SIFA Shooting Industry Foundation Australia

Australia's Firearms Experts

Consultation Paper: DRAFT NSW Explosives Regulation 2021

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The Shooting Industry Foundation of Australia (SIFA) thanks the NSW Government for the opportunity to contribute to the Proposed Explosives Regulation 2021.

SIFA is the peak body representing the major importers and wholesalers of firearms and firearm related components in Australia, who service the Australian Defence, Law Enforcement and Civilian markets.

The annual value of small arms and ammunition imports to Australia to March 2021 was A$772.3 million and exports over the same period was A$166.6 million. The civilian sectors alone (hunting and target shooting) contributed $A2.4B to the Australian economy in 2019, supported an estimated 400 small businesses and more than 19,000 jobs.

SIFA bases its expectations of regulators against the COAG Best Practice Regulation Guide, which NSW is a signatory to:

1. Establishing a case for action before addressing a problem;
2. A range of feasible policy options must be considered, including selfregulatory, coregulatory and non-regulatory approaches, and their benefits and costs assessed;
3. Adopting the option that generates the greatest net benefit for the community;
4. In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-
    a. The benefits of the restrictions to the community as a whole outweigh the costs, and
    b. The objectives of the regulation can only be achieved by restricting competition;
5. Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. Ensuring that regulation remains relevant and effective over time;
7. Consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. Government action should be effective and proportional to the issue being addressed.

SIFA supports the proposal to no longer require firearms dealers to obtain a security clearance when engaged in activities set out in Clause 48.

SIFA objects strongly to the proposal to limit reloading powder to 12kg per household.

It was the clear intent of the legislators that holders of a firearms license were not in scope for these regulations. The NSW Firearms Act 1996 and subordinate legislation proscribe how the supply and possession of ammunition is to be managed. It is important to note that whilst the Act talks of the possibility of limits to the amount of ammunition which can be purchased at any one time, the regulations are silent on any such limit. Neither the Act nor the Regulations set limitations on the amount of ammunition or propellant powder which can be stored at a firearm license holders' residence.

The regulatory impact statement itself states that *"firearms licence holders are subject to strict requirements for the supply, storage and use of ammunition under the Firearms Act 1996. Similarly, to gain a licence under the Firearms legislation, stringent reviews are conducted that are considered to be comparable to those conducted under the Explosives legislation"*.

This confirms that licensing is the primary control mechanism in use, and that the safeguards around the issuing of a firearms license are deemed sufficient to ensure public safety regarding access to ammunition and propellant powder. Where a risk demonstrably needs to be controlled, it should be controlled once at the most effective point. This is achieved via a firearms license.

Propellant powder needs to be removed from the explosives regulations entirely as it is a clear case of regulatory duplication and overreach.

Irrespective of that. the regulator has failed to clearly articulate the risk to community safety that they are seeking to mitigate with the proposed limit. The ADI safety data sheet, readily available from the chemwatch web site, lists Division 1.3 propellant powder (in this case, benchmark 8208) as "low" for flammability hazard rating.

Division 1.3 items are substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard. In Division 1.3 a "low risk" quantity is anything up to 50kg. For Division 1.3 in quantities of up to 1000kg, the recommended evacuation distance in the case of fire is only 100 meters.

The regulatory impact statement makes the claim that *"The proposed Regulation will ensure that there are not large, unsafe amounts of propellant powder being stored in the community"*. The evidence of this risk needs to be provided in far more detail. What is the science behind 11kg being safe and 13kg being unsafe? Why 12kg? Why not 50kg as per the definition of low risk for Division 1.3 items, or 1000kg as per the safety data sheet?

The regulator has not assessed the existing controls that are already in place and considered their effectiveness or otherwise. SIFA has requested that the regulator provide us with data on the number of safety incidences experienced over the last five years where >12kg's of propellant powder were involved, and none were provided.

SIFA needs to understand how the proposed limit and its administration / compliance monitoring and enforcement is intended to control / mitigate the perceived risk. Existing compliance monitoring and enforcement for this specific risk is virtually nonexistent in our experience. Unless there is an intent for Safework NSW to enter the private residences of firearms license holders to actively monitor the proposed limit by some means (nothing is mentioned along those lines in the regulatory impact statement) there is no value in maintaining a regulation which (in reality) will never achieve its objectives.

As set out in more detail in the case studies below, the proposed limit is insufficient when considered against typical usage patterns and market dynamics. Reloading powder is notoriously difficult for wholesalers to distribute around the country, largely as the result of poorly crafted and inconsistent regulation which is disproportionate to the risk involved.

This manifests itself in long periods where reloading powder is simply unavailable to purchase at a retail level. The Australian Forum of Explosives Regulators (AFER) plans to undertake a dangerous goods code maintenance project commencing this year which might begin to address this. Uncertainty of supply is the primary reason why reloaders feel compelled to maintain their own supplies of reloading powder.

Concurrently, the Institute of Makers of Explosives (IME), the Council on Safe Transportation of Hazardous Articles (COSTHA) and the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) are leading a discussion at the UN Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals regarding the exit of very low hazard energetic materials from Class 1.

The discussion paper states that *"the use of the word "explosive" in a classification may indicate to decision makers in transport chains that there is a possibility of mass explosion or a security concern. This often results in severe impediments to transport and storage from various entities including civil aviation authorities, ports, carriers, insurers and building and fire safety authorities"*. These regulations are an example which support that assertion.

Rather than imposing arbitrary limits on the amount of powder to be held by a household, NSW should instead be addressing the shortfalls in the regulations around the commercial distribution of reloading powder from the wholesaler to retail outlets nationally via the Australian Forum of Explosives Regulators (AFER) which would be far more effective in minimising any perceived risks around the volumes of residential holdings of propellant powder.

Summary.

1. Propellant powder should be removed from the remade explosive regulations (for both firearms dealers and firearm license holders).
2. Failing that,
    a. In the absence of any credible data to suggest otherwise, the limit per household needs to be increased to a level which is consistent with recognised risk thresholds such as UN agreements and safety data sheets.
    b. The implementation of revised domestic powder limits must be deferred until the completion of the DG code maintenance project, and until regulations around commercial distribution of powders are improved to the point where retail supply is no longer an issue.
    c. The regulator needs to set out the transitionary or compensatory arrangements where current household holdings exceed 12kg.

Case studies.

The international full-bore prone rifle standard single stage match course of fire requires a minimum of 90 rounds of 308 Winchester ammunition. A typical club level shooter participating just once per fortnight will conservatively fire 2250 rounds per year (i.e., ignoring all sighting, load development and practice rounds).

A typical 308 load of requires 47 grains or 3.045549 grams of AR2208 propellant. This equates to approx. 1300 rounds per 4kg container, or 6.85kg per year in the scenario above. That's for one rifle in one usage scenario. The average shooter in Australia owns 4 firearms.

Given its nondiscriminatory nature where men and women of all ages compete alongside each other as equals, shooting is often a family pastime. Rather than being a regulatory oversight, the existing regulations recognise the likelihood that multiple shooters may reside in the same house. When this occurs, it is not uncommon for that household to maintain multiple rifles / calibers requiring adequate quantities of a variety of different powders. One local manufacturer (ADI) list 18 different powders in their domestic range, all with different characteristics. ADI list 11 different powders suitable for use in the 223 Remington cartridge alone.

Pest controllers and kangaroo harvesters typically operate in remote areas and shoot relatively large volumes of ammunition. The work is itinerant in nature given seasonal conditions and proximity to chillers.

A professional shooter might make one or two trips per year to a regional city to purchase their reloading supplies over a season.

A typical harvester making two trips per night to the chiller 6 nights per week can be expected to fire 12,000 rounds per year of reloaded 223 Remington ammunition. Doing the same math's as the full-bore example, this equates to almost 18kg of reloading powder per year. As a critical business input, a professional shooter is unlikely to wait until their powder supplies are exhausted before replenishing their stock on hand. In this scenario the harvester is likely to purchase two or three 4kg containers at a time which, when added to the remaining supplies already on hand, would obviously exceed the proposed household limit.

When one considers that 12kg is also the maximum that a licensed firearms dealer is currently allowed to hold in stock without requiring an explosives license, this one transaction would result in a stock out situation for that dealer (for all brands and variants of propellant powder, not just the one type purchased by the harvester) which will likely take months to replenish under the current regime.

In border regions this might result in these purchases being made at interstate dealers who operate under slightly less onerous conditions. The current regulations not only distort the market, they fail the commitments NSW has made at COAG regarding competition.

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