

Weapons Legislation (Replica Firearms) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 155

made under the

Weapons Act 1990

General Outline

Short title

Weapons Legislation (Replica Firearms) Amendment Regulation 2020

Authorising law

Section 172 and Schedule 1 of the *Weapons Act 1990*

Policy objectives and the reasons for them

The *Weapons Act 1990* (the Act) regulates or prohibits the purchase, possession, use, carrying and sale of certain weapons and items in Queensland. The object of the Act is to prevent the misuse of weapons. The Act defines a weapon to include a firearm or another thing prescribed under a regulation to be a weapon or within a category of weapons. Categories of weapons are listed in the *Weapons Categories Regulation 1997*.

The Act defines a replica of a weapon to include a reasonable facsimile or copy of a weapon. Replicas are not currently classified under the *Weapons Categories Regulation 1997* except for a subset listed under Category R.

The number of replica firearms owned in Queensland has increased greatly since 2017, owing to the rise in popularity of 'gel blasters'. Gel blasters fire a water filled gel projectile that causes negligible harm. However, some of these devices are designed to closely resemble firearms which causes alarm if they are sighted in public. This has resulted in a sharp increase in the number of calls for police to respond to sightings of, what are mistaken to be, firearms.

While the prevalence of gel blasters has increased the number of incidents relating to replica firearms, the same risks of public alarm exist in relation to all replica firearms. The sighting of a replica firearm necessitates the same policing response as a sighting of an actual firearm until police can determine that they are not confronted with a real firearm. This places a drain on police resources and increases the risk of a critical incident occurring.

While the Act provides offences for the misuse of replica firearms it places no restrictions on possession of these items.

The recent increase in calls for police assistance is an indicator that further measures need to be adopted to deter people from misusing replica firearms in public. This is supported by findings made in a coronial inquest in 2017 (*Inquest into the deaths of Anthony William Young; Shaun Basil Kumeroa; Edward Wayne Logan; Laval Donovan Zimmer; and Troy Martin Foster*), which investigated, among other matters, police use of lethal force involving a replica firearm. This inquest recommended that the Queensland Police Service consider whether a regulatory scheme for replica firearms should be established.

The lack of any restriction on the possession of replica firearms, to date, has limited any means of reducing the number in the community. Such a reduction would lessen public alarm caused by sightings of replicas and, consequently, the drain on policing resources in responding to calls for service.

This is addressed by the *Weapons Legislation (Replica Firearms) Amendment Regulation 2020* (the Amendment Regulation) which will categorise replica firearms as restricted items under the *Weapons Categories Regulation 1997* thereby regulating their possession and placing storage requirements on owners.

Section 67 'Possessing and acquiring restricted items' of the Act prohibits the possession or acquisition of a restricted item without a reasonable excuse. This offence provision carries a maximum penalty of 10 penalty units. Additionally, section 142 'Storage measures and other precautions about access to restricted items' of the *Weapons Regulation 2016* requires that restricted items be stored in a locked container when not in physical possession and that owners take reasonable precautions to ensure the item is not accessible to persons who are not lawfully entitled to possess it. Failing to comply with the section makes a person liable to a maximum penalty of 10 penalty units.

There may be instances, however, where complying with this storage requirement is impracticable. For instance, an item securely mounted to a wall in an RSL may be reasonably secure and yet would not comply with the storage requirements for restricted items. The Amendment Regulation will provide for this situation by amending the *Weapons Regulation 2016* to provide authorised officers with the ability to approve an alternative means of storage in certain instances.

Achievement of policy objectives

The Amendment Regulation amends the *Weapons Categories Regulation 1997* by categorises replica firearms as restricted items. Restricted items will include all replicas of firearms, including those previously categorised as category R, as well as permanently inoperable firearms that would be category A, B or C firearms if they were not inoperable. Inclusion of all these items is necessary to target the possession of items that have the appearance of a functioning firearm and may cause alarm but are otherwise not regulated.

Currently, permanently inoperable firearms, that would be category A, B or C weapons if they were no permanently inoperable, fall within the definition of a 'replica' in section 6A of the Act and their possession is not otherwise captured in legislation. The Amendment Regulation will include these items as restricted items to ensure that all replica firearms are treated consistently. Without this amendment, an anomaly would arise as a replica firearm of a categories A, B or C weapon would be a restricted item while an permanently inoperable firearm from one of these categories would not be considered to be a restricted item.

Section 8 'Category R' of the *Weapons Categories Regulation 1997* makes replicas or facsimiles of machine guns and sub-machine guns, category R weapons. The Amendment Regulation will amend this section to provide that replicas of these weapons, that are not functioning firearms, are restricted items. This ensure that all replica firearms, that are not functioning firearms, are captured as restricted items.

Incorporating replicas of machine guns and submachine guns with all other replica firearms supports the implementation of the policy as the similarity in appearance of some machine guns and certain category D weapons could result in confusion for consumers and operational police in determining which weapons category the item belongs. The amendment also acknowledges that all replicas of firearms, that do not function as firearms, pose the same issues regardless of the type of firearm they replicate.

A clarifying amendment is also made to section 8 of the *Weapons Categories Regulation 1997* to specify that items belonging to section 8(1)(a), (c), (i), or (j) that are permanently inoperable are category R weapons. The wording of section 8 does not distinguish between functioning and permanently inoperable weapons of these types. As such, the section has been generally interpreted to include permanently inoperable items and has been administered and enforced in this way. The amendment will confirm this approach and will provide consistency with the other firearm categories which expressly provide for permanently inoperable firearms within those categories.

A sub-class of replica firearms, that function as actual firearms, are not captured by these amendments. A functioning firearm may be designed to have the appearance of a different firearm. In this way, an item may be an actual firearm and a replica of a firearm. The amendment to section 9 'Restricted items' of the *Weapons Categories Regulation 1997*, will clarify that a replica of a firearm, that is also a functioning firearm, is not a restricted item as community safety would necessitate these firearms continuing to be appropriately categorised as a firearm .

The Amendment Regulation also make it clear that a replica of a firearm that is authorised to be possessed under a blank-fire firearms licence or a theatrical firearms licence is not a restricted item. The *Weapons Regulation 2016* authorises the possession of blank-fire firearms under these licences. The definition in the Act of blank-fire firearms includes replicas of firearms. The Amendment Regulation clarifies that the continued lawful possession of such items under the authority of these licences may continue.

Pursuant to the provisions of section 67 of the Act, the amendments will have the effect of limiting lawful possession of a replica of a firearm to those with a reasonable excuse to do so. While what constitutes a reasonable excuse is ultimately a matter for a court to determine, it is envisaged that many persons will continue to have a reasonable excuse to possess items captured by the policy. For example, possession by members of a gel ball club to take part in club activities, as part of a collection, for display at an RSL, or possession by a legitimate retail outlet for the purpose of selling to those entitled to use the items, are likely to be reasonable excuses for possession.

Categorising these items as restricted items will place a storage obligation on owners. Section 142 of The *Weapons Regulation 2016* states that restricted items must be stored in a locked container when not in physical possession and that owners must take reasonable measures to ensure the item is not accessible to persons who are not lawfully entitled to possess it. It provides no specification as to the type of container that must be used, it requires only that it must be locked.

There may be instances where storage of a replica firearm as prescribed by regulation is not practicable. For this reason, section 98 'Authorised officer may approve safe storage measures at least equivalent to those required under this regulation' of the *Weapons Regulation 2016* is amended to enable authorised officers to approve alternative storage measures in some instances. The amendment extends the current capacity of authorised officers to approve alternative storage of firearms to include relevant restricted items. 'Relevant restricted items' is defined to include replica firearms and deactivated firearms which, if they were not deactivated, would be category A, B or C firearms.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the authorising Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Regulation will benefit the community through reducing the number of incidents of alarm being caused through the misuse of replica firearms and alleviate the resourcing impost placed on the Queensland Police Service (QPS) in responding to such incidents.

Any costs incurred through the implementation of the Amendment Regulation will be met through existing budgets.

Costs to the community may be incurred as a consequence of storage requirements that require replicas firearms must be kept in a locked container. However, compliance with this provision may be met through the use of any locked container minimising the need for specific items to be purchased for this purpose.

Consistency with fundamental legislative principles

The Amendment Regulation has sufficient regard to the rights and liberties of individuals and the institution of Parliament and has been drafted with due regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

While the Amendment Regulation does not directly impinge on any of the matters specifically listed in the *Legislative Standards Act 1992*, section 4(3), the former Scrutiny of Legislation Committee consistently took the view that these matters referred to in that section are not to be treated as exhaustive and that all matters relevant to an individual's rights and liberties should be considered.

As such, the view could be taken that the Amendment Regulation impinges on rights and liberties of individuals, specifically current owners of replica firearms, as it limits possession of this property to certain classes of persons and imposes a new obligation regarding storage.

As the acquisition and possession of replica firearms has not previously been regulated, a large number of people have lawfully acquired such items, believing their ongoing possession would be uninterrupted. The Amendment Regulation may impact upon the enjoyment of this ownership by making it unlawful to possess a replica of a firearm without a reasonable excuse. As such, the amendments may be seen to impinge on an owner's property rights.

The Amendment Regulation also imposes an obligation on owners to store their replica firearms in a locked container. This introduces a new burden to which they were not subjected when acquiring the replica firearm. It is noted, however, that the *Weapons Regulation 2016* does not make any specifications regarding the nature of this container and, as such, the purchase of a new item for this purpose may not be necessary for many owners. Furthermore, the *Weapons Regulation 2016* is

amended to enable authorised officers to approve alternative storage measures, for these items, when these are at least as secure as that required by regulation.

To alleviate the impact of these changes commencement of the Amendment Regulation is delayed until 1 February 2021 to allow sufficient time for owners and stakeholders to take any compliance measures necessary.

Any concerns about the infringement of individual rights is outweighed by the public interest in protecting the community from the fear and alarm caused by the inappropriate use of replica firearms, coupled with the need to minimise the risk of a critical incident occurring.

Consultation

A range of stakeholders from the weapons industry and other interest groups were consulted in relation to the Amendment Regulation. In February 2020 the Minister for Police and Minister for Corrective Services discussed the policy with members of the Ministerial Firearms Advisory Forum. Present at this forum were representatives of the gel ball and firearms industry as well as the RSL and community groups.

Subsequent consultation was undertaken with gel ball industry representatives with to further explain the policy and investigate implementation issues.

This consultation has resulted in general support for the policy amongst most stakeholders and an expressed willingness from industry to work with the QPS in implementation of the policy.

The QPS has concluded that this Regulation is exempt from regulatory impact analysis as it falls within exclusion category (j) outlined in the Queensland Government Guide to Better Regulation:

(j) 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 Regulation.