

Weapons Legislation (Lever Action Shotguns) Amendment Regulation 2017

Explanatory notes for SL 2017 No. 212

made under the

Weapons Act 1990

General Outline

Short title

Weapons Legislation (Lever Action Shotguns) Amendment Regulation 2017

Authorising law

Section 172 of the *Weapons Act 1990*

Policy objectives and the reasons for them

The objects of the *Weapons Legislation (Lever Action Shotguns) Amendment Regulation 2017* (amendment regulation) are to:

1. limit access to high capacity lever action shotguns in the community; and
2. enable the lawful sale and ownership of 'air gun' weapons.

Following the Port Arthur Massacre in 1996 all Australian governments supported a National Firearms Agreement (NFA) placing tighter controls on firearm possession. The *Weapons Act 1990* is based on the NFA and includes the underlying principles that, weapon possession and use are subordinate to the need to ensure public and individual safety and that this safety is improved by imposing strict controls on the possession of weapons.

The *Weapons Categories Regulation 1997* categorises weapons in line with the NFA. These categories generally have regard to the potential danger posed by the weapon. Currently, lever action shotguns are Category A weapons. Air rifles are also Category A weapons; however, air bows and air guns (of the type used in the sport Airsoft) are uncategorised and therefore difficult to regulate.

A report by the *Joint Commonwealth-New South Wales Review into the Martin Place Siege* (the Review), following tragic events in Sydney in December 2014, was considered by the Council of Australian Governments (COAG) Law Crime and Community Safety Council (LCCSC) in May 2015. The LCCSC agreed to implement a

number of the Review's recommendations, including simplifying the regulation of the legal firearms market through an update of the technical elements of the NFA.

Concerns emerged in 2015 over the proposed importation of a large number of Adler A110 lever action shotguns with high capacity magazines of seven rounds as opposed to the more commonly available three or four round shotguns. In August 2015, the Australian Government banned the importation of lever action shotguns with a magazine capacity of more than five rounds based on concerns that their continued importation may undermine the public safety intent of the NFA. The re-classification of lever action shotguns was subsequently incorporated into the NFA review.

Jurisdictional agreement on the re-classification of lever action shotguns was ratified in February 2017.

In addition, the amendment regulation aims to enable the lawful sale and ownership of 'air gun' weapons.

Air guns include weapons, such as 'Air Bows' and 'Airsoft' firearms that have recently become available for sale in Queensland. An Air Bow resembles a rifle in size and appearance and fires arrows powered by compressed air. It is typically used for hunting purposes. Airsoft is a sport in which opponents are fired at with Airsoft weapons which fire spherical non-metallic pellets. The pellets do not disintegrate on contact as paint pellets do and, as such, may significantly injure people.

These weapons fall within the definition of a firearm under the *Weapons Act 1990*; however, they do not satisfactorily match any of the weapon types listed in the *Weapons Categories Regulation 1997*. As such, they are unable to be classified and therefore sold or held lawfully under any weapons licence. This is contrary to the objects of the *Weapons Act*, which seeks to licence all firearms so as to manage their supply and possession.

Achievement of policy objectives

To achieve its objectives, the amendment regulation will re-classify lever action shotguns to higher, more restrictive categories. This is in keeping with amendments made to the NFA and ratified by all jurisdictions in February 2017.

Lever action shotguns with a magazine capacity of five rounds or less (low capacity) will be moved from Category A to Category B, and those with a magazine capacity of more than five rounds (high capacity) will move from Category A to Category D.

The movement of lever action shotguns with a magazine capacity of five or less from Category A to Category B will have the effect of requiring a person seeking to obtain such a weapon to state a need to possess the weapon prior to being granted the necessary 'Permit to Acquire', enabling acquisition of the weapon.

Lever action shotguns with a magazine capacity of more than five rounds will move to Category D. This will restrict the lawful possession of high capacity lever action shotguns only to those with a Category D licence for a specific reason, such as agricultural culling.

The re-classification of lever action shotguns will greatly restrict their possession and use in the community, thus achieving the policy objective.

This move is reasonable and appropriate as:

- it maintains Queensland's compliance with the National Firearms Agreement;
- reduces the number of higher capacity firearms that may be possessed in Queensland;
- it places higher capacity lever action shotguns into the same category as pump action shotguns, which are a comparable style of fast discharge weapon;
- all current owners of lever action shotguns, which will move from Category A to Category B, already possess a licence for Category B weapons and, as such, will be licensed to continue to possess them without impact;
- transitional provisions will enable current owners of lever action shotguns moving from Category A to Category D to retain possession of their weapons against their current licence without the need to acquire a Category D licence;
- no cost or obligation will be placed on owners to continue possession of their weapons; and
- provision is made for Category D lever action shotguns to be passed down through the laws of succession without the requirement to obtain a Category D licence.

The amendment regulation will also create a definition of 'air gun' to facilitate the administration of this categorisation. Including air guns in the *Weapons Categories Regulation 1997* will assist authorities to regulate their use to ensure community safety. Air guns describe weapons typically used in the sport of Airsoft, which is endeavouring to establish itself as a recreational activity in Queensland.

This policy amendment is reasonable and appropriate as it:

- upholds the objectives of the *Weapons Act 1990*, which includes, 'establishing an integrated licensing and registration scheme for all firearms' (an Airbow is a 'firearm' under the definition of the *Weapons Act 1990*);
- is consistent with interstate legislation;
- facilitates the possession and use of the weapons when authorised;
- places the weapons in the least restrictive category enabling possession for a reasonable purpose, whilst regulating ownership;
- ensures details of each weapon and its owner are recorded in the Police Commissioner's firearms register.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the object of the *Weapons Act 1990*, which is to prevent the misuse of weapons. Ensuring all firearms are appropriately classified is essential to regulating their ownership and use and, thereby, preventing misuse.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Queensland Police Service (QPS) and its partner agency, the Public Safety Business Agency, will incur minor costs associated with the implementation of the changed categories of lever action shotguns.

These minor additional costs will be absorbed within existing funding. Due to the limited impact of these activities realignment of resources will not be required.

Licence costs will also apply to people requiring a general firearms licence to possess an air gun.

Consistency with fundamental legislative principles

The amendment regulation is generally consistent with fundamental legislative principles. Potential breaches of these principles are outlined below:

Whether legislation has sufficient regard to rights and liberties of individuals - Legislative Standards Act 1992, section 4(3).

Clause 6 Amendment of section 5 (Category D weapons)

Clause 6 amends the list of Category D weapons in section 5 of the *Weapons Categories Regulation 1997* to include lever action shotguns with a magazine capacity of more than 5 rounds. A potential breach of the rights and liberties of individuals may be experienced in that commercial ramifications may be felt by any attempt by current owners to sell these weapons after commencement.

While the amendment regulation makes provision to enable the continued ownership of these firearms by current owners, attempts to sell such a weapon may be hindered by the fact that a licence enabling ownership of a Category D weapon would be required to take lawful possession. Relatively few people possess such a licence. Consequently, this may impact on the monetary return expected from such a sale.

While this potential breach is noted, regard has been given to the principles of the *Weapons Act 1990* which include that weapon possession and use are subordinate to the need to ensure public and individual safety. The amendment is required to enhance public safety by limiting the number of high capacity firearms in the Queensland community and, as such, is considered reasonable.

Furthermore, the amendment reflects recent changes to the National Firearms Agreement, to which Queensland is a signatory and which represents a shared national approach to firearms control.

It is also noted that only a small number of firearms owners are impacted by this change and that, while the available market for the sale of the weapons may be reduced, provision has been made to enable the firearms to be left through succession without those inheriting being required to hold a Category D licence.

Clause 13 – Insertion of section 174 Firearms licence—lever action shotguns that became category D weapons on commencement

Clause 13 inserts section 174 which provides for a continuation of the current ownership of lever action shotguns with a magazine capacity of more than five shots after commencement. This is to be achieved by adding an endorsement to the owner's current Firearms Licence permitting possession of the Category D weapon.

A potential breach of the rights and liberties of individuals could be experienced if there is a time delay between commencement and making the endorsement on the licence. If that were to occur, the licensee, during that period, would not be authorised to possess or use the lever action shotgun that the licensee could previously under the licence. As such, the licensee would be temporarily deprived of the right to possess and use the lever action shotgun.

To overcome this potential breach, the electronic database which records licence information, the Weapons Licence Management System, will be programmed to automatically run a script to apply an endorsement to the effected licences at 0000hours on the commencement date. This will ensure that there is no time period in which owners are deprived of ownership rights to the weapon.

Consultation

The Minister for Police, Fire and Emergency Services and Minister for Corrective Services consulted members of the weapons community about the amendment regulation through his Ministerial Firearms Advisory Forum (the Forum). The Forum comprises weapons dealers, rural and sporting association representatives, academics, the Queensland Police Union of Employees and the Queensland Law Society. Forum meetings have enabled open discussions on a wide range of firearms-related matters with particular attention paid to the proposed reclassification of lever action shotguns.

The QPS has concluded that the amendment regulation is exempt from regulatory impact analysis as it falls within the following exclusion category outlined in the Queensland Government Guide to Better Regulation:

- category (j) – Regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services).

Consequently, the Office of Best Practice Regulation was not consulted about the amendment regulation.

As part of the implementation process QPS Weapons Licensing will write to affected firearms licensees, prior to commencement, to inform them of the changes and any impacts based on their existing firearms licence arrangements.