



Australian
BORDER FORCE

Discussion Paper:

Tablet Press and Encapsulator Import Control Review 2022

Introduction

The Australian Border Force (ABF) seeks comment from members of the public, industry, government departments and law enforcement agencies about the effectiveness of the import control for tablet presses and encapsulators introduced on 1 May 2020 to regulation 4G of the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations). Specifically, the ABF seeks comment on whether the import control has been effective and to identify any opportunities to fine-tune the control.

Current Regulation 4G

Purpose of the tablet press control introduced in 2010

Regulation 4G of the Prohibited Imports Regulations commenced on 1 March 2010. The regulation prohibits the import of tablet presses unless permission has been granted by the Minister for Home Affairs, or a person authorised by the Minister, to grant permission.

The rationale behind the introduction of the import control was linked to concerns about the increased usage and domestic production of amphetamine-type stimulants such as MDMA (ecstasy) in tablet form.

The Explanatory Statement accompanying the introduction of regulation 4G stated:

“The purpose of the amending regulations is to introduce a new import control on tablet presses. Tablet presses are key equipment in the domestic manufacture of illicit synthetic drugs. The Australian Government’s Organised Crime Strategic Framework recognises the manufacture and supply of amphetamine-type stimulants as one of three priority areas for combating organised crime.

The new import control is consistent with Australia’s National Drug Strategy supply reduction policy and will reduce the ability of criminals to access tablet presses to domestically manufacture illicit synthetic drugs.”

The import control at the federal level complemented state and territory controls that prohibited the possession of tablet presses without a legitimate reason. This meant that a level of consistency was achieved when the import control was introduced.

Under the Customs Act 1901 the penalty for importing tablet presses, encapsulators and incomplete, temporarily or permanently inoperable or unfinished tablet presses and encapsulators without permission is 1,000 penalty units.

Evaluation of the control in 2019

In February 2019, the Department of Home Affairs published a [discussion paper](#) seeking views on amending regulation 4G to prohibit the import of encapsulators and incomplete tablet presses and encapsulators. The process sought views from the public, industry and government consultation, and used publicly available data from the Australian Criminal Intelligence Commission (ACIC) and the National Drug and Alcohol Research Centre.

That research showed that, since 2010, domestic seizures of tablet presses had decreased as border seizures increased. The research also depicted that over the same time period, the domestic use of ecstasy tablets had decreased whilst the use of ecstasy capsules significantly increased.

The findings suggested that:

- There was a relationship between the increase in border seizures of tablet presses, the decrease in usage rates of ecstasy tablets and subsequent increase in capsule usage.
- The tablet press border control had been effective in reducing the domestic supply of illicit drugs in tablet form.
- There was an evidence base to support prohibiting the import of encapsulators as capsule usage was becoming more prevalent.

Expanding the control to encapsulators in 2020

On 1 May 2020, regulation 4G was amended to include encapsulators and incomplete machines. The [Explanatory Statement](#) provides details of the amendment.

The amended import control provides the ABF the power to seize tablet presses, encapsulators and incomplete, temporarily or permanently inoperable or unfinished tablet presses and encapsulators that are imported into Australia without permission.

Border seizures

Table 1: Tablet press and encapsulator border seizures

	Encapsulator	Tablet Press	Total
01/07/2019 – 31/12/2019	0	9	9
01/01/2020 – 31/12/2020	6	194	200
01/01/2021 – 31/12/2021	57	56	113
Total	63	259	322

Permission to import

Australia's border control on tablet presses and encapsulators seeks to prevent the use of this equipment in domestic illicit drug manufacture, while also ensuring it does not affect the operation of legitimate businesses. Importers are required to apply for, and be granted, permission to import tablet presses or encapsulators. The ABF website contains [details for making an application](#).

Permission to import tablet presses, encapsulators and incomplete machines may be granted, providing an importer can satisfy the Minister, or authorised person, that they have a legitimate purpose to import the goods and that the risk of diversion of the machine to the domestic illicit market is low. Legitimate types of uses for tablet presses and encapsulators include, but are not limited to: confectionary or food production, therapeutic goods, pharmaceuticals production, manufacturing industry, dispensing chemists, veterinary chemical products, and university research and development.

The number of import permit applications has risen sharply since the 2020 amendment. This is largely due to the import control on encapsulators. The ABF has granted the following tablet press/encapsulator permit applications. A permit may be for more than one tablet press or encapsulator.

- 2018/19 – 30 permits
- 2019/20 – 32 permits
- 2020/21 – 83 permits
- 2021/22 – 103 permits (to end May).

Potential Regulation Reform

The ABF seeks to ensure regulatory settings are fit-for-purpose and implemented in a way that maintains critical safeguards while reducing unnecessary regulatory burden on business to support Australia's productivity growth and competitiveness. An important aspect of the ABF's best practice is to continuously improve our performance, which is why this post-implementation review is being conducted.

A consideration that could benefit business is determining if the level of decision maker is appropriate now that the number of applications for tablet presses and encapsulators has increased so significantly since regulation 4G was amended in 2020. Currently, subregulation 4G(7) allows the Minister to authorise an 'SES employee or an acting SES employee of the Department' of Home Affairs to consider applications to import tablet presses.

The role of the Senior Executive Service (SES) is to provide Australian Public Service (APS)-wide strategic leadership of the highest quality. The level immediately below SES officers are Executive Level 2 (EL2) officers. They provide a high level of advice to the SES and Ministers as well as coordinating and assuming responsibility for highly complex or sensitive work. They are also responsible for initiating, establishing and maintaining strong relationships with key internal and external stakeholders and lead a work team. The Australian Public Service Commission (APSC) publishes information on the classification of APS employees on their [website](#).

The APSC also publishes information on the proportion of employees by classification in the [State of the Service Report](#). SES officers form approximately 1.9 percent of the composition of the APS and EL2 officers form approximately 8.2 per cent.

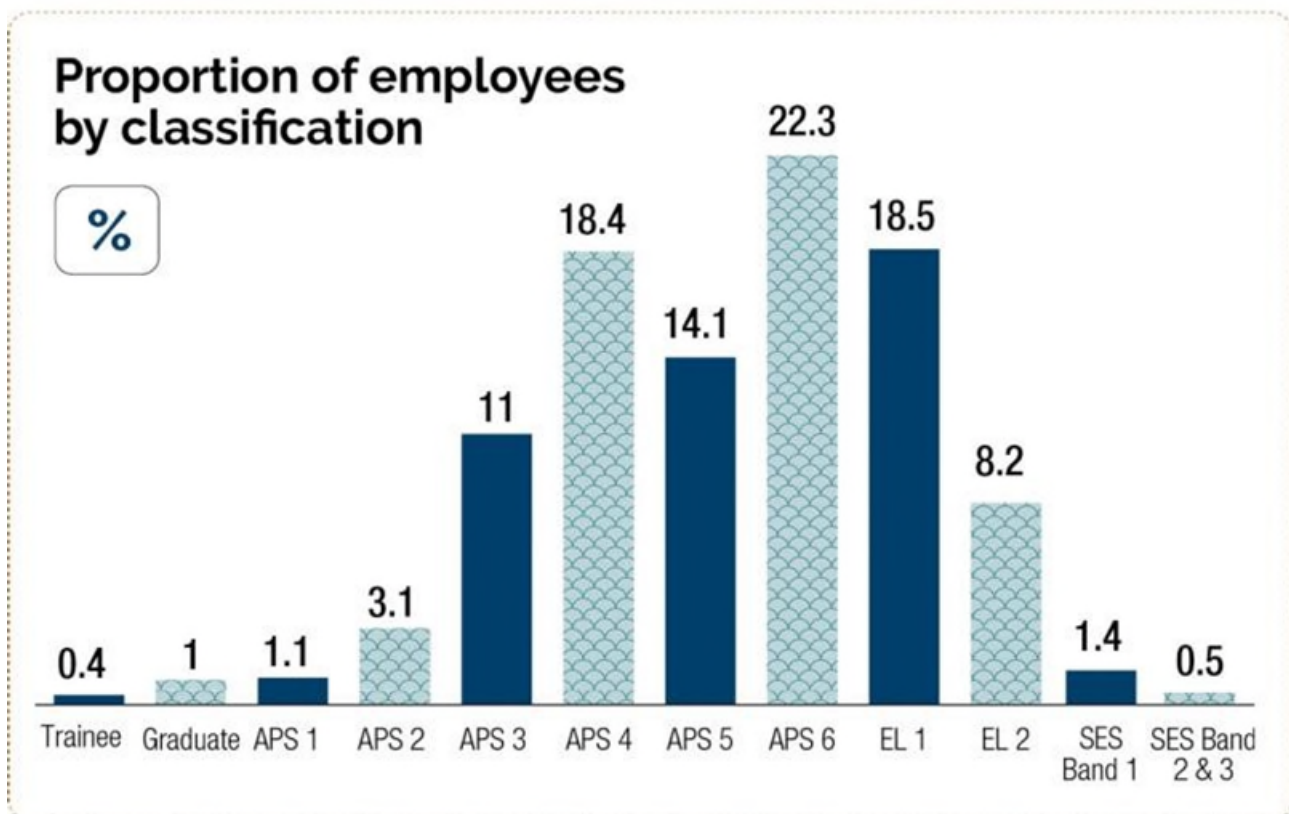


Figure 1: APS employees by classification from the APSC's State of the Service Report 2020-21

The limited number and availability of SES officers impacts resourcing and the Department's ability to consider applications in a timely manner, which could have an adverse impact on an applicant's business. Authorising EL2 officers, in addition to SES officers, would ensure a sufficient number of individuals with the relevant expertise would be available to consider the volume of applications being received.

Regulation 4G allows the Minister to authorise any SES or acting SES employee in the Department to deal with applications. As is customary, not all SES employees in the Department are authorised, instead the authorisation has been limited to SES within the Customs Group as having the necessary qualifications, attributes and expertise. The internal policy position on the management of operational decision making is that officers only exercise those powers relevant to their roles, regardless of whether they are authorised or not.

The SES in the Customs Group have a wide remit and are responsible for providing policy advice and regulatory administration for customs and trade issues across all goods at a high level. The delegation of this authority to deal with applications for tablet presses and encapsulators to EL2 officers in the Customs Group would compare appropriately in level of complexity, risk and volumes to decision making powers to decide applications for other goods in the Prohibited Imports Regulations, such as firearms and weapons under schedule 6 and schedule 13 and tobacco products under regulation 4DA.

Authorisation Framework – officers with appropriate qualifications and expertise

The Senate Standing Committee for the Scrutiny of Delegated Legislation assesses delegated legislation against a set of scrutiny principles that focus on compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight. The committee has published [Guidelines](#) which it uses to assess its functions. Of relevance to this paper is the technical scrutiny principal (c) scope of administrative powers. A regulatory agency needs to ensure that any instrument, in this case, the Prohibited Imports Regulations, explains the purpose and scope of the delegation, who will be exercising the delegation and any limitation on exercising those powers.

Authorising officers in the Customs Group to consider permission requests is common as an administrative necessity due to the volume of decision making, and to maintain the orderly management of the Department's business. The Minister and the Comptroller-General of Customs can delegate many powers across a wide range of subject matters under the customs framework.

Authorisations of the kind in regulation 4G are made by the Minister signing a written instrument, which is publicly available. Authorisations are published on LEGEND. This program can be access either through subscription basis on an Immi Account or through libraries that subscribe to Legend.com through the Commonwealth Library Deposit and Free Issue Scheme. Authorisations are not published on the Federal Register of Legislation as they are not legislative instruments per Item 4 in the Table under subsection 6(1) of the [Legislation \(Exemptions and Other Matters\) Regulation 2015](#).

The general form of authorisation used for powers and functions administered by the Department is to officers of a specific classification, rather than a position number or specific person. This supports efficiency in decision-making processes. The existing approach for prohibited import decision making is to delegate to officers within the Customs Group, as these officers possess the appropriate qualifications and expertise.

Only a very small number of specialist powers have a statutory limitation relating to an authorisation holder's specific qualifications or training. For example, before the Comptroller-General of Customs can authorise an officer of Customs to operate internal body scan equipment, the officer must have completed specific training. Another example relates to the exercise of monitoring powers for auditing purposes. Exercising an authorisation to consider an application to import prohibit goods requires the policy and regulatory skills and expertise of an officer in the Customs Group, but not specific, specialist training.

Authorisations made by the Minister are often narrower than that allowed under the Prohibited Imports Regulations. For example, the Minister could authorise all SES and acting SES in the Department under regulation 4G, but currently only authorises those in the Customs Group because that is where the expertise for these decisions are located. Similarly, under regulation 4DA (importation of tobacco products), the Minister could authorise any APS employee in the Department, but has instead limited the authorisation to SES and EL2 employees in the Customs Group.

Amending the authorisation to EL2 employees under regulation 4G of the Prohibited Imports Regulations would allow for additional persons to be authorised. This would assist in maintaining the orderly and timely management of Department business, including the not hindering legitimate trade.

Authorisation Safeguards - limitations to the exercise of powers and functions

Decisions related to applications to import prohibited goods are subject to judicial review. The requirements of lawful decision making include observing the principles of procedural fairness and natural justice. There is no formal right to internal review in regulation 4G. However, as a matter of policy, good administration, and in keeping with the principles of procedural fairness and natural justice, applicants are informed of deficiencies in information on their application and given an opportunity to provide further information before a decision is made. Applicants are again advised prior to a refusal decision being made and are provided a right of reply. Refusal decisions are made in writing, with reasons for the decision clearly stated. There is no bar on applicants reapplying for permission following a decision to refuse an application.

The consideration of an application under regulation 4G is not subject to independent merits review. This compares appropriately with consideration of other goods in the Prohibited Imports Regulations such as firearms and weapons under schedule 6 and schedule 13 and tobacco products under regulation 4DA. There are factors involved in the nature of the decision of application for permission to import prohibited goods that justify excluding merits review, including law enforcement, public interest, community safety and significance to the economy.

Decisions relating to the granting or refusing of import permission are based on a range of factors including the applicant's record of complying with Australian customs requirements and/or breaches of import permit conditions. Similarly, decisions relating to the revocation of import permission would take into account the conditions applied on import permit and the permit holder would be afforded natural justice. A breach of a condition may result in the revocation of a permit, in particular, where an importer has not complied on multiple occasions.

Tablet presses and encapsulators are highly sought after by criminal organisations for use in illicit drug manufacture. As such, other factors that are relevant to granting or refusing an application include: the legitimate need for the tablet press or encapsulator, assessed by examining the nature of an applicant's business operations; the character of importer, such as criminal history; whether necessary licenses are held; and the security of the premises where the equipment would be stored.

Discussion Questions

Discussion Question 1:

Has the amended import control on tablet presses, encapsulators and incomplete, temporarily or permanently inoperable or unfinished tablet presses and encapsulators been effective in reducing the domestic supply of illicit drugs? Are there further amendments that should be made?

Discussion Question 2:

Should the Prohibited Imports Regulations be amended to allow for APS employees (Executive Level 2) to be authorised to make decisions on applications under regulation 4G?