



Australian Government

Attorney-General's Department

Criminal Justice Division

Consultation Paper

Proposed amendments to the Firearms Importation Regime

Regulation 4F and Schedule 6 of the
Customs (Prohibited Imports) Regulations
1956

Revised version October 2012

Contents

Introduction	4
Next steps	5
Making a submission.....	5
Proposals proceeding.....	6
A1. Definition of a handgun.....	6
A2. Co-location of muzzle-loading and paintball marker handguns	6
A3. Blank-fire cartridge firearms	6
A4. Clarification of meaning of ‘flare gun’ under the definition of a firearm.....	7
A5. Interchangeable magazines.....	7
A6. Restrictions on .50BMG firearms and derivatives.....	7
A7. Interchangeable firearms parts	8
A8. Definition of firearm parts	9
A9. Release of Category C dealer stock	9
A10. Amendment to the Specified person test – Vertebrate pest controllers	10
A11. Prohibited firearm accessories.....	11
A12. Telescopic and collapsible stocks	11
A13. Detachable stocks	12
A14. Definition of firearm accessory	12
A15. Consolidation of firearm accessories under Part 2 of Schedule 6	13
A16. Silencers and sound moderators.....	14
A17. Integral or attached silencers.....	14
A18. Paintball markers	14
A19. Safety requirements for firearms.....	15
A20. Electroshock cartridges	16
A21. Powerheads.....	16

A22. Removal of terminology ‘as soon as practicable’ from conditions of import	16
A23. Conditions relating to importations	17
A24. New Zealand sports shooter applications	17
New proposals	18
B1. Category H (Handguns) Scheme stock limits to be removed	18
B2. Category C Firearms Dealer authorisation to deal in specified categories of firearms.....	18
B3. Detachable box magazines	19
B4. Extend Category C dealer stock system to Category D firearms	19
B5. Reduced transhipment permit requirements	20
B6. New limb to the specified purposes test for ammunition manufacturers.....	20
B7. Power to make a determination	21
B8. Introduction of the ‘Military and Police Supplier Test’	22
Amendments not progressing	25
C1. Classification of revolving rifles	25
C2. Damaged or unfinished firearm parts, and subcomponents of firearm parts	25
C3. Restrictions on .25 ACP calibre ammunition	25
C4. Power to revoke or amend permission	26
C5. Sports Shooter and International Sports Shooter Certification (Category C)	26
C6. Meaning of certified sports shooter (Category C).....	26
C7. Amendment to the Specified Purposes test – research and development.....	27
C8. Definition of firearm magazine.....	28

Introduction

In September 2010, the then Minister for Home Affairs and Justice, the Hon Brendan O'Connor MP, released a consultation paper setting out a total of 32 proposed amendments to the rules governing the import of firearms contained in Schedule 6 of the *Customs (Prohibited Imports) Regulations 1956*.

The Attorney-General's Department received in response 61 submissions from members of the public as well as additional information provided in subsequent stakeholder meetings.

The thirty-two proposals were also considered by the Commonwealth Firearms Advisory Council (CFAC) which set out a number of detailed recommendations to the Minister.

Since that time, the focus of Commonwealth firearms policy has been directed to addressing the spate of organised crime related shootings across Australia. This resulted in a special meeting of the Standing Council on Police and Emergency Management at which Australian, state and territory government ministers announced a comprehensive package of measures to tackle firearms crime. This includes improvements to law enforcement powers, information technology, intelligence and operational coordination.

However, this activity meant that the Australian Government was unable to proceed with the planned amendments to the import regulations within the timeframe originally envisaged.

In recognition of the time that has passed, and the need to update stakeholders of current developments, the Government has decided to release an updated consultation paper. This paper incorporates a number changes made as a result of the consultation process.

In particular, there are 24 proposals (numbered A1-A24) that were in the earlier consultation paper, some of which have been modified based on comments received. There are also eight new proposals (numbered B1-B8). Eight of the earlier proposals (numbered C1-C8) are not proceeding; these are listed at the end of this paper with a short explanation.

This consultation paper provides an overview of the proposed amendments and the issues they aim to address. The Government again invites your views on this body of proposals.

Unless otherwise stated, all references to the Regulations are to Schedule 6 of the *Customs (Prohibited Imports) Regulations 1956*. Where definitions are referred to, these definitions can be found in Regulation 4F of the Regulations. All references to 'the Department' relate to the Commonwealth Attorney-General's Department. All references to 'Customs and Border Protection' relate to the Australian Customs and Border Protection Service.

The Regulations can be accessed from the [ComLaw website](#).

www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200400519?OpenDocument

Next steps

At the close of the consultation period, the Department will prepare the Regulation Amendments in their final form, together with formal instruments such as the Explanatory Statement. These will be released for a further period of public consultation.

The Government intends to release these for comment in mid-January 2013, with the final regulations coming into force around March.

Making a submission

If you would like to comment on this consultation paper, please forward your submission no later than **Friday 14 December 2012** to firearms@ag.gov.au or by facsimile to (02) 6141 5463. Submissions may also be mailed to:

Consultation Paper
Firearms Team
Criminal Justice Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

All submissions will be treated as public unless the author clearly indicates to the contrary.

A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

A1. DEFINITION OF A HANDGUN

The Regulations currently do not define a 'handgun', potentially creating ambiguity.

It is proposed that the following definition of handgun be inserted into Regulation 4F(4) to the Regulations:

'A handgun means a firearm that:

- a) is reasonably capable of being raised and fired by one hand; and*
- b) is reasonably capable of being carried or concealed about the person; and*
- c) has an overall length not exceeding 650mm.'*

This definition was developed in consultation with the Australian Federal Police and with reference to current definitions of handguns in each jurisdiction. Jurisdictional regulatory controls surrounding handguns will not be affected by the introduction of this definition.

A2. CO-LOCATION OF MUZZLE-LOADING AND PAINTBALL MARKER HANDGUNS

Handguns (with some exceptions) are classified under Part 2 of Schedule 6 as Item 9 articles. However, muzzle-loading handguns currently fall under Item 2 (as muzzle-loading firearms) and paintball marker handguns fall under Item 14A (as paintball markers).

It is proposed that both articles be included under Item 9 in order to resolve both definitional and technical ambiguity in the Regulations and to create simplicity for users.

The changes will not affect the actual regulatory controls for these items. Muzzle-loading handguns and paintball marker handguns will not be subject to the category H scheme.

A3. BLANK-FIRE CARTRIDGE FIREARMS

The definition of 'firearm' in Regulation 4F(4) does not specifically include, nor exclude, blank-fire cartridge firearms. However, it is important for blank-fire cartridge firearms to be explicitly controlled due to the ease with which many of these articles can be converted to live fire ammunition and also the threat posed by the articles being mistaken for real firearms.

It is proposed to include blank-fire cartridge firearms in the definition of a firearm in Regulation 4F(4) and specifically exclude it from the definition of an imitation (for imitation firearms an importer need only meet the requirements of the Police Certification test).

The effect of this amendment would be to change the regulatory controls surrounding the importation of blank-fire cartridge firearms. This amendment would make it unambiguous that blank-fire firearms must

meet the import tests applicable for the same firearm that is not blank-fire. The amendment would also clarify that blank-fire firearms should not be treated as imitation firearms.

A4. CLARIFICATION OF MEANING OF ‘FLARE GUN’ UNDER THE DEFINITION OF A FIREARM

Flare guns are specifically excluded from the current definition of a firearm in Regulation 4F(4), potentially creating ambiguity where a firearm that can operate as a flare gun would otherwise be controlled.

It is proposed to amend the exception in Regulation 4F(4) to read:

‘a flare gun, or other signalling device, which is principally designed for emergency or life saving purposes’.

The effect of this amendment is to clarify that a multifunction device also capable of operating as a flare gun or other kind of signalling device would not be exempt from the firearms importation regime.

A5. INTERCHANGEABLE MAGAZINES

Following the decision of *CEO V Powell* [2007] QCA 106, a firearm part which is categorised under more than one Item number in Part 2 of Schedule 6 must meet the importation requirement of all Items under which it is categorised. This has resulted in an absurdity where legitimate users are unable to acquire new magazines for their licensed firearms as the magazines are subject to stricter import controls.

For example, a shooter may wish to replace a worn-out six round magazine for their Category B bolt-action centre-fire rifle. However, the standard magazine might also fit a Category D automatic rifle. The importer would therefore need to meet the higher tests associated with magazines for Category D firearms. In many cases this means that importation is not legally possible.

It is proposed that magazines with a maximum capacity of up to and including 10 rounds be available for import under the Police Certification test. Such magazines would require authorisation under the legislation of the relevant jurisdiction to possess the specific magazine.

The proposal would provide clear legislative controls over the importation of firearms that use these magazines. The proposal does not alter state and territory laws relating to licensing, ownership or use of these firearms and does not represent a departure from the National Firearms Agreement.

A6. RESTRICTIONS ON .50BMG FIREARMS AND DERIVATIVES

Single shot and repeating centrefire rifles are currently classified as Item 2 articles in Part 2 of Schedule 6, regardless of their calibre. These rifles will only fall to the higher controls of Item 6 if they are self-loading centrefire rifles, or Item 12 if they are fully automatic or military rifles. Articles classified under Item 2 can be imported under the Police Certification test, administered by the States and Territories.

This means that calibres previously designed for military use are being marketed to civilian shooters for extra long range target shooting and hunting. In particular, a number of international manufacturers are

releasing firearms capable of firing .50 calibre Browning Machine Gun (BMG) cartridges and derivatives of this cartridge.

In military use, these projectiles are principally used in an anti-materiel role to destroy light armoured vehicles, communications facilities or to penetrate buildings. In the long range anti-personnel sniping role, they are capable of accurately hitting human targets at a range in excess of 1500 metres.

The Government considers that .50BMG firearms and derivatives pose a significant risk to the community based on their very long range and high penetrating power. Designed primarily for military application, there is little justification for civilian ownership of these firearms. Only two civilian ranges in Australia are capable of accommodating this calibre and few, if any, game species require such a heavy calibre rifle, with other purpose designed ammunition better suited to hunting requirements.

It is proposed to amend the Regulations so that .50BMG firearms, cartridges, derivatives of these cartridges and cartridge components are subject to higher import controls under the Regulations.

The effect of this amendment would be to change the regulatory controls surrounding the importation of these articles so these are only available to importers under the Official Purposes, Specified Purposes and Returned Goods tests.

Note that this proposal relates only to the specific class of .50BMG and its derivatives such as the .416 Barrett, but not to heavy calibres more generally, such as the .450 Rigby or .470 Nitro.

A7. INTERCHANGEABLE FIREARMS PARTS

Following the decision of *CEO v Powell* [2007] QCA 106, if an article is able to be categorised under more than one Item number in Part 2 of Schedule 6, it must meet the importation requirements of all items under which it is able to be categorised.

The effect of this ruling is that owners of some firearms are unable to import spare parts for their firearms in cases where that part would also fit a higher category firearm to which more stringent controls apply.

A number of importers have claimed that this current restriction on the importation of interchangeable parts for Category A and B firearms is rendering thousands of firearms unusable. The Department recognises that legitimate users of Category A and B firearms should be able to import parts to service their firearms accordingly.

It is proposed to amend the Regulations to include a new item number for interchangeable parts to enable importation subject to the Police Certification test for those legitimate users seeking to import parts for Category A, B or C firearms which are also parts for a higher category firearm.

This will enable the police in the relevant jurisdiction to determine whether an importer is licensed to possess the item.

It is proposed to place a sunset clause of 12 months on this amendment to test whether it rectifies the issue and to ensure that it does not inadvertently create vulnerabilities.

A8. DEFINITION OF FIREARM PARTS

The items currently listed in the definition of 'firearm part' under Regulation 4F(4) do not constitute an exhaustive list of unique or crucial parts. For example, a barrel is controlled as a firearm part, but a firearm cylinder is not. There is an identified risk in allowing unrestricted importation of such unique or crucial parts.

It is proposed to add a number of items to the definition of 'firearm part' on the basis that they are *unique or crucial to the operation of a firearm*. These parts include:

- a) *Frame / Receiver*
- b) *Slide*
- c) *Upper and/or lower receiver*
- d) *Cylinder*
- e) *Bolt carrier*

It is also proposed that the term 'friction assembly' be replaced with the term 'friction ring' in the definition of a 'firearm part' to more accurately describe the part subject to the control.

It is also proposed that the word 'assembled' is removed from the definition of a 'trigger mechanism' to prevent importers from circumventing the controls by breaking it down and arguing that the parts of a part are not controlled.

The effect of the amendment would be to change the regulatory controls surrounding the importation of parts and ensure that the Regulations are not circumvented by individuals intentionally breaking down parts.

A9. RELEASE OF CATEGORY C DEALER STOCK

There is currently no mechanism in the Regulations for an importer, who has imported articles under the Dealer test (paragraph 6.2 in Part 1 of Schedule 6) that are stored by Customs and Border Protection, to seek permission to have an article released for demonstration purposes.

It is proposed to create a provision which will allow an importer to seek permission from the Attorney-General to have an article released for demonstration or testing purposes, where:

- the article has been imported under the Dealer test, and
- the importer complies with the criteria relevant to the importation of an article for demonstration under the Dealer test.

The effect of the amendment would be to fix an absurdity in the Regulations in that an importing dealer can apply to bring a new Category C firearm to Australia for the purpose of demonstration but cannot access one that has already been imported for sale to the Australian market.

It is also proposed to amend the Regulations to permit the reverse situation in which a dealer has imported a firearm under the Dealer test for demonstration purposes but under current rules is not permitted to sell that firearm to a certified buyer until the expiration of a stipulated demonstration period.

The current quantity and model type limits associated with the Dealer test for demonstration purposes would still apply, maintaining the original intention of limiting the overall number of Category C firearms held by a dealer.

A10. AMENDMENT TO THE SPECIFIED PERSON TEST – VERTEBRATE PEST CONTROLLERS

Sub paragraph 3.2(a) of the Specified Person test, in Part 1 of Schedule 6, relates to the granting of permission to import articles by a person whose 'principal or only occupation is the business of controlling vertebrate pest animals on rural land'.

While vertebrate pest control is often a significant part of a licensed shooter's occupation, it is frequently not their 'principal' or 'only' occupation. This has resulted in circumstances where licensed vertebrate pest controllers who hold contracts from government to eradicate pests, and who also hold licences for Category C and D firearms, are unable to import new firearms or parts. This creates an inconsistency with state and territory legislation. The reference to 'rural land' is also problematic, failing to recognise pest control conducted on non-rural land such as golf courses and airports.

It is proposed to amend the wording of the Specified Person test to remove references to 'principal' and 'only' in relation to occupation as well as the reference to 'rural land' and include 'partly or wholly' as follows:

'the importer of the article is a person whose occupation, partly or wholly, is the control of vertebrate pest animals'.

An importer will still require the appropriate licence in their jurisdiction to possess and use a firearm for occupational purposes. The Regulations would also include limiting words to clarify that the test does not extend to allow recreational shooters who control vermin on a casual basis to receive import permission for controlled firearms; however removing 'principal' or 'only' will result in an increase in the number of highly controlled firearms that are available to civilians.

The proposal recognises that there are appropriately licensed shooters who cannot satisfy the requirement that pest control is their 'principal' or 'only' occupation. These include part time pest controllers, or part time helicopter pilots/aerial cullers and farmers who cull animals on a part time basis to supplement their income.

This amendment changes current import controls and may increase the number of Category C and D firearms entering Australia. However, it is consistent with the National Firearms Agreement, which lists

occupational categories of shooters who have been licensed for a specified purpose as one of the exceptions to the ban on the importation of semi-automatic firearms.

A11. PROHIBITED FIREARM ACCESSORIES

Items 5, 8, 11 and 14 in Part 2 of Schedule 6 impose higher controls on the importation of certain firearm accessories which can modify or convert a firearm. However, the majority of firearm accessories that are already fitted to a firearm are classified separate to the firearm, except for ‘folding or detachable stocks’.

To rectify this issue, it is proposed that the list of exclusions under Items 1, 2, 3 and 6 be amended to incorporate firearms fitted with any firearm accessory. In addition, a similar clause is to be inserted in Item 9.

This amendment does not change the availability of firearms or firearms accessories for existing importers, but improves clarity by making the status of firearms fitted with accessories unambiguous.

A12. TELESCOPIC AND COLLAPSIBLE STOCKS

The terms ‘telescopic’ and ‘collapsible’ are used to describe stocks under the Regulations. However, these terms are not defined in Regulation 4F(4), which creates uncertainty as to what constitutes a controlled stock.

It is proposed to replace the terms ‘telescopic’ and ‘collapsible’ with the term ‘adjustable stock’.

In addition to this definitional change, it is also proposed to amend the regulatory control on the length of adjustment for adjustable stocks.

Currently, under the Regulations, any stock which can be adjusted using a ‘telescopic’ action – regardless of length of adjustment – is prohibited as a firearm accessory. The intention of the Regulations is to restrict access to stocks which are able to readily shorten the overall length of a firearm, making them easier to conceal.

This has resulted in the prohibition of stocks which, although using a similar action to a telescopic stock, are designed to be adjusted only for ergonomic or similar purposes.

As an interim measure, prior to the commencement of the consultation process in 2010, the Department adopted an administrative definition of a telescopic, collapsible and folding stock. This definition, which was developed in consultation with a number of stakeholders including law enforcement agencies, recognised that 70mm or less was a reasonable length of adjustment for ergonomic purposes. This administrative definition is still in use.

As part of the consultation process, the Department sought comments on the proposal to amend the Regulations to legislate the current administrative definition. The feedback on this issue included 52 submissions that were indifferent to the issue, while nine submissions recommended increasing the length of the pull from between 100mm to 350mm.

The Department considered the merits and disadvantages of these nine proposals and noted:

- the Department receives very few queries from the general public about the length of pull of a stock over 70mm,
- stocks are controlled because they enable a firearm to be rapidly shortened and thus concealed, and because of the increased accuracy achieved when such a stock is attached to a short firearm such as a pistol, and
- it is undesirable to change the regulatory controls to allow all stocks to be imported under the Police Certification test due to differing legislative controls in each jurisdiction, which may encourage 'jurisdiction shopping'.

It is proposed that adjustable stocks which may be adjusted to alter the length of a firearm by 70mm or less be available for importation under the Police Certification test. Any adjustment over 70mm would be subject to higher import controls under the Regulations.

The effect of the amendment would be to allow the importation of adjustable stocks with reasonable ergonomic adjustment, reflecting the current administrative definition. This is consistent with the intention of the Regulations to permit the import of stocks which allow for ergonomic or other minor adjustments.

A13. DETACHABLE STOCKS

The definition of a firearm accessory under Regulation 4F(4) includes 'detachable stock'. Detachable stock is not defined in the Regulations, which can lead to ambiguity as to what is intended to be controlled.

It is proposed to include a definition of detachable stock in the Regulations as follows:

'Detachable stock means:

a stock which may be readily removed from the firearm without the use of a tool, and when so removed, does not render the firearm inoperable or dangerous to operate'.

The effect of the amendment is to clarify the existing controls by introducing a definition for 'detachable stock'. The intention of the Regulations is to restrict stocks which are easily removable while still allowing the firearm to function.

This definition is consistent with the *Customs (Prohibited Imports) Regulations (Amendment) 1996 No.91* which states that a firearm with a detachable stock 'must be not be capable of being fired when the stock is in a folded position or removed'.

A14. DEFINITION OF FIREARM ACCESSORY

Under Regulation 4F(4) the definition of a firearm accessory includes:

(b) a device designed to modify a firearm so as to give it a rapid fire capability, and

(c) a device capable of converting a firearm to fire in a fully automatic condition.

A device is considered to be a complete unit, a concept which does not cover an article that is incomplete or has been broken down into parts and imported into Australia in separate shipments.

This has created a potential vulnerability in the Regulations where importers may attempt to import a conversion kit capable of converting a firearm into a fully automatic or burst control (two or three shots with the single pull of a trigger) firearm, by removing one part from the kit and then arguing that it is incomplete and therefore does not constitute a 'device'.

The definitions in (b) and (c) above also distinguish between devices specifically designed to modify a firearm, and devices that are not specifically designed to modify but are capable of being used to convert a firearm. However, (b) only covers devices designed to modify a firearm to rapid fire capability; while (c) only covers devices capable of converting firearms to fire in a fully automatic condition. This means that a device designed to modify a firearm to fully automatic capacity or a device capable of converting a firearm to rapid fire capability are not covered under the definitions.

It is proposed to amend the definition of 'firearm accessory' to include components that are unique to a device. This will ensure devices that otherwise meet the definition but are incomplete or broken down and shipped separately are still controlled as firearms accessories.

The use of the term 'rapid fire' is also problematic as there is no technical definition for this term; and a definition is not provided by the Regulations. This leads to ambiguity about whether this term refers to burst fire or the ability to rapidly fire a single shot firearm.

It is also proposed that the definition is amended to remove the term 'rapid fire' and instead include 'burst fire, semi-automatic and fully automatic fire'.

The effect of this amendment would be to:

- remove ambiguity created by the term 'rapid fire', which is not technically accurate,
- ensure that all devices that can convert firearms into burst fire, semi-automatic or fully automatic capacity are controlled under the Regulations as firearm accessories, regardless of whether they are designed to modify a firearm or are simply capable of modifying a firearm, and
- clarify the intention of the Regulations to control both assembled and incomplete/broken down firearms accessories.

A15. CONSOLIDATION OF FIREARM ACCESSORIES UNDER PART 2 OF SCHEDULE 6

Firearm accessories fall to Items 5, 8, 11 and 14 in Part 2 of Schedule 6 because the classification of an accessory is determined by the classification of the firearm to which it fits.

To simplify administration of the Regulations and ensure clarity for users, it is proposed that firearms accessories be consolidated under a single item in Part 2 of Schedule 6.

The controls and applicable tests regulating their import will not change.

A16. SILENCERS AND SOUND MODERATORS

Currently, there is ambiguity over whether the term ‘silencer’ in the definition of firearm accessory in Regulation 4F(4) includes ‘sound moderator’. It is proposed that the definition of firearm accessory be amended to include ‘sound moderator’ as follows:

‘Firearm accessory means:

a silencer, sound moderator or noise moderator designed or intended for use with a firearm’.

The effect of the proposed amendment is to bring the definition in line with current terminology.

A17. INTEGRAL OR ATTACHED SILENCERS

Firearm silencers are currently controlled as ‘firearm accessories’ under Regulation 4F(4) as they are generally manufactured as an aftermarket accessory that can be fitted to a firearm barrel.

A small number of manufacturers now offer firearms that have silencers incorporated within the firearm barrel, meaning that the silencer would be treated as part of the barrel and therefore controlled as a ‘firearm part’ under the Regulations rather than a ‘firearm accessory’. Consequently, it would not fall to the higher control that is intended for silencers.

It is proposed that the definition of ‘firearm accessory’ be amended to include a firearm barrel that incorporates a silencer, sound suppressor or noise moderator.

The effect of the amendment would be that barrels with built-in silencers are subject to the same import tests as conventional silencers, being the Official Purposes, Specified Purposes and Returned Goods tests.

It is also proposed that the Regulations are amended so that the importation of a complete firearm with a built-in silencer falls to the higher control of Item 12.

The effect of this amendment would be that importation is available only under the higher controls of the Official Purposes, Specified Purposes and Returned Goods tests. This proposal clarifies the intention of the Regulations to control accessories which moderate the sound of a firearm.

A18. PAINTBALL MARKERS

Under paragraph 1.3 in Part 3 of Schedule 6, safety requirements do not apply to a firearm if the importer produces to the Customs Collector at the time of importation evidence that the firearm has previously been exported from Australia by the importer. This may be in the form of a restricted goods permit or an export permit issued by the Department of Defence.

Paintball markers are not controlled by the *Customs (Prohibited Export) Regulations 1958* and therefore do not require permission to be exported from Australia. As a result, importers bringing paintball markers back into Australia are required to pass safety testing, creating considerable delays for importers and cost for the Government.

It is proposed that paragraph 1.3 be amended so that paintball markers that do not require an export permit under the *Customs (Prohibited Export) Regulations 1958* do not have to meet safety testing requirements on return to Australia. The importer will still be required to provide evidence to satisfy Customs and Border Protection that the firearm had been previously exported from Australia.

It is proposed that, in addition to removing safety testing requirements for paintball markers, the Regulations also be amended to enable the importation of all paintball products using the Police Certification test.

Paintball markers would still be controlled at the state and territory level and it would be a matter for each jurisdiction to determine what they will allow. Import controls under the Regulations will remain for paintball markers which are substantially the same in appearance as a fully automatic firearm.

A19. SAFETY REQUIREMENTS FOR FIREARMS

Firearms being imported are required to pass a safety test. Subparagraph 1.6(c) in Part 3 of Schedule 6 requires, in the case of a firearm having an exposed hammer or exposed hammers or having a bolt action, that each hammer or bolt tail is struck once with a rubber hammer.

Concerns have been raised by both industry and the Australian Federal Police that the requirement of striking the firearm with a rubber hammer may result in unnecessary and avoidable damage to the firearm.

It is proposed to rename subparagraph 1.6 'Firearm Verification' and remove the requirement that Customs and Border Protection be required to safety test firearms by striking either an exposed hammer or bolt with a rubber hammer or performing the controversial 'drop test'. Instead, Customs and Border Protection Officers must, via visual inspection:

- a) *verify that all firearms presented for importation have a safety switch by visually inspecting the item*
- b) *verify that all firearms presented for importation have a unique serial number in Latin script, that is permanently applied to the frame or receiver of the firearm (except for firearms manufactured before 1 January 1900), and*
- c) *accurately record the unique serial number in the relevant Government database.*

It is proposed to maintain a provision which allows Customs and Border Protection Officers to conduct further safety testing on firearms presented for importation if they consider it necessary. This discretion is also based on the visual appearance of the firearm upon importation, e.g. the state of repair or disrepair.

The effect of the proposed amendment would be to reduce administrative costs and allow the refocusing of existing Customs and Border Protection resources to identified areas of risk.

The amendment is also consistent with Australia's obligations to maintain an accurate record of all firearms imported into Australia, pursuant to the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

A20. ELECTROSHOCK CARTRIDGES

Electroshock cartridges deliver a taser-like electric charge to the target upon contact. This type of ammunition is currently not controlled under the Regulations.

In line with restrictions on the importation of tasers under Item 3 in Schedule 13 of the Regulations, it is proposed that ammunition of this type should be included under Item 19 in Part 2 of Schedule 6. This would allow for importation under the Official Purposes, Specified Purposes or Returned Goods tests.

In addition, a definition of 'electroshock cartridges' will be included as follows:

'Electroshock cartridges means:

hand held and area denial electroshock devices or ammunition discharged from firearms, designed or adapted to deliver an electric shock or charge on impact'.

The effect of the proposed amendment would be to introduce a new control to recognise this new technology and avoid potential ambiguity.

A21. POWERHEADS

An underwater 'powerhead', or 'shark stick', is a specialised firearm used underwater that is fired when in contact with a target. A powerhead consists of a short length of tubing, which is the chamber for the cartridge.

These devices are currently excluded from the definition of a firearm in Regulation 4F(4). However, there is an obvious potential for these articles to be used in the commission of crimes, functioning as a highly concealable single shot firearm.

It is proposed to remove 'powerhead' from the exclusion list and add it as a new item under Part 2 of Schedule 6, with importation subject to the Police Certification, Official Purposes, Specified Purposes, and Returned Goods tests.

The effect of the proposed amendment would be to align the Regulations with state and territory legislation, which requires a person using a 'powerhead' to be appropriately licensed to use the article.

A22. REMOVAL OF TERMINOLOGY 'AS SOON AS PRACTICABLE' FROM CONDITIONS OF IMPORT

In certain circumstances, articles imported under the Official Purposes test are subject to the condition, in sub-paragraphs 3.1-3.4 in Part 3 of Schedule 6, that the importer must export the article 'as soon as practicable'.

The term 'as soon as practicable' is ambiguous and inconsistent with the conditions of other import tests (which require export within a period specified on the Attorney-General's permission). There are also an increasing number of importers seeking to exploit this provision by claiming it is not 'practicable' for them to export an article, sometimes three years after the conditions of the import have lapsed.

It is proposed to amend all references to ‘as soon as practicable’ to ‘in a timeframe specified by the Attorney-General or delegate’ as per other tests under the Regulations.

The effect of the proposed amendment would be to ensure consistency of conditions across all import tests.

A23. CONDITIONS RELATING TO IMPORTATIONS

Under the Official Purposes, Specified Purposes and International Sports Shooter tests (subparagraphs 2.1(b), 3.1(b) and 3A.1(b) in Part 3 of Schedule 6), there is a legislative requirement that the importer must comply with any condition or requirement specified, in relation to the article, in the Attorney-General’s permission to import.

It is proposed to include a similar condition in Part 3 of Schedule 6 for all other tests requiring permission from the Attorney-General, including the Specified Person, Sports Shooter, Returned Goods and Dealer tests.

The effect of the proposed amendment would be to allow the Attorney-General to place conditions on importations that are appropriately tailored to the specific circumstances of an importation, e.g. timeframes, possession requirements and number of end users.

A24. NEW ZEALAND SPORTS SHOOTER APPLICATIONS

Currently, paragraph 1 in Part 4 of Schedule 6 states that to be certified as a sport shooter, the Attorney-General must be satisfied that the person is:

- a) an Australian citizen; or
- b) a lawful non-citizen under the *Migration Act 1958* who holds a permanent visa under that Act.

The requirement that an importer be a lawful non-citizen under the *Migration Act 1958* has caused some difficulty for New Zealand applicants who are New Zealand citizens and hold a special category visa, but do not hold a permanent visa because the *Migration Act 1958* does not require them to do so.

It is proposed that the Regulations be amended to allow New Zealand citizens with special category visas under the *Migration Act 1958* to meet the requirements of a certified sports shooter.

The effect of this amendment would be to expand the meaning of a lawful non-citizen under the Regulations to allow an eligible New Zealand citizen who holds a special category visa to import firearms as a certified sports shooter. It is not anticipated that this would lead to a significant increase in the number of new imports.

B1. CATEGORY H (HANDGUNS) SCHEME STOCK LIMITS TO BE REMOVED

Under the Category H Scheme (the Scheme) at paragraph 5, Part 3 of Schedule 6, newly imported handguns may be released to an importer subject to the importer providing evidence of certification issued by Customs and Border Protection, which includes a limit on the number of firearms that a dealer can hold in stock. Where the number of handguns exceeds the limit, the remainder must be held in storage by Customs and Border Protection.

These controls were introduced in August 2000, aimed at reducing the risk that stockpiles of handguns could become a target for theft and diversion into the black market and to address legal loopholes in state and territory legislation. These loopholes were closed in late 2002.

As a result, there is limited justification for maintaining the scheme, with stocking controls more appropriately managed by jurisdictional police. Accordingly, it is proposed to amend the scheme to:

- remove current restrictions on the number of newly imported Category H articles able to be held as stock by a dealer
- retain the requirement that importing dealers obtain certification, but non-importing dealers would no longer be required to obtain certification to hold stocks of handguns, and
- retain the requirement that importing dealers report the disposal of Category H articles.

Dealers will still be subject to state and territory laws and will only be able to hold stock up to the amount that their licence permits and their premises' security allows. At the same time, the requirement for importing dealers to maintain certification enables Customs and Border Protection to prevent the import of dealer stock to companies that are of concern.

The proposal also allows Customs and Border Protection to focus its resources on higher priority risks and reflects the responsibility of the states and territories for licensing, storage, and security of firearms.

This amendment is not expected to have any impact on the number of handguns available in the domestic market.

B2. CATEGORY C FIREARMS DEALER AUTHORISATION TO DEAL IN SPECIFIED CATEGORIES OF FIREARMS

To import Category C articles pursuant to the Dealer test (paragraph 6 in Part 1 of Schedule 6), the importer must be 'a licensed firearms dealer', which is defined in Part 4, paragraph 5.1. This situation leads to confusion, as the definition is located in a different part of the Regulations and likely to be overlooked.

Consistent with modern drafting practice, it is proposed to insert a note in the relevant part of the Dealer test to refer the reader to the definition.

B3. DETACHABLE BOX MAGAZINES

Item 18 in Part 2 of Schedule 6 currently controls:

'a device that increases the capacity of an integral firearm magazine or a tubular firearm magazine, whether or not attached to a firearm'.

However, devices that increase the capacity for detachable magazines are not specifically controlled. The failure to control such devices for detachable magazines appears to have been an oversight.

The Government proposes to amend Item 18 to include 'detachable box magazine'. As with other devices within Item 18, this device will be subject to the Official Purposes, Specified Purposes or Returned Goods tests.

The proposed amendment will ensure consistency in importation requirements for all types of magazines.

B4. EXTEND CATEGORY C DEALER STOCK SYSTEM TO CATEGORY D FIREARMS

Semi-automatic longarm firearms are controlled under Item 3 and Item 6 in Part 2 of Schedule 6.

Item 3 firearms (semi-automatic rimfire rifles with a magazine capacity no greater than 10 rounds, self loading shotguns with a magazine capacity no greater than five rounds or pump action shotguns with a magazine capacity no greater than five rounds) are categorised as Category C firearms in the state and territory jurisdictions.

Item 6 firearms (self-loading centrefire rifles or those Item 3 firearms with a magazine capacity greater than 10 rounds) are more highly controlled and are categorised as Category D firearms. Importation of Item 6 articles must comply with one of the following import tests: the Official Purposes test, the Specified Purposes test, the Specified Person test or the Returned goods test.

Currently, when Category C firearms are imported under the Dealer test, they are held in dealer stock by Customs and Border Protection and may only be released upon certification of the purchaser as a certified buyer under the Regulations. Category D firearms, however, cannot be held in dealer stock and require an import permit to be issued in each instance prior to importation.

The limitation with the current system is that importers are faced with an import process which can take up to six months or more between the time a customer orders an item and when it actually arrives in the country. This includes the time taken for the approval process to import into Australia, export requirements imposed by the country of origin and the fact that in certain circumstances firearms may only be manufactured after import approval has been given. In many cases, a manufacturer will not commence production until these approvals are in place.

This poses a significant problem for military and law enforcement agencies that are the principal customers of Category D equipment and can result in operational difficulties where they are unable to procure replacements and spares in a reasonable time.

It is proposed to extend the Category C Dealer test to Category D firearms. This would allow firearm dealers to import Category D items which would be securely stored by Customs and Border Protection, rather than individual dealers.

This proposed amendment would not result in a change to the current controls or increase public availability. The amendment will principally benefit government agencies that rely on commercial suppliers for spares, servicing and replacements.

B5. REDUCED TRANSHIPMENT PERMIT REQUIREMENTS

Under sub-paragraph 2.2(e) in Part 1 of Schedule 6, all firearms being transhipped through Australia require both an import permit from the Attorney-General's Department and an Export Permit from the Defence Export Control Office. Firearms that are transiting Australia do not require import or export permits.

There is no legislative basis for the terms 'transit' and 'transhipment', but differing meanings are used administratively. Goods in transit are goods that remain undisturbed on the conveyance in or on which they arrived in Australia. Goods being transhipped are goods which have been brought into Australia and have been or will be transferred from one conveyance to another for the purpose of being conveyed to a place other than a warehouse, within the meaning of Part V of the *Customs Act 1901*, or for home consumption.

Current controls impose a significant burden on people transiting through Australia.

The Government proposes to remove the requirement to obtain the permission of the Attorney-General to import for the purpose of transhipment. This would not alter the requirement to obtain export permission from the Defence Export Control Office in accordance with Australia's international obligations.

The effect of the proposed amendment would be to reduce the administrative burden both for those transiting through Australia and agencies associated with processing permits for articles that in many instances are never unloaded or in the possession of the importer during the time that they tranship through Australia.

B6. NEW LIMB TO THE SPECIFIED PURPOSES TEST FOR AMMUNITION MANUFACTURERS

In the course of manufacturing small arms ammunition, testing is required to ensure that it complies with product specifications. Importantly, these tests are completed to ensure the ammunition can be fired from a firearm without compromising the safety of the user.

To undertake testing, ammunition of different calibres and access to a number of different Category C and D firearms is required. However, there is no current applicable test to enable importation for this purpose.

It is proposed to create an import test to enable the importation of Category C and D firearms to test ammunition manufactured in Australia.

The new manufacturing test would require importers to satisfy the following criteria:

- *the article is to be imported for the testing of ammunition manufactured in a state or territory*
- *the importer holds a licence or authorisation to possess the article for manufacturing and testing ammunition in accordance with the law of the state or territory in which the article is to be used in manufacturing ammunition*
- *the importer, who is a manufacturer of small arms and/or ammunition, has an annual turnover of more than a specified amount (to be determined by Determination, but recommended to be approximately \$25 million per year)*
- *the importer has a specific business case / project plan / tender*
- *the Attorney-General is satisfied that the article will be secured appropriately in Australia, and*
- *the article will be destroyed or exported once the articles are no longer serviceable or required by the importer.*

Only a small number of firearms manufacturers would satisfy the stringent criteria under the proposed test, and as such this proposal is not expected to enable any significant increase in the number of highly controlled firearms available in Australia.

B7. POWER TO MAKE A DETERMINATION

Regulation 4F includes a list of articles that are specifically excluded from the definition of a firearm. This list includes articles such as flare guns or other signalling devices, tranquiliser guns and other similar articles.

However, instances regularly arise where an item falls in a grey area between several definitions, or falls within the technical meaning of a definition, but as a matter of common sense should be excluded from the operation of the controls. In some cases, this can lead to an absurd outcome or be inconsistent with the intention of the Regulations.

Such situations typically arise when new or unusual products appear that meet the definition of a firearm but strict control of which is not consistent with the intention of the Regulations nor in the public interest. An example is the SmartVet device, which uses a paintball type gun to apply anti-parasite medication to cattle. Similarly, the 'Green Dragon' device which is another paintball type system used for starting fires in controlled burns. These devices fall within the technical definition of a 'firearm' under Regulation 4F, and therefore cannot be imported without meeting one of the specified tests under the Regulations. However, by their nature, these items will have difficulty in meeting tests associated with firearms, such as the requirement for a serial number or a safety catch.

It is proposed to amend the Regulations to provide for a power for the Attorney-General or delegate to issue a public Determination about how an article is to be categorised under the Regulations. The proposal offers three principle advantages, enabling:

- *rapid resolution of the legal impasse that can occur when items of this type arrive at the Australian border, particularly in comparison to formal regulatory amendments which may take months to implement*
- *increased transparency and certainty in how these items are to be controlled, and*
- *reduced need for minor technical amendments to the Regulations themselves.*

A determination could be made only in cases of uncertainty over the classification of an item, or in cases where the classification would result in an absurd outcome, with regard to the objectives of the Regulations.

Matters to be taken into account by the Minister would include (but not be limited to):

- *whether the item is intended to be used as a weapon*
- *whether the item would pose a risk to the community*
- *whether it is in the public interest for the importation of the item to be restricted to persons with a genuine need*
- *the regulatory impact, if any, and*
- *if it is decided that some regulatory control is required, whether there is a more appropriate mechanism to control the importation of the item (eg: toys that are more appropriately dealt with by consumer protection legislation).*

It is proposed that draft determinations would be published on the Attorney-General's Department website together with a statement of reasons and would come into force after a period of ten working days, subject to public comment.

Determinations would apply to a class of items rather than specific applications.

B8. INTRODUCTION OF THE 'MILITARY AND POLICE SUPPLIER TEST'

Currently, major firearms suppliers to the police and military are required to apply for individual permits for every item imported. Each item must be assessed against the relevant test under the Regulations.

This importation system reflects the historical arrangements for the supply of firearms to military and police in Australia. Until relatively recently, firearms were principally manufactured in Australia by government owned businesses, which were exempt from the Regulations. However, privatisation has meant that police and military now rely on private sector companies to provide their firearms, as well as much of the inventory management, spare parts, and repairs. This was not envisaged by the drafters of the Regulations.

The current import requirements for supply to the military and the police are expensive, inconvenient, and create difficulties for maintaining necessary supplies of spare parts.

The Government proposes to create a new test called the 'Military and Police Supplier' test. Under this test, certified suppliers could import firearms for government purposes without seeking individual permission. Instead, they would be required to notify the Department in writing of the forthcoming import, including details of the items, quantities and serial numbers. The Department would issue a letter for the importer to present to Customs and Border Protection to facilitate the importation of the articles into Australia. This would ensure that accurate records are kept of firearms imports, but would not constitute an import permission scheme.

The scheme would allow items imported for any official purpose, including demonstration, modification, testing, supply under contract, as well as holding in stock. The scheme would be limited to firearm items imported for supply to the military and police.

It is proposed to confer on the Attorney-General or Delegate the power to certify a company as an official government supplier, able to import under the Military and Police Supplier test. In making this decision, the Attorney-General could consider any relevant matter including the following:

- the compliance record of the company
- the trading record of the company, evidenced by previous contracts with government agencies
- the recommendation of government agencies
- the advice of police in the relevant jurisdiction, as well as of the Australian Crime Commission
- an assessment that the office holders of the company are of good standing, and
- an assessment that the supplier has appropriate security arrangements for the safe storage of the firearms, including for example, evidence of Defence Industry Security Program accreditation.

Certification would be conditional on an agreement between the Department, jurisdictional police and the supplier in relation to regular reporting and audits of firearms holdings and disposals. Certification could be revoked at any time if the Attorney-General or Delegate is no longer satisfied that the conditions are met.

In instances where a supplier breaches obligations under the scheme, the agreement could be re-issued to include altered conditions or more rigorous audit and compliance arrangements. This might be particularly appropriate in cases where a company has voluntarily admitted fault.

The proposal offers incentives for certified suppliers to comply with their obligations under the Regulations. Companies that maintain high levels of compliance will have substantially reduced compliance costs and increased flexibility. Those that are found to be non-compliant risk losing their certification and having to return to the conventional more onerous and costly system of individual permit applications.

It should be noted that the number of companies that would be eligible to be certified suppliers is quite small. These suppliers already have extremely secure facilities (often at least the equal of those of the military) and are generally highly professional in how they manage firearms. There is little risk that firearms imported by these companies will be diverted into the illicit market.

Amendments not progressing

C1. CLASSIFICATION OF REVOLVING RIFLES

Revolving rifles are currently classified as both Item 1 (for rimfire versions) and Item 2 (for centrefire versions) articles in Part 2 of Schedule 6.

It was proposed that revolving rifles be re-classified as Item 3 or Item 6 articles, recognising that revolving rifles provide a significantly increased rate of fire over standard non-self loading firearms. Therefore, the risk they pose is greater than that of other firearms classified under Item 1 and 2.

Following feedback from the consultation process and a reassessment of the capabilities of revolving rifles, the Government decided not to progress the above amendment to impose higher import controls. Re-classification of revolving rifles as Category C and D firearms would have made it unnecessarily difficult for importers to obtain these firearms.

C2. DAMAGED OR UNFINISHED FIREARM PARTS, AND SUBCOMPONENTS OF FIREARM PARTS

The current definition of firearm part in Regulation 4F(4) does not capture subcomponents of a controlled firearm part, unfinished parts or damaged firearm parts.

It had been proposed to amend the definition of firearm part to specifically include subcomponents of a firearm part, unfinished firearm parts and damaged firearm parts.

It is no longer necessary to progress this amendment as the issue has been addressed by specific amendments already put into effect this year.

C3. RESTRICTIONS ON .25 ACP CALIBRE AMMUNITION

The 2003 Australian Government Handgun Buyback saw the removal of a number of pistols from the Australian community. In particular, the emphasis was on firearms with a barrel length of less than 120mm. Self loading pistols chambered for .25 ACP calibre ammunition (originally designed as pocket pistols) cannot be licensed for recreational or club shooting.

It was proposed that .25 ACP calibre ammunition be controlled under Item 19 and the cartridge case and bullet components of the .25 ACP calibre self loading pistol be controlled under Item 21 in order to restrict access to this calibre of ammunition.

Based on feedback from the Consultation process, it was identified that while this calibre is not currently used by sports shooters, firearms chambered for .25 ACP can still be legally imported by collectors and dealers under the Police Certification test.

Further, the importation of this ammunition is not considered to be a significant public safety concern due to its low power.

C4. POWER TO REVOKE OR AMEND PERMISSION

A number of circumstances may arise where, following the issuing of an import permit, there are changes to the details of articles to be imported.

It was proposed to insert an express power for the decision maker to revoke or amend a permission to import after it has been issued.

The Government determined that it is not necessary due to the operation of section 33(3) of the *Acts Interpretation Act 1901* which provides that where an Act confers a power to make, grant or issue any instrument of an administrative character, the power shall be construed as including a power to repeal, rescind, revoke, amend, or vary any such instrument.

C5. SPORTS SHOOTER AND INTERNATIONAL SPORTS SHOOTER CERTIFICATION (CATEGORY C)

The Regulations provide for the importation of Category C semi-automatic shotguns for a limited class of certified Sports Shooters and International Sports Shooters.

To meet the requirements of a 'certified sports shooter' in paragraph 4.1 in Part 4 of Schedule 6, the Attorney-General or Delegate must be satisfied that, among other requirements, the person is a registered shooter with the Australian Clay Target Association (ACTA).

To meet the requirements of a 'certified international sports shooter' in paragraph 4.1A in Part 4 of Schedule 6, the Attorney-General must be satisfied that, among other things, the shooter is bringing a firearm into the country to participate in a clay target event and the event is the Olympic Games or associated event, the Paralympic Games or associated event, the Commonwealth Games or associated event, or an event organised by ACTA.

These requirements have created problems for a number of other organisations that host sports shooting events, since the Regulations do not recognise the wide range of clay target organisations. It was therefore proposed that the Department consult with organisations to develop a more general and criteria based approach to the sporting shooter test, under which membership of other organisations could be considered to satisfy this requirement.

Based on consultations, it is evident that further work is needed to be undertaken in relation to this proposal. Any proposed amendments require the endorsement of the Standing Council on Police and Emergency Management as they were initially implemented as part of the 1996 National Firearms Agreement.

C6. MEANING OF CERTIFIED SPORTS SHOOTER (CATEGORY C)

The meaning of certified sports shooter under sub-paragraph 1.1(b) in Part 4 of Schedule 6 includes the requirement that 'the person is the holder of a licence or authorisation, in accordance with the law of the State or Territory where the club is situated, to possess the article for the purpose of taking part in clay target events'.

It was proposed that the term 'club' be clarified or defined to refer to 'an accredited, licensed or approved shooting or firearms club', in accordance with relevant state and territory regulations.

Based on consultations, it is evident that further work will need to be undertaken in relation to this proposal. Any proposed amendments require the endorsement of the Standing Council on Police and Emergency Management as they were initially implemented as part of the 1996 National Firearms Agreement.

C7. AMENDMENT TO THE SPECIFIED PURPOSES TEST – RESEARCH AND DEVELOPMENT

Sub-paragraph 2.2(g) of the specified purposes test in Part 1 of Schedule 6 relates to the granting of permission to import articles by importers whose 'principal or sole occupation is the business of researching or developing firearms technology or other defence or law enforcement related products'. The importer must also have a proven history of developing products for the government of the Commonwealth, a state or a territory.

To create greater flexibility for research and development importers and to increase innovation, it was proposed to amend the wording of the specified purposes test to remove references to 'principal' and 'sole' in relation to occupation, and include 'partly or wholly', and remove the requirement for a proven history relating to products for the Commonwealth, a state or territory. It was proposed that the new provision read as follows:

'the importer of the article is a person whose occupation, partly or wholly, is the business of researching or developing firearms technology or other defence and law enforcement related products'.

In addition, to increase the technical viability of research and development projects, it was proposed that the need to demonstrate a proven history of developing or producing firearms technology or other defence and law enforcement related products for the government of the Commonwealth, a state or a territory be removed from the test.

The effect of the proposed amendment would be to change the regulatory controls surrounding the importation of articles for research and development purposes, recognising that the current wording of the provision precludes entry of new developers and researchers to the market, in addition to encouraging innovation in the field.

The Government recognises that research, development and innovation are important. However, further consultation and consideration are needed to ensure that a revised test does not inadvertently create opportunities for abuse.

It should be noted that there is limited research and development of firearms technology or other defence or law enforcement related products in Australia, and the Department receives few applications to import under this test.

C8. DEFINITION OF FIREARM MAGAZINE

The current definition of a firearm magazine in Regulation 4F(4) does not make it clear whether parts of magazines are also controlled.

An increasing number of importers have been found to be circumventing the Regulations by disassembling firearm magazines or cutting in half the essential components of magazines and arguing on importation that these articles are not controlled.

It was proposed that the definition of firearm magazine be amended to include:

'Firearm magazine means:

a magazine body or part thereof, designed or intended for use with a firearm'.

The effect of the amendment would have been to clarify that major component parts of a magazine are subject to import controls whether they are imported separately or fully assembled.

This amendment is now unnecessary as a result of a high priority amendment progressed separately.