

Weapons Legislation (Replica Firearms) Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HRA), I, Mark Ryan, Minister for Police and Minister for Corrective Services, provide this human rights certificate with respect to the *Weapons Legislation (Replica Firearms) Amendment Regulation 2020* made under the *Weapons Act 1990*.

In my opinion, the *Weapons Legislation (Replica Firearms) Amendment Regulation 2020* (the Amendment Regulation), as tabled in the Legislative Assembly, is compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *Weapons Categories Regulation 1997* (the Weapons Categories Regulation) to clarify that:

- permanently inoperable firearms of a type belonging to category R, are category R weapons;
- replicas of machine guns and submachine guns that do not function as actual firearms, are restricted items; and
- permanently inoperable category A, B, and C firearms are restricted items.

The Amendment Regulation also amends the *Weapons Regulation 2016* to provide for authorised officers to approve alternative safe storage measures that are at least as secure as that required by regulation.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Amendment Regulation may be considered to impinge on one human right, however, its purpose goes towards the strengthening of two others. Section 24 of the HRA, property rights, is engaged by the amendments as it interferes with ongoing possession of property. Conversely, section 29 (the right to liberty and security), and section 26 (the right to the protection of families and children) are strengthened by the amendments.

The Amendment Regulation will make replica firearms restricted items within the meaning of the Weapons Categories Regulation. The *Weapons Act 1990* (the Weapons Act) makes it an offence to possess a restricted item without a reasonable excuse.

As such, the amendments will make the possession of replica firearms, by persons without a reasonable excuse, unlawful. In this way, the Amendment Regulation may be seen to impact on the property rights of current and prospective replica firearm owners.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

It may be argued that the Amendment Regulation impinges on the human right of Property Rights as outlined in section 24 of the HRA.

The right protects the right of all persons to own property (alone or with others) and provides that they must not be arbitrarily deprived of their property. The right does not provide a right to compensation.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the Amendment Regulation is to restrict the possession of replica firearms to only those individuals who have a reasonable excuse to possess them, so as to minimise their misuse in public.

The limitation on who may possess a replica firearm could be considered to interfere with personal property rights as it may mean that some persons, who lawfully acquired a replica of a firearm, will no longer be able to lawfully possess it. This, in effect, acts to deprive the person of their right to that property.

This limitation is, however consistent with a free and democratic society as it has arisen out of a pressing need to protect other human rights of the wider community. The ongoing misuse of replica firearms in public and corresponding increased risk of a police shooting interfere with, the right to liberty and security (section 29), and the right to the protection of families and children (section 26).

In terms of the section 29 protection of liberty and security, protecting the right to liberty means that all reasonable steps must be taken to ensure the physical safety of those who are in danger of physical harm. The right to security includes bodily and mental integrity, or freedom from injury to the body and mind. As such, the fear and alarm being caused to individuals and families, by sightings of replica firearms in public, as they carry out their daily activities, limits this right for the wider community. The Amendment Regulation acts to correct this limitation by focussing possession of replica firearms with those with a reasonable excuse to do so.

The protections provided by section 26 in terms of families and children are, in part, an acknowledgement of the extra protections that must be afforded to children due to their vulnerable position in society. Children and youths are known to be among the users of replica firearms, particularly gel blasters, in our community. Any increased risks of a police use of force due to a replica firearm being presented at police, may be seen to pose a particular risk to children. The Amendment Regulation acts to reduce this risk and, therefore, bolster this right in our community.

Since 2017, there has been a rise in the numbers of replica firearms in the community which has in turn accompanied the rise in popularity of replica firearms designed for recreational purposes. The increasing number of replica firearms in the community has led to a large increase in sightings of them in public. These sightings have resulted in a consequential increase in calls to police and emergency services as a result of the fear and distress caused to members of the public whom frequently mistake the replica items for actual firearms. The need to limit possession of replica firearms has, therefore, arisen out of a need to protect the expectation of other members of the community to go about their lives without fear.

This increase in calls also places high demands on police resources in responding to incidents involving the use of replica firearms. Such incidents divert police time away from attending to other duties. Furthermore, since police must respond to reports of replica firearms as though they are real (due to the fact that they cannot be readily distinguished from actual firearms) police responses may require the presentation or use of actual firearms by police officers, which in turn carries inherent risks to public safety.

(c) The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

By classifying replica firearms as restricted items under the *Weapons Categories Regulation 1997*, the items will only be able to be possessed by individuals who have a reasonable excuse. The amendments therefore limit the number of individuals who may lawfully possess replica firearms, in turn limiting the number of replica firearms in the community and decreasing the potential for these replica firearms to be sighted by the general public.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose

Limiting possession of replica firearms is considered the most reasonably appropriate way of achieving this purpose. Offences for the use of replica firearms in public have long existed and have been enforced. These include section 69 ‘Going armed as to cause fear’ of the Criminal Code, and section 57 ‘Particular conduct with a weapon in a particular place’ of the *Weapons Act 1990*. However, these offences have not curbed the increase in incidents involving replica firearms. This is evidence that the current offence provisions are not sufficient deterrent to prevent the inappropriate use of replica firearms in public. As such, limiting possession of these items by capturing them as restricted items under the *Weapons Categories Regulation 1997* is considered the least restrictive way to achieve the purpose.

(e) The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

While the Amendment Regulation may limit the property rights of some current and prospective owners of replica firearms, the community benefits of limiting the number of such items and thereby bolstering community rights to liberty and security and the rights of families and children, outweigh the impact of the limitation on the right.

Enhancing the rights of the wider community as they go about their day to day lives, enhancing safety, and minimising fear, outweigh the impingement on property rights. While the harm caused to property rights is of note, this limitation is of a relatively minor nature as it impacts only on a limited number of people and not generally on their day-to-day or business activities.

Furthermore, the amendments do not prevent ownership of replica firearms altogether, but rather they operate to restrict such ownership to those with a reasonable excuse to do so (for example, individuals who hold collector's licences).

On balance, it is considered that the significant public interest in making the amendments outweighs any impact on property rights that they may present.

Conclusion

I consider that the *Weapons Legislation (Replica Firearms) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Mark Ryan
Minister for Police and
Minster for Corrective Services

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