

EXPLANATORY STATEMENT

Issued by Assistant Minister Customs, Community Safety and Multicultural Affairs
Parliamentary Secretary to the Minister for Home Affairs

Customs Act 1901

Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021

The *Customs Act 1901* (the Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

Subsection 270(1) of the Act provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters, which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act.

Section 50 of the Act provides, in part, that the Governor General may, by regulation, prohibit the importation of goods into Australia and that the power may be exercised by prohibiting the importation of goods absolutely or by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

The *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) prohibit the importation of certain goods, which include the prohibition on the importation of firearms, non-firearms weapons, and their parts, ammunition, accessories and other related goods.

The purpose of the *Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021* (the Amendment Regulations) is to amend the PI Regulations to:

- include additional circumstances in which firearms and weapons can be imported under the official purposes test, to allow the importation of such goods by persons who are subcontractors to primary contractors or tenderers. As a consequence, the requirement that the government must own the articles at the time of importation or intend to acquire ownership within a specified period after importation is also removed. These amendments reduce the regulatory burden associated with importations under the official purposes test;
- remove the requirement that importers need to have a proven history of developing or producing defence or law enforcement related products before being granted an import permit for firearms and non-firearms weapons under the specified purposes test, reducing the regulatory burden associated with certain importations. As a consequence, the good must be imported for the completion of a specific project or tender involving a government of the Commonwealth, a State or Territory;
- introduce a new import prohibition on barrel extensions as a firearm part. The amendments are necessary to prevent these goods being used in the illicit manufacture of firearms;
- streamline the tests that apply in relation to the importation of certain firearms and their parts and magazines, reducing the regulatory burden;
- specifically identify self-opening repeating action shotguns to ensure their importation is appropriately classified and controlled;

- consolidate the requirement for paintball markers and related articles such that the importation test that apply are located in one table item under Part 2 of Schedule 6 to the PI Regulations; and
- more clearly distinguish the electro-shock cartridges that can be imported as ammunition for a firearm from those that could be imported as a part for a hand held electric shock device. This amendment will assist importers in identifying the import test that applies to the latter.

Details of the Amendment Regulations are set out in [Attachment A](#).

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at [Attachment B](#).

Commonwealth law enforcement agencies were consulted on the amendments, including the Australian Federal Police, Australian Border Force and Australian Criminal Intelligence Commission.

State and Territory law enforcement agencies were also consulted on the amendments through the national Firearms and Weapons Policy Working Group, which includes representatives from the:

- Australian Capital Territory Justice and Community Safety Directorate and Australian Capital Territory Policing
- South Australia Police
- Victoria Police and Victoria Department of Justice and Regulation
- Queensland Police Service
- New South Wales Police
- Western Australia Police
- Northern Territory Police, and
- Tasmania Police.

The Commonwealth also publically consulted on the amendments. In September 2020, the Commonwealth released a consultation paper on the amendments and received nine submissions. On 28 May 2021, the Commonwealth released an exposure draft of the amendments, along with explanatory and background material. The Department received 170 submissions.

During these public consultation processes, submissions were received from a number of stakeholders, including (but not limited to):

- Gun Control Australia and Australian Gun Safety Alliance.
- Aquaterro, Shooters Union Australia, Firearms Dealers Association – Qld Inc, Rheinmetall, Shooting Australia, Firearm Owners United, GameCon NSW Inc, Hunters and Shooters Society of Australia, National Shooting Council.
- SUNS Shooting Club Inc, Oceania Precision Pty Limited, NIOA, Shooting Industry Foundation of Australia, Sporting Shooters' Association of Australia, Western Australia Airsoft Club, W&A Platt

Submissions challenged the classification of the ‘self-ejecting manual-loading repeating action shotgun’ and raised concerns that this was too broad a description for this shotgun. In response, the Amendment Regulations will narrowly describe this shotgun as a ‘self-opening repeating action shotgun’ and ensure that its classification aligns with similar shotguns.

The remaining measures are maintained in the Amendment Regulations, as controls on importing barrel extensions supports efforts to combat illicit firearms manufacturing and stakeholders broadly supported the other remaining measures.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments and has advised that the amendments is likely to have no more than minor regulatory impacts on business, individuals and organisations, and a Regulation Impact Statement will not be required. The OBPR reference number is 43106.

The Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on 15 December 2021.

Details of the Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021

Section 1 – Name

This section provides that the title of the instrument is the *Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Amendment Regulations commence.

Table item 1 provides that the whole instrument to commence on 15 December 2021.

Section 3 – Authority

This section sets out the authority under which the Amendment Regulations are to be made, which is the *Customs Act 1901* (the Act).

Section 4 – Schedules

This section provides for each instrument that is specified in a Schedule to the Amendment Regulations to be amended or repealed as set out in the applicable items in the Schedule concerned, and for any other item in a Schedules to this instrument to have effect according to its terms.

The *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) are amended by Schedule 1 to the Amendment Regulations.

Schedule 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item [1] - Subregulation 4F(1)

Item [1] of the Amendment Regulations amends subregulation 4F(1) of the PI Regulations to omit a reference to subregulation 4F(2A) of the Regulations. This reference is redundant as a result of subregulation 4F(2A) of the PI Regulations being repealed by the *Customs (Prohibited Imports) Amendment (Weapons) Regulations 2019*. This amendment is minor and mechanical in nature and does not alter or change the existing operation of subregulation 4F(1) of the PI Regulations.

Item [2] - Subregulation 4F(4)

Item [2] of the Amendment Regulations amends subregulation 4F(4) of the PI Regulations to insert a new definition of barrel extension, which means a metal projection:

- (a) which extends rearward from the breech end of a firearm barrel; and

(b) into which the breech locks while the firearm is in battery or firing position.

This amendment is consequential on the amendment made by item [4] of the Amendment Regulations, which amends the definition of *firearm part* in subregulation 4F(4) of the PI Regulations to include a barrel extension as a firearm part.

Item [3] - Subregulation 4F(4) (at the end of paragraph (c) of the definition of *firearm*)

Item [3] of the Amendment Regulations amends paragraph (c) of the definition of *firearm* in subregulation 4F(4) of the PI Regulations to add a new device to be excluded from that definition. The new device is a hand-held electric device to which table item 3 of Part 2 of Schedule 13 to the PI Regulations applies.

Table item 3 of Part 2 of Schedule 13 to the PI Regulations applies to handheld devices designed to administer an electric shock on contact (for example goods commonly known as tasers), excluding certain specified goods. Table item 4 of Part 2 of Schedule 13 to the PI Regulations applies to parts for such goods.

Under table item 19 of Part 2 of Schedule 6 to the PI Regulations, goods known as electro-shock cartridges are controlled as ammunition for a firearm. *Electro-shock cartridge* is defined in subregulation 4F(4) of the PI Regulations as ammunition designed or adapted to deliver an electric shock or charge on impact, when discharged from a firearm.

Similar terminology across Schedules 6 and 13 to the PI Regulations have caused confusion for importers of electro shock cartridges for hand held electric devices, such as State and Territory police forces, as to whether the cartridges fall to table item 19 of Schedule 6, or table item 4 of Part 2 of Schedule 13, to the PI Regulations.

This amendment reduces ambiguity around the importation requirements for electro-shock cartridges for hand held electric devices, by adding to the list of things that are not a firearm under the definition of firearm in regulation 4F, being hand-held electric devices to which table item 3 of Part 2 of Schedule 13 to the PI Regulations applies.

Further, in order to clarify that electro-shock cartridges for hand held electric devices are covered by table item 4 of Part 2 of Schedule 13 to the PI Regulations, a reference to these items is expressly included in table item 4 (see item [32] of the Amendment Regulations and the related clause notes for that item).

Item [4] - Subregulation 4F(4) (after paragraph (b) of the definition of *firearm part*)

Item [4] of the Amendment Regulations amends the definition of *firearm part* to insert new paragraph (ba), which includes barrel extension as a firearm part.

The easy procurement of barrel extensions facilitates the illicit domestic manufacture of some types of semi-automatic firearms and the barrel assemblies that fit those firearms.

This amendment prohibits the importation of barrel extensions unless the importation of such extensions satisfy the requirements under Part 2 of Schedule 6 to the PI Regulations that apply to the importation of firearm parts.

Item [5] - After paragraph 1.3(a) of Part 1 of Schedule 6

Item [5] of the Amendment Regulations amends subitem 1.3 of Part 1 of Schedule 6 to the PI Regulations to insert new paragraph (aa).

Regulation 4F of the PI Regulations prohibits the importation of firearms, firearm accessories, firearm parts, firearm magazines, ammunition, components of ammunition and imitations unless the article is an article to which an item in Part 2 of Schedule 6 to the PI Regulations applies and the importation is in accordance with the requirements set out in column 3 of the item. The requirements include various tests with which the importation of an article may comply.

The official purposes test is one of the importation tests, and one of the elements of this test is that the article is to be imported for the purposes of a government of the Commonwealth, a State or Territory. Subitem 1.3 of Part 1 of Schedule 6 of the PI Regulations sets out several examples where the importation of an article is for the purposes of a government of the Commonwealth, a State or Territory.

New paragraph (aa) adds a new example, being an article that is to be imported by a person for the purposes of supplying the article to another person to enable that other person to supply the article to a government under a contract in force when the article is to be imported.

The purpose of this amendment is to recognise the contemporary commercial practice by which a government engages with a primary contractor who may rely on subcontractors to provide necessary articles to enable the primary contractor to fulfil its contractual obligations with a government.

An example of such an importation is where Blue Company has a contract with the Department of Defence (Defence) but Blue Company has a contract with Orange Company to provide parts to enable Blue Company to meet the contract with Defence. Orange Company may need to import these parts and therefore needs permission for this importation. As Orange Company is not importing the goods to be supplied by them to government under a contract, they cannot be given permission to import the articles under the official purposes test. In this scenario, only Blue Company can be granted import permission under the official purposes test as it has the contract with Defence. This amendment allows an import permission to be granted to Orange Company in these circumstances.

This amendment is supported by amendments made by item [7] of the Amendment Regulations, which amends the ownership arrangement of an article that is to be supplied to a government of the Commonwealth, a State or Territory under a contract such that the article may be owned by any person.

Item [6] - After paragraph 1.3(b) of Part 1 of Schedule 6

Item [6] of the Amendment Regulations amends subitem 1.3 of Part 1 of Schedule 6 to the PI Regulations to insert new paragraph (ba).

Similar to the amendments made by item [5] of the Amendment Regulations, new paragraph (ba) adds another new example, being an article that is to be imported by a person for the

purposes of enabling another person to show or demonstrate the article (including as part of another article) to a government:

- (i) under a contract or proposed contract; or
- (ii) as part of a tender process.

The purpose of this amendment is to recognise the circumstance whereby a primary contractor or primary tenderer may rely on subcontractors to provide articles that are necessary to enable a primary contractor or tenderer to show or demonstrate an article to government.

An example of such an importation is where Orange Company, the subcontractor to Blue Company, wishes to import articles that will either be provided in whole to Blue Company (who is a prime tenderer to Defence), or be provided to Blue Company to be used as a component to create something else (for example a tracking system, which is modified to be used on a soldier's smart helmet or firearm). In response to a tender, Blue Company demonstrates the capability of the whole article or another article that incorporates the imported article to Defence.

Orange Company may need to import these parts and therefore needs permission for this importation. As Orange Company is not importing the goods to be shown to government by them, it cannot be given permission to import the articles under the official purposes test. In this scenario, only Blue Company can be granted import permission under the official purposes test as it is showing the goods to Defence. This amendment allows an import permission to be granted to Orange Company in these circumstances.

In respect of the ownership arrangements of these articles, table item 2 under subitem 1.4 of Part 1 of Schedule 6 allows the article to be owned by any person such that the subcontractor may retain ownership while the article is shown to a government of the Commonwealth, a State or a Territory to demonstrate its uses.

Item [7] - Subitem 1.4 of Part 1 of Schedule 6 (cell at table item 1, column headed "Ownership arrangements")

Item [7] of the Amendment Regulations repeals and substitute the cell in the column headed "Ownership arrangements" in table item 1 under subitem 1.4 of Part 1 of Schedule 6 to the PI Regulations.

One of the matters that the Minister must consider under the official purposes test is whether there are ownership arrangements in accordance with subitem 1.4 of Part 1 of Schedule 6 to the PI Regulations.

Currently, column 3 of table item 1 under subitem 1.4 of Part 1 of Schedule 6 to the PI Regulations sets out the ownership arrangements that apply in relation to an article that is to be supplied to a government of the Commonwealth, a State, or a Territory under a contract. In these circumstances, the government must own or intend to acquire ownership of the article within a period that the Minister considers appropriate, and the government must retain ownership until the good is disposed of to another government or the good is destroyed.

The current ownership requirements in this circumstance are too prescriptive and do not reflect contemporary commercial practice. As mentioned above, the means by which Defence is supplied with articles have changed over the years and Defence now uses new supplier engagement models that predominantly engage domestic suppliers more so than international suppliers. There is a need to update the PI Regulations to ensure domestic manufacturers can fulfil contractual obligations, to readily import goods required to deliver on Defence's expectations and operational requirements.

Given that the ownership arrangements do not reflect contemporary commercial practice, this item amends the ownership arrangements in column 3 of table item 1 of subitem 1.4 of Schedule 6 to the PI Regulations to remove the existing requirements and instead enables the article to be owned by any person at the time of importation.

Item [8] - Subparagraph 2.2(g)(ii) of Part 1 of Schedule 6

Item [8] of the Amendment Regulations repeals subparagraph 2.2(g)(ii) of Part 1 of Schedule 6 to the PI Regulations.

Item 2 of Part 1 of Schedule 6 to the PI Regulations sets out the Specified purposes test, which sets out several purposes for which firearms and firearms-related articles can be imported.

Each purpose under the Specified purpose test contains various considerations of which the Minister must be satisfied before permission for the importation of firearms and firearms-related articles can be granted. Under paragraph 2.2(g) of Part 1 of Schedule 6 to the PI Regulations, the Minister may give permission to import an article if the Minister is satisfied that the importer's principal or sole occupation is the business of researching or developing firearms technology or other defence equipment and law enforcement related products, and the importer has a proven history of developing or producing such products for a government of the Commonwealth, a State or a Territory.

The need to have such a proven history of importation may reduce the number of competitors who are able to compete for the provision of firearm technology to Commonwealth and State Territory governments. The current requirement may result in an unnecessary impediment on possible innovations relating to firearm technology in Australia.

The repeal of subparagraph 2.2(g)(ii) of Part 1 of Schedule 6 to the PI Regulations removes the requirement to have a proven history of developing or producing firearms technology or other defence and law enforcement related products which the Minister must consider when deciding under paragraph 2.2(g) whether to grant an import permit for goods.

Item [9] - Sub-subparagraph 2.2(g)(iv)(A) of Part 1 of Schedule 6

Item [9] of the Amendment Regulations amends sub-subparagraph 2.2(g)(iv)(A) of Part 1 of Schedule 6 to the PI Regulations to insert "involving the government of the Commonwealth, a State or Territory" after the word "tender".

As above per the notes for item [8] of the Amendment Regulations, paragraph 2.2(g) concerns the circumstance of importation under the specified purposes test where an

importer's principal or sole occupation is the business of researching or developing firearms technology or other defence and law enforcement related products.

With the removal of the requirement to have a proven history of developing products for governments, this amendment introduces a new requirement which requires the article be imported for the completion of a specific project or tender involving a government of the Commonwealth, a State or Territory. Articles that are to be imported for a project or a tender that does not involve such a government but is related to another project or tender will therefore not satisfy the new requirement.

Item [10] - Part 2 of Schedule 6 (table item 2, column 2, after paragraph (g))

Item [10] of the Amendment Regulations amends the cell under column 2 of table item 2 of Part 2 of Schedule 6 to the PI Regulations to add new paragraph (ga), which provides for a new category of firearm; being a self-opening repeating action shotgun:

- (a) without a firearm magazine; or
- (b) fitted with a firearm magazine of a capacity no greater than 5 rounds.

The importation of these shotguns needs to comply with one of the tests specified for table item 2 of Part 2 of Schedule 6 to the PI Regulations. The purpose of this amendment, along with the amendment in item [13] of the Amendment Regulations, is to appropriately control self-opening repeating action shotguns in line with other comparable shotguns.

Items [13] and [17] of the Amendment Regulations also makes consequential amendments.

Item [11] - Part 2 of Schedule 6 (cell at table item 2B, column 3)

Item [11] of the Amendment Regulations repeals and substitutes the cell under column 3 of item 2B of the table in Part 2 of Schedule 6 to the PI Regulations. The new cell includes two additional tests and has the effect that, for the importation of articles covered by item 2B in the table in Part 2 of Schedule 6 to the PI Regulations, an importer must comply with at least one of the following tests:

- (a) the official purposes test;
- (b) the specified purposes test;
- (c) the police certification test.

Table item 2B of Part 2 of Schedule 6 to the PI Regulations covers a firearm part of, or for, a firearm to which table item 1 or 2 of that Part applies, other than a firearm part that is capable of converting, either on its own or in conjunction with other parts, a firearm to a semi-automatic or fully automatic firearm. Currently, the importation of the goods covered by item 2B of the table in Part 2 of Schedule 6 to the PI Regulations only has to satisfy the police certification test.

The importation of most firearms under items 1 and 2 must comply with at least 1 of the following tests:

- (a) the official purposes test;
- (b) the specified purposes test;
- (c) the specified person test;
- (d) the police certification test.

The importation of soft air rifles, referred to in table item 1 of Part 2 of Schedule 6 to the PI Regulations, only has to comply with the police certification test.

It is common for importers to import consignments, which contain both the firearms referred to in table items 1 and 2 of Part 2 of Schedule 6 to the PI Regulations, and their parts. In such instances, there are often a mixture of firearms and firearm parts that are subject to various importation tests. When this occurs, importers of mixed consignments may need to gain a certification from State and Territory police forces as well as an import permission from the Department of Home Affairs (Home Affairs) in order to satisfy the appropriate test for all imported goods within the same consignment.

This is an unnecessary regulatory burden and can cause significant delay and unnecessary costs for importers.

The effect of this amendment is to provide importers of firearms under table items 1 and 2 of Part 2 of Schedule 6 to the PI Regulations, and parts for such firearms, with an option to satisfy the same tests for both the firearm and its parts, in order to avoid the need to gain a certification from State and Territory police as well as an import permission from Home Affairs.

Item [12] - Part 2 of Schedule 6 (table item 6, column 2, paragraph (d))

Item [12] of the Amendment Regulations amends paragraph (d) in column 2 of item 6 of the table in Part 2 of the Schedule 6 to the PI Regulations to omit “pump-action” and in its place substitute with “pump action”, so that this term is consistently referred to across the framework. This amendment is minor and mechanical in nature and does not alter or change the existing operation of item 6 of the table under Part 2 of Schedule 6.

Item [13] - Part 2 of Schedule 6 (table item 6, column 2, after paragraph (d))

Item [13] of the Amendment Regulations amends column 2 of table item 6 of Part 2 of Schedule 6 to the PI Regulations to insert new paragraph (da) to refer for a new category of firearm to which item 6 applies. The new category being a self-opening repeating action shotgun fitted with a firearm magazine of a capacity greater than 5 rounds.

The effect of this amendment is that the importation of a self-opening repeating action shotgun fitted with a firearm magazine of a capacity greater than 5 rounds, must comply with at least one of the tests in column 3 of table item 6 of Part 2 of Schedule 6 to the PI Regulations. However, table item 6 of Part 2 of Schedule 6 to the PI Regulations does not apply to a firearm that has a fully automatic firing capability or one to which a firearms accessory is attached or is integral.

Item [14] - Part 2 of Schedule 6 (at the end of the cell at table item 14A, column 2)

Item [14] of the Amendment Regulations amends the cell in column 2 of table item 14A of Part 2 of Schedule 6 to the PI Regulations to add new categories of goods to which table item 14A applies, being:

- a detachable firearm magazine (other than a gravity fed paintball hopper) designed exclusively for use with a paintball marker and paintballs; and
- paintballs.

The purpose of this amendment is to consolidate paintball markers, their parts, and paintballs under one table item of Part 2 of Schedule 6 to the PI Regulations. A detachable firearm magazine designed for dual use (for paintball markers and other firearms) is not covered by table item 14A of Part 2 of Schedule 6 to the PI Regulations as amended.

This amendment is supported by amendments made by items [22] and [24] of the Amendment Regulations. Items [15], [18] and [20] of the Amendment Regulations also makes consequential amendments.

Item [15] - Part 2 of Schedule 6 (table item 15, column 2)

Item [15] of the Amendment Regulations amends column 2 of table item 15 of Part 2 of Schedule 6 to the PI Regulations to insert “(other than a firearm magazine to which item 14A applies)” after “Detachable firearm magazine”.

Table item 15 of Part 2 of Schedule 6 to the PI Regulations covers certain detachable firearm magazines for specified firearms, none of which are paintball markers. The purpose of this amendment is to put beyond doubt that table item 15 Part 2 of Schedule 6 to the PI Regulations does not apply to magazines for use with a paintball marker.

Item [16] - Part 2 of Schedule 6 (table item 15, column 2, paragraph (b))

Item [16] of the Amendment Regulations amends paragraph (b) under column 2 of table item 15 of Part 2 of the Schedule 6 to the PI Regulations to omit “pump-action” and substitute with “pump action”, so that this term is consistently referred to across the framework. This amendment is minor and mechanical in nature and does not alter or change the existing operation of table item 15 of Part 2 of Schedule 6 to the PI Regulations.

Item [17] - Part 2 of Schedule 6 (table item 15, column 2, paragraph (c))

Item [17] of the Amendment Regulations amends column 2 of table item 15 of Part 2 of Schedule 6 to the PI Regulations to repeal paragraph (c) and substitute the two new paragraphs as follows:

- (c) fully automatic shotguns;
- (d) self-opening repeating action shotguns.

Table item 15 of Part 2 of Schedule 6 to the PI Regulations applies to detachable firearm magazines having a capacity of more than 5 rounds for specified firearms. This amendment inserts a new category of firearms in relation to such magazines, being a self-opening repeating action shotgun. The effect of this amendment is that an importation of these magazines must comply with at least one of the tests in column 3 of table item 15 of Part 2 of Schedule 6 to the PI Regulations.

This amendment is consequential on the amendments made by item [13] of the Amendment Regulations.

Item [18] - Part 2 of Schedule 6 (table item 16, column 2)

Item [18] of the Amendment Regulations amends column 2 of table item 16 of Part 2 of Schedule 6 to the PI Regulations to insert “(other than a firearm magazine to which item 14A applies)” after “Detachable firearm magazine”.

Table item 16 of Part 2 of Schedule 6 to the PI Regulations covers certain detachable firearm magazines for specified firearms, none of which are paintball markers. The purpose of this amendment is to put beyond doubt that table item 16 of Part 2 of Schedule 6 to the PI Regulations does not apply to magazines for use with a paintball marker.

Item [19] - Part 2 of Schedule 6 (table item 16, column 2, paragraph (b))

Item [19] of the Amendment Regulations amends paragraph (b) under column 2 of table item 16 of Part 2 of the Schedule 6 to the PI Regulations to omit “pump-action” and in its place substitute with “pump action”, so that this term is consistently referred to across the framework. This amendment is minor and mechanical in nature and does not alter or change the existing operation of item 16 of the table under Part 2 of Schedule 6 to the PI Regulations.

Item [20] - Part 2 of Schedule 6 (table item 16A, column 2)

Item [20] of the Amendment Regulations amends column 2 of table item 16A of Part 2 of Schedule 6 to the PI Regulations to insert “(other than a firearm magazine to which item 14A applies)” after “Detachable firearm magazine”.

Table item 16A of Part 2 of Schedule 6 to the PI Regulations covers certain detachable firearm magazines for specified firearms, none of which are paintball markers. The purpose of this amendment is to put beyond doubt that table item 16A of Part 2 of Schedule 6 to the PI Regulations does not apply to magazines for use with a paintball marker.

Item [21] - Part 2 of Schedule 6 (table item 16A, column 2)

Item [21] of the Amendment Regulations amends paragraph (b) under column 2 of table item 16A of Part 2 of the Schedule 6 to the PI Regulations to omit “pump-action” and in its place substitute with “pump action” so that this term is consistently referred to across the framework. This amendment is minor and mechanical in nature and does not alter or change the existing operation of table item 16A of Part 2 of Schedule 6 to the PI Regulations.

Item [22] - Part 2 of Schedule 6 (table item 17, column 2, paragraph (a))

Item [22] of the Amendment Regulations amends paragraph (a) in the cell in column 2 of table item 17 of Part 2 of Schedule 6 to the PI Regulations to insert a reference to table item 14A of that Part. The effect of this amendment is that firearms magazines covered by table item 14A of Part 2 of Schedule 6 to the PI Regulations is excluded from table item 17 of that Part.

This amendment is consequential on the amendments made by item [14] of the Amendment Regulations to enable table item 14A of Part 2 of Schedule 6 to the PI Regulations to apply to all paintball markers, magazines, parts and paintballs.

Item [23] - Part 2 of Schedule 6 (at the end of the cell at table item 17, column 3)

Item [23] of the Amendment Regulations amends the cell under column 3 of table item 17 of Part 2 of Schedule 6 to the PI Regulations to add the dealer test to the list of tests with which the importation of goods to which table item 17 applies must comply.

Similar to the amendments made by item [11] of the Amendment Regulations, firearms and firearms magazines may be imported in the same consignment and, in some circumstances, a permission to import a firearm can be granted if the importation satisfies the dealer test. Under current table item 17 of Part 2 of Schedule 6 to the PI Regulations, the magazine for such firearms cannot satisfy the dealer test so the importation of such magazines has to satisfy one of the other tests. The purpose of this amendment is to provide importers, when importing firearms under the dealer test, to also be able to import magazines for such firearms under the same test. This will reduce the regulatory burden on importers.

Item [24] - Part 2 of Schedule 6 (table item 20, column 2)

Item [24] of the Amendment Regulations amends column 2 of table item 20 of Part 2 of Schedule 6 to the PI Regulations to omit “, 12 or 14A” and substitute with “12”.

Table item 20 of Part 2 of Schedule 6 to the PI Regulations applies to ammunition for any firearm to which table item 1, 2, 3, 6, 9, 12 or 14A of that Part applies, other than ammunition to which table item 19 of that Part applies. Table item 14A of Part 2 of Schedule 6 to the PI Regulations is amended by item [14] of the Amendment Regulations such that table item 14A applies to all paintball markers, parts, magazines, and paintballs (which are ammunition for paintball markers). As such, table item 20 of Part 2 of Schedule 6 to the PI Regulations would no longer need to apply to paintballs as ammunition for paintball.

Item [25] - Subitem 3.1 of Part 3 of Schedule 6

Item [25] of the Amendment Regulations amends subitem 3.1 of Part 3 of Schedule 6 to the PI Regulations to omit all the words from and including “following conditions” and substitute with “condition that the importer must comply with any condition or require specified, in relation to the article, in the Minister’s permission.”.

Subitem 3.1 of Part 3 of Schedule 6 to the PI Regulations sets out the conditions applicable to an importation, in accordance with the official purposes test in Schedule 6, of an article to be supplied under a contract to a government of the Commonwealth, a State or a Territory. One of the conditions is that, if the government does not acquire ownership in the period that the Minister mentions in the permission, the importer must export the article (current paragraph 3.1(a) of Part 3 of Schedule 6 to the PI Regulations refers).

Consequential on the amendments made by item [7] of the Amendment Regulations, which removes the requirement for a government of the Commonwealth, a State or a Territory to acquire ownership, the condition in current paragraph 3.1(a) of Part 3 of Schedule 6 to the PI Regulations is redundant. The condition under paragraph 3.1(b) of Part 3 of Schedule 6 to the PI Regulations is retained.

Item [26] - After paragraph 1.4(a) of Part 1 of Schedule 13

Item [26] of the Amendment Regulations amends subitem 1.4 of Part 1 of Schedule 13 to the PI Regulations insert new paragraph (aa).

Regulation 4H of the PI Regulations prohibits the importation of a weapon and weapon part of the kind mentioned in a table item of Part 2 of Schedule 13 to the PI Regulations unless the importation is in accordance with the requirements set out in the item. The requirements include various tests with which the importation may comply.

The official purposes test is one of the importation tests and, similar to Schedule 6, one of the elements of this test is that the good is to be imported for the purposes of a government of the Commonwealth, a State or Territory. Subitem 1.4 of Part 1 of Schedule 13 to the PI Regulations sets out several examples where the importation of a good is for the purposes of a government of Commonwealth, a State or Territory.

New paragraph (aa) adds a new example, being a good that is to be imported by a person for the purposes of supplying the good to another person to enable that other person to supply the good to the government under a contract in force when the article is to be imported.

The purpose of this proposed amendment is to recognise the contemporary commercial practice by which the government engages with a primary contractor may rely on a subcontractor to provide necessary goods to enable the primary contractor to fulfil its contractual obligations with government.

This amendment is supported by amendments made by item [28] of the Amendment Regulations, which amends the ownership arrangement of a good that is to be supplied to a government of the Commonwealth, a State or Territory under a contract such that the good may be owned by any person.

Item [27] - After paragraph 1.4(b) of Part 1 of Schedule 13

Item [27] of the Amendment Regulations amends subitem 1.4 of Part 1 of Schedule 13 to the PI Regulations to insert new paragraph (ba).

Similar to the amendments made by item [6] of the Amendment Regulations, new paragraph (ba) adds another new example being that a good that is to be imported by a person for the purposes of enabling another person to show or demonstrate the good (including as part of another article) to a government:

- (i) under a contract or proposed contract; or
- (ii) as part of a tender process.

The purpose of this amendment is to recognise the circumstance whereby a primary contractor or primary tenderer may rely on a subcontractor to provide goods that are necessary to enable a primary contractor or tenderer to show or demonstrate and good to government.

In respect of the ownership arrangements of these goods, table item 2 under subitem 1.5 of Part 1 of Schedule 13 to the PI Regulations allows the good to be owned by any person such that the subcontractor may retain ownership while the good is shown to a government of the Commonwealth, a State or a Territory to demonstrate its uses.

Item [28] - Subitem 1.5 of Part 1 of Schedule 13 (cell at table item 1, column headed "Ownership arrangements")

Item [28] of the Amendment Regulations repeals and substitutes the cell in the column headed “Ownership arrangements” in table item 1 under subitem 1.5 of Part 1 of Schedule 13 to the PI Regulations.

One of the matters that the Minister must consider under the official purposes test is whether there are ownership arrangements in accordance with subitem 1.5 of Part 1 of Schedule 13 to the PI Regulations.

For a good that is to be supplied to the government of a Commonwealth, a State or a Territory under a contract, table item 1 under subitem 1.5 of Part 1 of Schedule 13 to the PI Regulations provides that the government must own or intend to acquire ownership of the good within a period that the Minister considers appropriate, and the government must retain ownership until the good is disposed of to another government or the good is destroyed.

The current ownership requirement does not reflect contemporary commercial practice whereby a primary contractor may rely on a subcontractor to provide goods the importation of which are for the purposes of a government of the Commonwealth, a State or Territory.

This amendment changes the ownership arrangement for the goods such that the goods may be owned by any person. For example, a contract may require goods for inventory for repairs or replacement. This amendment assists both the government and its contracted suppliers with managing the inventory onshore such that articles are imported and acquired as necessary.

Item [29] - Subparagraph 2.2(f)(ii) of Part 1 of Schedule 13

Item [29] of the Amendment Regulations repeals subparagraph 2.2(f)(ii) of Part 1 of Schedule 13 to the PI Regulations.

Item 2 of Part 1 of Schedule 13 to the PI Regulations sets out the specified purpose test, which sets out several purposes for which weapons and weapons-related goods can be imported.

The specified purpose test under Schedule 13 to the PI Regulations is similar to the same test in Schedule 6 to those Regulations and contains various considerations of which the Minister must be satisfied before permission for the importation of weapons and weapons-related goods can be granted. Under paragraph 2.2(f) of Part 1 of Schedule 13 to the PI Regulations, the Minister may give permission to import a good if the Minister is satisfied that the importer’s principal or sole occupation is the business of researching or developing weapons technology or other defence equipment and law enforcement related products, and the importer has a proven history of developing or producing such products for a government of the Commonwealth, a State or a Territory.

Similar to the amendments made for Schedule 6 to the PI Regulations, the need to have such a proven history of importation has had the practical effect of reducing the number of competitors who are able to compete for the provision of weapon technology to Commonwealth and State Territory governments. The current requirement has resulted in an unnecessary impediment on possible innovations relating to weapon technology for Australia.

The repeal of subparagraph 2.2(f)(ii) of Part 1 of Schedule 13 to the PI Regulations removes the requirement to have a proven history of developing or producing weapons technology or other defence and law enforcement related products which the Minister must consider when deciding whether to grant an import permit for goods.

Item [30] - Subparagraph 2.2(f)(iii) of Part 1 of Schedule 13

Item [30] of the Amendment Regulations amends subparagraph 2.2(f)(iii) of Part 1 of Schedule 13 to the PI Regulations to omit “that kind.” and substitute with “that kind;”.

This amendment is minor and mechanical in nature to correct a grammatical error and does not alter or change the existing operation of subparagraph 2.2(f)(iii) of Part 1 of Schedule 13 to the PI Regulations.

Item [31] - Sub-subparagraph 2.2(f)(iv)(A) of Part 1 of Schedule 13

Item [31] of the Amendment Regulations amends sub-subparagraph 2.2(f)(iv)(A) of Part 1 of Schedule 13 to the PI Regulations to insert “involving the government of the Commonwealth, a State or Territory” after the word “tender”.

As above per the clause notes for item [29] of the Amendment Regulations, paragraph 2.2(f) of Part 1 of Schedule 13 to the PI Regulations concerns the circumstance of importation under the specified purposes test where an importer’s principal or sole occupation is the business of researching or developing weapons technology or other defence and law enforcement related products.

With the removal of the requirement to have a proven history of developing products for government, this amendment introduces a new requirement, which requires the good be imported for the completion of a specific project or tender involving a government of the Commonwealth, a State or Territory. Goods that are to be imported for a project or a tender that does not involve the government, but is related to another project or tender, will therefore not satisfy the new requirement.

Item [32] - Part 2 of Schedule 13 (table item 4, column headed “Weapons and weapon parts”)

Item [32] of the Amendment Regulations amends table item 4 of Part 2 of Schedule 13 to the PI Regulations to insert “(including cartridges)” after the word “Parts”. This amendment has the effect of specifically identifying electro-shock cartridges in table item 4 of Part 2 of Schedule 13 to the PI Regulations as a part of a good covered by table item 3 of that Part (see item [3] of the Amendment Regulations and the related clause notes).

Item [33] - Subitem 1.1 of Part 3 of Schedule 13

Item [33] of the Amendment Regulations amends subitem 1.1 of Part 3 of Schedule 13 to the PI Regulations to omit all the words from and including “following conditions” and substitute with “condition that the importer must comply with any condition or require specified, in relation to the article, in the Minister’s permission.”.

Subitem 1.1 of Part 3 of Schedule 13 to the PI Regulations sets out the conditions to which an importation, in accordance with the official purposes test in that Schedule, of a good to be supplied under a contract to a government of the Commonwealth, a State or a Territory is subject. Similar to amendments to Schedule 6 of the PI Regulations made by the Amendment Regulations, one of the conditions is that, if the government does not acquire ownership in the period that the Minister mentions in the permission, the importer must export the good (current paragraph 1.1(a) of Part 3 of Schedule 13 to the PI Regulations refers).

Consequential on the amendments made by item [28] of the Amendment Regulations, which removes the requirement for government to acquire ownership, the condition in current paragraph 1.1(a) of Part 3 of Schedule 13 to the PI Regulations is redundant. The condition under paragraph 1.1(b) of Part 3 of Schedule 13 to the PI Regulations is retained.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021

This Disallowable 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.

Overview of the Disallowable Legislative Instrument

The *Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021* (the Amendment Regulations) make amendments to the import controls under the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) that apply to firearms, non-firearm weapons, their parts, accessories and ammunition. Specifically, these amendments:

- include additional circumstances in which firearms and weapons can be imported under the official purposes test, to allow the importation of such goods by persons who are subcontractors to primary contractors or tenderers;
- encourage innovation and reduce regulatory burden by removing the requirement that importers need to have a proven history of developing or producing defence or law enforcement related products before being granted an import permit for firearms and non-firearms weapons under the specified purposes test;
- introduce new import controls on barrel extensions as a firearm part to assist in preventing these goods being used in the illicit manufacture of firearms;
- streamline the tests that apply in relation to the importation of certain firearms and their parts and magazines, reducing the regulatory burden associated with certain importations;
- specifically identify self-opening repeating action shotguns to ensure their importation is appropriately classified and controlled;
- consolidate the requirement for paintball markers and related articles such that the importation test that apply are located in one table item under Part 2 of Schedule 6 to the PI Regulations; and
- more clearly distinguish the electro-shock cartridges that can be imported as ammunition for a firearm from those that could be imported as a part for a hand-held electric shock device.

The Amendment Regulations reduce regulatory burden on firearms dealers and importers, along with Commonwealth, state and territory government agencies, by amending the tests that apply in relation to the importation of certain firearms, weapons, and their parts and magazines. These amendments also expand the conditions under which certain import tests can be satisfied, in order to reflect contemporary commercial practice.

Human rights implications

This Disallowable Legislative Instrument may engage the following rights:

- the right to life under Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom from arbitrary and unlawful interference with privacy, family, home and correspondence under Article 17 of the ICCPR.

Right to Life

The Amendment Regulations may engage the right to life in Article 6(1) of the ICCPR. The United Nations Human Rights Council's General Comment No 36 on Article 6 states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

General Comment No 36 also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal weapons to unauthorised individuals.

Import controls on barrel extensions

The import controls on barrel extensions under items [2] and [4] of the Amendment Regulations promote the right to life under Article 6(1) of the ICCPR, as they lower the risk and potential harm to life posed by such devices by limiting their availability to the Australian community.

Imported barrel extensions are currently being used to illicitly manufacture firearms and alter firearms to make them untraceable. These barrel extensions were not previously regulated on import, and could be imported without seeking import permission. To combat this threat, items [2] and [4] of the Amendment Regulations amend the definition of 'firearm part' in subregulation 4F(4) of the PI Regulations to include barrel extensions.

These amendments ensure that barrel extensions can only be imported under import tests specified in Schedule 6 to the PI Regulations, constricting the circumstances in which these barrel extensions are available to the Australian community. Any person who intentionally imports a barrel extension without the appropriate permission may be liable for a penalty under subsection 233BAB(5) of the *Customs Act 1901* of up to imprisonment for 10 years or 2,500 penalty units (currently \$555,000), or both.

These amendments also assist law enforcement in tracing the movement and location of barrel extensions, reducing the risk that they will be diverted to illicit manufacturing.

Import controls on self-opening repeating action shotguns

The import controls on self-opening repeating action shotguns at items [10] and [13] of the Amendment Regulations may engage the right to life under Article 6(1) of the ICCPR, as these items alter existing controls on these shotguns.

Self-opening repeating action shotguns were previously regulated as item 12 articles under Part 2 of Schedule 6 to the PI Regulations, meaning that they could only be imported under the official purposes test, specified purposes test or returned goods test.

Items [10] and [13] of the Amendment Regulations alter controls on self-opening repeating action shotguns by classifying them under the following items under Part 2 of Schedule 6 to the PI Regulations, allowing them to be imported under a wider range of import tests:

- Item 2 – Where the shotgun is without a firearm magazine or fitted with a firearm magazine having a capacity of no more than 5 rounds, allowing this shotgun to be imported under the police certification, official purposes, specified purposes or returned goods test.
- Item 6 – Where the shotgun is fitted with a firearm magazine of a capacity greater than 5 rounds, allowing this shotgun to be imported under the official purposes, specified purposes, specified person, police certification, dealer or returned goods tests.

These changes align the controls on these shotguns with those imposed on similar repeating action shotguns, ensuring greater consistency in the treatment of these shotguns on import.

Although this measure will allow the importation of these shotguns for a wider range of import tests, this measure still fulfils the States' duty to protect the right to life, as appropriate safeguards still remain on the importation of these items.

Self-opening repeating action shotguns can only be imported with under import tests specified in Schedule 6 to the PI Regulations. Any person who intentionally imports a self-opening repeating action shotgun without the appropriate permission may be liable for a penalty under subsection 233BAB(5) of the *Customs Act 1901* of up to imprisonment for 10 years or 2,500 penalty units (currently \$555,000), or both.

States and Territories also impose restrictions on the possession and use of these self-opening repeating action shotguns, and an individual must apply for a licence to possess an imported shotgun for a genuine reason under state and territory law. Genuine reasons typically include (but are not limited to) government use, sports shooters and vertebrate pest control. Self defence is not a genuine reason to own a firearm under any Commonwealth, state or territory law, and criminal penalties apply where an individual possesses a firearm in breach of the conditions imposed under their firearms licence or import permit.

These controls are currently applied to other kinds of repeating action shotgun, and have been highly effective in protecting the Australian community from firearm-related violence.

Right to privacy

The Amendment Regulations may engage the right to privacy under Article 17 of the ICCPR. Article 17 of the ICCPR accords everyone the right to protection against arbitrary or unlawful interference with their privacy, family, home or correspondence. Interferences are permissible so long as they are authorised by law and are not arbitrary.

The United Nations Human Rights Committee has not defined 'privacy', however it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The term 'unlawful' in Article 17 means no interference can take place except in cases authorised by law. What is 'arbitrary' will be determined by the circumstances of each case. In order for an interference with the right to privacy not to be arbitrary, the interference must

be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in particular circumstances.

The United Nations Human Rights Committee has interpreted reasonableness in this context to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The import controls on barrel extensions may engage the right to privacy, as an individual will need to provide personal information to secure import permission. This typically includes information verifying their identity, the reason for importing the barrel extension and verifying the proposed end-user.

Where permission is sought from the Minister, this permission can often be subject to conditions under Part 3 of Schedule 6 to the PI Regulations. These conditions typically include reporting requirements, providing government with information on the location of the firearm barrel and verification that it has reached the intended end user.

The import controls on barrel extensions are clearly lawful, as they are prescribed by law. The import controls are also not arbitrary, as they are necessary and reasonable to ensure that barrel extensions are imported lawfully under the PI Regulations and can be traced once they arrive in Australia. This assists in ensuring that these barrel extensions are not used to illicitly manufacture firearms or alter firearms to make them untraceable.

The import controls are also proportionate in achieving this objective. Information provided in support of an import application is subject to protections under the *Privacy Act 1988* (Cth). This information may only be used for official purposes, including purposes connected with law enforcement and the processing of import permits. In making an application to import barrel extensions, an applicant is also asked to provide consent for their personal information to be checked with official record holders.

Conclusion

The Amendment Regulations are compatible with human rights because it promotes the right to life.

The Hon. Jason Wood MP
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