Child Sex Offenders) Act 2005*.

This clause inserts a new section 4C(g), to provide that a function of the Ombudsman is to monitor compliance with the *Firearms Act 1996*, division 12A.10 (Enforcement) by the chief police officer and other officers in exercising functions under that division.

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[1.4] Division 2.2AA, Monitoring police compliance with Firearms Act 1996

This clause inserts a new Division 2.2AA into the Ombudsman Act, to provide the Ombudsman and other authorised officers with powers to monitor compliance with the *Firearms Act 1996,* in accordance with the function conferred by section 4C(g).

Section 17CA – Police to give ombudsman reasonable assistance

This section provides that the chief police officer and other officers exercising powers under Division 12A.10 of the *Firearms Act 1996* (Enforcement) must give the Ombudsman any assistance that the Ombudsman reasonably requires to exercise the Ombudsman's functions in relation to that Division.

Section 17CB – Power to enter police premises

This section provides that the Ombudsman or a police officer may, at any time, enter premises occupied by the Australian Federal Police where the Ombudsman reasonably believes there are documents relevant to the Ombudsman's functions in relation to Division 12A.10 of the *Firearms Act 1996* (Enforcement).

Before entering premises, the Ombudsman or a police officer must notify the chief police officer of the intended entry.

The section further provides that the Ombudsman or a police officer may inspect or copy any document found at any premises entered under section 17CB and may do anything necessary to enable an inspection to be carried out under that section.

[1.5] New Section 20B

This clause inserts a new section 20B into the Ombudsman Act, to provide that the Ombudsman may, at any time, give the Minister administering the *Firearms Act 1996* a written report on:

- the results of any inspection caried out under section 17CB.
- Compliance with Division 12A.10 of the *Firearms Act 1996* (Enforcement) in the period to which the report relates by the chief police officer and other officers assisting in exercising functions under that Division.

The section further provides that the Minister administering the *Firearms Act 1996* may request a report from the Ombudsman and requires the Ombudsman to give the report to the Minister as soon as practicable after receiving the request.

The Ombudsman must give a copy of a report to the chief police officer.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au