**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. 133, 2015**

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

*Customs Act 1901*

*Customs (Prohibited Imports) Amendment (Firearms and Firearm Magazines) 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 (Firearms and Firearm Magazines) 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 firearms-related articles. The amending Regulation amends the Principal Regulations as they relate to the importation of lever action shotguns with a magazine capacity of more than five rounds.

The technical elements of the National Firearms Agreement (‘NFA’) are currently being reviewed with a view to being updated, as recommended by the Martin Place Siege Review. As part of this, the appropriate classification of lever action shotguns, particularly those with a magazine capacity of more than five rounds, is being considered.

In order to ensure any update of the NFA in this regard is not undermined by having a large number of lever action shotguns with a magazine capacity of more than five rounds imported into Australia in the time taken to finalise the review and update of the NFA, a temporary prohibition on the importation of those firearms is being put in place. This is an interim measure until the review and update of the NFA are completed. This process will ensure there will be fewer individuals licensed to possess these firearms who will be affected should the update to the NFA result in a change in categorisation of such firearms. The update of the NFA is expected to be finalised in early 2016.

The purpose of the amending Regulation is therefore to amend the Principal Regulations to prohibit the importation of lever action shotguns fitted with a firearm magazine of a capacity of more than five rounds.

In order to ensure that the prohibition on the importation of lever action shotguns with a magazine capacity of greater than five cannot be avoided by importing the magazines separately, the amending Regulation also prohibits the importation of magazines with a capacity of greater than five rounds for lever action shotguns.

The amending Regulation achieves this by:

* amending the description of lever action shotguns in Item 2 in Part 2 of Schedule 6 of the Principal Regulations to refer to lever action shotguns:
* without a firearm magazine, or
* fitted with a firearm magazine of a capacity no greater than five rounds, and
* excluding lever action shotguns fitted with a firearm magazine of a capacity greater than five rounds from Item 12 in Part 2 of Schedule 6 of the Principal Regulations, and
* excluding magazines with a capacity of more than five rounds for lever action shotguns from Item 17 of Part 2 of Schedule 6 of the Principal Regulations.

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 Office of Best Practice Regulation has been consulted and has advised that a Regulation Impact Statement is not required.

The amending Regulation does not incorporate any documents by reference.

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

A Statement of Compatibility with Human Rights has been prepared and completed for the amending Regulation and is at Attachment B.

The amending Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

**ATTACHMENT A**

**Details of the *Customs (Prohibited Imports) Amendment (Firearms) Regulation 2015***

Regulation 1 – Name

This regulation provides that the title of the Regulation is the *Customs (Prohibited Imports) Amendment (Firearms and Firearm Magazines) Regulation 2015* (the ‘amending Regulation’).

Regulation 2 – Commencement

This regulation sets out the timetable for the commencement of the provisions of the Regulation. The amending Regulation commences on the day after it is registered on the Federal Register of Legal Instruments.

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 of the Principal Regulations currently includes all lever action shotguns.

Item 1 of the amending Regulation repeals paragraph (g) in item 2 of Part 2 under Schedule 6 and inserts a new paragraph (g) to only refer to lever action shotguns:

1. without a firearm magazine, or
2. fitted with a firearm magazine with a capacity of no more than 5 rounds.

This amendment ensures that such lever action shotguns are able to be imported under the import tests 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, for example, fully-automatic firearms and firearms fitted with a firearm accessory.

Because of the amendment to Item 2 of Part 2 of Schedule 6 made by Item 1 of the amending Regulation, Item 12 would therefore include lever action shotguns fitted with a magazine with a capacity of more than five rounds.

Item 2 of the amending Regulation amends Item 12 of Part 2 so that it does not include lever action shotguns fitted with a magazine with a capacity of more than five rounds.

The effect of this amendment is that lever action shotguns fitted with a magazine with a capacity of more than five rounds 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 firearms are unable to be imported unless the firearm is listed in Part 2 of Schedule 6.

As such, the combined effect of the amendment and paragraph 4F(1)(a) is that lever action shotguns with a magazine capacity of more than five rounds are unable to be imported.

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 3 of the amending Regulation amends Item 17 of Part 2 so that it also does not include firearm magazines with a capacity of more than five rounds for lever action shotguns whether or not attached to a firearm.

The effect of this amendment 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.

As such, the combined effect of the amendment and paragraph 4F(1)(a) is that firearm magazines with a capacity of more than five rounds for lever action shotguns are unable to be imported.

**ATTACHMENT B**

**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 Firearm Magazines) Regulation 2015***

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*.

Overview of the Legislative Instrument

This Legislative Instrument prohibits the importation of lever action shotguns with a magazine capacity of more than five rounds, as well as the importation of firearm magazines with a capacity of more than five rounds for lever action shotguns whether or not attached to a firearm.

A review and update to the National Firearms Agreement is currently underway. The purpose of this instrument is to ensure that lever action shotguns with a magazine capacity of more than five rounds are not imported into Australia prior to the finalisation of the review and update which is expected to conclude in early 2016.

In order to ensure that the prohibition on the importation of lever action shotguns with a magazine capacity of greater than five rounds cannot be avoided by importing the magazines separately, the Instrument also prohibits the importation of magazines with a capacity of greater than five rounds for lever action shotguns.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not adversely affect any applicable rights or freedoms.