

Supplementary Analysis Report: Firearms Prohibition Orders Amendments

Coversheet

Purpose of Document	
Decision sought/taken:	<i>Policy decisions on changes to the Firearms Prohibition Order regime</i>
Advising agencies:	<i>New Zealand Police/Ministry of Justice</i>
Proposing Ministers:	<i>Hon McKee– Associate Minister of Justice</i>
Date finalised:	<i>15 February 2024</i>
Problem Definition	
<p>The current firearms prohibition order (FPO) regime was introduced in 2022 with the objective of improving public safety by allowing additional restrictions to be placed upon high-risk individuals to reduce the likelihood they are able to access firearms.</p> <p>Firearms violence, particularly associated with gangs and organised crime, continues to be a prevalent concern. A 2021-2022 Police operation to disrupt the illegal possession and use of firearms by gangs and organised crime groups resulted in the seizure of approximately 1,800 firearms.¹ In 2022-2023, Police recorded 2,869 firearms offences where a gang member was prosecuted.²</p> <p>While Police consider it too early to evaluate the effectiveness of the FPO regime, the Government has committed to increase the regime's effectiveness in restricting high-risk individuals, particularly gang members, from accessing firearms.</p> <p>Specific areas of concern that have been identified by the Government are:</p> <ul style="list-style-type: none">• that high-risk gang members are not being issued FPOs• that Police is not able to sufficiently monitor compliance with FPOs• once issued, FPOs cannot be altered or revoked before expiry to reflect the changing circumstances of individuals.	
Executive Summary	
<p>Violent offending involving firearms is a significant source of harm in the community. In 2022, there was a monthly average of 528 firearms-related offences across 377 occurrences (over 12 firearms occurrences a day), with the number of firearms-related offences rising each year since 2015.³</p> <p>To help reduce this harm, the Arms Act 1983 (the Arms Act) was amended in August 2022 to introduce FPOs. The objective of the FPO regime is to improve public safety by</p>	

¹ Operation Tauwhiro, which ran between February 2021 and July 2022.

² To 30 November 2023.

³ Police-held dataset as at 31 August 2023.

reducing the likelihood that individuals who are at high-risk of violent offending are able to access firearms.

FPOs prohibit offenders from accessing firearms, associating with people in possession of firearms, and residing at or visiting locations where firearms are held.

Fundamental to the current FPO regime is a legislated set of qualifying criteria – specified offences which qualify an individual to be issued an FPO, should a court consider it necessary and reasonable to manage the risk the offender poses to public safety. Serious criminal offences that make a person eligible for an FPO include violent offences such as murder, serious assaults, sexual violence, aggravated robbery or burglary, a range of arms offences such as illegally importing or assembling a prohibited firearm, participation in an organised criminal group, and offences against the Terrorism Suppression Act 2002.⁴

Given the newness of the FPO regime (only taking effect on 15 November 2022), Police consider that it is too early to evaluate if it is improving public safety. However, there is a perception, expressed in the National Party 2023 election manifesto and subsequent Ministerial discussions, that several legislative design features of the current framework limit the efficiency and effectiveness of the regime. Specific areas for improvement identified by Government are:

- **High-risk gang members are not being issued FPOs:** as at 1 February 2024, 30 FPOs have been issued, 8 of which apply to known gang members. Current FPO qualifying criteria requires offenders to have been convicted of a specified serious offence. These do not include some offences commonly associated with organised criminal offending such as drug offences and unlawful possession of a firearm. There is a perception that the current qualifying criteria does not appropriately target gang and organised crime offenders (i.e. groups who we are aware use firearms as tools to intimidate and cause violence to others), and therefore is unable to effectively achieve the intended public safety benefits.
- **Police is not able to sufficiently monitor compliance with FPOs:** the current FPO regime does not provide Police any specific search powers associated with FPOs. Police therefore must rely on general search powers associated with arms to monitor compliance as set out in the Search and Surveillance Act 2012 (the SSA), generally requiring reasonable grounds to suspect an offence before searches can be conducted. This threshold limits the circumstances that both proactive and reactive monitoring of compliance of persons with FPOs may be conducted.
- **Once issued, FPOs cannot be altered or revoked before expiry to reflect the changing circumstances of individuals:** FPOs are issued for a period of 10 years. While an FPO can be appealed following sentencing, such an appeal must generally be filed within 20 working days of sentencing and, following this, there is no ability to have it reviewed or revoked for the term of the order. This means FPOs may continue to apply significant restrictions upon individuals even where their circumstances have changed such that they no longer pose public safety risks.

⁴ The full list of qualifying offences is provided in section 39A of the Arms Act.

Options analysis

In accordance with Government's 100 Day programme of work, Police provided Ministers with options to address the areas for improvement identified in National Party 2023 election manifesto and 100 Day Plan. In line with Ministers' decisions, recommendations for changes to the FPO regime were subsequently provided to Cabinet for approval.

The changes agreed by Cabinet [100-23-MIN-0010, CAB-23-MIN-0491 refer] were:

- **Expanded qualifying criteria exclusively for members of gangs and organised criminal groups:** creating a new qualifying category enabling Courts to issue FPOs against a member or associate of either a gang or organised criminal group convicted of any significant offence,⁵ to recognise the particular risks to public safety posed by firearms in the hands of individuals associated with gangs and organised crime.
- **Establishing specific search powers for FPOs:** introducing a new specialised search power associated with FPOs that allows Police to search the FPO subject, vehicles they are present in or control, and premises they occupy or control without cause at any time.
- **Introducing a review and revocation process:** establish a process for persons subject to an FPO, after half the length of the FPO has expired, to apply to the Court to request it is revoked or request modifications be made to FPO conditions.

In the analysis we consider each of these changes against the status quo.

In regard to the option of permitting FPOs to be issued to high-risk gang members, we also assess a further identified option for changes to qualifying criteria. The further option would expand qualifying offences for all offenders, rather than introducing a new qualifying category specifically for members of gangs and organised crime groups.

We assess the options for change against the following criteria:

- **Public safety:** to what extent will the option reduce risks to public safety posed by high-risk individuals accessing firearms?
- **NZBORA compliance:** to what extent does the option limit one or more of the rights of individuals provided for under the New Zealand Bill of Rights Act 1990 (NZBORA)?
- **Administrative efficiency:** to what extent does the option make it clear and efficient for Police and Courts in deciding a course of action (i.e. is the option easy to administer?)

Police's assessment of options

Issue One: supporting FPOs to be issued to more high-risk gang members

Police considers changes to qualifying criteria to allow more gang members to be issued FPOs may create public safety benefits in comparison to the status quo. However, our preferred option differs from that selected by Cabinet.

⁵ This agreement was subject to further advice from officials on what should be deemed a "significant offence" for this purpose.

Cabinet's selected option introduces a second qualifying criteria solely applicable to members and associates of gangs and organised criminal groups. A wider category of convictions will qualify persons that have these identifiers for FPOs. While we consider this may produce some public safety gains by allowing more FPOs to be issued to high-risk persons, we consider proving these identifiers (i.e. proving that an individual is a member or associate of either a gang or Organised Criminal Group) will introduce administrative and procedural challenges, which may risk the changes not realising their intended benefits.

Police's preferred option is to maintain a single qualifying criterion applicable to all persons, and to expand the list of offences that qualify a person for an FPO. This expanded offence list could focus on high-risk offences typically associated with gang or organised criminal activities such as drug and arms offences. We consider this could produce public safety gains equivalent to Cabinet's selected option while minimising administrative inefficiencies.

Issue Two: improving Police's ability to monitor compliance with FPOs

Police prefer Cabinet's selected option to the status quo. We consider public safety gains can be produced by introducing specialised search powers associated with FPOs. Qualitative evidence from Police in several Australian States indicates that broad search powers associated with FPOs are effective in proactively identifying FPO breaches and driving behavioural changes among offenders, resulting in improved public safety.

While we note this option involves significant limits to rights of individuals provided by NZBORA we consider this option is justified by the expected public safety gains and the rights of those who may be otherwise harmed by firearms offending.

Issue Three: introducing a mechanism for FPOs to be altered or revoked before expiry to reflect changing circumstances of individuals

Police prefer Cabinet's selected option to the status quo. While introducing a review mechanism will result in new administrative costs, we consider this is offset by the benefits of allowing FPOs to be modified to better reflect changing individual circumstances. This will provide better recognition of rights and more effectively target the regime to individuals posing ongoing high risks. We consider administrative costs may be able to be mitigated through the design of the implementation of this option, such as restricting the frequency at which individuals can request reviews to disincentivise meritless applications.

Summary of impacts

Who are the main expected beneficiaries?

The main expected benefit of these changes is improved public safety. Public safety is improved through FPOs being able to be issued to more high-risk individuals and Police's improved ability to monitor compliance with FPO conditions thus reducing the risk of firearms offending against the public and first responders.

The primary beneficiary of this package of changes is therefore the New Zealand public, including persons who might otherwise be victims (or repeat victims) of violent offending.

The ability to be able to appeal and revoke an FPO will also provide a significant benefit to the individual subject to the FPO – ensuring that they are no longer subject to the strict conditions of the FPO if they are able to demonstrate that it is no longer required. This

approach ensures NZBORA rights are better upheld and encourages rehabilitation which provides a benefit to the New Zealand public.

Marginal costs

We expect only minor financial costs to result from the recommended package of changes, which will fall on Government.

Developing a process whereby individuals can apply to have their FPO reviewed and revoked (or have its conditions altered) will have some costs for Police and the wider justice system, specifically relating to costs for preparing, resourcing, and paying for court hearings. Relevant agencies have been consulted in regard to this, and have advised that they anticipate that costs will be minor. Police will aim to mitigate any additional costs by providing in the Bill that an application can only be made after half the length of an FPO has expired, and will set limitations which ensure that a review may only be requested once in the term of the FPO.

Expanding qualifying criteria is expected to result in a minor to moderate increase in the number of FPO applications that, based on projected increases, will result in only minor additional administrative and time costs to Police, prosecutors and courts. Costs will be mitigated as FPO applications continue to be incorporated within the sentencing process.

Providing Police expanded search powers may result in more frequent searches associated with FPOs being conducted by Police and more frequent detection and prosecution of breaches, resulting in administrative costs to the Justice sector. However, we expect the cost increases resulting from this change to be marginal.

Risks and unintended impacts

These changes (with particular attention to the addition of search powers) risk the FPO framework being considered inconsistent with NZBORA by the judiciary. This could result in the Courts taking a narrow interpretation on when FPOs and associated search powers are available, to maintain as much consistency with NZBORA as possible. This would give rise to a number of secondary risks that would limit the effectiveness of changes, such as:

- few FPOs are issued, as their impact on rights means they are only considered appropriate in extraordinary cases of risk to public safety
- evidence obtained by Police in FPO searches may be ruled inadmissible where search powers are ruled to have been used in an unreasonable manner
- Crown liability for damages may arise if FPO search powers are ruled to be used in an unreasonable manner.

Police will develop internal guidelines to apply reasonableness limits on when and how searches are conducted, and will also consider options in providing legislative direction on when FPO search powers should be used. However, risks of NZBORA inconsistency are likely to remain significant.

Additionally, there is an existing risk (with the status quo FPO system) that insufficient FPOs are issued to achieve the objective of improving public safety and, as detailed above, we consider it too early to tell whether this is the case or not.

A moderate risk remains that the changes may not impact the currently low FPO application and issuing rates. To mitigate this risk, Police intends to provide guidance to

frontline staff and prosecutors alongside these changes to increase awareness of FPOs and when and how they should be applied for.

Stakeholder views

Given time constraints on this analysis, public consultation has not been conducted on proposals. However, based on previous public consultation on proposals to introduce FPOs in 2020 and Select Committee submissions on the Arms Act changes in relation to FPOs in 2022, we identify the following key views:

- A **majority of submitters** in both 2020 and 2022 supported an FPO regime in New Zealand and considered it could be effective in improving public safety. The minority of submitters who opposed the introduction of an FPO regime generally considered it would be ineffective and/or were concerned about the disproportionate impact FPOs may have on specific population groups.
- The **New Zealand Police Association** were strongly supportive of FPOs being introduced, but considered that for FPOs to be highly effective, additional search powers (beyond the current status quo) should be provided.
- The **Office of the Privacy Commissioner** did not support the introduction of FPOs as it did not consider the benefits of the regime would outweigh the significant privacy impacts that would result on individuals.
- **Firearms owner and user groups** generally supported or did not oppose the introduction of FPOs, but preferred more restrictive search powers for Police due to concerns searches would disproportionately impact licenced firearms owners.
- **Victim and family violence advocacy groups** were strongly supportive of family violence offending being included as a grounds for qualifying persons for an FPO.
- A **strong majority of submitters** preferred FPOs being issued by Courts, rather than by the Commissioner of Police. Reasons for this view varied, but included the Court being better placed to consider the cumulative effects of sentencing and the rehabilitation needs of offenders.

A summary of the views expressed by submitters in 2020 and 2022 is provided in Annex One.

Limitations and Constraints on Analysis

Police intended to provide a Regulatory Impact Analysis alongside our Cabinet paper in December 2023 [100-23-MIN-0010, CAB-23-MIN-0491]. However, late changes in Ministerial direction for proposals meant that providing a comprehensive analysis was not feasible in the timeframe. As a result, this Supplementary Analysis Report has been completed based on the guidance provided by The Treasury.

Limits due to time constraints

Police considers this SAR is subject to a number of notable limitations, largely due to the limited time available to prepare this advice while progressing changes within the Government's 100 Day Action Plan. Limitations include:

- No public consultation has been conducted on these proposals. Police has relied on previous statements in 2020 consultations and 2022 Justice Select Committee regarding FPOs to indicate stakeholder views. However, these views may no longer

be accurate and proposals previously consulted on have a number of key differences from current proposals.

- Police consider it is too early to properly assess how effectively the current FPO regime is achieving its objectives. The current regime only took effect from November 2022 and only comes into place at the point of sentencing for offences committed since that time. In addition, many individuals that have had an FPO imposed on them are also subject to custodial sentences and the impact of the regime will therefore take considerable time to be visible. The problem definition for these changes therefore has limited evidence to support it and there is very little baseline evidence to support future monitoring of whether these changes have been effective.
- There is a lack of certainty regarding how many FPOs will be issued under these new requirements due to factors such as court discretion at sentencing. Effect and cost modelling therefore relies on estimates that Police only have low to moderate confidence in.
- Detailed analysis of the consistency of options with the NZBORA is yet to be completed. Crown Law will advise the Attorney-General regarding the consistency of legislation resulting from these proposals with NZBORA ahead of Cabinet decisions on whether legislation should be introduced.

Limits on options considered

The Government's 100 Day Plan and the National Party 2023 election manifesto provide a commitment to expand Police's powers to search gang members for firearms through reforming the FPO framework. We have therefore limited the options considered to changes to the design of the FPO framework, and have not considered alternative options to achieve similar outcomes (i.e. exploring other means to limit gang members access to firearms).

We have also limited our analysis to options that address the perceived shortcomings identified by the Government ahead of Cabinet decisions: qualifying criteria, search powers, and the introduction of a review and revocation process. Other potential changes to the regime that were ruled out in ministerial consultation (such as transferring the issuing powers for FPOs from Courts to the Police Commissioner) are not discussed in this analysis.

Assumptions underpinning impact assessment

There is an assumption that the current FPO regime is insufficient to mitigate firearms violence or control gang crime, which has not been rigorously tested. Given the newness of this FPO regime, it is difficult to assess if it is working effectively, or whether it amendments are needed to increase its efficacy. As at 1 February 2024, 30 FPOs have been issued, eight of which apply to gang members. Many of these individuals are likely to still be serving sentences of home detention or imprisonment, making it difficult to assess whether current FPO settings are actually effective in reducing risks to public safety.

Responsible Manager(s) (completed by relevant manager)

Jeremy Wood

Executive Director

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14 February 2024

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Violent firearms offending continues to be an issue in New Zealand

1. Violent crime involving firearms continues to be a significant source of harm in New Zealand. The number of firearms-related offences in New Zealand has been progressively increasing since 2015.
2. Since 1 March 2019, Police records 13,828 firearms seized, recovered or surrendered; 53 firearms presented at Police in the course of their work and 37 firearms discharged at Police. In 2022, there was a monthly average of 528 firearms-related offences across 377 occurrences, equating to over 12 firearms events a day.⁶
3. Firearms are involved in a notable amount of violent offending. Between January 2020 and June 2023 there were 1280 injuries and 46 homicides resulting from firearms-related offending.
4. The use of firearms associated with gang and organised criminal activities is also a significant concern. The growing complexity of New Zealand's gang environment has led to changing patterns of offending, including high-profile violent offending involving firearms. In 2022-2023, Police recorded 2,869 firearms offences where a gang member was prosecuted.⁷ A 2021-2022 Police operation to disrupt the illegal possession and use of firearms by gangs and organised crime groups resulted in the seizure of approximately 1,800 firearms.⁸

Firearms Prohibition Orders were introduced in 2022 to reduce the likelihood that high-risk individuals access firearms

5. In August 2022 the Firearms Prohibition Order Legislation Bill was passed. This Bill amended the Arms Act to allow the Courts to issue FPOs to persons convicted of serious criminal offences. These changes took effect in November 2022.
6. Serious criminal offences that make a person eligible for an FPO include violent offences such as murder, serious assaults, sexual violence and aggravated robbery or burglary, a range of arms offences such as illegally importing or assembling a prohibited firearm, participation in an organised criminal group, and offences against the Terrorism Suppression Act 2002.⁹
7. Only offenders that have committed offences since November 2022 (when the FPO legislation took effect) are eligible for FPOs.
8. FPOs are designed to improve public safety by reducing the likelihood people aged 18 and older whose offending indicates a high risk of violence can access firearms. FPOs do this by:
 - a. prohibiting offenders from accessing firearms or restricted weapons¹⁰

⁶ Police-held data as at 31 August 2023.

⁷ January 2022 to 30 November 2023.

⁸ Operation Tauwhiro, which ran between February 2021 and July 2022.

⁹ The full list of qualifying offences is provided in section 39A of the Arms Act.

¹⁰ While a person without a firearms licence is also prohibited from possessing firearms, a person subject to an FPO doing so is liable to significantly higher penalties. A person subject to an FPO is also not permitted to use a firearm under the immediate supervision of a licence-holder.

- b. preventing offenders from associating with people in possession of firearms
 - c. preventing offenders from residing at or visiting locations where firearms are held.
9. FPOs are issued by Courts as part of sentencing for the qualifying offence. Judges may issue an FPO when they consider imposing an FPO on the offender is necessary and reasonable to manage the risk the offender poses to public safety.
 10. FPOs are issued for a period of 10 years, and it is a criminal offence to breach the conditions of that order. If the court imposes a custodial sentence, the FPO period begins on the offender's release from custody. Currently, there is no process to revoke or alter an FPO.
 11. The penalties for breaches are set out at sections 42A and 42B of the Arms Act. Depending on the nature of the breach, this could result in a term of imprisonment up to seven years.

No specific search powers are currently provided in relation to FPOs

12. Current legislation does not provide any specific search powers regarding persons subject to FPOs. Police instead relies on the provisions for searches related to firearms under the Search and Surveillance Act 2012 (the SSA) to monitor and gather evidence relating to FPO breaches.
13. For example, section 18 of the SSA permits the Police to conduct warrantless searches of people, places and vehicles where there are reasonable grounds to suspect arms are present and that an offence against the Arms Act (such as a breach of FPO conditions) has occurred.
14. Sections 18A to 18E of the SSA also provide Police the ability to seek specialised search powers during gang conflict, including powers to search for and seize weapons.

This regulatory system is still bedding in

15. As the current regulatory framework for FPOs was only introduced in late 2022, Police consider it is too early to effectively evaluate its performance. While anecdotal evidence from prosecutors and operational staff would suggest that the current FPO regime has not yet reached full efficiency, that conclusion is purely speculative at this point.
16. As at 1 February 2024, 490 individuals had been sentenced with qualifying charges. Of these, 30 have had an FPO issued against them. Within this cohort:
 - a. eight are gang members, and one has gang associations but is not a known member of a gang
 - b. nine received sentences of home detention, two were placed on community detention and 19 received sentences that included a term of imprisonment.
17. No warrantless searches have yet been conducted of persons who have been issued an FPO. This might reasonably be anticipated given many of these individuals are likely currently serving prison. However, this makes it difficult to assess whether current search powers allow effective monitoring of FPO subjects when they are in the community.
18. There are 5,570 currently active charges that will make a person eligible for an FPO on conviction. Of these, the leading charge types are:
 - strangulation/suffocation (20%)
 - violent sexual offending (18%)
 - wounding with intent to injure or cause grievous bodily harm (14%)
 - aggravated robbery (6%)
 - participation in an organised criminal group (3%).

19. 15% of persons with active qualifying charges have either currently active or historical firearms charges, suggesting an FPO may be particularly relevant to protect public safety.
20. While current issuing rates are low, to a large extent, we consider this is attributable to the fact that the Courts, prosecutors and frontline staff are still familiarising themselves with FPO processes and tools. Police is working to improve guidance on where FPOs should be sought for frontline officers and prosecutors involved with qualifying offences and are monitoring opportunities for the Courts to develop case law.
21. The link of FPOs to offences committed since November 2022 also creates a natural lag time. With the exception of where offenders plead guilty, many cases with qualifying offences committed since that time will not reach sentencing for one to two years after the event leading to the charges occurred. We expect issuing rates will increase over time.
22. The effectiveness of the current FPO framework in improving public safety will also only be able to be evaluated as individuals complete custodial sentences. Search powers associated with FPOs will also only become relevant when those sentences are completed. It will likely be around three or four years before a sufficient number of individuals subject to an FPO have completed sentences to allow a credible assessment of whether FPOs have been effective in reducing further violent offending by these high-risk individuals.

A number of international jurisdictions have FPO regimes, but the design of these systems varies considerably

23. Six Australian States and territories along with Canada and the United Kingdom have FPO regimes in place.
24. While there are some variations across States, key features of the Australian FPO model that differ from the current New Zealand regime are:
 - a. FPOs are issued by a senior member of Police
 - b. FPOs are issued based on the decision-maker being satisfied that, in the public interest, the person should not possess firearms. This assessment can be based on a number of factors, including that the person in question is considered to pose an undue danger to people or property, they are not considered to be fit and proper to possess firearms, or that they are associated with persons or groups which would make their possession of firearms contrary to the public interest.
 - c. In most States, Police has specialised powers to search FPO subjects, their vehicles, premises and people in their company without a warrant, where “reasonably required” to determine if they are in breach of an FPO.¹¹
25. Under the United Kingdom model, FPOs are automatically applied where a person is sentenced to imprisonment for a term of three months or more (including suspended sentences). No specialised search powers associated with FPOs are provided.
26. Under the Canadian model, weapon prohibition orders,¹² are applied automatically after convictions for serious violence, family violence, firearms or drug offences. Judges also have discretion to apply prohibition orders for less serious offences involving actual or threatened violence, and Police can apply to the court for preventative orders where there are reasonable grounds to consider the person should not possess a firearm or

¹¹ South Australia and Tasmania do not provide specialised search powers linked to FPOs. New South Wales does not provide a power to search persons in the company of the FPO subject.

¹² Which include some additional types of weapons, such as crossbows.

weapon in the interest of safety. No specialised search powers associated with these orders are provided.

27. Annex Two provides a comparison of the key features of these different models.

How will the status quo develop if no action is taken?

28. Key features of how we expect the status quo to develop in the absence of change are:

- a. We expect issuing rates for FPOs will begin to increase in the next 1-2 years. As outlined in paragraphs 20-21 we consider the primary drivers for current low issuing rates to be a lack of familiarity with the FPO process, and the delay before offenders are sentenced for qualifying offences. While we consider it unlikely that issuing rates will reach the 900+ per year projected during the establishment of the FPO regime in 2021-2022, we consider it plausible that annual issuing rates will reach 80-120 per year under the current framework.

As at 1 February 2024, there are currently 288 defendants (398 charges) awaiting sentencing. 47 of those defendants have history and/or current charges involving arms that suggest that a FPO may be a relevant consideration.

- b. Certain gang offenders will not qualify for FPOs. Because qualifying offences for FPOs primarily relate to violent offending, there will be a group of gang members sentenced for other types of offending (such as drug or lower level firearms offences) that are not eligible for an FPO.
- c. Police may face challenges in monitoring compliance with FPOs. Current legislation requires “reasonable grounds to suspect” an offence (such as a breach of FPO conditions) before searches of FPO subjects can be conducted. This limits Police’s ability to proactively check that persons with FPOs are abiding by conditions and may result in FPO breaches going undetected.

What is the policy problem or opportunity?

29. The objective of the FPO regime is to improve public safety by reducing the likelihood that individuals who are at high-risk of violent offending are able to access firearms. This Government has expressed a desire to redesign the FPO regime to address features of the current FPO framework which they perceive as limiting its capacity to achieve this objective.
30. Specific issues identified for improvement in the Government’s 100 Day Plan and the National Party 2023 election manifesto, and in subsequent Ministerial discussions, are:
- a. High-risk gang members are not being issued FPOs
- b. Police is not able to sufficiently monitor compliance with FPOs
- c. Once issued, FPOs cannot be altered or revoked early to reflect changing circumstances of individuals.

High-risk gang members are not issued FPOs

31. As at 1 February 2024, 30 FPOs have been issued, 8 of which apply to gang members. There is a perception that this low issuance rate, particularly towards gang and organised crime offenders, means the FPO regime is not effectively achieving its public safety objectives.
32. For an individual to be eligible for an FPO at sentencing, they need to have committed one of the offences listed under section 39(1)(a) of the Arms Act (this list of offences is referred to in this SAR as the ‘qualifying offences’ or ‘qualifying criteria’). Current qualifying offences largely focus on violent offending, with limited coverage of other offending types. This creates a potential gap in the availability of FPOs where other types of offending may indicate persons will pose significant risks to public safety if they obtain access to firearms.

33. For example, participation in organised criminal offending can be indicative of a person posing significant risks to public safety, due to the sudden and significant violence that can result from gang conflicts and the access gang members frequently have to firearms. However, many entrenched gang members do not have convictions for violent offending, but rather have convictions for drug supply or carriage of firearms that indicate their participation in organised crime – and so do not currently qualify for FPOs.
34. Similarly, a number of firearms offences that may indicate high risk to public safety also do not qualify a person for an FPO. Notably, these include offences relating to the unlawful possession or carriage of firearms without a proper purpose. Unlawfully possessing firearms can, in some circumstances (such as organised crime involvement), be indicative that a person is prepared to use firearms in a dangerous manner or to intimidate – behaviours that pose a significant risk to public safety.

Compliance monitoring challenges

35. As discussed in paragraphs 12-14 current legislation does not provide any specialised search powers associated with FPOs to monitor compliance, with Police instead relying on general search powers associated with firearms under the SSA to monitor FPO compliance.
36. The primary limitation on Police's current search powers is the requirement to have "reasonable grounds to suspect" an offence or legal breach has occurred, and that arms are present.
37. While this threshold provides a protection for individual's rights to be free from unreasonable search and seizure, given that individuals who have been issued an FPO have been identified as posing high risks to public safety this threshold may overly restrict the FPO regime's ability to achieve its public safety objectives.
38. In particular, the requirement to meet the "reasonable grounds" threshold prevents Police being able to proactively search and monitor people subject to an FPO to ensure they are complying with conditions and are not accessing firearms. Under current settings, searches can only be conducted where Police has credible evidence to suggest an offence has been or is about to be committed. This late point of intervention limits the public safety benefits that arise from the regime.

FPOs are unable to be altered and revoked early

39. FPOs are issued for a period of 10 years, and it is a criminal offence to breach the conditions of that order. FPOs impose a series of significant conditions that limit the freedoms of individuals subject to them, including:¹³
 - a. prohibiting offenders from accessing firearms or restricted weapons
 - b. preventing offenders from associating with people in possession of firearms
 - c. preventing offenders from residing at or visiting locations where firearms are held.
40. Under the current regime, there is very limited scope to review or revoke FPOs before expiry if the person ceases to pose a risk to public safety. A person subject to an FPO can appeal the issue of an FPO as part of an appeal against their sentence, but this generally must be filed within 20 working days of sentencing (unless the Court grants leave for a later filing).

¹³ Standard conditions of FPOs are provided for in section 39C of the Arms Act.

41. Given the 10 year effective period of FPOs, this inability for orders to be altered or revoked to reflect the changing circumstances and risk profiles of individuals is unnecessarily burdensome and may inhibit incentives to rehabilitate.
42. Providing a mechanism for FPOs to be reviewed and revoked where appropriate is a feature of most international models for FPOs.¹⁴

Stakeholder views of policy problem

43. Given the expedited nature of these proposals, public consultation has not been conducted.
44. Public consultation was previously conducted regarding proposals to introduce FPOs in 2020 and the Justice Select Committee received submissions on the Firearms Prohibition Orders Legislation Bill in 2022. In those rounds of consultation, 41 submissions were received, 30 from individuals and 11 from organisations (including the New Zealand Police Association, Amnesty International Aotearoa, Council of Licenced Firearms Owners, Gun Control New Zealand, New Zealand Law Society and Victim Support New Zealand.)
45. While these proposals have some differences from those consulted on at that time, we have identified the following relevant key views:
 - a. A **majority of submitters** in both 2020 and 2022 supported an FPO regime in New Zealand and considered it could be effective in improving public safety. The minority of submitters who opposed the introduction of an FPO regime generally considered it would be ineffective and/or were concerned about the disproportionate impact FPOs may have on specific population groups.
 - b. The **New Zealand Police Association** were strongly supportive of FPOs being introduced, but considered that for FPOs to be highly effective, additional search powers should be provided. It also recommended that “gang affiliation”, without requiring a criminal conviction, should be added as an eligibility criterion for an FPO (while noting proving and defining gang affiliation in legislation would be difficult).¹⁵
 - c. The **Office of the Privacy Commissioner** did not support the introduction of FPOs as it did not consider the benefits of the regime would outweigh the significant privacy impacts that would result on individuals.
 - d. **Firearms owner and user groups** generally supported or did not oppose the introduction of FPOs, but preferred more restrictive search powers for Police due to concerns searches would disproportionately impact licenced firearms owners.
 - e. **Victim and family violence advocacy groups** were strongly supportive of family violence offending being included as a ground for qualifying persons for an FPO.
 - f. Submissions were largely supportive of the 2022 FPO Bill, with 32 submissions supportive and 8 opposed (with the remainder not expressing a position). Submissions opposing the Bill generally focused on the potential disproportionate impact FPOs may have on Māori and licensed firearms owners, and the application of Police search powers to people subject to an FPO.

¹⁴ See, for example, Firearms Act 1996 (Victoria) sections 112L-112M, Firearms Act 1996 (NSW) section 75, and Firearms Act 1968 (UK) section 21(6).

¹⁵ Conversely, two submitters considered the Bill's FPO regime focussed too much on gang members and should be more focused on domestic violence harm.

46. The issue of review and revocation of FPOs was not covered in these consultations. A summary of the views expressed by submitters in 2020 and 2022 is provided in Annex One.

Impact on specific population groups

47. While these changes to FPOs are not designed to impact any particular community, ethnic group or gender, some groups may be disproportionately impacted.
48. In respect of the qualifying criteria, disproportional impacts will include:
- a. Māori and Pacific people (particularly Māori and Pacific men) are overrepresented in the criminal justice system and so will be more likely to receive convictions that will qualify them for an FPO.
 - b. Māori men are also make up a disproportionate share of gang membership in New Zealand. As both Police's and the Government's preferred option for expanding qualifying criteria aims to target members and associates of gangs, Māori will likely be disproportionately affected by these changes to the FPO regime qualifying criteria.
49. Increased rates of FPOs being issued to these population groups will mean they are also disproportionately exposed to the criminal sanctions and search powers associated with FPOs.
50. Proposals to expand search powers associated with FPOs may result in significant disruption and harm for communities and whānau that include someone subject to an FPO, as residing with or travelling in vehicles with the FPO subject may expose them to Police searches.
51. Conversely, Māori and Pacific people are also overrepresented as victims of crime and will benefit from initiatives that deter and prevent offending. For example, in 2020 Māori made up 37.3% of identified victims of firearms offending, where victim ethnicity was known.
52. As these proposals will disproportionately affect Māori, under the active protection and partnership principles, there is a strong Te Tiriti o Waitangi-based argument that Māori should, at the very least, be consulted. However, due to time constraints, no consultation with Māori has been done.
53. If proposals are found to be inconsistent with NZBORA rights, these are also likely to conflict with the Crown's specific article three duties to provide Māori with all the rights and protections of citizenship.

What objectives are sought in relation to the policy problem?

54. The objective of the FPO regime is to improve public safety by preventing high-risk people from having access to firearms. These proposals seek to amend the FPO legislative framework to better enable it to achieve that objective.
55. These changes support the Government's wider priority of restoring law and order.

Section 2: Deciding upon an option to address the policy problem

57. The following section provides an overview of Police's evaluation of the effectiveness of the options for change agreed by Cabinet.

What criteria was used to compare options to the status quo?

58. The criteria used to assess the options are:
- Public safety*: to what extent will the option reduce risks to public safety posed by high-risk individuals accessing firearms?
 - NZBORA compliance*: to what extent does the option limit one or more of the rights of individuals provided for under NZBORA?
 - Administrative efficiency*: to what extent does the option make it clear and efficient for Police and Courts to decide a course of action (i.e. is the option easy to administer?)
59. We give more weight to criterion 1 (public safety) as this reflects the primary objective of the FPO regime and is consistent with the Government's overall objective of restoring public order.
60. The criteria are not mutually exclusive and may involve trade-offs against each other. What may make the most efficient and administratively simple regime may not represent the least intrusive possible option, nor be the most effective in reducing the risk to the public.

What options were considered by Cabinet?

61. The scope of options considered by Cabinet were limited by commitments made in the National Party 2023 election manifesto and Ministerial discussions regarding how commitments should be implemented.
62. Options for change considered by Cabinet were:
- whether additional qualifying criteria should be introduced allowing FPOs to be issued to members and associates of gangs and organised criminal groups convicted of significant offences
 - whether Police should be granted powers to conduct warrantless, without cause searches of persons subject to FPOs, their vehicles and their premises.
 - whether persons subject to FPOs should be permitted to apply to the court to have their FPO altered or revoked early
63. Cabinet subsequently agreed to progress all three changes [100-23-MIN-0010, CAB-23-MIN-0491].
64. In the analysis we consider each of these changes against the status quo. In regard to the option of permitting FPOs to be issued to high-risk gang members, we also assess a further identified option for changes to qualifying criteria. The further option would be expanding qualifying offences for all offenders, rather than introducing a new qualifying category specifically for members of gangs and organised crime groups.

2.1 Issue One: allowing FPOs to be issued to high-risk gang members

Option One: *expanded qualifying criteria exclusively for members of gangs and organised criminal groups* (Cabinet's selected option)

65. This option amends section 39A of the Arms Act to introduce a new qualifying criterion for FPOs. Under this approach, in addition to FPOs being able to be issued to any person under current qualifying criteria, FPOs may also be issued to any member or associate of a gang or organised criminal group that commits any defined significant offence.¹⁶
66. In effect, this option creates two categories of qualifying criteria: one which is applicable to any person convicted of a relevant offence; and a second which only applies to offenders who are a member or associate of either a gang or organised criminal group. Under the second category, convictions for a wider range of offences qualify offenders for an FPO.
67. As with the status quo, under this new qualifying category, a Court may issue an FPO upon sentencing a person for a relevant qualifying offence where satisfied an FPO is necessary, reasonable and appropriate to assist in managing the risk the person poses to public safety.

Discussion of Option One:

68. **Public safety** – this option may result in some increase in public safety benefits, as more persons that may demonstrate public safety risks are able to be issued FPOs under the expanded qualifying criteria. The expanded criteria recognise the particular risks associated with members of gangs and organised criminal groups, due to the sudden violence that can result from group conflicts and frequent ability of such individuals to access firearms and the established pattern of their use as a tool to intimidate and cause violence. However, the extent of public safety benefits is uncertain and will be dependent on sentencing Court's assessment that an FPO is appropriate for such individuals.
69. **Rights limits** – this option may impose some restrictions on the right to freedom of association by increasing consequences for offending based on an individual's association with gangs or organised crime groups. However, we do not consider these limits to be significant. Courts are still required to consider, in the full circumstances of the case, whether an FPO is appropriate and necessary.
70. **Administrative efficiency** – this option will have efficiency challenges. For this new qualifying criteria to be used, an additional evidential requirement as to whether a person is a member or associate of a gang or organised criminal group will need to be met. Providing sufficient evidence to show this may be difficult in practice, reducing the effectiveness of this change.

The introduction of a second qualifying criteria for gang members, rather than a single criteria applicable to all, also introduces further complexity into the efficiency of administering the legislation.

¹⁶ The definition of 'significant offence' is still being finalised, but is expected to be a significantly expanded list beyond current qualifying criteria that includes a range of offences punishable by imprisonment of one year or more under the Crimes Act 1961, Arms Act 1983, Misuse of Drugs Act and Psychoactive Substances Act 2013.

Option Two – a single, expanded qualifying criteria

71. This option amends the current qualifying criteria for FPOs under section 39A of the Arms Act to introduce an expanded list of offences that will qualify individuals for FPOs.
72. As with the status quo, no distinction is drawn between whether or not the offender is a member of a gang or organised criminal group. If convicted of a specified offence, the sentencing court may choose to issue an FPO to any individual where it is satisfied that it is appropriate to assist in managing the risk the person poses to public safety.
73. As discussed at paragraph 33 and 68, participation in organised criminal offending can be indicative of a person posing significant risks to public safety, due to the sudden and significant violence that can result from gang conflicts, the access gang members frequently have to firearms and the established pattern of their use as a tool to intimidate and cause violence. However, many entrenched gang members do not have convictions for violent offending, but rather have convictions for drug supply or carriage of firearms that indicate their participation in organised crime – and so do not currently qualify for FPOs.
74. A revised set of qualifying criteria should also capture a number of firearms offences that may indicate high risk to public safety, and may be indicative that a person is prepared to use firearms in a dangerous manner or to intimidate.
75. To deliver to the desired outcome of the FPO regime of improving public safety, the expanded list of qualifying offences would include offences commonly associated with organised crime, such as:
 - a. Offences under the Misuse of Drugs Act 1975 (Misuse of Drugs Act) that are punishable by 2 years imprisonment or more. This will exclude possession offences, but capture offences relating to the manufacture, import and supply of illicit drugs that are frequently associated with organised crime.
 - b. Offences of unlawfully possessing or carrying firearms under the Arms Act.
 - c. Other offences under the Arms Act that are punishable by 2 years imprisonment or more relating to the illegal supply of firearms or firearm parts, removing identification markings from firearms, and careless use of a firearm.

Discussion of Option Two:

76. **Public safety** – As with option one, this approach will enable some individuals that pose risks to public safety and who do not meet current qualifying criteria to be issued FPOs, resulting in some public safety gains. However, the extent of gains will be uncertain and dependent on courts assessments of where FPOs are appropriate to issue.

This option may result in some additional public safety benefits beyond Option One by allowing offenders that cannot be demonstrated to be a member of, or associated with, a gang or organised criminal group to qualify for FPOs, but this additional benefit is likely to be marginal.
77. **Rights limits** – we do not consider this option will have any material impacts on rights.
78. **Administrative efficiency** – we do not consider this option will materially change efficiencies from the status quo. The assessment of whether an FPO is issued will

continue to be whether an individual has committed a specified qualifying offence and the sentencing court considers an FPO to be appropriate.

How do the options compare to the status quo/counterfactual?¹⁷

	Status Quo	Option One: expanded qualifying criteria exclusively for members of gangs and organised criminal groups	Option two: single expanded qualifying criteria
Public safety	0	<p>+</p> <p>Some gains likely as FPOs may be issued to more high-risk individuals, but extent of benefits unclear.</p>	<p>+</p> <p>Some gains likely as FPOs may be issued to more high-risk individuals, but extent of benefits unclear.</p>
NZBORA compliance	0	<p>0</p> <p>Creates some restrictions for freedom of association but not significant.</p>	<p>0</p> <p>No material impacts.</p>
Administrative Efficiency	0	<p>-</p> <p>To benefit from change will require showing membership in gang or criminal group, an additional requirement from status quo.</p>	<p>0</p> <p>No material impacts.</p>
Overall assessment	0	0	+

Police's preferred option

79. Police considers Option Two to be preferable. We consider this approach will result in the public safety gains sought by allowing FPOs to be issued to more persons who pose public safety risks. This option will also be more efficient to administer than Option One, as evidence of membership in a gang or organised criminal group would not be required.

¹⁷ In assessing options against our criteria, we have utilised the following indicators:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same the status quo
- worse than the status quo
- much worse than the status quo

2.2 Issue Two: Monitoring of compliance

Option for change: introduce without-cause search powers associated with FPOs

80. This option amends the SSA to introduce new specialised search powers associated with FPOs. Under this new power, searches may be conducted where Police has reasonable grounds to suspect a person is subject to an FPO. There is no requirement to have reasonable grounds to suspect an offence or legal breach or for a warrant to be obtained.
81. Searches may be conducted of the person, any vehicle they are present in or control (including a power to search other persons present in the vehicle), and any premises that they occupy or control.

Discussion of option for change

82. **Public safety** – this option addresses one of the major challenges of the current FPO system in achieving greater public safety benefits by enabling more proactive monitoring of persons with FPOs.

Qualitative evidence from Police in several Australian States that permit searches of FPO subjects at lower evidential thresholds than reasonable suspicion of an offence is that these search powers are a highly effective tool to improve public safety. Police in these jurisdictions have advised that these search powers have been effective for proactively identify persons breaching FPOs, driving behavioural change among gang and organised crime offenders, and gathering intelligence regarding criminal groups. We therefore consider this change is likely to result in notable benefits to public safety.

83. **Rights limits** – this option will represent significant limitations on the rights of individuals subject to FPOs that are guaranteed by NZBORA, in particular the right to be secure against unreasonable search and seizure.

These limits on rights may pose risks as to whether the expected public safety benefits of searches are realised. For example, fewer FPOs may be issued by Courts if they consider that FPOs are now overly burdensome as a result of the intrusions on rights which an individual faces as a result of these new search powers. Additionally, there is a risk that evidence discovered in searches is deemed inadmissible if Courts find the search powers used to obtain that evidence were exercised unreasonably. However, these risks can be mitigated in implementation, such as through ensuring clear operational Police policies limit the use of searches to only reasonable circumstances.

84. **Administrative efficiency** – expanded search powers may result in more frequent searches being conducted and more frequent detection and prosecution of breaches, resulting in some increased administrative costs, but we expect these additional costs to be marginal.

How does the option compare to the status quo/counterfactual?

	Status Quo	New search powers
Public safety	0	<p>++</p> <p>As police will have the capability to ensure that FPO conditions are being adhered with the introduction of new specific search powers, this will have strong public safety benefits as compared with the status quo.</p>
NZBORA compliance	0	<p>--</p> <p>Significant limit on the rights of individuals with FPOs. These limits may also pose risks to the effectiveness of changes if result in fewer FPOs issued.</p>
Administrative Efficiency	0	<p>0</p> <p>No material impacts.</p>
Overall assessment	0	<p>+</p> <p>Based on higher weighting given public safety criteria, we consider better than status quo.</p>

Police's preferred option

85. Police prefers the option to include a new search power in the legislation. While this option introduces significant limits to rights, we consider that these issues may be justified. We have applied a strong weighting to public safety criteria as this is the underlying objective of the FPO regime. Impacts on rights may be mitigated somewhat in implementation through mechanisms like operational Police policies limiting when searches can be conducted to reasonable circumstances.

2.3 Introduction of a review and revocation process

Option for change: introduce a review and revocation process

86. This option amends the Arms Act to introduce a process for persons with FPOs to apply to the court to have their FPO modified or revoked before expiry. The Court would be able to modify or revoke the FPO where satisfied it is no longer reasonable, necessary or appropriate to manage the risks the person poses to public safety.
87. A person is eligible to make such a review application once half the duration of their FPO (5 years) has passed. A person may also only request a review once in the term of their FPO.

Discussion of option for change

88. **Public safety** – While this option will provide a minor incentive for rehabilitation of offenders (to qualify for their FPO to be revoked), we do not consider that this option will have a material impact on public safety.
89. **Rights limits** – This option will provide significant benefits in terms of upholding NZBORA. Under the current regime, FPOs remain in effect for 10 years and place significant restrictions on the rights of individuals. This option would provide the opportunity that, where an individual's circumstances have changed and they no longer pose a risk to public safety, they are able to have the FPO, and the accompanying restrictions, removed.
90. **Administrative efficiency** – this option will have some costs to Police and the wider justice system, specifically relating to costs for preparing, and resourcing court hearings. Relevant Justice sector agencies have been consulted in regard to this, and have advised that they anticipate that costs will not be significant.

How does the option compare to the status quo/counterfactual?

	Status Quo	Introduction of review and revocation process
Public safety	0	0 May be minor improvements in safety if it encourages rehabilitation, but any benefits will be marginal. No negative effect, as Court's will need to determine that individual no longer poses public safety risk before revocation.
NZBORA compliance	0	++ Allows mechanism to remove burdensome FPO conditions when they no longer are deemed to be necessary to protect public.
Administrative efficiency	0	- Some costs to courts and justice sector in responding to applications, but not considered significant.
Overall assessment	0	+

Police's preferred option

91. Police prefers the option to introduce a review and revocation process to the status quo. We consider this change addresses a current gap in the FPO regime through allowing a mechanism for FPOs to be reconsidered during their term, better recognising individuals' rights. The restriction on persons only being able to make review applications when half the duration of the FPO has passed will assist in avoiding overburdening the Courts.
92. Implementation may also be able to further mitigate administrative costs, such as through limiting the frequency at which individuals can request reviews (for instance, to one application every two years) to disincentivise meritless applications.

What was the Government's preferred option, and what impacts will it have?

93. In summary, the changes agreed by Cabinet [100-23-MIN-0010, CAB-23-MIN-0491 refer] were:
 - a) ***Expanded qualifying criteria exclusively for members of gangs and organised criminal groups:*** creating a new qualifying category enabling Courts to issue FPOs against a member or associate of either a gang or organised criminal group convicted of any significant offence,¹⁸ to recognise the particular risks to public safety posed by firearms in the hands of individuals associated with gangs and organised crime.
 - b) ***Establishing specific search powers for FPOs:*** introducing a new specialised search power associated with FPOs that allows Police to search the FPO subject, vehicles they are present in or control, and premises they occupy or control without cause at any time.
 - c) ***Introducing a review and revocation process:*** establish a process for persons subject to an FPO, after half the length of the FPO has expired, to apply to the Court to request it is revoked or request modifications be made to FPO conditions.
94. Police prefers the options for change to establish specific search powers for FPOs and introduce a review and revocation process to the status quo.
95. We consider the option to expand qualifying criteria exclusively for members of gangs and organised criminal groups could result in some public safety gains, but consider an alternate option of a single expanded qualifying criteria (Option Two) would be preferable to produce similar gains while avoiding introducing new administrative complexities.

¹⁸ This agreement was subject to further advice from officials on what should be deemed a "significant offence" for this purpose.

What are the marginal costs and benefits of the option?

96. The following section provides an overview of expected costs and benefits for the Government's agreed options for change.

Assumptions and limitations

97. Police has made several assumptions for cost-benefit modelling purposes:
- a. approximately 80 – 120 FPOs will be issued per annum.¹⁹
 - b. that approximately 4-8% of all individuals issued with an FPO will apply to have this reviewed and revoked once half the duration of their FPO (5 years) has elapsed.²⁰
 - c. that 4% of all FPOs will result in a breach of FPO conditions.²¹
98. Note that Police have only low to moderate confidence in these estimates. Total numbers of FPOs issued are difficult to estimate due to being conditional on factors like Court and prosecutor discretion. It is also unclear to what extent evidence from Australia will be an accurate predictor of FPO reviews and breaches given the notable differences in these jurisdictions' models for FPOs from New Zealand (as noted at paragraph 24).
99. The below costs and benefits have largely been unable to be quantified. Given the primary benefits associated with these changes is improved public safety, benefits cannot be easily monetised, and the lack of current data on system performance means we are unable to project precise harm reduction impacts of changes.
100. While we have sought general indications of anticipated costs from agencies, given the limited available data regarding current regime performance and how these changes will impact the regime, we have not conducted detailed cost modelling. The below considerations for costs and benefits are also, therefore, largely unmonetised.

¹⁹ In the year November 2022 - November 2023 only 24 FPOs were issued. However, we primarily attribute this to relatively few eligible cases where an offender committed a qualifying offence since November 2022 reaching sentencing during this period, and so expect to see a significant increase in the next 2-3 years. Considering this expected increase and the agreed expansions to qualifying criteria, we consider an estimate of 80-120 FPOs per annum to be appropriate.

²⁰ This estimate is based off the frequency of reviews and appeals to the court under two comparable models: reviews of FPOs under the Victorian Firearms Act 1996 and New Zealand appeals of revocations of firearms licences. **IN CONFIDENCE**

²¹ This was the estimated breach rate when the FPO system was introduced in 2021-2022, based on Australian data. As the conditions of FPOs are not being modified in this package of changes we are continuing to use this estimate, though we note expanded search powers may result in a higher rate of breaches being detected.

Costs and benefits

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Individuals subject to FPOs	<p>Ongoing – Expanded qualifying criteria will mean a greater number of individuals will be issued FPOs.</p> <p>Ongoing – Expanded search powers may lead to a greater number of searches.</p>	<p>Medium – individuals will incur the same non-monetised costs following from the standard conditions of a FPO (being subject to search provisions, limiting persons with whom they can associate, limiting premises in which they can reside). The Courts would be able to modify these standard conditions where needed to support a person's rehabilitative and reintegration (such as employment, education or training).</p> <p>Medium – Expanded search provisions will also pose a non-monetised cost for individuals, potentially leading to more searches of their persons, premises, vehicles, and family/friends</p>	<p>Medium – We anticipate increased qualifying criteria will lead to higher numbers of FPO orders issued.</p> <p>Low – It is possible that greater search powers will lead to more individuals with FPOs being searched, but this will be variable and dependant on Police policies.</p>
Families of the subject person	<p>Ongoing – Families of individuals subject to FPOs may will also need to abide by FPO conditions, particularly in regard to control of their firearms when in the presence of the individual, and potentially being subject to searches.</p>	<p>Low – There may be some non-monetised costs as a result of the imposition of conditions (these are largely the same under the current FPO regime – though to a wider group given expanded eligibility). However, these conditions are modifiable to support the subject person's rehabilitation and reintegration.</p> <p>Low – Expanded search provisions will have non-monetised costs for families of the subject person, as their homes or persons may be searched as a result.</p>	<p>Medium – While families will be impacted by individuals with FPOs, additional impact will be contingent on their being an increased number of FPOs issued as a result of changes.</p> <p>Medium – Similarly, while expanded search powers could impact family members, this will be contingent on this leading to a greater number of searches being carried out.</p>
New Zealand Police	<p>Ongoing – Cost of applying for, monitoring, and enforcing FPOs.</p>	<p>Low – These will be absorbed into standard operational expenditure, and are expected to be minor.</p>	<p>Medium – Will be incurred per order, but any change is contingent on their being an</p>

Affected groups	Comment	Impact	Evidence Certainty
			increase in number of FPOs issued and number of searches carried out.
Corrections	Ongoing – Breaches of FPO orders are liable to imprisonment	Low – Corrections have been consulted and indicate that these changes will have minimal impact on them. It is likely that a number of FPO breaches will occur alongside other charges that would have been laid regardless of whether the firearms prohibition order existed, and probably other ‘new’ charges for associating with other gang members.	Medium – While we anticipate some orders to result in prosecutions, the total number of orders and rate of breaches is unknown. Medium certainty that it will not be significant though.
Court costs	Ongoing – Cost of proceedings for the making of orders, and for breaches of the conditions of an order. Ongoing – Some additional costs involved as a result of the review and revocation process.	Low – The number of orders issued may be low overall and will continue to be incorporated within sentencing. We expect only a small share of FPOs will result in a prosecution.	Medium –Contingent on a number of unknown figures, such as the increased number of FPOs issues, the increased number of breaches discovered, and the use of the review and revocation process.
Justice	Ongoing – Cost of legal aid for any additional breach offences (for defendants of the breach offence).	Low – \$16,000 per individual where stand-alone order sought (civil). This will apply in a very small number of additional cases as compared to the status quo. UNDER ACTIVE CONSIDERATION	Low – Contingent on increased rate of FPOs being issued, and breaches being discovered due to searches.
Prosecution costs (Police and Crown)	Ongoing – Costs for applying for increased number of FPOs under new qualifying criteria, and responding to review requests.	Low-medium – Applications for FPOs continue to be incorporated within sentencing process so additional costs will be low. While some costs will be incurred through responding to review requests numbers of these are expected to be low.	Low
General public	Ongoing – Costs for increased number of FPOs issued, greater search powers, and review of	Low/Neutral – The costs of expanding the FPO regime will be borne by the Government. These costs have been incorporated as part of the Government costs, and can	Medium –There is an assumption that changes will result in increased costs (through

Affected groups	Comment	Impact	Evidence Certainty
	FPOs will be borne by the Government.	be balanced against the higher costs (including human costs) of firearms harm.	number of FPOs issued, reviews, number of searches etc.). Medium – There is an assumption that changes will result in greater public benefit.
Total costs	Ongoing	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Individuals subject to FPOs	Ongoing – Introduction of the review and revocation process will provide individuals with the opportunity to have burdensome conditions removed, and will incentivise rehabilitation.	High – While we anticipate only 4-8% of individuals subject to FPOs will seek a review when available, the impact to those individuals will be significant.	High – individuals who apply for a review and are successful will receive said benefit.
Families of the subject person	Ongoing – increased number of FPOs issued can result in benefits to families of subject person. Ongoing –Conversely to the costs which families face outlined above, they will benefit from the introduction of a review and revocation process.	Medium-High – Benefits for families of individuals subject to FPOs includes, for instance, reduced risk of harm associated with the subject person's access to firearms, especially in family violence situations.	Medium – contingent on more FPOs being issued. Medium – contingent on FPOs being revoked as part of review process.
New Zealand Police	Ongoing – Greater ability to monitor those considered high-risk and subject to a FPO, ability to ensure compliance and act in case of breach.	High – Ability to be able to ensure compliance and clearer dedicated search provisions will result in a safer, simpler and more efficient system for police	Medium – There is limited evidence with which to estimate both how well the orders will affect rates of offending in practice, and how it will affect the broader strategic use of Police resources.

Affected groups	Comment	Impact	Evidence Certainty
Wider Government	Ongoing – The proposals are aimed at reducing firearms-related harm, which will have far-reaching benefit across government.	Medium – Any reduction in firearms-related harm will reduce the actual and resource costs of responding to that harm (i.e. health care, ACC costs, etc.).	Medium – Contingent on as-of-yet unproven benefits of FPOs, and assumptions on figures for FPOs issued and additional search powers used.
General public	Ongoing – Increased public safety and reduced risk of harm, particularly firearms-related harm.	High – Significant benefit as a result of greater percentage of high-risk offenders no longer having access to firearms, and police being able to monitor and ensure that individuals subject to FPOs are adhering to their conditions.	Medium – Contingent on as-of-yet proven benefits of FPOs, and assumptions on figures for FPOs issued and additional search powers used.
Total benefits	Ongoing	High	Medium

Section 3: Delivering an option

How will the new arrangements be implemented?

101. Implementing Cabinet's selected options will require legislative change. We anticipate a Bill will be introduced in late February 2024, alongside other elements of the Government's gang reform package included in the 100 Day Action Plan. We anticipate the Bill will be passed in late 2024, with changes commencing after a six month commencement period in early 2025.
102. Police will undertake the bulk of implementation for these FPO changes. This will include updating operational policies for when FPOs should be considered by investigators and prosecutors and developing guidelines for how new search powers should be used. Minor changes to IT systems will also be required to flag whether new search powers are available for a person subject to an FPO.
103. The Ministry of Justice will be responsible for administering the legislation containing the policy changes. The Ministry of Justice also will provide any necessary operational support or guidance for the judiciary resulting from these changes.

What are the implementation risks?

104. We consider the main risks in implementation relate to the potential for the regime to impact disproportionately on Māori and Pacific peoples, for the regime to be deemed inconsistent with the NZBORA, for the regime to fail to be taken up by judiciary, and for the regime to be underpinned by a lack of appropriate ICT capabilities.

Human Rights and Litigation

105. Changes regarding search powers are likely to limit section 26 of NZBORA – the right to be secure from unreasonable search and seizure. As noted at para 69 above changes to qualifying criteria may also limit section 17, the right to freedom of association. The Attorney-General will provide a report into whether the Bill implementing these changes is consistent with NZBORA prior to its introduction.
106. There are risks associated with NZBORA inconsistent legislation, including:
 - a. Courts may read down the relevant legislation in order to be more rights-consistent
 - b. challenges may be issued to Police exercises of discretionary powers
 - c. individuals may submit claims for monetary damages for breaches of NZBORA-protected rights
 - d. applications may be made for a declaration of inconsistency.
107. If realised, these risks may limit the public safety benefits intended to result from these changes.
108. Mitigations to these risks will be implemented in Police's operationalisation of the FPO framework. As part of this, Police intends to develop clear criteria which limit applications for FPOs to instances where they are necessary to ensure public safety, and limiting searches to where they are reasonably required to monitor compliance.

Judicial uptake of new FPO regime

109. There is a risk that the imposition of new search powers may have a perverse effect if it results in a reduced willingness of Courts to issue FPOs. Courts may only issue FPOs where satisfied an FPO is necessary, reasonable and appropriate to assist in managing the risk the offender poses to public safety. If Courts consider that expanded search powers reduce the circumstances when an FPO is reasonable, this may result in fewer FPOs being issued and therefore reduced public safety benefits from the regime.
110. To mitigate this risk, Police will seek to ensure legislation and associated materials clearly indicate the legislative intent behind these changes. Police also intends to develop further policies and guidance on when FPOs should be applied for by prosecutors, to ensure they are targeted to high-risk individuals where the restrictions imposed by FPOs will be proportionate to the public safety risks posed.

Operational system capabilities

111. Any new search powers provided for under this FPO review will only apply to FPOs issued following the legislative changes. As such, frontline staff will need to have appropriate systems to inform them as to whether an individual is subject to an FPO, and whether that particular FPO permits Police to utilise warrantless search powers to verify that the FPO conditions are being adhered to.
112. There is a risk that, if these capabilities are not in place, frontline staff could be apprehensive to conduct any searches, to avoid risk of conducting an illegal search. There is also a risk of mistaken searches of individuals who are not subject to these search powers, meaning that search would be deemed a breach of NZBORA, and any evidence obtained would be considered inadmissible.
113. Police considers this risk is low, as our existing information systems can be adapted to provide frontline staff the necessary information and capability.

Search power use

114. Without cause search powers introduce an increased risk that searches may be conducted unreasonably by Police. Unreasonableness could occur if a person is, for instance, excessively made subject to searches, searches are conducted at unreasonable times or in an unreasonable manner.
115. Risks associated with search powers being used unreasonably will be particularly acute for vulnerable population groups that may disproportionately qualify for FPOs. For example, Māori and Pacific peoples, particularly Māori and Pacific men, are overrepresented in the criminal justice system and will be more likely to receive convictions that will qualify them for an FPO. Expanded search powers, if used unreasonably may result in significant disruption and harm for communities and whānau that include someone subject to an FPO, as residing with or travelling in vehicles with the FPO subject may expose them to Police searches.
116. Search powers being used unreasonably will also introduce risks that evidence gathered is deemed inadmissible and of liabilities to Police and the Crown.
117. To mitigate these risks Police will ensure there are comprehensive guidance and policies regarding the use of without cause search powers.

How will the new arrangements be monitored, evaluated, and reviewed?

118. All 100 Day Plan proposals involving new policy are generally required to have a post implementation review (PIR) undertaken one year after the relevant legislation is enacted. This will provide an early check of whether changes are operating as intended.
119. Police note that given the lack of baseline data available about the performance of the FPO regime, the scope of assessment able to be undertaken in this early PIR is likely to be limited.
120. As part of implementation planning for this Bill, Police have determined the need to collect and be able to report on all aspects of the changes. This will include data on the FPOs made, as well as relevant information relating to those orders (i.e. proceedings related to breaching orders, etc.).
121. Under section 170 of the SSA, Police are required to provide details of the use of all search powers in annual reports. This annual reporting requirement will apply to new search powers associated with FPOs introduced through these changes.
122. The National Party-Act Party coalition agreement includes a commitment to review and replace the Arms Act within the current parliamentary term. This legislative review may provide a further opportunity to consider the effectiveness of these FPO changes as part of determining if and how the FPO framework should be transitioned to new firearms legislation.

Annex One: Key themes from previous FPO consultation

2020 Public consultation

Between November 2019 and January 2020 Police consulted on proposals to introduce a firearms prohibition order (FPO) regime. 41 submissions were received, 30 from individuals and 11 from organisations (including the New Zealand Police Association, Amnesty International Aotearoa, Council of Licenced Firearms Owners, Gun Control New Zealand, New Zealand Law Society and Victim Support New Zealand).

General views on FPOs

Views were divided on introducing an FPO regime, with 21 submitters indicating they overall supported FPOs introduction, while 13 submitters did not.

Reasons for supporting the introduction of FPO included considering that more firearms control was needed and that they would assist in reducing victimisation. Reasons for opposing FPOs being introduced included considering FPOs were not needed or would not be effective, and opposing additional firearms control.

Common concerns shared by both submitters supporting and opposing the introduction of FPOs were the impacts on individual human rights and privacy, and potential impacts on particular groups and communities within society.

Who should issue FPOs

A majority of submitters preferred FPOs to be issued by the Court, rather than the Commissioner of Police. 19 of the 24 submitters responding to this question preferred an option of either the Court issuing orders at sentencing (the current model) or the Court issuing orders on an application by Police.

Reasons for these views varied, but included the Court being more appropriately placed to assess the cumulative effects of sentencing and consider the rehabilitation needs of offenders.

The New Zealand Police Association preferred an option where Police could apply to the Court seeking an FPO both at sentencing for a qualifying offence and at any subsequent time after sentencing.

Eligibility criteria comments

Submitters were largely supportive of eligibility for FPOs being determined by convictions for serious offences (23 of 33 submitters responding), and a majority did not consider a qualifying conviction should need to involve a firearm.

A majority (21 of 30) also supported FPOs being able to be issued based on historical offending. Views were divided however, on how recent convictions should be in order to qualify for an FPO being issued – i.e. if a conviction within 5, 10, or 15 years was appropriate to make a person eligible.

Submitters supporting eligibility based on convictions noted that previous convictions were an indicator of future behaviour. Views were divided on the types of convictions that should qualify for an FPO, with some expressing support for a low threshold for orders being issued (e.g. Victim Support New Zealand), while others considered qualifying offences needed to be clearly linked to the criminal use of firearms (e.g. the New Zealand Law Society).

A slight majority (18 of 31) considered a person being a known or prospect gang member should make the person eligible for an FPO, without requiring a criminal conviction. Reasons given for supporting a gang member criterion included the link between gangs and firearms, gang intimidation and the need for community safety. Reasons for opposing this criterion included the impact on human rights and privacy, impacts on Māori, the potential for rehabilitation, and the potential to criminalise non-criminal behaviours.

Search Powers

Preferences were evenly split between whether FPOs should be monitored and enforced under existing law (14 submitters) or whether “without cause” search powers should be introduced (13 submitters).

Reasons given for preferring enforcement under the existing law included privacy risks, evidence under the New South Wales FPO system that a low percentage of FPO searches result in firearms being found, impact on human rights and the potential for broad search powers to be abused.

The primary reason for preferring “without cause” search powers was that Police should be able to conduct checks any time there is a legitimate reason for concern. The New Zealand Police Association considered the impact of a “without cause” search power on individual rights was reasonable given the purpose of the legislation.

2022 Submissions to Select Committee

The Justice Committee called for public submissions on the Firearms Prohibition Orders Legislation Bill between February and March 2022. 51 submissions were received: 34 from individuals; and 17 from organisations (including the New Zealand Police Association, New Zealand Law Society, Council of Licenced Firearm Owners, New Zealand Deerstalkers Association, Gun Control New Zealand and New Zealand Council of Victim Support Groups).

General views on FPOs

Submissions were largely supportive of the Bill, with 32 submissions supportive and 8 opposed (the remainder did not express a position).

Submissions opposing the Bill generally focused on the potential disproportionate impact FPOs may have on Māori and licensed firearms owners, and the application of Police search powers to people subject to an FPO.

Eligibility criteria comments

Submissions on the Bill regarding eligibility criteria were focused on two issues:

- **Family violence:** 25 submissions commented on links between domestic violence and firearms, with a number recommending additional qualifying offences be added regarding domestic violence.
In response to these views, the offence of strangulation or suffocation (section 189A of the Crimes Act 1961) was added as an additional qualifying offence. Suggestions to include a breach of a protection order (section 112 of the Family Violence Act 2018) as a qualifying offence were not adopted, as the maximum penalty for this offence is significantly lower than other qualifying offences, and Courts making protection orders may consider risks associated with firearms.
- **Gangs:** Five submitters commented that the proposed FPO regime could be used in response to increases in firearms harm caused by gangs. The New Zealand Police Association recommended that “gang affiliation”, without requiring a criminal conviction, should be added as an eligibility criterion for an FPO (while noting proving and defining gang affiliation in legislation would be difficult).
Conversely, two submitters considered the Bill’s FPO regime focused too much on gang members and should be more focused on domestic violence harm.

Search Powers

Seven submitters commented on Police search powers to investigate and monitor compliance with FPOs.

Six of these submitters (including the Council of Licenced Firearms Owners, New Zealand Deerstalkers Association and Office of the Privacy Commissioner) considered the extension of search powers under the Search and Surveillance Act 2012 to FPOs was inappropriate.

These submitters were concerned that licensed firearms owners, who may associate with people subject to an FPO, would inadvertently be subject to Police searches or surveillance. Conversely the Police Association noted the Bill did not provide search powers associated with FPOs equivalent to Australian jurisdictions and recommended the inclusion of new legislative powers to search persons subject to FPO and vehicles containing a person subject to an FPO in public places.

Annex Two: Comparison of international FPO models

	Current NZ	Australian examples				Canada	United Kingdom
		New South Wales	South Australia	Victoria	Western Australia		
Who issues	Court on sentencing	Member of Police inspector or above	Authorised member of Police	Member of Police commander or above, or employee at executive level	Member of Police commander or above	Court on sentencing or application by Police	Automatic on conviction
Grounds for Issuing	Convicted of serious offence, and Court satisfied reasonable and necessary	Public interest test	Either: <ul style="list-style-type: none"> public interest test person is member or participant in criminal organisation. 	Public interest test Grounds include: <ul style="list-style-type: none"> behavioural history known associates other information suggesting risk to public safety. 	Public interest test Grounds include: <ul style="list-style-type: none"> the person is not fit and proper their firearms possession likely to result in undue danger. 	Mandatory order after conviction for serious violence, firearms and drug offences. Discretion to also make order after conviction for other actual/threatened violence offences, and on application by Police were satisfied in the interests of public safety the person should not possess a weapon.	Sentence of imprisonment of 3 months or more
Duration	10 years	No specified end date	No specified end date	<ul style="list-style-type: none"> 10 years for people aged 18+ 5 years for people aged under 18 	10 years	5 years, 10 years or life depending on type of offending and if first offence	<ul style="list-style-type: none"> Life, where qualifying sentence was for 3+ years 5 years where sentence less than 3 years
Effect – search	No search powers specifically tied to orders	<ul style="list-style-type: none"> Warrantless search where reasonably required to determine if a breach of FPO has occurred Permits searches of person, vehicles and premises they occupy or control 	No search powers specifically tied to orders	<ul style="list-style-type: none"> Warrantless search power where reasonably required to determine if person possesses firearm Permits searches of person, vehicles and premises they occupy or control Permits searches of persons in their company only where reasonable suspicion they have firearm or may be committing or about to commit offence 	<ul style="list-style-type: none"> Warrantless search powers where reasonably required to determine if a breach of FPO has occurred Permits searches of person, vehicles and premises they occupy and control, and anyone in their company 	No search powers specifically tied to orders	No search powers specifically tied to orders
Effect – restrictions	<ul style="list-style-type: none"> Must not access, possess or use firearm or related item Must not reside at premises firearm stored or visit firearms-associated premises Must not be in presence of person with firearm Offence for another person to supply with firearm 	<ul style="list-style-type: none"> Must not acquire, possess, or use firearms, parts or ammunition Must not reside at premises firearm stored or visit firearms-associated premises Offence for another person to supply with firearm 	<ul style="list-style-type: none"> Must not acquire, possess, or use firearms, parts or ammunition Must not reside at premises firearm stored or visit firearms-associated premises Must not be in company of person with firearm Offence for another person to supply with firearm 	<ul style="list-style-type: none"> Must not acquire, possess, carry or use a firearm or firearm related item Must not reside at premises firearm stored or visit firearms-associated premises Offence for another person to supply with firearm 	<ul style="list-style-type: none"> Must not acquire, be in possession of or use a firearm Must not reside at premises firearm stored or visit firearms-associated premises Must not be in company of person in possession of firearm Offence for another person to supply with firearm 	<ul style="list-style-type: none"> Must not access any restricted weapon, including firearms or ammunition Offence for another person to supply with firearm 	<ul style="list-style-type: none"> Must not possess firearms or ammunition Offence for another person to supply with firearm
Appeal rights	Appealable to courts as an appeal against sentence	Right of review to Civil and Administrative Tribunal	Right of review to Civil and Administrative Tribunal	Right of review of decision to make order to Victorian Civil and Administrative Tribunal. Can also request review if more than half time for order has expired	Right of review to State Administrative Tribunal	Appealable to superior court. Court can remove order on application if qualifying circumstances no longer apply	Person may apply to Court for removal of prohibition