

**INQUIRY INTO PROVISIONS OF THE FIREARMS AND  
WEAPONS LEGISLATION (CRIMINAL USE) BILL 2020**

**Name:** Mr Glenn Kable

**Date Received:** 28 May 2020

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## SUBMISSION ON

### Provisions of the Firearms and Weapons Legislation (Criminal Use) Bill 2020

By Glenn Kable, Firearm Solicitor,

1. I am a solicitor that specialises in Firearms matters, not only in NSW, but Australia wide.
2. I have competed in 4 Olympic Games in the Men's Trap Shooting event.
3. I have held a firearms licence since about 1980 and was admitted as a lawyer in 1988.
4. My submission is in relation to Firearms Prohibition Orders, specifically the blanket powers of search and the pathway to revocation of the order.
5. In relation to police powers of search, despite being aligned to powers instituted by Hitler and Nazi Germany (and flying in the face of United Nations Protocols), the NSW Ombudsman, in a 2016 report ([https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0016/37132/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/37132/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf)), made the following determinations;

*"My office found that police used the FPO search powers extensively during the review period. Over the two years, there were approximately 1,500 interactions where police used the search powers. During those interactions, police conducted over 2,500 separate searches, sometimes of the person's body as well as their property. The police were sometimes able to use the FPO search powers in circumstances where general search warrant powers were unlikely to apply. Police found firearms, ammunition and firearm parts in 2% of these interactions. In the two years, they seized 35 firearms, 26 lots of ammunition and 9 firearm parts. We examined the profiles of the people whom police searched using the FPO search powers. In total, 400 FPO subjects were searched. The searches conducted on these people appeared to be generally consistent with Parliament's intention. However, we also found that police conducted searches on over 200 people who were not subject to an FPO at the time of the search (a total of 269 person searches). Police conducted those searches on what appears to be an erroneous application of the new FPO search powers and, as such, the searches may have been unlawful. We also found a lack of clarity in police understanding of when they may conduct an FPO search on an FPO subject. In 14% of search events, police conducted a search on the basis of their apparent understanding that a search can be conducted for the reason alone that the person is an FPO subject. We do not consider this is correct. A search can be conducted only when 'reasonably required' to determine if an FPO offence has been committed. It is not a roving search power to be used randomly on FPO subjects, but a power to be used in a targeted way to examine if firearms control legislation is being properly observed. This report recommends changes to ensure that the intended meaning of the legislation is properly observed. One option is for Parliament to consider amending the legislation to resolve the apparent ambiguity that has led to the incorrect use of the search powers. Another option is for the NSW Police Force to develop guidelines regarding the meaning of 'reasonably required', and to ensure that, through education, training and monitoring, the intended meaning of the legislation is understood*

*and followed by police. Other measures are also proposed to ensure that police use FPO search powers fairly and reasonably. We recommend that FPOs expire after five years. This recommendation, if implemented, will allow police to continue to target current firearms risks, while reducing the potential for people to be subject to arbitrary or unreasonable searches for an indefinite period. If the circumstances warranted, the Commissioner could make a further FPO against that same person at the expiry of five years.”*

6. This would therefore seem to be an opportune time to implement the recommendations of that Ombudsman’s report, particularly;
  - a) A search should only be conducted when “Reasonably Required”, not on a carte blanche basis;
  - b) FPO’s to expire after 5 years;
7. It is to be kept in mind that out of 1,500 interactions (2,500 individual searches), firearms, firearm parts, or ammunition, was only detected in 2% of cases (does this warrant the draconian implications of having such legislation, when search warrant applications may have resolved these breaches regardless).
8. In relation to pathways to revoke a Firearm Prohibition Order, which is related to 6(b) above. At present an FPO has no end, and has limited appeal prospects through the NSW Administrative Decisions Tribunal, which were made somewhat more difficult last year with the finding in the matter of **Holdsworth v Commissioner of Police, NSW Police Force [2019] NSWCATAD 42**. This was a matter whereby the time limit for appealing the imposition of an FPO was limited to within 28 days of the making of the order.
9. In Holdsworth the original order was made in 1986, and at that time there were grounds for the imposition for such an order (currently, s75(1A) disqualifies a person from seeking an Administrative Review of that decision, if there are mandatory grounds to be refused a licence or permit), but with the passage of time, there is now no longer a pathway to seek an Administrative Review of the current status for maintaining an FPO on a person (In Holdsworth’s case, he may have been an angel for 33 years, become a cleric, or been the nation’s leading charity fundraiser, the model citizen, he still has no way of seeking an independent challenge to the order, see also **Taylor v Commissioner of Police, NSW Police [2006] NSWADT 219**).
10. In such a case, the recipient in an FPO matter is still subject to the same search powers regardless of not coming to police attention for decades.