



Australian Government

**Australian Customs and
Border Protection Service**

**Acting Chief Operating Officer
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Ms Julie Dennett

Committee Secretary

The Senate Standing Committee on Legal and Constitutional Affairs

Parliament House

PO Box 6100

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Dear Ms Dennett,

**Inquiry into the Crimes Legislation
Amendment (Organised Crimes and Other Measures) Bill 2012**

On 3 December 2012, the Senate Standing Committee on Legal and Constitutional Affairs invited Customs and Border Protection to make a submission regarding the Crimes Legislation Amendment (*Organised Crime and Other Measures*) Bill 2012. Customs and Border Protection welcomes the opportunity to provide this submission.

Customs and Border Protection considers that the proposed legislative amendments will ultimately help to provide increased penalties—and potentially an increased deterrence factor—for individuals who have engaged in crimes at the Australian border. As such, we are generally supportive of the amendments.

Schedule 1 Unexplained wealth amendments

1. Customs and Border Protection supports the proposed expansion of paragraph 228(1)(d) of the Proceeds of Crime Act 2002, which will ensure that things relevant to unexplained wealth proceedings can be seized. Customs and Border Protection also supports the inclusion of ‘things relevant to unexplained wealth proceedings’ into section 256 ‘Returning seized things’.

Enhanced reporting requirements

2. The amendments will impose new reporting requirements on Customs and Border Protection through the contribution of relevant information and statistics to an annual report that will be submitted to the Parliamentary Joint Committee on Law Enforcement by the Commissioner of the AFP. Customs and Border Protection supports the introduction of these amendments.

Schedule 2 Firearms trafficking amendments

3. Importers must comply with a strict regime in order to bring firearms into Australia. Firearms and firearm parts subject to control by the firearms trafficking amendment are already strictly controlled on import/export under the Customs legislation.
4. Customs and Border Protection administers the Customs (Prohibited Imports) Regulations 1956 (the PI Regulations) which regulates the import of firearms, firearms parts and accessories (such as silencers and collapsible stocks) into Australia.
5. Under the Regulations, the import of a firearm, firearm part or accessory is prohibited unless the importer has first obtained permission to import that item from either State or Territory police or the Attorney-General (or his delegate).
6. The proposed Crimes Legislation Amendment schedule 2 firearms trafficking amendment of the Criminal Code Act (the Code) will introduce:
 - a) a new offence for firearm trafficking across Australia's borders (covering import and export), which is in addition to the cross-border trafficking offence already in the Code, and
 - b) a new offence for aggravated firearm trafficking covering instances in which a large number (i.e. greater than 50) of firearms, their parts or components are trafficked.
7. The aim of these laws is to ensure firearm traffickers are held responsible for the consequences of providing firearms into the black market from both domestic and international sources. It is also intended to support efforts to prevent the diversion of firearms into overseas illegal markets.
8. Customs and Border Protection's role at the Australian border will continue as at present to detect illicit firearms and firearm parts and to administer the import/export controls on

those goods. On detection, illicit firearms or firearm parts will continue to be referred to the Australian Federal Police (AFP) for investigation and prosecution. This is similar to the current process for drugs and precursor trafficking investigation referrals to the AFP.

9. Customs and Border Protection and the AFP already cooperate across a range of law enforcement activities. Each agency notifies the other of serious drugs and border controlled precursor's detections and they collaborate on investigations under annexes to the Memorandum of Understanding between the agencies.
10. The illegal importation and exportation of firearms is currently an offence against section 233BAB of the Customs Act 1901 (the Customs Act) and firearms, firearm accessories (e.g. silencers and stocks), firearm parts, firearm magazines, ammunition and components of ammunition are Tier 2 goods for the purposes of the Customs Act.

Subsection 360.2(2) – Aggravated offence

11. New subsection 360.2(2) will introduce an aggravated offence of disposing of or acquiring 50 or more firearms or firearm parts in a six month period, in a domestic cross-border context.
12. To establish this offence, the prosecution must prove that:
 - a) a person engaged in conduct on one or more occasions that constituted an offence (the underlying offence) against a firearm law as defined in subsection 360.2(3).
 - b) the conduct occurred in the course of trade or commerce among the States, between a State and Territory or between two Territories.
 - c) the conduct on any occasion, or on two or more occasions taken together, results in the disposal or acquisition, by the person of:
 - 50 or more firearms
 - 50 or more firearm parts that might be used to constitute one or more firearms, or
 - a combination of firearms and firearms parts such that the sum of the actual firearms and the firearms that might be constituted by the parts is 50 or more, and
 - the relevant occasions of conduct, if more than one, happened within a six month period.”

Division 361 – International firearms trafficking

13. The proposed international trafficking offence applies only to the trafficking of firearms and firearms parts as defined in the Customs (Prohibited Imports) Regulations 1956 (the Customs PI Regulations).
14. Division 361 within the Criminal Code will substantially increase the penalties for trafficking firearms and firearm parts into or out of Australia. More specifically, it will strengthen the integrity of the import and export regime by introducing harsher penalties for the import or export of larger numbers of firearms (50 or above).
15. The inclusion of the definition of 'firearm part' throughout various sections in the Criminal Code would seem particularly useful as this will cover the broader trend of individuals attempting to import only parts of firearms for future diversion or assembly of fully functioning weapons at a later stage.
16. The inclusion of a six-month period for the accumulation of firearms or parts of firearms to make up the 50 or more threshold seems reasonable given the severity of the penalties proposed for the aggravated offences (i.e. maximum life imprisonment). It is essential that these offences only apply to serious examples of offending.

Yours sincerely,

Jan Dorrington
Acting Chief Operating Officer
DCEO Maritime, Corporate & Intelligence

5 February 2013