

## FOI

**From:** s22(1)(a)(ii)  
**Sent:** Wednesday, 14 December 2016 6:43 PM  
**To:** s22(1)(a)(ii)  
**Cc:**  
**Subject:** FW: Classification of Troy Sporting Rifle [SEC=UNCLASSIFIED]

FYI

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**From:** firearms.enquiries [<mailto:firearms.enquiries@ag.gov.au>]  
**Sent:** Monday, 29 February 2016 4:55 PM  
**To:** s22(1)(a)(ii)  
**Cc:** firearms.enquiries  
**Subject:** Classification of Troy Sporting Rifle [SEC=UNCLASSIFIED]

## UNCLASSIFIED

Good afternoon s22(1)(a)(ii)

Thank you for hosting us a couple of weeks ago, and sorry for the delay in getting back to you.

After further discussions back at the office informed by our visit, we can confirm that our position has not changed on this matter. The Troy Sporting Rifle is controlled as an Item 12 article under Part 2 of Schedule 6 to the *Customs (Prohibited Imports) Regulations 1956*.

As noted at the meeting, we are willing to consider alternative designs – noting that we have resource constraints limiting how much specific assistance we can provide.

Thanks again, and happy to discuss.

s22(1)(a)(ii)  
 Firearms Team  
 Criminal Justice Division  
 Attorney-General's Department

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For further information about importing firearms and firearm related articles, please visit our firearms importation website: [www.ag.gov.au/firearms](http://www.ag.gov.au/firearms)

This advice is current at the time of writing and is specific to the particular information it has been provided in response to. This advice may be superseded by changes to the Customs (Prohibited Imports) Regulations 1956 or changes to government policy. Before relying on this advice, importers should seek confirmation from the Attorney-General's Department that Government policy or Regulations have not changed.

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## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 255**

Issued by the Authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs (Prohibited Imports) Amendment Regulations 2008 (No. 6)*

Subsection 270(1) of the *Customs Act (1901)* (the Act) relevantly provides 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 for giving effect to the Act or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to Customs.

Section 50 of the Act relevantly provides 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 in specified circumstances or unless specified conditions or restrictions are complied with. Further, subsection 50(3) of the Act relevantly provides that the regulations may provide that the importation of the goods is prohibited unless a licence, permission, consent or approval to import the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations made under the Act.

The *Customs (Prohibited Imports) Regulations 1956* (the Principal Regulations) control the importation of the goods specified in the various regulations and Schedules, by prohibiting importation absolutely, or making importation subject to the permission of a Minister or a specified person.

The purpose of the *Customs (Prohibited Imports) Amendment Regulations 2008* (No. ) (the amending regulations) was to amend the Principal Regulations to provide that:

- (a) importers must hold a licence or authorisation that is relevant to the purpose of their importation in accordance with the law of the State or Territory in which the article is to be used – previously the only requirement was for the importer to have a licence to possess the firearm. The amendment achieves greater harmonisation and consistency in licensing requirements across Commonwealth and State and Territory jurisdictions, and supports licensing requirements at the States and Territories level;
- (b) an article may be imported under the official purposes test for exhibition at a museum by the government of the Commonwealth, a State or a Territory, and be owned by any person. The amendment allows for articles or collections owned by a foreign government or individual to be displayed in a museum by an Australian government;
- (c) manual firearms that are substantially the same in appearance as a fully automatic firearm be subject to the same regulatory controls as fully automatic firearms. Almost all States and Territories have legislation that effectively restricts access to manual firearms which resemble fully automatic firearms. The amendment is designed to achieve greater harmonisation between

Commonwealth, State and Territory legislation and provide greater certainty on the controls of firearms; and

- (d) the phrase 'fully automatic firearms' be included as a new category in item 15 to ensure clarification that magazines for fully automatic firearms are also covered by item 15 of Part 2 of Schedule 6 to the Principal Regulations. The amendment clarifies that they are subject to higher import controls.

In developing the amending Regulations, consultation was undertaken across Commonwealth, State and Territory agencies involved in firearms management. In addition to this, a consultation paper was sent out to industry stakeholders, including the 18 members of the Sporting Shooters and Firearms Advisory Council (an Australian Government consultative forum) and a range of firearms importers active in the past two years, inviting submissions in relation to the amending Regulations. A large number of submissions were received and considered in the development of the amending Regulations.

The amending Regulations were designed to maintain a balance between the interests of those who have a genuine need to have access to and use firearms and the interests of the broader community to live in a safe and secure environment.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

## Attachment A

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### NOTES ON CLAUSES

#### Clause 1: Name of Regulations

This clause is a formal provision specifying the name of the *Customs (Prohibited Imports) Amendment Regulations 2008 (No. 6)*.

#### Clause 2: Commencement

This clause is a statement that the Regulations will commence on the day after they are registered.

#### Clause 3: Amendment of *Customs (Prohibited Imports) Regulations 1956* (the Principal Regulations)

This clause provides that each regulation that is specified in Schedule 1 is amended or repealed as set out in that Schedule.

#### Clause 4: Transitional

This clause provides that the proposed amendments made by Schedule 1 apply in relation to a request for a permission, made on or after the date on which these Regulations commence, to import a firearm, a firearm accessory, a firearm part, a firearm magazine, ammunition, a component of ammunition or a replica mentioned in regulation 4F of the *Customs (Prohibited Imports) Regulations 1956*.

### Schedule 1 – Amendments

#### Item 1

This item is a consequential amendment to Item 2 and amended Schedule 6, Part 1, paragraph 1.2 (b) of the Principal Regulations to allow for new paragraph (c).

#### Item 2

This item amended Schedule 6 of Part 1, paragraph 1.2 of the Principal Regulations to include a new paragraph (c) stipulating that the Attorney-General must not give written permission for the importation of an article under the official purposes test unless satisfied that the importer holds a relevant licence or authorisation to possess the article for the importer's intended use in accordance with the law of the State or Territory in which the article is to be used. The new provision requires that an importer be able to demonstrate that they are appropriately licensed or authorised by the relevant State or Territory for their intended use of the article. For example, if the importer is importing the article with the intention of selling the article to government, then the importer must hold a licence that permits the sale, or not be required to hold a licence for the sale – meaning they are otherwise authorised. An authorisation is considered to exist in circumstances where the law of the relevant State or Territory does not require the importer to have a licence for the importer's intended use.

Essentially the importer needs to meet any relevant licensing or authorisation required by the relevant State or Territory for what they intend to do with the articles.

Under this amendment, the licence does not need to specifically mention the activity concerned, but rather the activity simply needs to be permitted under the licence or authorisation that applies to the importer.

The amendment provides for greater harmonisation of Commonwealth, State and Territory provisions, and also supports the licensing requirements of the States and Territories by making them part of the import process.

### **Item 3**

This item amended Schedule 6 of Part 1, paragraph 1.4, table, Item 2, column 2, paragraph (c) of the Principal Regulations to include new paragraph (d).

New paragraph (d) provides that an article exhibited at a museum by the government of the Commonwealth, a State or a Territory may be owned by any person in accordance with the conditions of the official purposes test. The effect of the amendment is to allow museums such as the Australian War Memorial to temporarily import articles for exhibition that are owned by a foreign government or individuals.

### **Items 4 through 6, Item 8 through 11, Item 21 and Items 23 through 29**

These items have the effect that importers must hold a licence or authorisation that is relevant to the purpose of their importation in accordance with the law of the State or Territory in which the article is to be used. For this amendment, the licence does not need to specifically mention the activity concerned, but rather the activity simply needs to be permitted under the licence or authorisation that apply to the importer.

The amendment provides for greater harmonisation of Commonwealth, State and Territory provisions, and supports the licensing requirements of the States and Territories by making them part of the import process.

### **Item 7**

This item is a technical amendment that corrects a reference.

### **Item 12**

This item is a consequential amendment to item 13 and amended Schedule 6 of Part 2, Item 1, column 2 of the Principal Regulations.

### **Item 13**

This item amended Schedule 6, Part 2, Item 1, column 2 of the Principal Regulations to include new paragraph (b). The previous paragraphs (a) and (b) are now numbered as subparagraphs (i) and (ii).

New paragraph (b) provides that any firearm listed in Schedule 6 of Part 2, Item 1, column 2 of the Principal Regulations that is substantially the same in appearance as a fully automatic firearm cannot be included under Schedule 6 of Part 2, Item 1, column 2 of the Principal Regulations. The amendment ensured that firearms normally classified as Item 1 that are substantially the same in appearance as a fully automatic firearm, regardless of their manner of operation, design or colour, are classified under Schedule 6 of Part 2, item 12 of the Principal Regulations. Therefore, importation of these firearms requires compliance with the official purposes test, the specified purposes test, or the returned goods test. A decision that a firearm is substantially the same in appearance as a fully automatic firearm requires comparison between the particular firearm that is to be imported and a fully automatic firearm in existence. Substantially the same in appearance allows for some differing characteristics. For example the colour, the existence of magazines, stock covers and sight rails may not necessarily be determinative.

In almost all States and Territories these firearms are more tightly controlled than a Category A or Category B firearm. Therefore, the amendment provides greater harmonisation and consistency of firearms regulations across both Commonwealth and State and Territory jurisdictions.

#### **Item 14**

This item is a consequential amendment to Item 15.

#### **Item 15**

This item amended Schedule 6 of Part 2, item 2, column 2 of the Principal Regulations to include new paragraph (b). The previous paragraphs (a) and (b) are now numbered as subparagraphs (i) and (ii).

New paragraph (b) provides that any firearm listed in Schedule 6 of Part 2, item 2, column 2 of the Principal Regulations that is substantially the same in appearance as a fully automatic firearm cannot be included under Schedule 6 of Part 2, Item 1, column 2 of the Principal Regulations. The proposed amendment ensures that firearms normally classified as Item 2 that are substantially the same in appearance as a fully automatic firearm, regardless of their manner of operation, design or colour, are classified under Schedule 6 of Part 2, Item 12 of the Principal Regulations. Therefore, importation of these firearms requires compliance with the official purposes test, the specified purposes test, or the returned goods test. A decision that a firearm is substantially the same in appearance as a fully automatic firearm requires comparison between the particular firearm that is to be imported and a fully automatic firearm in existence. Substantially the same in appearance allows for some differing characteristics. For example the colour, the existence of magazines, stock covers and sight rails may not necessarily be determinative.

In almost all States and Territories these firearms are more tightly controlled than a Category A or Category B firearm. Therefore, the amendment provides greater harmonisation and consistency of firearms regulations across both Commonwealth and State and Territory jurisdictions.

## Item 16

This item amended Schedule 6 of Part 2, Item 9, column 2, paragraph (b) of the Principal Regulations to replace the words ‘resembles in appearance a sub-machine gun, a machine pistol or a handgun that has a fully automatic firing capability’ with ‘is substantially the same in appearance as a sub-machine gun, a machine pistol or a handgun that has a fully automatic firing capability’. This amendment ensures that handguns or soft air handguns that are substantially the same in appearance as a sub-machine gun, a machine pistol or a handgun that has a fully automatic firing capability, do not fall to Item 9 of Part 2 of Schedule 6 of the Principal Regulations. Rather, such firearms, regardless of their manner of operation, design or colour, are classified under Item 12 of Part 2 of Schedule 6 of the Principal Regulations. Therefore, the importation of these firearms requires compliance with the official purposes test, the specified purposes test, or the returned goods test. By replacing the phrase ‘resembles in appearance’ with ‘is substantially the same in appearance as’ the amendment ensures consistency in phrasing within Schedule 6 of the Principal Regulations.

## Item 17

This item amends Schedule 6 of Part 2, Item 9A, column 2, of the Principal Regulations to replace the words ‘resembles in appearance a sub-machine gun, a machine pistol or a handgun that has a fully automatic firing capability’ with ‘is substantially the same in appearance as a sub-machine gun, a machine pistol or a handgun that has a fully automatic firing capability’. This amendment ensures that replicas that are substantially the same in appearance as a sub-machine gun, a machine pistol or a handgun that has a fully automatic firing capability, do not fall to Item 9A of Part 2 of Schedule 6 of the Principal Regulations. Rather, such firearms, regardless of their manner of operation, design or colour, will be classified under Item 12 of Part 2 of Schedule 6 of the Principal Regulations. Therefore the importation of these firearms requires compliance with the official purposes test, the specified purposes test, or the returned goods test. By replacing the phrase ‘resembles in appearance’ with ‘is substantially the same in appearance as’ the amendment ensures consistency in phrasing within Schedule 6 of the Principal Regulations.

## Item 18

This item amended Schedule 6 of Part 2, Item 12, column 2 of the Principal Regulations to provide that a firearm, not being a firearm to which Items 1, 2, 3, 6, 9 or 14A applies, falls to Item 12. The effect of this amendment is to include firearms that do not fall under Item 14A of Part 2 of Schedule 6 to be included in Item 12 and therefore, the importation of these firearms must comply with the official purposes test, the specified purposes test, or the returned goods test. The Principal Regulations were silent as to how firearms that are excluded from Item 14A were to be classified. The amendment clarified the classification of these articles.

## Item 19

This item amended Schedule 6 of Part 2, Item 14A, column 2, paragraph (b) of the Principal Regulations to substitute it to provide the exception of firearms that are



substantially the same in appearance as fully automatic firearms. This ensures that the paintball markers listed in Column 2 in Item 14A of Part 2 of Schedule 6 of the Principal Regulations, regardless of their colour, that are substantially the same in appearance as fully automatic firearms be classified under Item 12 of Part 2 of Schedule 6 of the Principal Regulations. Therefore the importation of these paintball markers requires compliance with the official purposes test, the specified purposes test, or the returned goods test. By replacing the phrase 'resembles in appearance' with 'is substantially the same in appearance as' the amendment ensures consistency in phrasing within Schedule 6 of the Principal Regulations. The phrase 'fully automatic firearms' also encapsulates the previous words of 'a sub-machine gun, an assault rifle, a machine gun, a machine pistol or a handgun that has a fully automatic firing capability'.

### **Item 20**

This Item amended Schedule 6 of Part 2, Item 15, column 2 of the Principal Regulations to include magazines for fully automatic firearms. The proposed amendment results in Item 15 of the Principal Regulations capturing detachable magazines having a capacity of more than five rounds for self-loading centre fire rifles, self-loading shotguns, pump-action shotguns, and fully automatic firearms. This amendment includes the phrase 'fully automatic firearms' as a new category in Item 15 to ensure that magazines for fully automatic firearms are subject to the more appropriate tests of Item 15.

This Item corrects a previous drafting error.

### **Item 22**

This Item amended Schedule 6 of Part 3, Item 3 of the Principal Regulations to include sub item 3.5 - articles imported for temporary exhibit at a museum. Sub item 3.5 articulates the conditions that must be met when an article is imported, for the purposes of exhibition, under the official purposes test.



**Australian Government**  
**Attorney-General's Department**

**Criminal Justice Division**

## NOTICE OF RECENT AMENDMENTS

### **Schedule 6 - *Customs (Prohibited Imports) Regulations 1956***

On 16 December 2008, regulations amending the *Customs (Prohibited Imports) Regulations 1956* took effect. The effects of the amendments are outlined below.

#### **Military-style firearms**

A manual long arm that is substantially the same in appearance as a fully automatic firearm is subject to the same import controls as fully automatic firearms (Item 12, Part 2 of Schedule 6). A decision that a firearm is substantially the same in appearance as a fully automatic firearm requires comparison between the particular firearm that is to be imported and a fully automatic firearm in existence. Almost all States and Territories have legislation that effectively restricts access to manual long arms that resemble fully automatic firearms.

The amendment is designed to achieve greater harmonisation between Commonwealth, State and Territory legislation and provide greater certainty about controls on military-style firearms.

#### **Magazines for fully automatic firearms**

Detachable firearm magazines with a capacity of more than five rounds for fully automatic firearms are now classified under Item 15, Part 2 of Schedule 6.

#### **Temporary import by government for display at museums**

An article may be imported under the official purposes test for exhibition at a museum by the government of the Commonwealth, a State or a Territory, and be owned by any person. The amendment allows for articles or collections owned by a foreign government or individuals to be temporarily imported for display in a museum by an Australian government.

#### **Licensing and authorisation under State and Territory law**

Importers must demonstrate that they are appropriately licensed or authorised as required in the relevant State or Territory, for their intended use of the article. For example, if the importer is importing the article with the intention of selling the article to government, then the importer must hold a licence that permits the sale, or not be required to hold a licence for the sale – meaning they are otherwise authorised. Essentially, an importer needs to meet any relevant licensing or authorisation required by the State or Territory that relates to the purpose of import. A licence does not need to specifically mention the activity concerned, but rather the activity simply needs to be permitted in accordance with a licence or authorisation.

The amendment provides for greater harmonisation of Commonwealth, State and Territory provisions, and also supports the licensing requirements of the States and Territories by making them part of the import process.

#### **More Information**

The *Customs (Prohibited Imports) Amendment Regulations 2008* contain the details of the above amendments and can be found at [www.comlaw.gov.au](http://www.comlaw.gov.au).

If, as a result of these amendments, you are unsure about the importation requirements that apply to a particular firearms article, please contact the Attorney-General's Department at <[firearms@ag.gov.au](mailto:firearms@ag.gov.au)>. The Department will arrange for classification of articles and provide advice on import requirements.

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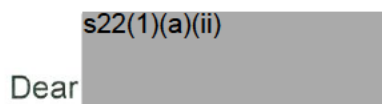
**THE HON PETER DUTTON MP  
MINISTER FOR IMMIGRATION  
AND BORDER PROTECTION**

Ref No: MC16-017792

s22(1)(a)(ii)



s22(1)(a)(ii)



Dear

Thank you for your representation of 16 August 2016 on behalf of  
s22(1)(a)(ii) concerning the importation of the Troy pump action rifle.

The importation of firearms into Australia is strictly controlled under the *Customs (Prohibited Imports) Regulations 1956* (the Regulations) and enforced by the Australian Border Force (ABF). The Regulations list the requirements and conditions that importers must meet to import firearms into Australia. The requirements are based on the physical characteristics of the firearm, such as its action and the type of ammunition used with the firearm, and the purposes for which the firearm is being imported.

The Troy pump action rifle is a repeating action centre fire rifle that is substantially the same in appearance as a fully automatic firearm. Permission to import fully automatic firearms, and those that resemble them, is only provided in very limited circumstances by the Attorney-General's Department or the state and territory police. These strict import requirements are necessary in order to protect the community, police and security officers who may believe a firearm, which is substantially the same in appearance as a fully automatic firearm, is a fully automatic firearm and respond accordingly.

Thank you for bringing s22(1)(a)(ii) concerns to my attention.

Yours sincerely

PETER DUTTON

30/8/16

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s. 22(1)(a)(ii)

## 2. Firearms Identification and Safety Testing Officer (FSTO)

### 2.1 Role and Function

2.1.1 An FSTO is primarily responsible for:

- the safety testing of firearms;
- identifying and classifying firearms and related goods in their region

2.1.2 Trained FSTO's are required to formally identify firearms and their parts and accessories in their Region in order to ensure that ACBPS treats all firearms correctly under the Regulations. FSTO's follow a set procedure and use specialised equipment to safety test firearms that are required to be safety tested under the Regulations.

2.1.3 All firearms, parts, accessories, magazines, imitation firearms or articles suspected as such MUST be examined by an FSTO prior to release. The FSTO will confirm the relevant Item number that applies to the article from Part 2, Schedule 6 of the Regulations.

2.1.4 An authorised FSTO can issue classification over the phone, via email with or without use of pictures, or following physical examination of the articles. If physical inspection is carried out the results are to be recorded on an Identification and Safety Testing Results Form signed by the FSTO.

2.1.5 It is up to the FSTO to decide based on the nature of the articles which inspection method will be required to identify the articles correctly. When transferring firearms or related articles to FSTO's, officers need to be mindful of the transport requirements discussed in chapter 3 of the [Custodial Firearms Policy Instruction and Guidelines](#).

### 2.2 Training and Qualification

2.2.1 To qualify as an FSTO, an ACBPS officer is assessed against the unit of competence *PSPBORD408A Examine and test firearms* by an FSTO Assessor.

2.2.2 As part of that assessment, the officer will undergo the following phases:

- Preparation phase
- Classroom theory and practical phase
- Assessment phase

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- 2.2.3 At the successful completion of the course the FSTO Assessor will send all relevant paperwork (while maintaining a local copy) to the FSTO Coordinator in Canberra and record into COMPASS the course completion. Where necessary this may be entered by the FSTO Coordinator.

**2.3 Re-certification**

- 2.3.1 Current ACBPS Policy is that the FSTO undergoes the assessment process at least once every two (2) years – this ensures that the officer is still competent in the safety testing and identification of firearms and is aware of any recent legislative or technological changes.

s. 22(1)(a)(ii)



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