

EXPLANATORY STATEMENT

Select Legislative Instrument No. 153, 2015

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901

Customs (Prohibited Imports) Amendment (Sunsetting of Firearms and Firearm Magazines Provisions) Regulation 2015

Power to make regulations

Under section 270 of the *Customs Act 1901* ('the Act') the Governor-General may make regulations prohibiting the importation of goods into Australia. Subsections 50(2) and 50(3) of the Act provide that this power may be exercised by making regulations prohibiting the importation of goods unless a 'licence, permission, consent or approval to import the goods or a class of goods ... has been granted as prescribed by regulations made under [the] Act'. Further, the power may be exercised by making regulations stipulating that any such licence, permission, consent or approval, so granted, may be 'subject to compliance with conditions or requirements, either before or after the importation of the goods, by the holder of the licence or permission at the time the goods are imported'.

The *Customs (Prohibited Imports) Amendment (Sunsetting of Firearms and Firearm Magazines Provisions) Regulation 2015* (the 'amending Regulation') is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose of the Regulation

The *Customs (Prohibited Imports) Regulations 1956* (the 'Principal Regulations') impose import controls for various items including firearms and firearm-related articles. This includes controls which relate to the importation of lever action shotguns and magazines for those shotguns.

The classification of lever action shotguns is currently being considered by the Government as part of a review of the technical elements of the National Firearms Agreement (NFA), as recommended by the Martin Place Siege Review. First Ministers will consider recommendations arising from the NFA review at the first meeting of the Council of Australian Government's (COAG) in 2016.

To ensure that any recommendations or decisions to be considered or made by COAG to re-classify lever action shotguns were not undermined by the importation of high-capacity lever action shotguns prior to 2016, the Government introduced amendments to the Principal Regulations via the *Customs (Prohibited Imports) Amendment (Firearms and Firearm Magazines) Regulation 2015*, which commenced on 7 August 2015. The amendments prohibit absolutely the importation of lever action shotguns with a magazine capacity of greater than five rounds, and the importation of magazines with a capacity greater than five rounds to fit lever action shotguns.

The Government is now ensuring that the provisions contained in the *Customs (Prohibited Imports) Amendment (Firearms and Firearm Magazines) Regulation 2015* are set to expire 12 months after their commencement. This reflects the fact that the prohibition of lever action shotguns with a magazine capacity greater than five is an interim measure put in place while Commonwealth, State and Territory governments consider the broader NFA review.

The purpose of the amending Regulation is therefore to repeal the provisions made in the *Customs (Prohibited Imports) Amendment (Firearms and Firearm Magazines) Regulation 2015*, and substitute them with the previous provisions they had replaced in the Principal Regulation. This is set to occur on 7 August 2016.

Targeted consultation on the most appropriate way to deal with lever action shotguns with a magazine capacity of more than five rounds was undertaken with law enforcement agencies. The law enforcement agencies with whom consultation was undertaken are aware that the prohibition on lever action shotguns with a magazine of more than five rounds is an interim measure while the NFA review is undertaken. Therefore, further consultation on repealing the prohibitions after the review is complete has not been undertaken.

Details of the amending Regulation are set out in Attachment A.

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument ensures that provisions relating to lever action shotguns and their magazines which were made in the *Customs (Prohibited Imports) Amendment (Firearms and Firearm Magazines) Regulation 2015* will on 7 August 2016 be repealed and substituted with the provisions they replaced. The purpose of this instrument is to signify that the absolute prohibition of the above items is an interim measure while a broader review of the NFA is underway.

Human rights implications

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This Legislative Instrument is compatible with human rights.

Authority: Section 270 of the
Customs Act 1901

ATTACHMENT A

Details of the Customs (Prohibited Imports) Amendment (Sunsetting of Firearms and Firearm Magazines Provisions) Regulation 2015

Regulation 1 – Name

This regulation provides that the title of the Regulation is the ***Error! Use the Home tab to apply ShortT to the text that you want to appear here.*** (the ‘amending Regulation’).

Regulation 2 – Commencement

This regulation sets out the timetable for the commencement of the provisions of the amending Regulation. The amending Regulation commences on 7 August 2016 being 12 months from the date of the commencement of the *Customs (Prohibited Imports) Amendment (Firearms and Firearm Magazines) Regulation 2015*.

Regulation 3 – Authority

This regulation provides that the amending Regulation is made under the *Customs Act 1901*.

Regulation 4 – Schedules

This regulation provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1

The items in Schedule 1 set out in detail the amendments to the *Customs (Prohibited Imports) Regulations 1956* (the ‘Principal Regulations’).

Item 1

Item 2 of Part 2 of Schedule 6 currently refers to ‘(g) a lever action shot gun:

- i. without a firearm magazine; or
- ii. fitted with a firearm magazine having a capacity of no more than 5 rounds’.

Item 1 of the amending Regulation repeals paragraph (g) in item 2 of Part 2 under Schedule 6 and substitutes it with ‘a lever action shot gun’.

This amendment ensures that all lever action shot guns are able to be imported into Australia under the import test applicable to articles listed in item 2 of Part 2 of Schedule 6 of the Principal Regulations.

Item 2

Item 12 of Part 2 of Schedule 6 of the Principal Regulations is designed to cover all firearms not elsewhere listed in Part 2. These include, for example, fully-automatic firearms and firearms fitted with a firearm accessory.

Column 2 of the cell at table item 12 in Part 2 of Schedule 6 of the Principal Regulations currently refers to a ‘firearm, other than:

- a) a firearm to which item 1, 2, 3, 6, 9 or 14A applies; or
- b) a lever action shot gun fitted with a firearm magazine having a capacity of more than 5 rounds’.

As a result of the amendment made by Item 1 of the amending Regulation, all lever action shot guns (including those with a firearm magazine having a capacity of more than 5 rounds) are classified as item 2 articles for the purposes of Part 2 of Schedule 6.

Item 2 of the amending Regulation repeals column 2 of the cell at table item 12 in Part 2 of Schedule 6 of the Principal Regulations and substitutes it with ‘firearm, other than a firearm to which item 1, 2, 3, 6, 9 or 14A applies’.

This amendment ensures that lever action shot guns with a firearm magazine having a capacity of more than 5 rounds do not appear in both item 2 and item 12 of Part 2 of Schedule 6 of the Principal Regulations, and that they are able to be imported under the import test applicable to articles listed in item 2 of Part 2 of Schedule 6 of the Principal Regulations.

Item 3

Item 17 of Part 2 of Schedule 6 of the Principal Regulations covers firearm magazines other than magazines which fall under items 15, 16 or 16A.

Item 17 of Part 2 of Schedule 6 of the Principal Regulations currently refers to a ‘firearm magazine, other than:

- a) a firearm magazine to which item 15, 16 or 16A applies; or
- b) a firearm magazine, having a capacity of more than 5 rounds, for lever action shot guns

whether or not attached to a firearm’.

The effect of this provision is that firearm magazines with a capacity of more than five rounds for lever action shotguns are not listed in Part 2 of Schedule 6 of the Principal Regulations, and so are prohibited from being imported by subregulation 4F(1) of the Principal Regulations. Paragraph 4F(1)(a) of the Principal Regulations relevantly provides that firearm magazines are unable to be imported unless the firearm magazine is listed in Part 2 of Schedule 6.

Item 3 of the amending Regulation repeals column 2 of the cell at table item 17 of Part 2 of Schedule 6 of the Principal Regulations and substitutes it with a ‘firearm magazine, other than a firearm magazine to which item 15, 16 or 16A applies, whether or not attached to a firearm’.

This amendment ensures that firearm magazines having a capacity of more than 5 rounds for lever action shot guns are listed in Part 2 of Schedule 6 of the Principal Regulations, meaning that they are not prohibited from being imported by subregulation 4F(1) of the Principal Regulations.