

# Comment on 'Draft Guide to Schedule 1 (6) – Prohibited Firearms v 0.a 14 July 2016'

---

Submitted by RARCO Engineering

## Contents

Cover Letter .....	2
Summary of areas in which the draft guide is inconsistent with practice in other states and territories.....	4
1. Interpretation of which firearms are classified as Schedule 1 (6).....	4
2. Proposal that Schedule 1 (6) firearms cannot be registered in Tasmania .....	4
3. Application of Schedule 1 (6) to semi-automatic and fully-automatic firearms .....	5
4. Clarification of features used to define Schedule 1 (6) firearm .....	5
5. Missing detail for the specific Schedule (1) firearm that a firearm under review is considered to duplicate .....	6
6. Inclusion of firearms prohibited in other states due to design rather than appearance.....	6
Item 1: Interpretation of which firearms are Schedule 1 (6) is inconsistent with other states and territories.....	7
1) Bolt action or pump action rifles that <i>are not</i> based on semi-automatic rifles .....	7
2) Bolt action or pump action rifles that <i>are</i> based on semi-automatic rifles .....	9
3) Self-loading rimfire rifles that are <i>copies, duplicates or facsimiles</i> of military rifles.....	11
4) Self-loading rimfire rifles that <i>are not</i> copies, duplicates or facsimiles of military rifles.....	12
Item 2: Proposal that Schedule 1 (6) firearms cannot be registered in Tasmania is inconsistent with other states.....	13
Item 3: Application of Schedule 1 (6) to self-loading and fully-automatic firearms.....	14
Item 4: Clarification of features used to define Schedule 1 (6) firearm .....	15
Item 5: Missing detail for specific Schedule (1) firearm that firearm under review is considered to duplicate .....	16
Item 6: Inclusion of firearms prohibited in other states due to design rather than appearance....	18
Conclusion and Recommendations .....	19
Appendix 1: Summary of legislative approaches to Item 1 (6) in Australian states and territories	20
Appendix 2: Summary of classification of firearms in draft guide in Australian states and territories.....	21

## Cover Letter

26 July 2016

### RE: Request for comment on Draft Interpretation Guide for Schedule 1 Item 6

Dear Commander Rossiter,

Thank you for the opportunity to comment on the proposed Interpretation Guide for Schedule 1 (6) Firearms (the guide). I have reviewed the draft guide, the original NFA Memoranda as adopted by the Police Ministers on 10 May 1996, and the Firearms Acts from each Australian state and territory.

Based on my review of those documents, I have summarised the legislation, and the current interpretation of that legislation by Police in each state and territory.

This table is presented in Appendix 1.

Drawing on my professional knowledge of the firearms industry, and in conjunction with leading firearms industry figures in each of the states and territories, I have applied the current interpretation in each state and territory to the firearms pictured in the guide, and summarised it in table form.

This table is presented in Appendix 2.

From my review of the legislation and current interpretation relating to each state and territory, I have made a number of comments, first in summary form and then expanded on later in this document.

The stated aim of the draft guide was to provide guidance and an interpretation of which firearms are Schedule 1 (6) firearms, based on what the majority of other states are doing.

Furthermore, the Minister for Police separately communicated his expectation that *'the outcome to be modest, conservative and broadly in line with the majority of other states'*.

However, the interpretation of the guide as currently written is not similar to any state apart from Western Australia, and represents a radical departure from the current practice in all the other states and territories.

Most significantly, the interpretation of what constitutes a Schedule 1 (6) firearm is far broader than all other states with the exception of WA. This is best demonstrated in the Table in Appendix 2, which shows how the firearms described in the guide or firearms very similar to them have been classified in each state and territory.

The other particularly significant area of difference between the proposed approach and the practice in almost all other states and territories is the proposal that a Schedule 1 (6) firearm cannot be registered. With the exception of the ACT, all other states and territories register Schedule 1 (6) firearms as Category D firearms.

In the email accompanying the draft guide, you mentioned that comments on the relative merit of Schedule 1(6) were outside the scope of responses sought. Schedule 1 (6) is part of the Firearms Act 1996, so Police must of course enforce it.

However, the Act gives Police significant discretion in determining which firearms might be categorised under Schedule 1 (6).

This is relevant to the discussion at hand, because applying a very broad interpretation of Schedule 1 (6) as currently proposed in the draft guide will result in an extraordinary expenditure of time, resources and funds for virtually no gain in public safety or firearms control generally.

I will say that in my opinion, effective firearm control legislation should always be based exclusively on objective, measureable and clearly defined technical characteristics of a firearm such as method of operation, magazine capacity and calibre, rather than a subjective measure such as appearance.

Australia's legislative approach to defining firearms categorisation partially by appearance is almost unique in the world, including amongst most countries in Western Europe, where firearms laws are comparatively restrictive.

I would encourage Tasmania Police to consider taking a relatively conservative approach to Schedule 1 (6), and review the Victoria Police policy, as illustrated in Tables 1 and 2. In my opinion, the Victoria Police model is the most practical and accurate interpretation of Schedule 1 (6) of all states and territories, and most likely to successfully withstand a legal challenge.

Adopting a policy similar to Victoria Police would allow Tasmania Police to fulfil their obligation to enforce Schedule 1 (6), but in a perhaps more efficient and pragmatic manner than currently proposed in the guide.

Such an approach would also be consistent with the great majority of other states and territories.

Thank you for taking the time to consider my comments.

Yours Sincerely,

(via email)

Owner, RARCO Engineering, Licenced Firearms Dealer 76234 / 5

## **Summary of areas in which the draft guide is inconsistent with practice in other states and territories**

### **1. Interpretation of which firearms are classified as Schedule 1 (6)**

The guide's interpretation of which firearms are Schedule 1 (6) firearms is very significantly broader than that of Victoria, New South Wales, Queensland, South Australia, The Northern Territory and the Australian Capital Territory.

This is in contrast to the stated aim of adopting a policy that is similar to 'most' other jurisdictions. The great majority of the firearms that would be affected in Tasmania are Category B bolt action rifles or pump action rifles with pistol grips. At present, only Western Australia restricts Category B bolt action rifles with pistol grips in a similar manner to that proposed by the guide.

Please refer to the Table in Appendix 1, which illustrate the exact wording of each state's equivalent Schedule 1 (6) legislation, how it is currently interpreted by that state's police force, and what the practical effect is on the firearms described in the guide.

Please refer to the Table in Appendix 2, which illustrate how the firearms referenced in the guide are currently classified in each state or territory.

It is my opinion that bolt action rifles or pump action rifles with pistol grips, fore-end shrouds or skeleton/collapsible stocks should not be included in Schedule 1 (6) solely because they have these features. Including such firearms would be inconsistent with the current practice in all states and territories with the exception of Western Australia.

### **2. Proposal that Schedule 1 (6) firearms cannot be registered in Tasmania**

The guide proposes that Schedule 1 (6) firearms cannot be registered under any category in Tasmania. This is not consistent with most other States, or the original NFA.

In all other jurisdictions with the exception of the ACT, Schedule 1 (6) firearms are classed as Category D. As such they would be registrable by anyone with a Category D licence who can demonstrate genuine need.

It is my opinion that any firearm that is genuinely a Schedule 1 (6) firearm should be classified as Category D, rather than 'prohibited', and so be registrable as Category D in Tasmania. This would be consistent with the practice in all other states and territories with the exception of ACT.

### 3. Application of Schedule 1 (6) to semi-automatic and fully-automatic firearms

The guide includes several actual semi-automatic and fully-automatic centerfire Category D firearms, which it classifies as Schedule 1 (6). This is not consistent with most other states, or the original NFA.

According to the NFA, a firearm that '*substantially duplicates*' a military self-loading centerfire rifle is already a Category D firearm. The implication then is that Schedule 1 (6) would not apply to such a firearm. Category D firearms are already highly restricted in all states and territories.

Further restricting self-loading centerfire rifles that also resemble Schedule 1 (1) firearms would be ineffective and at odds with all other jurisdictions with the exception of the ACT.

It is my opinion that there would be no advantage to considering Category D firearms which are also Schedule 1(6) firearm as 'prohibited'. This proposal is also inconsistent with the application of the Act in other states and territories, with the partial limited exception of NSW, and the ACT.

### 4. Clarification of features used to define Schedule 1 (6) firearm

The list of features identified as contributing to whether a firearm '*substantially duplicates*' requires clarification so that the true intent of the guide can be better communicated.

Some of the terminology used in the guide is not clear. In particular, it is not clear, from the firearms used as examples in the guide:

- If the intent is to generally prohibit thumb-hole stocks
- Why the feature of 'fore-end shroud or similar' is necessary, given the prohibition on pistol grips
- The intent and meaning of 'detachable extended magazine shroud'
- The definition of 'adjustable stock', particularly in terms of a defined range of adjustment, such as the range of up to 120mm allowed by Border Force.

It is important that definitions are consistent and accurate. For instance a more accurate interpretation of '*substantially duplicates*' would be '*is a duplicate, replica or facsimile of*'. As such, the presence of any one of the four 'features' named in the guide, or even all of them, would not necessarily result in that firearm being classified as a Schedule 1 (6) firearm.

Instead, the firearm would have to be a '*duplicate, replica or facsimile of*' a specific Schedule 1 (1) firearm. This interpretation would be consistent with all other states with the exception of WA.

## **5. Missing detail for the specific Schedule (1) firearm that a firearm under review is considered to duplicate**

The table in the guide including the proposed Schedule 1 (6) firearms should include additional columns which would list the manufacturer and model name, and an image, of the Schedule 1(1) firearm that the Schedule 1 (6) firearm is considered to ‘substantially duplicate’.

This would be consistent with the practice in all states and territories except for WA, and would allow for the expert’s judgement to be better explained, and defended against a legal challenge if necessary.

Given the subjective nature of Schedule 1 (6) and the considerable legal issues surrounding interstate commerce that are potentially at stake, it is anticipated that the rulings of Tasmania Police on certain Schedule 1 (6) may be challenged on occasion. Such legal challenges have already been mounted successfully in Queensland and the ACT.

In my opinion, it is not sufficient to claim that a specific firearm somewhat resembles, from a distance, a generic type of Schedule 1(1) firearm. In order to demonstrate that a firearm ‘substantially duplicates’ a Schedule 1(1) firearm, the manufacturer, model name and an image of that Schedule 1 (1) firearm should be provided, so an objective comparison can be made.

## **6. Inclusion of firearms prohibited in other states due to design rather than appearance**

The guide references firearms such as the H&K R8 which are restricted in other jurisdictions because of their design, not because of their appearance.

The H&K R8 was specifically designed *not* to resemble a ‘military style’ firearm, based on similar ‘*substantially duplicates*’ legislation in force in Germany at the time the rifle was designed. The German legislative provision was similar to the Schedule 1 (6) provision in force in Australia. The provision has since been revoked in Germany as it was considered unnecessary and ineffective.

The inclusion of the H&K R8 as an example of a Schedule 1 (6) firearm is relevant because if the H&K R8 had a different action, for instance a bolt action with no parts interchangeable with self-loading equivalents, it would not be prohibited in most states or territories.

It is my opinion that the H&K R8 should be removed from the guide, as it is not an example of a firearm that is a Schedule 1 (6) due to appearance in any state other than potentially WA.

**Item 1: Interpretation of which firearms are Schedule 1 (6) is inconsistent with other states and territories.**

The draft guide includes four broad classes of firearms that *aren't* semi-automatic or fully-automatic centerfire firearms and so potentially fall under the provision of Schedule 1 (6).

**1) Bolt action or pump action rifles that *are not* based on semi-automatic rifles**

These are the most common Category B firearm. Bolt action rifles include the Weatherby Vanguard in a LSS chassis or the Warwick Firearms WFA1 as pictured in the guide. Pump action rifles would include the Remington 7600 pump-action fitted with a pistol grip stock, not included in the guide but pictured below.



**Figure 1:** Remington 7600, Pistol Grip Stock

Since the year 2000, for reasons of ergonomics, and resulting safety improvements, it has been increasingly common for manufacturers to either offer factory models with pistol grips and adjustable or recoil-reducing stocks, or aftermarket chassis kits using pistol grips which users can fit themselves.

At present, most manufacturers offer a pistol grip version of their bolt action rifles, following the trend first identified in precision rifles used for Olympic Games type shooting events. There are also many after-market chassis system manufacturers, including several Australian manufacturers.

As per the table in Appendix 2, at present only Western Australia restricts the sale of such firearms, based on their appearance. All other states and territories, except SA, have a similar 'appearance' section in their Firearms Acts. However, no states other than WA presently consider bolt action rifles with pistol grips to 'substantially duplicate in appearance' Schedule 1 (1) firearms.



The wide availability over the past 10 years of pistol grip rifles in Australia would suggest that most Police forces in Australia would have been generally aware of the trend toward fitting pistol grips to Category B rifles, if only through regular inspections of safe storage and dealer premises.

In some states, such as Victoria, the Police Commissioner has the specific power to reclassify a Category A, B or C firearm as a Category D or E firearm. This power has been used on at least twelve separate occasions since 2009. To date, it has never been used to re-classify a bolt action rifle with a pistol grip unless that rifle is a semi-automatic rifle which has been converted to a bolt-action rifle.

This suggests that in the opinion of the Commissioner of Victoria Police, bolt action rifles with pistol grips are not Schedule 1 (6) firearms.

## 2) Bolt action or pump action rifles that *are* based on semi-automatic rifles

These are relatively uncommon Category B firearms. They are becoming increasingly common globally as more jurisdictions around the world restrict semi-automatic rifles, leading to manufacturers offering similar bolt or pump-action versions as a substitute.

Because of the action type, such rifles are often similar in design and appearance to semi-automatic rifles. Where the local laws allow, such rifles are often deliberately based on military type rifles to increase their utility to sports shooters who participate in 'practical' or 'action match' type competition shoots.

In Australia, such a rifle is usually already prohibited for one of the following reasons:

- i. The rifle is an *exact duplicate or facsimile* of a Schedule 1 (1) firearm. For example, the Olympic Arms Mach E2 Mk 2 exactly duplicates an M16 A2, as per the below images, and would be a Category D firearm in all states and territories.



**Figure 2:** Olympic Arms Match E2 Mk 2 straight-pull bolt action rifle



**Figure 3:** Colt M16A2 semi/full-automatic rifle

- ii. The rifle substantially duplicates in *design* a Schedule 1(1) firearm. For example, the H&K R8 substantially duplicates in design the G36 rifle. At least some of the parts, most likely the trigger group, bolt head and barrel would probably exchange between the two firearms.

The two rifles do not duplicate each other in appearance.



**Figure 4:** H&K R8



**Figure 5:** H&K G36

Because firearms based on or converted from semi-automatic centerfire rifles are generally prohibited imports and have been since 1996, they are very uncommon in Australia, and may not even have been classified previously in all states and territories.

The few that are registered in Australia are generally dealer samples that were imported for testing and evaluation, and then prohibited prior to large-scale importation.

### 3) Self-loading rimfire rifles that are *copies, duplicates or facsimiles* of military rifles

These rifles are commonly owned in countries with far greater firearms restrictions on firearms ownership than Australia, such as the United Kingdom. Due to the low powered .22LR ammunition they use, they are not generally considered to be a significant threat to public safety in the same way the centerfire version might be.

A typical example is the German Sport Guns StG 44. It is clearly designed and marketed to be an exact duplicate of the StG 44 in appearance. The original StG 44 was the first intermediate-cartridge selective fire rifle adopted by a major military force, making it a significant historical firearm. This explains the popularity of the .22LR version in other countries.



**Figure 6:** German Sport Guns StG 44, .22LR calibre



**Figure 7:** Original StG 44 selective fire self-loading rifle, 7.62 x 33.

It is important to note that the internal parts of the GSG version are completely different to the original, and the outer shell of the firearm is built from plastic, zinc alloy castings and other weak materials. This prevents it from being converted to a more powerful centerfire rifle.

These types of firearms are generally categorised as Category D firearms in Victoria, WA, and the ACT, because they 'substantially duplicate in appearance... an automatic firearm'. At present, similar firearms are still registered as Category C in Tasmania, NSW, Queensland, The Northern Territory and South Australia.

#### 4) Self-loading rimfire rifles that *are not* copies, duplicates or facsimiles of military rifles

Some self-loading rimfire rifles are fitted with pistol grips or adjustable stocks but are not copies, duplicates or facsimiles of military rifles. Such rifles generally have these features to improve ergonomics, not to make them resemble military firearms for marketing purposes.

An example of 'non-military' self-loading rimfire rifle with a pistol grip and adjustable stock is the Ruger SR-22. This firearm is essentially a Ruger 10/22 barrelled action fitted to a Ruger branded chassis system.

These rifles have been widely sold in Victoria as a Category C firearm. Victoria Police have re-classified the German Sport Gun self-loading rimfire series as Category D, but have chosen not to do so with the Ruger SR-22.

This indicates that the Victoria Police Commissioner or their delegate do not consider the Ruger SR-22 to 'substantially duplicate' a military firearm in appearance, despite sharing some configuration similarities with the Ruger SR-556 series, as shown below.



**Figure 8:** Ruger SR-22, .22LR self-loading rimfire rifle



**Figure 9:** Ruger SR-556, 5.56 x 45 self-loading centerfire rifle

## **Item 2: Proposal that Schedule 1 (6) firearms cannot be registered in Tasmania is inconsistent with other states**

The guide states that firearms classified as Schedule 1 (6) would be 'prohibited and therefore not registrable'. The fact that a firearm is listed on Schedule 1 – Prohibited firearms does not automatically mean it is not registrable. This is supported by the inclusion of all Category C firearms, which are relatively commonly owned and registered in Tasmania, in Schedule 1 – Prohibited Firearms:

**Item 2:** Any self-loading rimfire rifle

**Item 4:** Any self-loading shotgun

**Item 5:** Any pump-action shotgun

There does not appear to be any section in the Firearms Act 1996 that says a Schedule 1 (2), (4) or (5) firearm which is also a Schedule 1 (6) firearm cannot be registered. The term 'prohibited firearm' is confusing, as 'prohibited' does not actually mean 'ownership prohibited to all licence holders' but in practice 'ownership restricted to occupational or official purpose licence holders'

Furthermore, the original National Firearms Agreement as agreed to by the Police Ministers in all states and Territories on 10 May 1996 states:

"...Licence Category D (Prohibited, except for official purposes)

- self-loading centre fire rifles designed or adapted for military purposes *or a firearm which substantially duplicates those rifles in design, function or appearance...*"

The proposal to not allow the registration of Schedule 1 (6) firearms as Category D firearms is also inconsistent with the legislation in every other state except for the ACT. The standard practice in all other states with the exception of ACT is to register Schedule 1 (6) firearms as Category D.

This proposal would also create difficulties for importing firearms via Tasmania, servicing markets in other states where such firearms could be registered, and registering un-registered firearms during any future amnesties.

### **Item 3: Application of Schedule 1 (6) to self-loading and fully-automatic firearms**

In most other jurisdictions, Category D firearms are not prohibited based on appearance alone. NSW selectively prohibit certain Category D firearms for professional shooters if they are considered to be 'designed or intended for military purposes'. Significantly, Category D firearms 'designed or intended for military purposes' can still be registered by firearms dealers in NSW, just not by other occupational licence holders.

The practical effect of the NSW restriction on 'military' Category D firearms is effectively non-existent. This is because in order to qualify a firearm must have been adopted by, or marketed to, a military force. Since the criteria of similarity, magazine capacity or appearance are not applied, the effect is that one firearm may be restricted, but an almost identical firearm will be considered Category D.

For example, a semi-automatic 5.56x45 calibre Colt M4 Carbine is a prohibited firearm in NSW, because it has been issued to many military forces. However, the semi-automatic 5.56x45 calibre Ruger AR-556 has been sold and registered in NSW as a Category D firearm, as it has not been adopted by a military force.

This is despite the Ruger AR-556 being virtually identical in design, function and appearance to a semi-automatic Colt M4, to the point where most parts will interchange between the two firearms.



**Figure 10:** Colt M4 Carbine – 'Military Firearm - Prohibited' in NSW



**Figure 11:** Ruger AR-556 – Category D Firearm in NSW

The interpretation and legislation of all other states and territories except for the ACT and the partial exception of NSW is that Schedule 1 (6) does not apply to Category D firearms. Category D firearms already so tightly controlled that further restrictions would be ineffective.

#### **Item 4: Clarification of features used to define Schedule 1 (6) firearm**

Based on the application of 'substantially duplicates' legislation in all other states and territories with the exception of WA, it would seem that a more consistent and accurate interpretation of Schedule 1 (6) would be *'is a duplicate, replica or facsimile of'*.

As such, the presence of any one of the four 'features' named in the guide, or even all of them, would not necessarily result in that firearm being classified as a Schedule 1 (6) firearm. This interpretation is consistent with all other states with the exception of WA.

Regardless of how broadly or narrowly 'substantially duplicates' is interpreted, the following sections of the guide require further clarification:

**Feature 1: Pistol grip** - Was the intention to include 'thumb-hole' stocks, as fitted to the H&K R8 and the Sako M10?

Many traditional blued/timber hunting rifles now include timber thumb-hole stocks. If the intention is to exclude such stocks, the wording could be changed to Free standing pistol grip, to better differentiate between thumb-hole stocks and pistol grip stocks.

**Feature 2: Fore-end shroud or similar** - This item would seem to be redundant given the inclusion of Item 1 – Pistol grip.

**Feature 3: Detachable extended magazine shroud or similar** – The intent of this item is not clear. The only firearms fitted with magazines of this description in the list are the GSG series (522, AK-47 and StG 44) and the Walther H&K 416, which would already be restricted because they exactly duplicate in appearance military rifle.

**Feature 4: Skeleton/Folding/Adjustable stock** – Many rifles intended for Olympic type shooting competitions have adjustable stocks, so that they can better suit individual shooters. Most jurisdictions intending to prohibit AR-15 type collapsible stocks will specify a maximum adjustment limit.

Customs Prohibited Import Regulations 1956 specifies an adjustment limit of 120mm. Stocks which can adjust by more than 120mm are prohibited from import.



### **Item 5: Missing detail for specific Schedule (1) firearm that firearm under review is considered to duplicate**

Given the subjective nature of Schedule 1 (6) and the considerable legal issues surrounding interstate commerce that are potentially at stake, it is anticipated that the rulings of Tasmania Police on certain Schedule 1 (6) may be challenged legally on occasion.

Such legal challenges have apparently already been mounted successfully in the ACT and Queensland.

A licenced firearms owner from the ACT reported that applicants in the ACT who were initially denied permits-to-acquire for bolt action rifles with pistol grips had their permits granted on appeal to the Tribunal. At least one manufacturer of pistol grip chassis systems, GC Precision, is based in the ACT.

A firearms dealer from Queensland reported that individuals within Queensland Weapons Licencing attempted to classify the bolt action Barrett M98 B as a Category D firearm on the grounds that it 'substantially duplicated' an AR-15 rifle.

This judgement was apparently overturned on appeal, as the Barrett M98B and many other similar rifles are sold in Queensland at the present time. It is clear from the images below that despite the Barrett M98 B sharing some layout principles with the AR-15, it bears only a superficial resemblance to the other rifle.



**Figure 12:** Barrett M98B



**Figure 13:** AR-15 SP1

The precedents established so far in other states tend to indicate that it is not sufficient for a Schedule 1 (6) firearm to somewhat resemble a Schedule 1 (1) firearm when, for instance, viewed from a distance by a member of the public with no specific firearms knowledge.

With the exception of WA, it is required to establish that the firearm under review substantially duplicates a specific Schedule 1 (1) firearm.

For this reason, it is my recommendation that the guide be amended to include additional columns which contain the manufacturer's name, model number and an image of the Schedule 1 (1) firearm that the firearm under review is considered to 'substantially duplicate' in appearance.

## Item 6: Inclusion of firearms prohibited in other states due to design rather than appearance

The NFA states that ‘a firearm which substantially duplicates in design, function or appearance’ is a category D firearm. All states and territories except for South Australia have a similar provision.

Some of the firearms listed in the guide are restricted because of their *design*, not appearance. The H&K R8 is an example of a firearm that is restricted because of its’ design, which shared major components with the H&K SL-8 or G36 self-loading rifles.

Other firearms under review in Australia at present are restricted because of their *function*, not their appearance. An example is the Verney-Carron Speedline rifle, which looks like a traditional wooden-stocked hunting rifle and is very similar in appearance to the Verney-Carron Impact pump-action rifle which has been sold in Australia for several years.



**Figure 14:** Verney-Carron Speedline Rifle –Category D due to function, rather than appearance

The Speedline rifle uses a gas system similar to a self-loading rifle, but includes a mechanism that holds the bolt in the rearward position after each shot is fired. The user then releases the bolt forward and into battery by activating a lever with their thumb. This has the effect of providing a slightly higher rate of fire than other currently available Category B firearms.

Because of the similarity in *function* to a semi-automatic rifle, the Speedline is likely to be restricted as a Category D firearm in Australia.

This distinction between restricting a firearm based on the design or function as opposed to appearance is important. The implication is that if that if a new model of H&K R8 was developed with a completely different operation – for instance a turn-bolt action - but with the same appearance as the current model, it would not be restricted in most states and territories.

## Conclusion and Recommendations

The stated aim of the draft guide was to provide guidance and an interpretation of which firearms are Schedule 1 (6) firearms, based on what ‘most’ other states are doing. Furthermore, the Minister for Police separately communicated his expectation that *‘the outcome to be modest, conservative and broadly in line with the majority of other states’*.

However, the interpretation of the guide as currently written is not similar to any state apart from Western Australia, and represents a radical departure from the current standard practice in all the other states and territories.

Most significantly, the interpretation of what constitutes a Schedule 1 (6) firearm is far broader than all other states with the exception of WA. This is best demonstrated in the Table in Appendix 2, which shows how the firearms described in the guide or firearms very similar to them have been classified in each state and territory.

The other particularly significant area of difference between the proposed approach and the practice in all other states and territories is the proposal that a Schedule 1 (6) firearm cannot be registered. With the exception of the ACT, all other states and territories register Schedule 1 (6) firearms as Category D firearms.

In the email accompanying the draft guide, it was mentioned that comments on the relative merit of Schedule 1(6) were outside the scope of responses sought. While Schedule 1 (6) is part of the Firearms Act, the Police have significant discretion in determining how to use Schedule 1 (6) to classify firearms.

This is relevant to the discussion at hand, because applying a very broad interpretation of Schedule 1 (6) as currently proposed in the draft guide will result in an extraordinary expenditure of time, resources and funds for virtually no gain in public safety or firearms control generally.















In my opinion, effective firearm control legislation should always be based exclusively on objective, measureable and clearly defined technical characteristics of a firearm, rather than a subjective measure such as appearance. Australia’s legislative approach to defining firearms primarily by appearance is virtually unique in the world at present, including amongst most countries in Western Europe where firearms laws are comparatively restrictive.

I would urge Tasmania Police to take a conservative approach to Schedule 1 (6), and consider the Victoria Police policy as illustrated in Tables 1 and 2. In my opinion, this model is the most practical and accurate interpretation of Schedule 1 (6) of all states and territories. Adopting a policy similar to Victoria Police would allow Tasmania Police to fulfil their obligation to enforce Schedule 1 (6), but in an efficient and pragmatic manner consistent with the great majority of other jurisdictions.

## **Appendix 1: Summary of legislative approaches to Item 1 (6) in Australian states and territories**

Comparison of Current State / Territory approaches to 'Substantially Duplicates' Legislation					
Jurisdiction	Act or Regulation	Schedule	Exact wording	Current interpretation by Police	Practical Effect
<b>National Firearms Agreement 10 May 1996</b>	APMC Special Firearms Meeting 10 May 1996 Resolution -	Section 4. Basic Licencing Requirements	"...Licence Category D (Prohibited, except for official purposes) self-loading centre fire rifles designed or adapted for military purposes or a <i>firearm which substantially duplicates those rifles in design, function or appearance....</i> "	Equivalent wording included in all State and Territory Firearms / Weapons Acts and Regulations except South Australia	Varies between States and Territories
<b>Tasmania - Proposed</b>	Firearms Act 1996	Schedule 1 - Prohibited Firearms, item (6)	"...6. Any firearm that <i>substantially duplicates in appearance</i> a firearm referred to in item 1 (machine gun)..."	Any firearm with any one of the following features, regardless of operation.  1. Pistol Grip 2. Skeleton/folding/adjustable stock 3. Hand guard that encircles the barrel 4. Magazine that has the appearance of a magazine holding more than 10 rounds.	Any firearm with any one of the described features could be prohibited and unable to be registered without a Commissioner's Exemption, regardless of the category or action type of the firearm.
<b>Tasmania - Current</b>	Firearms Act 1996 - Tasmania	Schedule 1 - Prohibited Firearms, item (6)	"...6. Any firearm that <i>substantially duplicates in appearance</i> a firearm referred to in item 1 (machine gun)..."	In general the appearance of a firearm is not taken into account by Police when classifying a firearm.	Firearms have been classified solely based on action type, with no regard to their appearance. They are classified as A,B,C,D or H depending on action type, calibre, magazine capacity and physical size.
<b>Victoria</b>	Firearms Act 1996 - Victoria	Part 1 - Preliminary, 3B (1)	"...The Chief Commissioner, by instrument, may declare a firearm or type of firearm that would otherwise be a category A long arm, category B long arm or category C long arm to be—  (a) a category D long arm; or  (b) a category E long arm—  if the Chief Commissioner is satisfied that the firearm or type of firearm subject to the declaration is designed or adapted for military purposes, or <i>substantially duplicates a firearm of that type in design, function or appearance ....</i> "	In general the appearance of a firearm is not taken into account by Police when classifying a firearm.  A firearm substantially duplicates a 'military' firearm in <i>appearance</i> only if it is an exact replica or facsimile of a specific 'military' firearm. For example the GSG-522 is a .22LR replica of an H&K MP-5. An example is the Olympic Arms E2 Mk2 bolt action rifle, which could be converted to an M16A2 with commercially available parts.  A firearm substantially duplicates a 'military firearm' <i>in design</i> only if it can be readily converted to a semi-automatic firearm with commercially available parts. An example is the Olympic Arms E2 Mk2 bolt action rifle, which could be converted to an M16A2 with commercially available parts.	Firearms classifications are generally based on action type, with no regard to their appearance unless they exactly duplicate a specific 'military' firearm. They are classified as A,B,C,D or H depending on action type, calibre, magazine capacity and physical size.  Firearms that would otherwise be classified Category B or C are classified Category D or E only if:  -The firearm was designed for military purposes, or is an exact replica or facsimile of a firearm designed for military purposes.  Or  -The firearm is based on a actual semi-automatic military rifle, or is of a design that would be relatively easy to convert to a semi-automatic rifle using commercially available parts.
<b>New South Wales</b>	Firearms Act 1996 - New South Wales	Schedule 1 - Prohibited Firearms, item (7)	"...Any firearm that <i>substantially duplicates in appearance</i> (regardless of calibre or manner of operation) a firearm referred to in item 1 (machine gun), 5 (military self-loading centerfire rifle) or 6 (military self-loading centerfire shotgun)..."	In general the appearance of a firearm is not taken into account by Police when classifying a firearm.  A semi-automatic centerfire rifle is a military firearm only if it has been adopted by a specific military force. Such a firearm is prohibited.  A firearm substantially duplicates a 'military firearm' <i>in design</i> only if it can be readily converted to a semi-automatic firearm with commercially available parts. An example is the Olympic Arms E2 Mk2 bolt action rifle, which could be converted to an M16A2 with commercially available parts. Such a firearm is Category D.  A .22LR replica of a military firearm is a Category C firearm.	Firearms classifications are generally based on action type, with no regard to their appearance. They are classified as A,B,C,D or H depending on action type, calibre, magazine capacity and physical size.  Firearms that would otherwise be classified Category B are classified Category D only if:  -The firearm is based on a actual semi-automatic military rifle, or is of a design that would be relatively easy to convert to a semi-automatic rifle using commercially available parts.  A self-loading centerfire rifle classed as 'Military' firearm if it has been adopted by a specific military force, and is prohibited. A virtually identical self-loading centerfire rifle that has not been adopted by a specific military force may be classed as Category D.  By example, a semi-automatic Colt M4 Carbine has been adopted by the US Military, and is prohibited in NSW. A semi-automatic Remington R4 Carbine has not been adopted by any military and is classed as Category D in NSW, despite being indistinguishable in appearance, design or function from the Colt M4 Carbine.
<b>Australian Capital Territory</b>	Firearms Act 1996 - ACT	Schedule 1 - Prohibited Firearms, item (8)	"...Any firearm that <i>substantially duplicates in appearance</i> (regardless of calibre or manner of operation) a firearm referred to in item 1 (machine gun), 5 (military self-loading centerfire rifle) or 6 (military self-loading centerfire shotgun)..."	In general the appearance of a firearm is not taken into account by Police when classifying a firearm.  A firearm substantially duplicates a 'military firearm' in design only if it can be readily converted to a semi-automatic firearm with commercially available parts. An example is the Olympic Arms E2 Mk2 bolt action rifle, which could be converted to an M16A2 with commercially available parts. Such a firearm is Category D.  A firearm substantially duplicates a 'military' firearm in appearance only if it is an exact replica or facsimile of a specific 'military' firearm. For example the GSG-522 is a .22LR calibre replica or facsimile of an H&K MP-5.  To date, the only Category B firearm in ACT that has been considered to 'substantially duplicate in appearance' a 'military firearm' is the WFA1.	Firearms classifications are generally based on action type, with no regard to their appearance unless they exactly duplicate a specific 'military' firearm. They are classified as A,B,C,D or H depending on action type, calibre, magazine capacity and physical size.
<b>Queensland</b>	Weapons Regulation 1997	5) Category D Weapons	"...(1) Each of the following is a category D weapon—  (a) a self-loading centre-fire rifle designed or adapted for military purposes or a firearm that <i>substantially duplicates</i> a rifle of that type in design, function or appearance;..."	A firearm substantially duplicates a 'military firearm' in design if it can be readily converted to a semi-automatic firearm with commercially available parts. An example is the Olympic Arms E2 Mk2 bolt action rifle, which could be converted to an M16A2 with commercially available parts.	Firearms have been classified solely based on action type, with no regard to their appearance, provided they can't be readily converted to a self-loading rifle. They are classified as A,B,C,D or H depending on action type, calibre, magazine capacity and physical size.  A firearm that uses the same receiver as a fully-automatic firearm would be 'prescribed'.
<b>Northern Territory</b>	Firearms Act	Schedule 1 - Prohibited Firearms, item (7)	"...Any firearm that <i>substantially duplicates in appearance</i> (regardless of calibre or manner of operation) a firearm referred to in item 1 (machine gun), 5 (military self-loading centerfire rifle) or 6 (military self-loading centerfire shotgun)..."	In general the appearance of a firearm is not taken into account by Police when classifying a firearm.  A firearm substantially duplicates a 'military firearm' in design if it can be readily converted to a semi-automatic firearm with commercially available parts. An example is the Olympic Arms E2 Mk2 bolt action rifle, which could be converted to an M16A2 with commercially available parts.	Firearms have been classified solely based on action type, with no regard to their appearance, provided they can't be readily converted to a self-loading rifle. They are classified as A,B,C,D or H depending on action type, calibre, magazine capacity and physical size.
<b>South Australia</b>	Firearms Regulations 2008	Regulation 4 (k)	"...receivers of firearms referred to in a preceding paragraph. ( <i>automatic firearms</i> )..."	In general the appearance of a firearm is not taken into account by Police when classifying a firearm.  A firearm that uses the same receiver as a machine gun would be prohibited.	Firearms have been classified solely based on action type, with no regard to their appearance. They are classified as A,B,C,D or H depending on action type, calibre, magazine capacity and physical size.
<b>Western Australia</b>	Firearms Regulations 1974	Division 4 - Category D, Item 7. D1	"...a self loading centre fire rifle designed or adapted for military purposes or a firearm that <i>substantially duplicates</i> such a firearm in design, function, or appearance..."	The appearance of a firearm is one of the main criteria used by Police when classifying a firearm.  Any firearm that has a pistol grip and is not a handgun is potentially a Category D firearm	Firearms with pistol grips, regardless of the manner of operation, design, or calibre, that are not handguns are likely to be categorised as Category D firearms.

## **Appendix 2: Summary of classification of firearms in draft guide in Australian states and territories**

Action Type	Firearm		Category under State / Territory Firearms Act									
			Original NFA	TAS (Proposed)	TAS (Current)	VIC	NSW	QLD	NT	SA	ACT	WA
Bolt Action Centerfire Rifles	Ruger Precision Rifle		Category B	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category B	Exemption from Act req'd - folding stock, Sched 1 (11)	Category B	Exemption from Act req'd - Folding Stock	Category B	Exemption from Act req'd - Folding Stock	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	Savage 10 BA, 110 BA		Category B	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category B	Category B	Category B	Category B	Category B	Category B	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	Weatherby Vanguard Chassis		Category B	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category B	Category B	Category B	Category B	Category B	Category B	Category B
	SAKO M10		Category B	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category B	Category B	Category B	Category B	Category B	Category B	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	Armalite AR-30, AR-31		Category B	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category B	Category B	Category B	Category B	Category B	Category B	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	Warwick Firearms WFA1		Category B	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category B	Category B - status under review since 2015	Category B	Category B	Category B	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	H&K R8		Category B	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category D - Based on ease of conversion using original semi-auto parts	Category D - Substantially duplicates Cat D rifle in <i>design</i>	Category B	Category B	Uses 'Prescribed' receiver (Section 4 (1)(j))	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	Olympic Arms March E2 Mk2		Category D - Substantially duplicates Cat D rifle in design	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category D - Substantially duplicates Cat D rifle in <i>design</i>	Category D - Substantially duplicates Cat D rifle in <i>design</i>	Category D - Substantially duplicates Cat D rifle in <i>design</i>	Category B	Uses 'Prescribed' receiver (Section 4 (1)(j))	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
Pump-Action Centrefire Rifles	DPMS Panther Pump Action AR-15		Category D - Substantially duplicates Cat D rifle in design	Exemption req'd- Appearance, Sched. 1 (6)	Category B	Category B	Exemption from Act req'd - folding stock, Sched 1 (11)	Category B	Category B	Category B	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
Semi-automatic rimfire rifles	Alexander Arms R17		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category C	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Category C	Category C	Category C	Category C	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	GSG 522		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category C	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Category C	Category C	Category C	Category C	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	GSG StG 44		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category C	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Category C	Category C	Category C	Category C	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	GSG AK-47		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category C	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Category C	Category C	Category C	Category C	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>
	Walther H&K 416		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category C	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Category C	Category C	Category C	Category C	Category D- Substantially duplicates military rifle in <i>appearance (Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in <i>appearance</i>



Action Type	Firearm		Category under State / Territory Firearms Act									
			Original NFA	TAS (Proposed)	TAS (Current)	VIC	NSW	QLD	NT	SA	ACT	WA
Semi-automatic shotguns	Molot VEPR-12		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category C	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Exemption from Act req'd - military shotgun, Sched 1 (6)	Category C	Category C	Category C	Prohibited - military shotgun <i>(Sched 1 (6))</i>	Category D1- Substantially duplicates military rifle in appearance
	Saiga-12		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category C	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Exemption from Act req'd - military shotgun, Sched 1 (6)	Category C	Category C	Category C	Prohibited - military shotgun <i>(Sched 1 (6))</i>	Category D1- Substantially duplicates military rifle in appearance
Semi-automatic centrefire handgun	Australian Automatic Arms SA		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category H	Category H	Category D - Substantially duplicates Cat D rifle in design AND is semi automatic	Category H	Category H	Category H	Category D- Substantially duplicates military rifle in appearance <i>(Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in appearance
Semi-automatic centrefire rifles	Australian Automatic Arms SAR		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D- Substantially duplicates military rifle in appearance <i>(Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in appearance
	PWS Mk 220		Category D - Appearance and Action type	Exemption req'd- Appearance, Sched. 1 (6)	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D - semi-automatic rifle	Category D- Substantially duplicates military rifle in appearance <i>(Sched 1 (8))</i>	Category D1- Substantially duplicates military rifle in appearance
Fully-automatic firearms	Lithgow Bren Mk 1		Exemption Req'd - Fully Automatic	Exemption req'd- Appearance, Sched. 1 (6)	Category D - Sched. 1 (1)	Category E - Machine gun	Restricted - Sched. 1 (1)	Category R - Machine gun	Exemption from Act req'd - Machine gun, Sched. 1 (1)	Prescribed firearm - automatic firearm, Regulation 4 (a)	Exemption from Act req'd - Machine gun, Sched. 1 (1)	Category E6- Machine gun
	Enfield L4A4		Exemption Req'd - Fully Automatic	Exemption req'd- Appearance, Sched. 1 (6)	Category D - Sched. 1 (1)	Category E - Machine gun	Restricted - Sched. 1 (1)	Category R - Machine gun	Exemption from Act req'd - Machine gun, Sched. 1 (1)	Prescribed firearm - automatic firearm, Regulation 4 (a)	Exemption from Act req'd - Machine gun, Sched. 1 (1)	Category E6- Machine gun