

NICHOLAS TAYLOR - BARRISTER

THE ARMS AMENDMENT ACT 2012

LEGAL OPINION - 8th MAY 2013



My name is Nicholas Taylor. I am a specialist firearms lawyer and have practiced in the field of criminal and civil law relating to firearms in New Zealand for the past sixteen years. Over this time I have appeared before the courts in New Zealand on a daily basis in regards to firearm cases. I regularly advise shooters, collectors and gun dealers nationwide on issues relating to firearms law in New Zealand.

A major change has recently occurred in the law and will amend the Arms Act 1983.

The Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Act 2012 was granted royal assent after passing in Parliament on 11 December 2012.

No commencement date has yet been given, except in part 2 of the Act which indicates it will automatically commence on 11 December 2013. It is more likely that it will commence sooner by Order in Council (the Executive Council of the government). There is a need to confirm the definition of freestanding pistol grip in regards to military style semi-automatics (MSSA's) before the full Arms Amendment Act 2012 can be commenced. This could happen at any time in the next few months.

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Please note that all references to sections of the law in this opinion relate to the amended Arms Act 1983, as it will be after the commencement date of the Arms Amendment Act 2012.

What does the Arms Amendment Act 2012 do?

- 1) It puts certain airguns, paintball guns, and airsoft guns into a new category of 'restricted airguns', and places them on a similar footing to MSSA's and restricted weapons in regards to importation requirements (section 18 (2)(b)).
- 2) It redefines the meaning and definition of an MSSA (section 2).
- 3) It allows the police to seek to define any semi-automatic firearm as an MSSA if they so choose, regardless of its features (section 74A by Order in Council).
- 4) It allows the police to seek to make any feature of any semi-automatic firearm a feature of an MSSA for the purposes of section 2 (d) (section 74A by Order in Council). For example, a colour such as "black" could be made a feature of an MSSA.

What is the effect of the Arms Amendment Act 2012?

a) Airguns, airsoft guns and paintball guns

- 1) You will need to apply for an import permit under section 16 (1) of the Arms Act 1983 for any airsoft gun, paintball gun or airgun that looks like a real gun (or of its type or kind) or looks like it is capable of full automatic fire (or of its type or kind). The permit to import must be obtained prior to import. It is a criminal offence with a penalty of one years imprisonment to import a restricted airgun without a permit to import issued before it lands in the country.

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- 2) You will need an import permit to import any parts for any airgun, paintball gun or airsoft gun that looks like a real gun (or of its type or kind) or looks like it is capable of full automatic fire (or of its type or kind).
- 3) In order to get an import permit you must have a “special reason” for the importation. This is very difficult to get and falls under police policy and discretion (section 18 (2) of the Arms Act 1983).

Therefore, in my opinion, the reality, effect and purpose is a total import ban on all airguns, airsoft guns and paintball guns that look like a real gun or look like they are capable of full automatic fire (even if they are not modelled on a real gun), and all parts in relation to them.

It is highly unlikely that any import permits for restricted airguns will be issued as the police have discretion as to what they consider “special reasons”, and the very purpose of this amendment is to reduce the number of these types of airguns, airsoft guns and paintball guns in New Zealand.

The term “**special reasons**” has existed in the Arms Act 1983 for many years and the wider firearms community is used to this term in regards to the importation of MSSA’s, pistols, sub-machine guns etc. It has proven very difficult for shooters and dealers over the years to show a “**special reason**” for import exists, as it is discretionary and police policy on this shifts frequently and inconsistently.

If you are refused an import permit for not having a “special reason” this decision can be appealed (section 62) to a District Court Judge; this can be a lengthy and complex court action against the Commissioner of Police.

b) Military style semi-automatics (MSSA’s)

Under section 4 of the Arms Amendment Act 2012, a new definition of MSSA will be brought into effect; namely a change in regards to magazine capacity, which

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can now “look” like it holds no more than 10 rounds of centre fire ammunition. Any component part can now be described as a pistol grip in regards to semi-automatics.

Any make and model of semi-automatic firearm can now be declared an MSSA regardless of its features (section 74A by Order in Council).

Any further descriptive features of any semi-automatic firearm can be declared to be a feature of an MSSA (section 74A by Order in Council). For example, an M14 rifle or a Ruger mini 14 or 10/22 can be declared an MSSA by Order in Council with no further consultation or reasons given.

General waiver

This opinion is a brief description of the main reasons for, and effect of, the Arms Amendment Act 2012. It is not a complete review of all the amendments and should be read in conjunction with the Arms Act 1983, the Arms Amendment Act 2012, and the Arms Regulations 1992.

If you need further information in regards to the changes to the Arms Act 1983 as a result of the Arms Amendment Act 2012, please don't hesitate to contact me.



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Nicholas J. B. Taylor

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