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NSW Workplace Protection Orders Consultation

March 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback on the New South Wales Government's consultation on Workplace Protection Orders (WPOs).

ARC represents a \$444 billion sector and employs 1.4 million Australians, one in ten workers, making retail the nation's largest private sector employer and a cornerstone of the Australian economy.

Our membership spans the full breadth of Australian retail: from family-owned small and independent businesses, which comprise 95 per cent of our membership, to the largest national and international retailers that support thousands of jobs and sustain communities across both metropolitan and regional Australia. Our industry operates more than 155,000 retail outlets nationwide, with the majority of those also represented by an online or e-commerce presence.

A strong retail sector delivers widespread benefits to all Australians, with a significant portion of every dollar spent in retail flowing back into employees, suppliers, superannuation funds, and local communities. We are united in advocating for the policy settings, reforms and collaboration that will drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

Retail is uniquely exposed to crime and anti-social behaviour because it operates in highly accessible, customer-facing environments. When crime occurs in retail settings, the effects are not confined to one business. They affect workers, neighbouring businesses, shopping precincts, customer confidence and the broader community.

Executive Summary

ARC strongly supports the introduction of a WPO scheme in New South Wales. Retail crime has escalated beyond opportunistic theft and increasingly involves repeat offending, intimidation, harassment, abuse and violence directed at frontline workers. The NSW consultation paper itself notes reported increases in violence, harassment and threats towards staff in front-facing workplaces, particularly in retail, and refers to retailer data showing very high rates of verbal abuse and physical abuse, alongside around 800,000 reported retail crime incidents nationally in the past year.

ARC also welcomes the NSW Government's recognition that WPOs should be considered as part of a broader package rather than as a standalone response. The consultation paper notes that NSW has already introduced special assault offences for retail workers and launched Operation Percentile to target recidivist and high-harm retail offending. The ministerial announcement similarly positions WPOs as an additional measure that would build on existing retail worker protections and enforcement activity.

WPOs are the key missing piece in the current framework. They provide a direct legal mechanism to prevent known repeat offenders from returning to stores where they have caused harm, helping to break the cycle of repeat offending. ARC has publicly supported this approach in NSW and considers WPOs to be an important and necessary addition to the toolkit for protecting retail workers.

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ARC supports a NSW WPO scheme that is:

- workplace-focused and preventative, rather than merely punitive after harm has occurred;
- employer-led, with provision for an employer to formally appoint a third party to act on its behalf;
- capable of addressing repeat and mobile offenders, including across multiple premises where appropriate;
- administered through a public authority, with service by police or another authorised officer rather than by the employer or worker; and
- designed to complement, not replace, existing criminal offences, police operations and retailer safety controls.

Retail workers should not be expected to tolerate abuse, intimidation or violence as part of their job. Australia needs a retail crime response that prevents harm before it occurs, not one that relies solely on after-the-fact enforcement. Workplace Protection Orders are a practical reform that would help stop known offenders from cycling through retail environments unchecked.

The role of WPOs in the NSW legislative landscape

ARC agrees with the consultation paper that WPOs should be understood in the context of existing NSW criminal offences, Apprehended Violence Orders (APVOs), place restriction orders and other tools. Those measures remain important. However, ARC also agrees with the paper's core proposition that APVOs and place restriction orders are schemes of general application, whereas WPOs are specifically tailored for workplaces.

Retail settings present a distinct workplace safety problem. They are publicly accessible, customer-facing environments in which workers may be repeatedly exposed to the same high-harm offenders. Existing tools such as trespass laws, general criminal offences and APVOs do not always provide a sufficiently direct or practical mechanism for employers to exclude repeat offenders from a workplace before further harm occurs. The NSW consultation paper recognises that employers are already able to undertake other safety measures such as security guards and CCTV, but those measures do not substitute for a direct legal exclusion mechanism.

That is the central case for a WPO scheme. WPOs should fill the gap between broad criminal law protections and the practical workplace reality of repeat threatening, abusive or violent conduct directed at retail staff.

Scope of the scheme and who may apply

ARC supports the NSW Government proceeding with a WPO scheme for retail workers.

The consultation paper raises the possibility of extending the scheme to other front-facing industries. ARC acknowledges that other sectors may experience similar risks. However, the case for retail is already compelling, and the NSW Government has itself recognised the distinct risks faced by retail workers through the introduction of special assault offences and the development of Operation Percentile. A retail-first model would therefore be a practical and proportionate way to implement the scheme, while preserving the option of future expansion if warranted.

If the Government does decide to broaden the scheme, it should do so carefully and in a way that does not dilute the immediate retail worker safety objective.

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ARC also supports an employer-led application model. The WPO framework should align with the employer's legal duty of care and workplace safety obligations. ARC's preferred approach is that applications be brought by the employer, or by a third party formally appointed by the employer in writing to act on its behalf. This preserves accountability while allowing smaller retailers or more complex retail networks to access practical support from an authorised representative where needed.

ARC does not support a model in which standing is opened more broadly without employer authorisation. While unions, employer associations, health and safety representatives and others may have a legitimate interest in worker safety, the employer remains the duty holder and should remain the initiating authority. Allowing third parties to act independently of the employer risks creating uncertainty about accountability, evidence management and the relationship between a WPO application and the employer's broader workplace safety response.

ARC therefore recommends that NSW adopt a model under which:

- the employer is the applicant; and
- a third party may apply only where formally appointed by the employer.

Coverage of orders and threshold for making them

ARC supports a model that protects an identified worker or workers, but NSW should be careful not to define the scheme too narrowly.

The consultation paper proposes a model in which the employer applies for a WPO on behalf of a specific person in need of protection, rather than to protect a class of persons or the workplace more generally. ARC understands the rationale for that approach. However, retail offending often does not affect just one named worker. Repeat offenders may threaten multiple employees across repeated visits, target a store generally, or move across multiple stores within the same chain or shopping centre. Data from major retailers indicates that up to one third of offenders have recorded incidents across multiple stores, underscoring the limits of a model framed too narrowly around a single named person.

ARC is concerned by any suggestion that WPOs are not intended to protect the workplace more broadly from specific high-harm offenders. In practical terms, the purpose of a WPO is to make the workplace safer for employees by excluding individuals who present an ongoing risk. In retail settings, offending is often indiscriminate as between workers, and the practical protective effect of an order will frequently extend beyond one individual team member.

A WPO should not be framed as protection for a general and undefined class of persons. However, the scheme should make clear that a WPO may be sought where one offender has engaged in repeated harmful conduct affecting multiple specific employees at a workplace. Those incidents should be considered in their totality, rather than artificially separated by reference to one individual victim at a time.

Recent retailer data from New South Wales reinforces this point. Between 1 January 2026 and 28 February 2026, one retailer recorded 99 individuals engaging in threatening behaviour and 50 serious events, including assault, damage, robbery, disorderly conduct, breach of banning notice and third-party theft. More than half of those individuals had multiple prior events, around one-third had events across multiple locations, and 12 individuals had more than 20 prior events. This pattern underscores that high-harm retail offending is often repeat and mobile in nature, and cannot always be neatly confined to one worker, one incident or one location.

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For that reason, the NSW scheme should be designed flexibly enough to:

- protect more than one worker where appropriate;
- allow the court to consider patterns of conduct affecting multiple specific workers at a workplace, not only one isolated interaction; and
- permit orders to operate across multiple premises where the evidence shows that is necessary to protect workers from repeat and mobile offenders.

Multiple-premises coverage is important because it reflects the way high-harm retail offending actually occurs in practice. This is particularly relevant in shopping centre environments, where repeat offenders may target multiple retailers within the same centre over time. In those circumstances, the scheme should be flexible enough to allow an application to be made on behalf of affected retailers where there is clear authority to do so, rather than requiring each individual store to pursue a separate order in isolation.

ARC also supports a risk-based and preventative threshold for the making of a WPO. In retail settings, many harmful incidents create a clear and foreseeable risk to workers, even where the conduct may form part of a broader pattern across multiple incidents, employees or locations. The scheme should therefore allow the Court to respond to that ongoing risk in a practical and preventative way.

ARC's preferred model is that a court may make a WPO where satisfied that:

- the respondent has engaged in personal violence, threats, harassment, intimidation or similar harmful conduct in relation to a workplace; and
- there is a risk they may do so again if the order is not made.

That threshold is better aligned with the realities of repeat retail offending and with the purpose of WPOs as a workplace protection mechanism.

Terms and duration of orders

ARC broadly supports the approach proposed in the consultation paper, including standard terms prohibiting assault, threats, stalking, harassment or intimidation in the workplace, and the destruction or damage of workplace property. ARC also supports giving the court power to impose any other prohibitions or restrictions necessary or desirable to ensure the safety and protection of the worker in the workplace.

Orders should be flexible enough to prohibit a respondent from:

- entering or remaining at a workplace;
- approaching a workplace;
- contacting or approaching named workers in connection with the workplace; or
- engaging in specified threatening, harassing or intimidating conduct.

At the same time, the model should remain practical and enforceable. The Court should retain discretion to tailor conditions proportionately to the risk presented.

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Where a WPO is made in relation to a workplace, exclusion from the relevant site should ordinarily be a core condition of the order. If the scheme is intended to protect workers from known repeat offenders, its practical value will often depend on preventing the respondent from returning to the workplace.

ARC strongly supports the Court being able to make interim WPOs where necessary to protect workers before a final hearing. This will be an essential feature of any effective scheme. In serious retail settings, protection cannot always wait for the ordinary pace of proceedings, particularly where the offender is known to have engaged in threatening, abusive or violent conduct. Interim protection will be important if the scheme is to operate as a practical workplace safety mechanism rather than only after delay.

ARC supports a default duration of 12 months where the court does not specify a period. That better reflects the recurring nature of high-harm retail offending and is consistent with ARC's broader WPO advocacy.

Short exclusion periods are rarely sufficient to address persistent, repeat offending. A 12-month default order is more realistic for a workplace protection scheme, while still leaving room for the Court to tailor duration based on the facts.

ARC also supports allowing a WPO to cease operation or be varied where circumstances materially change, provided this occurs through a clear and safe court-supervised process.

Service, contravention and enforcement

ARC strongly supports service by police or another authorised enforcement officer, not by the employer, worker or another private applicant.

Given the elevated risk posed by people who may be subject to WPOs, many of whom may have displayed violent, threatening or abusive behaviour, service should not be the responsibility of the employer or the affected worker. Service by police or another authorised officer is safer, carries appropriate authority, and avoids placing additional burdens and risk on already affected workplaces.

Where personal service is not practicable, the legislation should permit court-managed alternative service through authorised officers at no cost to the applicant.

ARC also supports making it a criminal offence to knowingly contravene a WPO, with the same maximum penalties as the existing offence for breaching an APVO: 2 years imprisonment, 50 penalty units, or both. That is the approach proposed in the consultation paper and is appropriate.

ARC supports the safeguard that a person cannot be found guilty of contravening a WPO unless they were present in court when the order was made or have otherwise been served with a copy. That is an important fairness protection.

ARC also encourages a practical evidentiary framework that reduces the burden on affected workers. Employer-provided statements, CCTV and other reliable business records should be capable of supporting applications where appropriate, so that traumatised workers are not unnecessarily required to carry the full evidentiary burden in person.

In relation to enforcement, ARC considers that NSW Police Force should remain the primary enforcement and prosecution agency for contraventions, given the criminal nature of the breach and the need for a clear and authoritative enforcement pathway. SafeWork NSW has an important role in workplace safety compliance and broader

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worker protection, but the enforcement of WPO contraventions should not become fragmented or uncertain. A police-led model will be clearer for workers, employers and the courts.

WPOs should complement existing controls and strategies

ARC strongly supports the NSW Government's efforts to improve retail worker safety through Operation Percentile, dedicated police engagement, assault offences, and broader tripartite work. The consultation paper and ministerial statement both make clear that NSW has already put in place significant measures, including targeted operations, dedicated retail police contacts, special offences, and workplace guidance initiatives.

WPOs should form part of that broader response, alongside the measures already in place. Retailers already invest significantly in controls and safety initiatives, including CCTV, security guards, body-worn cameras, de-escalation training, duress devices, and retail crime intelligence and information-sharing systems. WPOs would complement those existing measures by adding a direct legal mechanism to exclude known repeat offenders from retail workplaces.

WPOs should sit alongside:

- stronger assault offences,
- intelligence-led policing against recidivist and high-harm offenders,
- workplace safety obligations,
- and retailer-led prevention and de-escalation measures.

Conclusion

ARC strongly supports the introduction of Workplace Protection Orders in New South Wales.

A NSW WPO scheme should be employer-led, preventative, risk-based, enforceable, and workable in practice. It should be capable of addressing repeat and mobile offenders. It should be served and enforced through appropriate public authorities. It should complement existing retailer safety controls and police-led retail crime strategies.

We also encourage the NSW Government to provide clarity on the interaction between any NSW WPO scheme and existing Commonwealth workplace protection frameworks, particularly for nationally operating employers and Commonwealth entities.

If a WPO scheme is legislated, implementation should be expedited. With retail crime continuing to escalate, an extended delay between passage and commencement would unnecessarily defer the worker safety benefits the scheme is intended to deliver. This is particularly important given the concentration of harm among repeat and high-harm offenders. Industry data indicates that the top 10 per cent of offenders are responsible for around 60 per cent of total retail crime harm and loss, which underscores the need for practical protections to commence as early as possible.

If designed well, WPOs will provide the direct workplace-focused protection that is currently missing from the NSW framework and will materially strengthen protections for frontline retail workers.

ARC would welcome the opportunity to continue engaging with the NSW Government as the model is refined. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

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