

# Departmental Disclosure Statement

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Firearms Prohibition Orders Legislation Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by New Zealand Police.

New Zealand Police certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

22 February 2024

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## Part One: General Policy Statement

This is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The interrelated topic is firearms prohibition orders (FPOs). The single broad policy is to reduce firearms crime and its impacts on communities by enabling FPOs to be made and monitored against a wider group of persons whose behaviour and actions pose a high risk of violence.

This Bill aims to improve public safety and complements other initiatives being introduced to help tackle crime and address unsafe behaviours associated with gangs.

An FPO may be made by a sentencing court against an offender who has been convicted of a specified offence if the court considers that the FPO is necessary, reasonable, and appropriate to assist in managing the risk that the offender poses to public safety. An FPO disqualifies an offender from obtaining a firearms licence and prohibits the offender from accessing firearms and restricted weapons (for example, the offender must not associate with persons in possession of firearms, or reside at, or visit, locations at which firearms are stored).

The Bill strengthens the FPO legislation by making 3 key changes.

First, the Bill amends the Arms Act 1983 to extend the group of persons against whom an FPO may be made. Currently, an FPO is only able to be made against a person aged 18 years or over who has been convicted of a specified serious offence. The Bill provides that an FPO may also be made against a person aged 18 years or over who is a member or an associate of a gang or an organised criminal group who has been convicted of an offence under the Arms Act 1983, Crimes Act 1961, Misuse of Drugs Act 1975, or Psychoactive Substances Act 2013 that is punishable by a term of imprisonment of 1 year or more. This change enables courts to make FPOs against gang and organised criminal offenders who have been convicted of a wider range of offences and who pose a risk to public safety. The Sentencing Act 2002 is amended to reflect this amendment.

Second, the Bill amends the Arms Act 1983 to establish a new review process that enables persons subject to an FPO to apply to the court to have their FPO varied, modified, or revoked. An FPO continues in force for 10 years and currently there is no right to challenge the FPO other than as part of an appeal against the sentence. The new review process enables a person who has been subject to an FPO for at least 5 years to apply to the court for an order varying or revoking their FPO. This affords a review mechanism for persons subject to the significant restrictions of an FPO who believe they no longer pose a risk to public safety.

Third, the Bill amends the Search and Surveillance Act 2012 to introduce a new “without cause” search power that enables the New Zealand Police (the Police) to conduct searches in respect of a person who the Police suspects, on reasonable grounds, is subject to an FPO. A search can be conducted at any time and may be exercised without the Police having reasonable grounds to suspect that any offence has been, is being, or will be committed by the person. As a person who is subject to an FPO has been identified as posing a high risk to public safety, they should be subject to the highest level of monitoring to ensure that they are not accessing firearms and are complying with their FPO. The new search power allows the Police to search the person, any thing in the person’s possession or control, any premises in which the

person is present or that the person owns, occupies, or controls, and any vehicle in which the person is present and any other persons present in the vehicle believed to be in possession of arms, and to seize and detain any arms found.

These 3 changes will result in an improved FPO regime that supports FPOs to be better targeted to more high-risk offenders and provides the Police with more effective tools to monitor whether persons who pose a high risk to public safety are accessing firearms.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>In assessing these changes New Zealand Police has considered the international experience in the use of firearms prohibition orders, particularly the regimes of the Australian states. New Zealand Police have also considered the findings and recommendations of the following reviews and inquiries:</p> <ul style="list-style-type: none"><li>• Inquiry into issues relating to illegal possession of firearms in New Zealand: Report of the Law and Order Committee – April 2017 <a href="https://selectcommittees.parliament.nz/view/SelectCommitteeReport/9ad3fdce-b70f-402a-afee-5d70fd368a4c">https://selectcommittees.parliament.nz/view/SelectCommitteeReport/9ad3fdce-b70f-402a-afee-5d70fd368a4c</a></li><li>• Review of police use of the firearms prohibition orders search powers: Ombudsman New South Wales – August 2016 <a href="https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0003/138297/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf">https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0003/138297/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf</a></li><li>• Inquiry into firearms prohibition legislation: Legal and Social Issues Committee (Victoria) – November 2019 <a href="https://www.parliament.vic.gov.au/490d29/contentassets/b67078d8b26a4a7aa7740bfd1a86b26c/inquiry-into-firearms-prohibition-legislation.pdf">https://www.parliament.vic.gov.au/490d29/contentassets/b67078d8b26a4a7aa7740bfd1a86b26c/inquiry-into-firearms-prohibition-legislation.pdf</a></li></ul>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
<p>A regulatory impact statement was not provided at the time of policy decisions leading to this Bill due to time constraints.</p>	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>Police have produced a Supplementary Analysis Report (SAR) to inform decisions on whether to introduce the Bill and what changes should be made. This SAR will be available at <a href="https://www.police.govt.nz/about-us/publications-statistics">https://www.police.govt.nz/about-us/publications-statistics</a></p> <p>The SAR provides analysis of the three key proposals included in the Bill – expanding qualifying criteria to allow more gang and organised crime offenders to be issued FPOs, establishing a new review process, and introducing expanded search powers – against the status quo, and the expected costs and benefits of changes.</p> <p>As permitted by Cabinet’s decisions and Treasury guidance on regulatory impact analysis for policy proposals during the Government’s 100 Days period, this supplementary analysis did not undergo formal quality assurance due to time constraints. Internal review of analysis has been conducted by New Zealand Police.</p>	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>The SAR referenced above includes analysis of potential costs and benefits of these changes (see pages 23-27).</p> <p>In summary, the main expected benefit of these changes is improved public safety through more high-risk offenders being eligible for an FPO and Police's improved ability to monitor compliance with FPO conditions. Benefits will also arise for individuals subject to an FPO through the new review process providing a mechanism for the conditions of an FPO to be removed where these are no longer reasonable and appropriate, providing better recognition of rights.</p> <p>Costs from these changes are expected to be minor and will fall on government. The justice sector will experience some costs to facilitate and respond to court hearings resulting from applications under the new review process. Changes to qualifying criteria may result in increased numbers of FPO applications and expanded search powers may result in more searches being conducted and more breaches being detected, with associated costs for Police, prosecutors and courts. The extent of costs will be dependent on how many FPOs are issued by courts and how frequently review applications are made.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The effectiveness of the FPO regime in achieving its objective of improved public safety is largely determined by the compliance of individuals with the conditions of their FPO. The conditions of an FPO are designed to improve public safety through reducing the risk persons identified as high-risk offenders access to or use of firearms.</p> <p>Levels of non-compliance directly impact the costs of the regime. Non-compliance with conditions of an FPO is an offence which can result in a term of imprisonment, with associated costs to the criminal justice system.</p> <p>While the changes in this Bill do not alter or impose new obligations, changes to search powers will improve Police's ability to identify and prosecute breaches.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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This Bill modifies the existing FPO regulatory system. Previous consultation on establishing the FPO system with external stakeholders and government agencies, including MFAT, concluded that the FPO system was consistent with New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Consultation has been conducted with government agencies including Te Puni Kōkiri on the policy decisions leading to this Bill. However, due to time constraints no wider consultation with relevant stakeholders on the rationale of changes and risks of harm have been conducted.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Crown Law is providing advice to the Attorney-General on whether the Bill complies with the New Zealand Bill of Rights Act 1990.
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Changes in the Bill may engage sections 18 (right to freedom of association) and 21 (right to be secure against unreasonable search or seizure).
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Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice or report will be accessible on the Ministry's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/section-7-reports/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/section-7-reports/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
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Clause 8 of the Bill (inserting new section 39FA to the Arms Act 1983) introduces a new application that can be made by a person who is subject to an FPO to the court that made the FPO, requesting the court modifies or revokes the FPO.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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The Ministry of Justice was consulted when Cabinet papers seeking approval for these provisions were being developed and throughout the drafting process.
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## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>Clause 14 of the Bill introduces a new warrantless search power associated with FPOs. Information about persons who are subject to an FPO will identify who may be subject to these new powers.</p> <p>This power enables a constable who has reasonable grounds to suspect a person is subject to an FPO may, without a warrant, search the person, any thing in the person's possession or control, any premises in which the person is present or controls, any vehicle in which the person is present and also any other persons present in the vehicle, and seize and detail any arms found.</p> <p>A constable may exercise this power without having reasonable grounds to suspect that the person is breaching any conditions of their FPO or that any offence has been, is being, or will be committed by the person.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Privacy Commissioner was consulted on the drafting of this Bill and provided comment in the Cabinet paper seeking approval to introduce the Bill.</p> <p>We expect the Cabinet paper <i>Firearm Prohibition Orders Legislation Amendment Bill: Approval for introduction</i> including the Privacy Commissioner's comment (at pages 6-7) will be published, subject to any appropriate redactions, following introduction of the Bill at <a href="https://www.police.govt.nz/about-us/publications-statistics">https://www.police.govt.nz/about-us/publications-statistics</a></p> <p>As the Privacy Commissioner's comments are inconsistent with the policy decisions underlying this Bill no amendments have been made in response.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>NO</b>
<p>No external consultation was undertaken on policy proposals due to time constraints.</p> <p>To inform advice Police have referred to previous statements from stakeholders made during consultation on proposals to introduce FPOs in 2020 and Select Committee submissions on the resulting FPO Bill in 2022. However, we note these views may no longer represent stakeholder positions and proposals previously consulted on have a number of key differences from current proposals.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
While the Bill does not have retrospective effect, clause 14 of the Bill introduces warrantless search powers associated with FPOs. These search powers are available in regard to all persons with an FPO, including where the FPO was issued prior to the commencement of the Bill.	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
<p>Clause 14 introduces a new warrantless search power associated with FPOs. This power is exercisable by constables without having reasonable grounds to suspect that the person is breaching any conditions of their FPO or that any offence has been, is being, or will be committed by the person.</p> <p>This “without cause” approach towards search powers is novel in New Zealand’s criminal law. Most warrantless search powers under the Search and Surveillance Act 2012 require the relevant officer to have “reasonable grounds to suspect” or “reasonable grounds to believe” before exercising search powers.</p> <p>This lower standard prior to search powers being available aims to facilitate more effective monitoring of persons subject to FPOs to ensure they are complying with the conditions of their order. This higher level of monitoring is justified by FPOs being court issued orders that indicate the relevant person poses a high risk to public safety.</p> <p>Pages 19-20 of the SAR referenced above provide further discussion of the introduction of this search power.</p>	

